

Trial Hearing
WITNESS: DAR-OTP-P-0718

(Open Session)

ICC-02/05-01/20

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and
7 Judge Althea Violet Alexis-Windsor
8 Trial Hearing - Courtroom 2
9 Tuesday, 14 June 2022
10 (The hearing starts in open session at 9.32 a.m.)
11 THE COURT USHER: [9:32:49] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE KORNER: [9:33:14] Yes, good morning, all.
15 If we can call the case, please.
16 THE COURT OFFICER: [9:33:21] Good morning, Madam President. Good
17 morning, your Honours.
18 This is the situation in Darfur, Sudan, in the case of The Prosecutor versus
19 Ali Muhammad Ali Abd-Al-Rahman, case reference ICC-02/05-01/20.
20 And for the record, we are in open session.
21 PRESIDING JUDGE KORNER: [9:33:38] Yes.
22 Appearances, please, Prosecution.
23 MR JEREMY: [9:33:41] Good morning, Madam President. Good morning,
24 your Honours. Mr Nicholls sends his apologies, he'll be back in court tomorrow.
25 On behalf of the Prosecution today we have Alison Whitford, Mohanad Elkholy,

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1 Claire Sabatini and myself, Edward Jeremy.

2 PRESIDING JUDGE KORNER: [9:34:02] Thank you.

3 Yeah. Defence.

4 MR EDWARDS: [9:34:03] Good morning, your Honours. In court today

5 Mr Abd-Al-Rahman is with us. Again, Mr Laucci extends his apologies, he too will

6 be present tomorrow. Representing Mr Abd-Al-Rahman is Eva Kalb to my right;

7 Mohammad El Rahi, behind me; and myself, Iain Edwards.

8 PRESIDING JUDGE KORNER: [9:34:26] Yes.

9 And the representatives for the victims.

10 MR SHAH: [9:34:29] Yes, good morning, Madam President, your Honours. Our

11 appearance is the same as yesterday, the participating victims are represented in

12 the court today by my colleague Idriss Anbari and myself Anand Shah, associate legal

13 counsel. Thank you.

14 PRESIDING JUDGE KORNER: [9:34:46] Yes, before the next witness comes in, can I

15 deal with what I anticipate will be tomorrow's witness, which I read last night.

16 First of all, I understand he's got the protective measures, Mr Jeremy, 547.

17 MR JEREMY: [9:35:05] Correct, Madam President, yes.

18 PRESIDING JUDGE KORNER: [9:35:08] Effectively, that means that this

19 whole -- the whole of his evidence is almost certainly going to have to be in closed

20 session or private session, doesn't it?

21 MR JEREMY: [9:35:21] I mean, I think (Overlapping speakers)

22 PRESIDING JUDGE KORNER: [09:35:22] I know it's not your witness, I

23 (Overlapping speakers)

24 MR JEREMY: [9:35:26](Overlapping speakers) put as much as possible in public

25 session, but inevitably there will be a large chunk in private (Overlapping speakers)

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1 PRESIDING JUDGE KORNER: [9:35:30] How is he going to say anything without
2 revealing who he is? Well, I know he's not your witness, I take it. I take it he's
3 Mr Nicholls' witness?

4 MR JEREMY: [9:35:41] That's right.

5 PRESIDING JUDGE KORNER: [9:35:43] Yeah. But the other thing is it is dense or
6 they are dense in the extreme. I think it would help all of us, certainly the judges, if
7 we could have with the statement a chronology of when the various institutions he
8 refers to were created, (a), something to indicate who the various high-level personnel
9 he are -- he mentions are and how they fit into all of this. And really, yeah, as I say,
10 a chronology of the events.

11 I'm assuming -- I think you've asked for five hours; is that right? Or you've said
12 you're going to take five hours over this witness?

13 MR JEREMY: [9:36:39] I think -- I think the plan is to take a large proportion of
14 tomorrow, if not (Overlapping speakers)

15 PRESIDING JUDGE KORNER: [9:36:46] Yeah, well, obviously you're not going to
16 get through all this and clearly not all of it is strictly relevant to this particular case,
17 although obviously it's -- it's the, if you like, the hierarchy and the background.

18 It would also help if -- if I think we had in advance - I assume Mr Nicholls is working
19 with somebody else on this - let's say by 4 o'clock today, some kind of indication of
20 what areas of the statement are going to be covered.

21 MR JEREMY: [9:37:21] Yes, Madam President. We'll work on that. And as you
22 say, this is a witness whose evidence is -- is broader than this case and we understand
23 that, and certainly the presentation of the evidence will be focused on -- on this
24 (Overlapping speakers)

25 PRESIDING JUDGE KORNER: [9:37:33] Well, I understood that. But, as I say,

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1 because it's so wide-ranging and because there are so many statements, it would help
2 if we have an indication, and I'm sure it would help the Defence too, so I think
3 any -- obviously any documentation should go to the Defence and indeed the LRVs.
4 Yeah.

5 Yes, all right. Who's calling the next -- sorry, Mr Jeremy.

6 MR JEREMY: [9:38:02] Madam President, yes, there was just -- there was also one
7 preliminary issue relating to the next witness that Ms Whitford intends to address.

8 PRESIDING JUDGE KORNER: [9:38:11] Yeah, Ms Whitford.

9 MS WHITFORD: [9:38:13] Good morning, Madam President, your Honours. This
10 morning at about 9 o'clock we received a call from the Victims and Witnesses Service
11 indicating that the witness had indicated he wished to speak to us. We didn't know
12 what the topic was at that time. And an email has now been sent and the Chamber
13 is copied on this email at 9.30 and it appears that what the witness wished to discuss
14 is something to do with corrections or amendments to his statement.

15 PRESIDING JUDGE KORNER: [9:38:44](Microphone not activated)

16 MS WHITFORD: [9:38:48] Indeed, your Honour, to the Trial Chamber I
17 communications email address.

18 It was only sent at 9.30 this morning, your Honour, when we were already in
19 the courtroom.

20 MR EDWARDS: [9:39:19] Is there any reason it couldn't be forwarded to us?

21 MS WHITFORD: [9:39:23] I don't see any reason why not, your Honour, yes.

22 MR EDWARDS: [9:39:27] Thank you.

23 PRESIDING JUDGE KORNER: [9:39:28](Microphone not activated)

24 Is this VWS saying that he couldn't talk to you? Well, what on earth does VWS think
25 it's playing at?

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1 MS WHITFORD: [9:39:56] As I understand it, VWS is referring to the protocol which
2 would normally not allow substantive contact between the Prosecution and
3 the witness within 24 hours of his testimony, but of course if your Honour was to
4 allow it, we could (Overlapping speakers)

5 PRESIDING JUDGE KORNER: [9:40:07] Well, yeah, I don't suppose anybody in this
6 court, let alone Mr Edwards, want to be taken by surprise.

7 I'm sorry, the protocol, even if the witness asks, he's then told by VWS, "No, you can't,
8 because of the protocol"?

9 MS WHITFORD: [9:40:24] If it relates to a substantive matter, your Honour, that is
10 my understanding, but of course if your Honour would allow it, we (Overlapping
11 speakers)

12 PRESIDING JUDGE KORNER: [9:40:30] Well, of course we'd allow it. And
13 anybody with any sense would know that you can't have -- if that's what a witness
14 says and hasn't started his evidence and wants to correct something ...

15 Right, yes, I give permission. How long is this going to take, do we think?

16 Well, I mean, you've got to notify the Defence then of what the changes are.

17 MS WHITFORD: [9:40:58] It's hard to estimate, your Honour, but we will meet with
18 him right away and we can keep the Court informed.

19 PRESIDING JUDGE KORNER: [9:41:04] All right. I am now making a change to
20 the protocol, which I want recorded.

21 If this happens again and a witness in advance of his court appearance says there is
22 something I want to alter, add or correct, permission is given for the -- this is also
23 provided this is before his evidence starts, permission is given to the Prosecution to
24 speak to him. VWS should note that. And the Defence should be promptly
25 informed of the request and obviously any changes made so that we do not waste

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1 time this morning or in the morning.

2 Any observations, Mr Edwards?

3 All right. Well, I suppose you'd better just let us know how long this is going to
4 take.

5 MS WHITFORD: [9:41:57] Indeed, your Honour, we will keep the Chamber
6 informed.

7 PRESIDING JUDGE KORNER: [9:42:01] Thank you.

8 All right, we'll rise.

9 THE COURT USHER: [9:42:06] All rise.

10 (Recess taken at 9.42 a.m.)

11 (Upon resuming in open session at 11.21 a.m.)

12 THE COURT USHER: [11:21:32] All rise.

13 Please be seated.

14 PRESIDING JUDGE KORNER: [11:21:55] Yeah, well, I think we've just had
15 a demonstration of why, if at all possible, this should have been done before.

16 However, I was reminded, and I reread the witness protocol that was agreed, and I
17 think I somewhat intemperately and irritably asked rhetorically what

18 witness -- the VWS thought they were playing at. I shouldn't have said that and

19 I -- and I'm happy to see it wasn't actually said to them, but I think publicly, as I said
20 it publicly, I should make it clear that the protocol is not clear and I will be raising
21 that.

22 The second thing is this - and again it relates to tomorrow's witness - during
23 the enforced idleness, we've been discussing tomorrow's witness, and I'm not sure
24 why he's not 68(3). There is very little about the accused himself in it and it's such
25 a massive statement that it seems to me that he is a suitable candidate.

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1 Now, Mr Edwards, I know this is again taking you somewhat by surprise, but we did
2 say originally that if we considered that the witness could be 68(3) we'd give advance
3 notice.

4 I don't know whether the Prosecution has considered that.

5 MR JEREMY: [11:23:37] I believe the original reason for why this witness was not
6 68(3) is simply actually the volume of the material that he provided. I think it's
7 seven witness statements, not all of which are directly relevant to this case. So I
8 think the intention was to lead him live in a very focused way to tailor his evidence
9 to -- to this particular case.

10 PRESIDING JUDGE KORNER: [11:24:02] All right. Well, if that's -- I mean, I can
11 see there's some merit in that as well, but it did seem to me that, whilst some of
12 the -- quite a bit of the detail is not relevant to this case, the overall picture is, and it
13 seemed to me that some time could be saved, but I think it's probably too late for this
14 witness, unless ...

15 MR EDWARDS: [11:24:33] I'm terribly sorry, your Honour, I've just been reminded
16 by my assistant that the defendant is not here.

17 PRESIDING JUDGE KORNER: [11:24:40] Oh, the defendant's not here.

18 MR EDWARDS: [11:24:41] He probably should be, yeah.

19 PRESIDING JUDGE KORNER: [11:24:42] The defendant should certainly be here.
20 Where is he?

21 MR EDWARDS: [11:24:44] Can I just turn my back for a moment and knock on
22 the door.

23 MS WHITFORD: [11:25:25] Your Honour, while we're waiting, if I could just ask
24 that the note that was emailed just a moment ago by myself, if I could have a printed
25 copy that would be of great assistance.

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1 I think your court officer has prepared one.

2 (Mr Abd-Al-Rahman enters the courtroom)

3 PRESIDING JUDGE KORNER: [11:26:43] Yes. Well, effectively, I think I only need
4 repeat, now that the accused is in court, and I'm sorry that we didn't notice that he
5 wasn't, that I was making a suggestion that tomorrow's witness - 542, is it? - 547
6 might be a 68(3) witness, but I appreciate it may be a bit late.

7 And again, Mr Edwards, because Mr Laucci is not in court, I suppose it's quite
8 difficult to make any comment.

9 MR EDWARDS: [11:27:23] Well, I'm not in a position to make any -- any substantive
10 submissions now, quite apart from the fact that I don't have that standing in the team.
11 But what I will do is over lunch call Mr Laucci, see what he has to say, and when we
12 come back after the lunch adjournment we may be in a position to provide more
13 detailed, possibly helpful submissions.

14 PRESIDING JUDGE KORNER: [11:27:53] Yes.

15 And I think, Mr Jeremy, if you can speak to Mr -- or somebody can speak to
16 Mr Nicholls and see what his view is.

17 MR JEREMY: [11:28:01] Yes. Yes, Madam President. As a preliminary point, I
18 reinforce what I said, that I do think the most *streamlined way to deal with this
19 witness now would be the way that we are planning with the live viva voce
20 examination.

21 PRESIDING JUDGE KORNER: [11:28:16] Yes, all right. Well, as I say, I just
22 thought I'd float that and possibly for future reference when you're considering other
23 similar witnesses.

24 Yes, all right, if we're now ready to go, can we have the summary of what the witness
25 is going to say and then we'll have the witness in.

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1 MS WHITFORD: [11:28:33] Thank you, your Honour.
2 P-718 is a Fur civilian from Wadi Salih, Darfur. He was a boy at the time of
3 the events in 2003 and 2004.
4 P-718 was present during a Janjaweed attack on his village in November 2003. He
5 fled the attack with members of his family. When he returned to the village, he
6 found that his family's hut had been burned, their food stores had been taken or
7 burned, and their livestock and other possessions pillaged. In the hut next to his, he
8 saw his neighbour's mother, an older woman with limited mobility, who had been
9 burned to death. P-718 also saw other dead bodies lying in the streets.
10 As a result of the attack, P-718 was displaced with his family to Deleig.
11 In March 2004, P-718 was arrested in Deleig and taken to the police station. He was
12 released, but three of his relatives were not released, and this was the last time that
13 P-718 saw them alive.
14 P-718 saw Ali Kushayb again in the Deleig market the next Sunday, and immediately
15 recognised him as the same man he had seen outside the police station days before.
16 Your Honour, that concludes the summary.
17 PRESIDING JUDGE KORNER: [11:30:12] Yes. Well, let's have the witness in.
18 We're going to sit through now till 1 o'clock. There will be an hour for lunch and
19 then we'll sit from 2 to 4.
20 MS WHITFORD: [11:30:23] Thank you, your Honour. And can I indicate that
21 the witness would like to repeat the solemn declaration after the court officer.
22 PRESIDING JUDGE KORNER: [11:30:30] Yes.
23 MR EDWARDS: [11:30:31] Just for timing purposes, whereas I -- I was confident that
24 we would be able to easily finish this witness today, events have overtaken us and I
25 regret that the -- the questions I have of this witness mean that it's now inevitable

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1 we're going to go into tomorrow, I think.

2 PRESIDING JUDGE KORNER: [11:30:52] Yes, all right. Well, I thought that might
3 be the case.

4 Yes, Mr Jeremy.

5 MR JEREMY: [11:30:57] Yes, Madam President, just before the witness comes in, I've
6 received some instructions that we would support a 68(3) conversion for Witness 547,
7 so I just wanted to give Mr Edwards as much notice as possible to relay that to
8 Mr Laucci.

9 PRESIDING JUDGE KORNER: [11:31:13] Thank you very much, Mr Jeremy.

10 Sorry, I've just been handed a note that I'm not quite clear what I'm supposed to be
11 doing about it.

12 Right. I've just been -- we've just been sent a message, Mr Edwards, Mr Jeremy,
13 I don't know whether *you've heard this, that the witness has become somewhat
14 emotional as a result of this morning's additions and he's requesting that he has
15 somebody sit next to him from VWS.

16 Mr Edwards, any objection?

17 MR EDWARDS: [11:32:22] No problem with that.

18 PRESIDING JUDGE KORNER: [11:32:24] All right, that can happen.

19 MS WHITFORD: [11:32:27] We would support that course, your Honour.

20 PRESIDING JUDGE KORNER: Yeah.

21 MS WHITFORD: [11:32:31] Your Honour, if I could also take this opportunity to
22 mention something in relation to his language capacity. His mother tongue is Fur,
23 he speaks Sudanese Arabic, but he is not fluent in standard Arabic. And we did
24 encounter some difficulties of communication in the preparation session, which might
25 explain the additional corrections he's come with today. We did use a Fur

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1 interpreter for our meeting this morning.

2 We do propose to go ahead, but just to make everybody aware that questions need to
3 be simple and we need to take some care that the witness is understanding. And we
4 did communicate this to the interpreters yesterday that his -- to the extent that
5 Sudanese Arabic can be used with him, it would -- it would facilitate matters greatly.

6 PRESIDING JUDGE KORNER: [11:33:31] I mean do we have interpreters who
7 speak -- I thought that was part of the problem, we don't.

8 (The witness enters the courtroom)

9 MS WHITFORD: [11:33:38] My understanding is that we have some interpreters
10 who are adaptable to Sudanese Arabic and -- and can make some effort to adjust, and
11 that there may even be one interpreter who is a Sudanese Arabic speaker.

12 PRESIDING JUDGE KORNER: [11:33:56] This all sounds fairly ominous, I have to
13 say.

14 All right. Yes.

15 And can I remind everybody, which again I got as a result of somebody who's
16 watching this trial, it is really vital, and -- and I'm -- I know I'm one of the worst
17 sinners, that we leave a pause after -- while the answer is going on before the next
18 question is asked so that the interpretation can finish. If everybody can write
19 themselves a note to stick in front of them, that's it.

20 Yes, right.

21 Sir, can you hear me and understand me?

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23 (The witness speaks Arabic)

24 THE WITNESS: [11:34:52](Interpretation) Yes.

25 PRESIDING JUDGE KORNER: [11:34:54] Thank you very much for agreeing to give

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1 evidence, and we all appreciate that this is difficult, and particularly as you had some
2 further things to say this morning.

3 THE WITNESS: [11:35:15](Interpretation) Yes.

4 PRESIDING JUDGE KORNER: [11:35:18] First of all, can I reassure you that if you
5 need a break at any time whilst you're giving evidence, then just ask for it.

6 THE WITNESS: [11:35:31](Interpretation) Okay, no problem.

7 PRESIDING JUDGE KORNER: [11:35:33] And you've got somebody sitting next to
8 you as some kind of emotional support.

9 You will be asked questions, as you know, by the three lawyers in this case who
10 represent different parties.

11 THE WITNESS: [11:36:02](No interpretation)

12 PRESIDING JUDGE KORNER: [11:36:03] If at any stage you don't understand
13 the question, then say so straightaway.

14 THE WITNESS: [11:36:13](Interpretation) Okay.

15 PRESIDING JUDGE KORNER: [11:36:15] In a moment we'd like you to repeat
16 the solemn declaration after the court officer. I'm sure you've had that explained to
17 you.

18 THE WITNESS: [11:36:32](Interpretation) Okay.

19 PRESIDING JUDGE KORNER: [11:36:34] All right. Yes.

20 THE COURT OFFICER: [11:36:37](Microphone not activated)

21 THE INTERPRETER: [11:36:42] Mic, please.

22 THE COURT OFFICER: [11:36:45] My apologies.

23 Good morning, Mr Witness. On behalf of the Chamber, I'd like to welcome to you
24 the courtroom.

25 Witness, you will first have to take the solemn undertaking. I will read it out to you.

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- 1 If you could please repeat after me:
- 2 I solemnly declare ...
- 3 THE WITNESS: [11:37:10](Interpretation) I solemnly declare.
- 4 THE COURT OFFICER: [11:37:12] That I will speak the truth.
- 5 THE WITNESS: [11:37:18](No interpretation)
- 6 THE COURT OFFICER: [11:37:23] The whole truth and nothing but the truth.
- 7 THE WITNESS: [11:37:26](Interpretation) The whole truth and nothing but
- 8 the truth.
- 9 THE COURT OFFICER: [11:37:29] Thank you, Mr Witness. You are now under
- 10 oath.
- 11 PRESIDING JUDGE KORNER: [11:37:33] Yes, Ms Whitford.
- 12 QUESTIONED BY MS WHITFORD:
- 13 Q. [11:37:41] Good morning, Mr Witness. We have already met, of course, but my
- 14 name is Alison Whitford and I will be asking you questions on behalf of
- 15 the Prosecution.
- 16 A. [11:37:55] Peace and blessings be upon you. Thank you very much.
- 17 Q. [11:38:00] Now, as you heard from the Judge, if at any time you don't
- 18 understand my question or even any word in my question, please tell me
- 19 straightaway.
- 20 A. [11:38:11] Okay.
- 21 Q. [11:38:16] Now at the moment we're in open session, which means that
- 22 the public can hear you. Okay. If I need to ask anything that might identify you,
- 23 we'll go into private session. Okay?
- 24 A. [11:38:34] Okay, very good.
- 25 Q. [11:38:36] Now, Mr Witness, you provided a statement to Prosecution

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1 investigators in 2018; is that correct?

2 A. [11:38:49] Yes.

3 Q. [11:38:50] For the record, this is item DAR-OTP-0209-2020.

4 Now, when we met last Thursday, you had the opportunity to review the statement
5 and you made some corrections and clarifications at that time; is that correct?

6 A. [11:39:22] Yes.

7 Q. [11:39:23] And the document containing those corrections and clarifications, for
8 the record, is DAR-OTP-0220-4792.

9 Now, Mr Witness, this morning you communicated to us that you would like to make
10 some additional corrections and clarifications to your statement; is that right?

11 A. [11:39:46] Yes.

12 Q. [11:39:47] And what I'll do now is take you through those additional corrections
13 that you wanted to make. Okay?

14 PRESIDING JUDGE KORNER: [11:39:57] I don't -- I'm sorry, Ms Whitford, can't it
15 just go in in the normal way?

16 MS WHITFORD: [11:40:07] If your Honour is satisfied for the note that was
17 prepared this morning to go in, this would certainly expedite matters.

18 PRESIDING JUDGE KORNER: [11:40:15] Mr Edwards.

19 MR EDWARDS: [11:40:16] I think the -- I don't wish to be obstructive. There are
20 details -- perhaps the witness can take off his -- well, he understands English.

21 (Overlapping speakers)

22 PRESIDING JUDGE KORNER: [11:40:33] All right. All right, you prefer it to be
23 done on this occasion --

24 MR EDWARDS: [11:40:36] In the traditional way.

25 PRESIDING JUDGE KORNER: [11:40:37] Yes, all right.

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- 1 MR EDWARDS: [11:40:39] And -- and not led, please.
- 2 PRESIDING JUDGE KORNER: [11:40:41] And not led?
- 3 MR EDWARDS: [11:40:43] Not led, no.
- 4 PRESIDING JUDGE KORNER: [11:40:45] Right. All right.
- 5 Ms Whitford.
- 6 MS WHITFORD: [11:40:51]
- 7 Q. [11:40:52] Mr Witness, the first point that I'd like to ask you about is the place
- 8 where you were arrested in Deleig.
- 9 Could you tell us where you were arrested.
- 10 A. [11:41:11] I was home. Of course we were displaced from an area called
- 11 (Redacted) and we were sleeping on the street. We were staying in a school, but then
- 12 the government told us that we have to leave the school. So we were sleeping rough
- 13 in the streets and we didn't have any homes, so we were in a camp in Deleig. It
- 14 wasn't a real camp. We were just sleeping rough in the streets. So at that time it
- 15 was a Friday and Ali Kushayb and his people came and they surrounded the entire
- 16 area of Deleig and then they started arresting people from the streets and from their
- 17 houses. And we didn't know at the time what was happening, so we were walking
- 18 towards the mosque to pray the Jummah prayer, the Friday prayer, and people told
- 19 us, you have to hide, you have to hide because Ali Kushayb and his people are here
- 20 and they are arresting people. You have to run away.
- 21 Of course, at the time I had an injury on my knee, so I couldn't run. So I was
- 22 arrested and I was beaten and put in a vehicle and was sent to a police station. Some
- 23 of Ali Kushayb's soldiers were there, close to the school of Deleig and the police
- 24 station. And they took us out of the vehicles and wanted us to lie down.
- 25 *Umdah* Adam Koyou was there with Ali Kushayb in the same place. I was still

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1 young, so *Umdah* Koyou said, "Bring this young boy." So he asked me, "Who are you?
2 Who's your father", so I gave him my father's name and he knew me straightaway
3 and he said, "Just sit here next to me."
4 I didn't know Ali Kushayb at the time and if he said Ali Kushayb, I really didn't have
5 any information about that. But *umdah* told me to just sit on the ground. All my
6 brothers and other people were asked to lie down and Ali Kushayb was beating them
7 with his small staff and he said nobody is allowed to lift their heads. So I was sat
8 there next to the *umdah*, but I was terrified. I didn't know that this person's name
9 was Ali Kushayb, but I just knew that he was some kind of a soldier because he was
10 beating people and shouting at them.

11 And then there was another person -- can I say the name? Can I say the name, or
12 not?

13 MS WHITFORD: [11:44:37] Yes, I think this can be said in public session,
14 your Honour.

15 THE WITNESS: [11:44:43](Interpretation) My teacher, Sadiq Harun, he was my
16 teacher in Deleig school and he said, "I know this boy, he goes to my school." So
17 the *umdah* said, "Okay, take him with you." So he took me, he took me back to
18 the school and hid me there and we stayed there.
19 They were still arresting other people, but I was very, very scared. At the time
20 I didn't know what was happening around me, so they just put me there. And it was
21 towards sunset when they took me to the house.
22 Everybody was hiding at the time and no one was going out, so the teacher took me
23 back to my family. We didn't know what happened about my maternal cousins.
24 We didn't understand what was happening and we didn't know anything about them
25 for quite some time, but then we were told that Ali Kushayb took them in his vehicle

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1 and drove them to Garsila.

2 We know that Garsila is a bigger town and we were told that maybe he was -- they
3 were taken to the prison in Garsila and maybe they will be taken to court there. And
4 some other people said that, yes, all those people were taken to Garsila, but nobody
5 knows exactly where they are right now.

6 So people just carried on with their normal life and they saw that these vehicles were
7 not going towards Garsila *because the vehicles didn't leave any traces towards
8 Garsila. And then people found bodies. They said that they found many, many
9 bodies, and they found that my three cousins were killed with another -- or a big
10 number of other people.

11 So we went there and we found that a lot of people are dead and there is blood
12 everywhere. We couldn't recognise everybody. We only recognise their clothes.

13 So we knew that they were killed here.

14 The bodies were so many and I was so scared. I was so scared of seeing the bodies,
15 and ...

16 PRESIDING JUDGE KORNER: [11:47:53] Sir, I'll give you a break, if you like, but I
17 think it would be better if you could try and complete your evidence.

18 THE WITNESS: [11:47:59](No interpretation)

19 THE INTERPRETER: [11:48:16] I'm afraid the interpreter didn't understand this
20 part.

21 PRESIDING JUDGE KORNER: [11:48:25] Would you like -- would you like a break,
22 sir?

23 THE WITNESS: [11:48:31](Interpretation) Yes, five minutes, please. Just give me
24 five minutes, please.

25 PRESIDING JUDGE KORNER: [11:48:36] Yes. All right. Yes.

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- 1 We'll give a chance for the witness to recover. We'll adjourn.
- 2 THE COURT USHER: [11:48:43] All rise.
- 3 (Recess taken at 11.48 a.m.)
- 4 (Upon resuming in open session at 11.56 a.m.)
- 5 THE COURT USHER: [11:56:56] All rise.
- 6 Please be seated.
- 7 PRESIDING JUDGE KORNER: [11:57:16] Ms Whitford, this is obviously going to be
- 8 fraught for every reason in the book. I suggest you get -- you deal with this as
- 9 quickly as possible. If you can't -- I mean the corrections, when I was looking at
- 10 them, didn't seem to me to be that dramatic, although Mr Edwards doesn't want them
- 11 led.
- 12 But it's clear that this witness is finding it extremely difficult.
- 13 Mr Shah, I would strongly suggest, and I mean strongly suggest, that you do not ask
- 14 your standard questions of this witness about what it has been like for him. I think
- 15 we can all see (Overlapping speakers)
- 16 MR SHAH: [11:58:11](Overlapping speakers) yeah, that's well received (overlapping
- 17 speakers)
- 18 PRESIDING JUDGE KORNER: [11:58:12](Overlapping speakers) without the
- 19 necessity of those questions. And unless you want the proceedings to come to
- 20 a grinding halt again, I would, as I say, suggest you do not ask your -- those
- 21 questions.
- 22 MR SHAH: [11:58:21] Well noted. Thank you, your Honour.
- 23 PRESIDING JUDGE KORNER: [11:58:23] All right.
- 24 Mr Edwards, I appreciate it's difficult, but again I'm going to strongly suggest that it's
- 25 not going to be in you or your client's interest to have constant breakdowns like this.

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1 MR EDWARDS: [11:58:38] No, I appreciate that. I would just observe that he
2 seemed to be doing all right until we reached a point where he was being asked about
3 a particularly traumatic event that he experienced.

4 Can I make it clear, I don't take issue with that at all.

5 PRESIDING JUDGE KORNER: [11:58:56] Right. All right. Well, let's see
6 (Overlapping speakers)

7 MR EDWARDS: [11:58:57] So (Overlapping speakers)

8 PRESIDING JUDGE KORNER: [11:58:58](Overlapping speakers) how we go.

9 I'm also going to suggest to him that I know -- I'm going to repeat, that I know it's
10 difficult, but that it's in his interest to try and keep going.

11 Yes, all right, let's have him back in again.

12 (The witness enters the courtroom)

13 PRESIDING JUDGE KORNER: [12:00:06] Sir, I hope you have had a chance to
14 recover. We all understand that reliving these events is extremely difficult, but it's in
15 your best interest, if you can keep going, please, because that way your evidence will
16 be completed quicker.

17 THE WITNESS: [12:00:43](Interpretation) Yes, I will try, but it's extremely difficult
18 because I remember things and I was unable, of course, to constrain myself. I will
19 try to do that. And I lost a lot -- a big number of my family, so it is not -- it is
20 extremely difficult for me. I will try. I'm sorry, your Honour, but I will try. But
21 this is extremely difficult situation because I remember what happened to me and
22 I -- sometimes I was unable to sleep because I remember these things.

23 PRESIDING JUDGE KORNER: [12:01:23] Sir, you do not have to apologise to us.

24 We all understand. And, as I say, it's important, as you understand, if possible, that
25 you can just tell the Court what the Court needs to know for the purposes of the truth

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1 being heard. All right.

2 Yes, Ms Whitford.

3 MS WHITFORD: [12:01:53] Your Honour, I hope to keep it brief, but I do think I
4 need to ask a little bit more about what occurred at the police station. I'll do that
5 now.

6 Q. [12:02:04] Mr Witness, thank you very much for the explanation that you gave
7 to us. I'd just like to come to the point in your story when you arrived at the Deleig
8 police station in the vehicle, and then you told us that you were taken out of
9 the vehicle and you were put on the ground.

10 Now, did you -- did you stay on the ground or did your position change on the
11 ground?

12 A. [12:02:40] Well, when they brought me, they said you have to sit down on your
13 knees. And when you sit on your knees, before Ali Kushayb comes and the other
14 people who will come, they hit you and tell you to -- ask you to lie down. Many
15 people were -- have gone through this. They were told to lie down on their stomach
16 and Ali Kushayb was hitting them.

17 And at the same time when we tried to sit, because I was very young at the time,
18 younger than other people, and the *umdah* was sitting next to Ali Kushayb, he saw me.
19 Well, the *umdah* saw me and he said, "Come here." He -- he asked me to come,
20 "What is your name?" I gave him my name and my father's name. He knows my
21 father. And the *umdah* said, "Well, sit next to me." Ali Kushayb talked with him.
22 He said, "I know this boy, he's very young." And the *umdah* left me next -- next to
23 him. And I saw people were brought.

24 And one of my teachers, Sadiq Harun, who died later, he saw me and he said, "What
25 are you doing here?" I said, "I was brought from there." And *umdah* asked me to sit

1 next to him. My teacher said to the *umdah*, "I know this boy and he's in Deleig school
2 and his name in the school book." Sadiq Harun said, "Okay, sit next to me", and I sat
3 next to him before Ali Kushayb and his soldiers. Sadiq took me and he put me in
4 the school of Deleig and I stayed inside the school for some time.
5 When things calmed down and some people managed to flee, of course, and some
6 people managed to hide, and continuing hitting people. And also the people, well
7 they asked them to lie down, they would continue to hit them. So I stayed inside
8 and when things calmed down Mr Sadiq tells me, "We can take you home." And I
9 told him where we live, where -- the street in which we live in the *umdah* area.
10 At that time there were no camp and we were just in the streets because most of the
11 homes were destroyed. So we were -- some of the people sitting in the streets, they
12 have no homes and most of the people are just staying next to walls and some next to
13 trees. So I was taken back and at sunset -- everybody, of course, was scared. I was
14 very scared and they put me inside and they tried to sleep. And the whole night
15 I was screaming because I was scared.
16 The second day no information was given at all about those who were lost. And
17 people tried to speak. Some people said that people were taken to Garsila, to
18 the prison or to another place. And at breakfast time, or close to that, breakfast time,
19 people -- some people go and -- to find things for their herds and they found bodies
20 in Koska in the Tolda mountain. They found a lot of bodies. So they were scared.
21 When they saw these bodies they came and told people that they found a lot of
22 bodies.
23 Some of the police and the *sheikhs*, and the people of the village who were there, went
24 to see what happened and they saw the traces of the car. They took these people and
25 these people were killed in that area. So we of course, we screamed. We wanted to

1 see those who were killed, to know exactly who was killed. And some, these people
2 who saw what happened, they said that they were going to their farms and that they
3 saw what happened. And they found in this *khor* a lot of bodies and they told
4 the people of the village that we found a lot of bodies so you have to go and see.
5 And of course the *umdah* was told about what happened. He -- *umdah* says
6 the *sheikhs* and the other people to go and to -- to know the people who were killed
7 and the dead bodies.
8 So I went with my -- members of my family. The people were asking me because
9 these people were wearing what uniforms, or what kind of clothes they were wearing.
10 And the -- the last time I saw them was when. So I gave them the information, I said,
11 "Yes, I know what uniforms they were wearing." When I tried to look at the bodies,
12 and I was scared to death, I tried, of course, to -- to cry. And someone was wearing
13 a shirt, white shirt, and this was called Adam who was -- used to sit next to me.
14 At that time, when I saw Adam was killed, he was a good friend of mine and he's one
15 of *maternal cousins. When I saw he was killed, so I became very scared.
16 So the other people tried to know the bodies. When I saw Adam and his body, I
17 started to cry. I was very scared, of course, and knew that all of those people were
18 killed. A lot of bodies were there. I cannot remember, of course, the number of
19 the bodies, but a lot of bodies were there. And I told my aunt that three of her kids
20 and my uncle were killed. Said we have to -- want to bury them. Most of the
21 *sheikhs* were putting down the name of the people who were killed and some of them
22 were not of course known because their family were not there.
23 So those who knew the bodies, of course they put down their names and the *sheikhs*
24 wrote down their names. And people were not known in the area, but they don't
25 know about the families. And the *sheikhs*, of course, the *sheikhs* took down the names

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1 of the people of the bodies they had seen. I came back, and my aunt whose three
2 children were killed, she was scared. And I was completely lost. I was in a very
3 difficult situation.

4 This is what happened on that day. Many problems of course occurred after that, so
5 this is what happened exactly on that day.

6 Q. [12:10:35] Thank you, Mr Witness, for that information. You said that when
7 you were outside the police station there was a conversation with *Umdah* Adam and
8 there was also a conversation with the teacher Sadiq Harun.

9 Where was Ali Kushayb when those conversations were happening, do you recall?

10 A. [12:11:03] Ali Kushayb was hitting some of the people there and he -- saying to
11 people to lie down and not to raise their heads. And I think at *1 or 2 metres, or 2
12 metres and a half, that's how far I was. I was of course scared. I was not able to see
13 very clearly, but he was just -- and he was trying to shout and to hit people and he
14 was hitting people. I was of course scared that he might hit me.

15 When *umdah* asked me to come and sit next to him, although I was scared, so that was
16 the moment for me that I tried to calm myself down. When he asked the *umdah*,
17 *umdah* said, "Well, I know this little boy, so please let him sit -- sit next to me."
18 Of course he was busy giving orders to the other people with him, so I stayed there
19 and saw this with my own eyes.

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

21 MS WHITFORD: [12:12:19]

22 Q. [12:12:21] And you explained that at some moment you were released.

23 A. [12:12:26] Yes.

24 Q. [12:12:28] What involvement, if any, did Ali Kushayb have in your release, as far
25 as you know?

1 A. [12:12:45] No, at that time he was very busy, of course, dealing with the other
2 people. Of course, a lot of people were brought and he was hitting these people, so
3 he was very busy and he did not really, well, look at me or try to find me.

4 Q. [12:13:06] And did *Umdah* Adam Koyou talk to Ali Kushayb?

5 A. [12:13:16] Yes.

6 Q. [12:13:19] Can you explain what you observed in relation to *Umdah* Adam
7 speaking to Ali Kushayb?

8 A. [12:13:33] *Umdah* said, "This is *a little boy, from where did you bring him?" And
9 the soldiers were not speaking with the *umdah*, because of course they receive orders
10 from Ali Kushayb. *Umdah* said, "Please let this boy come and sit next to me." Ali
11 Kushayb asked him who was this boy and he said, "He has nothing *to do with these
12 people. He is a very young boy and I know his father."

13 So the *umdah* said, "What is your name?" I said my name. He said, "And what is
14 your father's name?" I gave him the name. And he knows my father, of course, so
15 he said okay. Ali Kushayb said, "Well, this a young boy, so let him sit here." And I
16 sat next to the *umdah*. And my teacher Al Sadiq, of course, was sitting there. And
17 the people, of course, who live in that area could see from afar what is happening.
18 And Sadiq was very close to the police station, and because he knows a lot of people
19 in the police station in Deleig. When he saw me, he -- he said that he -- well, he
20 knew me and he said to the *umdah*, "Well, this is one of my students." And he took
21 me, of course, and was taken to the school. And when things calmed down he said
22 "Now we can take you home."

23 Q. [12:15:09] Now, there's one clarification that you made this morning, which I
24 think if my colleague in Defence does not object, that I can lead, and that's in relation
25 to where you saw Ali Kushayb in the market some days later, which is at paragraph 5

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1 of the note, in relation to the area of the market.

2 MR EDWARDS: [12:15:37] Given the particular circumstances, I don't object to
3 leading. That shouldn't be taken as an indication that it's accepted.

4 PRESIDING JUDGE KORNER: [12:15:49] No, you can rest assured on that one,
5 Mr Edwards.

6 MS WHITFORD: [12:15:55]

7 Q. [12:15:56] Mr Witness, when you saw Ali Kushayb in the market on
8 the following Sunday, where was he in the market?

9 A. [12:16:13] In the marketplace, many people come, of course, to eat meat. I did
10 not know that he was Ali Kushayb at the time. My colleague at school, he is a friend
11 of mine, when we came back, his name is Mohamed, and he said, "You don't know
12 Ali Kushayb who hit your relatives?" So he said, "Okay, we'll go to the market and
13 I can show you Ali Kushayb." We came, of course, to have meat in the market, we
14 can see him there. Just young people wandering around in the market and he said
15 to me, "Do you know that person who is sitting there?" We passed by and we went
16 by (indiscernible) my friend can tell me where is Ali Kushayb. And he was of course
17 talking to me in our Fur language. I said, "Do you know this person?" He said to
18 me, "That is Ali Kushayb." The man who is in uniform is Ali Kushayb, who is
19 wearing a turban and the *little black stick. He said, "Yes, this is Ali Kushayb." So
20 my friend told me that. And all these militias, of course, he is the leader of these
21 militia and the people in uniform.

22 This is the first time I see him and this is his car, he always uses this car with the red
23 flag, and he was -- this car was given by the government and every person in this area
24 in Darfur knows him. If you see this car, you know that this is Ali Kushayb's car.
25 Of course I was still scared that I can see Ali Kushayb in person. So my friend told

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1 me and we left the market and we went back home. I told my family members that
2 while we were in the market we saw Ali Kushayb in the street.
3 So I saw him the first time in the market on that day.

4 Q. [12:18:39] Just to be clear, Mr Witness, you told us moments ago that you had
5 seen Ali Kushayb outside the Deleig police station, and in your answer now you said
6 the first time you saw him was in the Deleig market. Could you explain for us when
7 was the first time you saw Ali Kushayb?

8 A. [12:19:01] The first time when I was brought to the police station, at that time I
9 did not know Ali Kushayb.

10 I was scared, as I said, because I was not trying to know who is this person or not.
11 People of course were being hit around me, so I was very scared so I was not really
12 looking at people sitting next to me. So I was not really paid -- I did not pay
13 attention to know that this was Ali Kushayb or not.

14 The first time I saw him, my friend gave me the description of this person. And
15 the people of Deleig of course know Ali Kushayb, he was very known in the area, in
16 Deleig and Garsila. The people of those areas know him very well, but my friend
17 gave me the description of Ali Kushayb, so this was the first time I saw him in
18 the market.

19 MS WHITFORD: [12:20:07] Your Honour, I'm almost finished and I have a couple of
20 brief points in private session, unfortunately.

21 PRESIDING JUDGE KORNER: [12:20:12] Yes, all right.

22 Private session, please.

23 (Private session at 12.20 p.m.)

24 THE COURT OFFICER: [12:20:29] We're in private session, Madam President.

25 (Redacted)

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22 (Open session at 12.22 p.m.)

23 THE COURT OFFICER: [12:22:35] We're back in public session, Madam President.

24 MS WHITFORD: [12:22:38] I have no further questions, your Honour.

25 PRESIDING JUDGE KORNER: [12:22:40] Well, I suppose technically, although I've

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1 been complaining about it, you ought to ask for the admission of the statement.

2 MS WHITFORD: [12:22:46] Yes, of course. Thank you for the reminder.

3 PRESIDING JUDGE KORNER: [12:22:50] And the -- and the documents.

4 MS WHITFORD: [12:22:52] Yes, indeed.

5 Q. [12:22:54] Mr Witness, having made all of the corrections and clarifications that
6 you have to your statement, do you confirm that this statement is otherwise true and
7 correct to the best of your knowledge and belief?

8 A. [12:23:09] Yes.

9 Q. [12:23:10] And do you agree to this statement and related documents being
10 introduced into evidence in this case?

11 A. [12:23:22] Yes.

12 Q. [12:23:23] Thank you very much, Mr Witness.

13 That concludes my examination.

14 PRESIDING JUDGE KORNER: [12:23:27] Thank you, Ms Whitford.

15 Mr Shah.

16 MR SHAH: [12:23:30] Thank you, Madam President. I just note that
17 Ms von Wistinghausen is following the proceedings, as she normally does, and I have
18 consulted with her. And in light of what is obviously a very difficult and emotional
19 testimony for the witness, we will not be asking any questions. We just want to
20 thank the witness for his willingness to come and testify before the Court.

21 PRESIDING JUDGE KORNER: [12:23:53] Yes.

22 MR SHAH: [12:23:53] Thank you.

23 PRESIDING JUDGE KORNER: [12:23:54] Mr Shah, as I -- as I indicated, I think it's
24 pretty clear the effect this has all had on him. So thank you very much for that.

25 Yes, Mr Edwards.

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1 QUESTIONED BY MR EDWARDS:

2 Q. [12:24:30] Good afternoon, Mr Witness. My name is Iain Edwards. I'm one of
3 the lawyers representing Mr Abd-Al-Rahman.

4 A. [12:24:45] Do you mean Ali Kushayb? I know Ali Kushayb. I don't know
5 Abd-Al-Rahman. Who is Abd-Al-Rahman?

6 Q. [12:24:53] Mr Ali Muhammad Ali Abd-Al-Rahman is the gentleman standing
7 behind me.

8 Now I'm going to ask you some questions for the remainder of the day. If at any
9 point you want a break, don't hesitate to ask, as her Honour has already told you.

10 And if you ever want me to repeat a question, because you don't understand it, again
11 please don't hesitate to ask, all right?

12 A. [12:25:28] Well, I know the name Ali Kushayb.

13 Q. [12:25:30] All right. Just -- we're going to try and get through your
14 cross-examination as quickly as possible. So just focus on the questions that I ask
15 and try and answer those questions. And I thank you in advance for your assistance
16 in that regard. Okay.

17 Your Honour, I'm afraid we need to go into private session, just for a few moments,
18 please.

19 PRESIDING JUDGE KORNER: [12:26:04] Yes. Private session, please.

20 (Private session at 12.26 p.m.)

21 THE COURT OFFICER: [12:26:11] We're in private session, Madam President.

22 (Redacted)

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- 24 (Upon resuming in open session at 2.08 p.m.)
- 25 THE COURT USHER: [14:08:22] All rise.

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1 Please be seated.

2 PRESIDING JUDGE KORNER: [14:08:43] Yes, Mr Edwards.

3 MR EDWARDS: [14:08:50] Thank you, your Honour. Both parties are of the view
4 that the sooner this matter relating to the modalities of the next witness's testimony is
5 sorted out, the -- if your Honours decide to -- to proceed 68(3), then that provides
6 the Prosecution with as much time as possible to sort out the formalities.

7 PRESIDING JUDGE KORNER: [14:09:10] Yeah.

8 MR EDWARDS: [14:09:11] I'm grateful for the time that your Honours have -- have
9 granted the Defence. I've been able to both speak with Mr Laucci and communicate
10 via email over the course of the morning.

11 Our position is that it's our strong preference that this witness be called viva voce
12 rather than via 68(3), and I'll explain why briefly. Even if it's the case that there's no
13 statutory or regulatory test of uniqueness, it is, nevertheless, over the course of
14 the last several months, the -- or one of the tests that this Trial Chamber has been
15 applying when deciding whether a witness appears 68(3).

16 And it's our submission that P-0547 does fall squarely within that bracket of
17 uniqueness. (Redacted)

18 (Redacted)

19 (Redacted)

20 PRESIDING JUDGE KORNER: [14:10:31] Sorry, are we in public session? I think
21 we better go into private.

22 MR EDWARDS: [14:10:36] Yes.

23 PRESIDING JUDGE KORNER: [14:10:37] Yeah.

24 (Private session at 2.10 p.m.)

25 THE COURT OFFICER: [14:10:46] We're in private session, Madam President.

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10 (Open session at 2.21 p.m.)

11 THE COURT OFFICER: [14:21:43] We're back in public session, Madam President.

12 MR EDWARDS: [14:22:12] Having said that, your Honour, I wonder if there's any
13 profit from your Honour reminding the witness in terms of listening. Thank you.

14 (The witness enters the courtroom)

15 PRESIDING JUDGE KORNER: [14:22:39] Sir, welcome back. I hope you've had
16 a relaxing lunch break, a little longer than I said. Can I just remind you of something
17 Mr Edwards said and which will, I hope, help you. And that is try just to listen to
18 the question that he asks and give him short answers, if you can. It -- it will go
19 quicker that way and you will finish your evidence quicker. I know it's difficult
20 because you've got a lot, but just try and listen to the question and just give it a short
21 answer. And, if possible, say "yes" or "no". All right?

22 Yes.

23 MR EDWARDS: [14:23:37] Thank you, your Honour.

24 Q. [14:23:37] Good afternoon. Good afternoon, sir.

25 Now, we're in public session now, so, again, be careful not to say anything that can

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1 reveal your identity. I understand that your -- the year of your birth is something of
2 an estimate.

3 A. [14:23:59] Yes.

4 Q. [14:24:00] And I think it's right to say that when you were going through your
5 statement with the Prosecution a couple of days ago, one of the things that you
6 wanted to clarify related to your estimate of the date of -- of a year of birth.

7 A. [14:24:31] Yes.

8 Q. [14:24:31] And indeed you told the Prosecutor a couple of days ago that you
9 were about 11 years old when you stopped going to school in around 2003.

10 A. [14:24:58] That's an estimate age. I can't give a specific age, but we were born
11 in a village so we don't have a birth registration system. We follow traditional ways
12 of doing things. We do not have birth certificates. So that's why it's always by
13 reliance on estimates.

14 Q. [14:25:30] Entirely understood. Thank you.

15 I'd like to ask you about someone called Ahmed Ismail. You found -- you and your
16 family found his body after the attack on your home village.

17 There's a raised hand, your Honour.

18 PRESIDING JUDGE KORNER: [14:25:52] Yes. Sorry.

19 THE WITNESS: [14:26:02](Interpretation) I -- I don't hear the sound clearly.

20 The line is not clear. I think I hear more than one voice. And I can't hear
21 the interpreter.

22 THE INTERPRETER: [14:26:34] There is overlap, your Honour.

23 PRESIDING JUDGE KORNER: [14:26:36] Sorry, there's overlap between who?

24 THE WITNESS: [14:26:45](Interpretation) Now I can hear very clearly.

25 PRESIDING JUDGE KORNER: [14:26:48] All right. It -- it may be that the overlap

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1 again is between answer and the question, so let's -- Mr Edwards, good luck with that.

2 MR EDWARDS: [14:27:05]

3 Q. [14:27:06] Mr Witness, I'm just going to repeat my question about Ahmed Ismail,
4 paragraph 37 of your statement -- paragraph 36, in fact. You -- you say in your
5 statement that you and your father found the body of Ahmed Ismail after the attack
6 on your home village.

7 A. [14:27:36] Yes.

8 Q. [14:27:40] He was the brother of *Umdah* Adam Ismail, correct?

9 A. [14:27:48] Yes.

10 Q. [14:27:52] The same Adam Ismail who was working with Ali Kushayb?

11 A. [14:28:04] Yes. The *umdah* was Adam Ismail.

12 Q. [14:28:14] Yeah. And Ahmed Ismail, his brother, had been killed by
13 the Janjaweed, correct?

14 A. [14:28:21] Yes.

15 Q. [14:28:27] You learned at some point that Ahmed Ismail was part of
16 a self-defence group sent from Deleig to your village, correct?

17 A. [14:28:48] Yes.

18 Q. [14:28:50] Did you learn if there -- how many others were part of this
19 self-defence group, sir?

20 A. [14:29:11] Many groups. But I was afraid at the time. I could not tell
21 the number. For example, if you are in a -- in a situation you would feel afraid and
22 you cannot, out of fear and out of crying, you cannot count the dead bodies. Ahmed
23 Ismail died in the **al-saha* next to the school. His corpse could be seen afar.
24 His group likewise died the same way.

25 Q. [14:29:49] Thank you. Who was it that told you about Ahmed Ismail and the

1 others being part of a self-defence group, do you remember?

2 A. [14:30:17] People in Deleig, when they heard about the attack on Taringa, as per
3 their habit, they would rush to help the other village, so they came from Deleig to
4 defend the citizens in Taringa. They came and stopped at an ambush.

5 Q. [14:30:41] Thank you. Were there villagers -- were there males from your home
6 village that formed their own self-defence group?

7 A. [14:31:02] We did not have anything to use to defend ourselves. If we had such
8 self-defence group, they would not have been able to attack us. We would have
9 been able to defend ourselves with whatever means. However, we did not have
10 anything to defend ourselves with, and we did not have a self-defence group, hence
11 the big trouble we ended up having in our village.

12 Q. [14:31:36] The fact that your home village was overwhelmed by militia does not
13 necessarily mean that there was no self-defence group at all, does it?

14 A. [14:32:04] That's not correct. Had we been -- I mean people who are able to
15 defend themselves should mean that the others would not have been able to burn
16 the village or villages. We could have -- in such hypothetical, we could have
17 defended ourselves with whatever means, even with our own clothes.

18 There was a police station in Deleig. Our area was small, we had no police station.
19 We could not report anything to anyone. What citizens and *sheikhs* could do was to
20 report things to the police in Deleig or to the *umdah*. Only then help would come.
21 And without a decision by the *umdah* or the police, then nothing would happen.

22 Ali Kushayb and the others were in cahoots with the government and the police, so
23 eventually you're left to your destiny. You're left to -- for God to save you. So
24 that's all that could happen.

25 Q. [14:33:12] You say in your statement that of those fallen self-defence groups

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1 there were cleavers or spears at their sides. I want to ask you about that for
2 a moment.

3 PRESIDING JUDGE KORNER: [14:33:30](Overlapping speakers)

4 THE WITNESS: [14:33:40](Interpretation) The sound comes intermittent, unlike
5 the other session. The sound is intermittent. I apologise.

6 PRESIDING JUDGE KORNER: [14:33:51](Microphone not activated)

7 MR EDWARDS: [14:33:57] Experience has shown that sometimes simply taking
8 the jack out of the hole and wiping it sometimes bears fruit.

9 Can we have a test from the Arabic booth, please?

10 THE WITNESS: [14:34:53](Interpretation) Yes, I can hear you clearly, perfectly.

11 MR EDWARDS: [14:35:00] Thank you. Well --

12 PRESIDING JUDGE KORNER: [14:35:01](Microphone not activated) let's see how
13 we go then.

14 MR EDWARDS: [14:35:07] Okay.

15 Q. [14:35:08] In your statement, sir, you talk about cleavers or spears being found
16 where the members of the self-defence group fell. I want to ask you about that for
17 a second, okay? You didn't see --

18 A. [14:35:30] Yes.

19 Q. [14:35:32] Did you yourself witness the members of the self-defence group
20 actually being shot and -- and falling?

21 A. [14:35:46] Yes, I saw Ahmed Ismail. We came by foot. He was coming from
22 Deleig towards Taringa and I saw his dead body. But the other people was far away,
23 I could not identify them, I could not see them, but I could see the dead body of
24 Ahmed Ismail.

25 Q. [14:36:20] You didn't see -- you didn't see Ahmed Ismail actually being shot,

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1 though?

2 A. [14:36:29] No, he was already dead.

3 Q. [14:36:31] So you don't know what he may have been carrying at the time he
4 was shot?

5 A. [14:36:42] He had a stick and a spear, like a sword, similar to a sword.

6 Q. [14:36:51] Thank you. I just want to put a proposition to you and see if you
7 agree. If these members of the self-defence group had been carrying firearms, had
8 been shot, do you think it's possible that the attackers might have picked up
9 the firearms and ridden away with them?

10 MS WHITFORD: Your Honour, I think that question calls for speculation on the
11 part of the witness.

12 PRESIDING JUDGE KORNER: [14:37:28](Microphone not activated)

13 MS WHITFORD: [14:37:33] Your Honour, I think that question calls for speculation
14 on the part of the witness.

15 PRESIDING JUDGE KORNER: [14:37:43](Microphone not activated)

16 MR EDWARDS: [14:37:45] I put a proposition to him. He didn't see the men being
17 shot, he didn't know what they were carrying at the time they were shot. I put
18 the proposition that is it not possible --

19 PRESIDING JUDGE KORNER: [14:38:01](Microphone not activated) to answer that?

20 MR EDWARDS: [14:38:10] Well, I just -- I'm -- I can leave the point.

21 PRESIDING JUDGE KORNER: [14:38:14] I think -- I mean, I really don't think that
22 that -- anything is possible, I suppose.

23 MR EDWARDS: [14:38:20] Yes. All right.

24 Q. [14:38:25] And at paragraph 43 of your statement, sir, you -- you assert that
25 there was no rebel presence in your home village that you were aware of.

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1 A. [14:38:50] Yes.

2 Q. [14:38:52] You were about 11 years old at the time?

3 A. [14:39:06] Approximately, yes, that was an approximate age.

4 Q. [14:39:12] Okay. Well, 11 or 12 or even 13, but the point is there are lots of
5 things that could have been organised in your village that you, as an 11 or
6 a 12-year-old boy wouldn't have known about, agree?

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

8 Q. [14:39:43] At paragraph 23, and then I will move on from the attack against your
9 home village, you describe the turbans worn by the attackers as being "a type of
10 turban with part of it wrapped around the face to expose only the eyes."

11 Could we please have brought up on the screen the document at position 4 of
12 the Defence list of materials. This is DAR-OTP-0216-0584. This is an unmarked
13 version of a document that the Trial Chamber is already familiar with.

14 Mr Witness, is the turban that you describe in your statement similar to the image we
15 see at position 7 on this piece of paper?

16 A. [14:41:26] Yes. They would usually wear number 7 or some others, number 2,
17 or number 8. Or even a normal hat. So many people can wear this hat in
18 a different way.

19 Q. [14:41:56] Thank you. In your statement at paragraph 55 - thank you, that can
20 be taken off the screen - you state that just before your arrest you were going to
21 a mosque in Deleig with your brother, that is, the *Sheikh* Sharif mosque, sometimes
22 known as the Masjid Al-Kabir, the big mosque, right?

23 A. [14:42:40] Yes.

24 Q. [14:42:41] That is a mosque which is in the northern neighbourhood of Deleig,
25 correct?

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1 A. [14:42:56] It is in the northern centre at the periphery of Deleig. That was
2 where Ali Kushayb was detaining people, for instance, so we can locate it at the
3 northern west. So this is where that mosque is located.

4 Q. [14:43:34] Well, Mr Witness, you're saying that Ali Kushayb was detaining
5 people at the mosque or people were being arrested as they were coming out of
6 the mosque?

7 A. [14:43:53] No, they would arrest people in the street and from within their
8 homes. Part of those who were arrested were sometimes on their way to the mosque,
9 in the streets, going to their work. They could be arrested in the street. But I did
10 not enter into the mosque to know if this happened.

11 Q. [14:44:21] Yes, okay. No, there may have been a -- an interpretation -- an
12 interpretation issue. But I just wanted to -- to clear that -- that matter up.
13 There was also a mosque, wasn't there, to the -- sorry.

14 The *Sheikh* Sharif mosque, the big mosque, was that the nearest mosque to the Salam
15 camp?

16 A. [14:44:57] Yes, there is another camp that was a smaller one, but the bigger
17 mosque that is closer to that camp is the Sharif mosque. We have another mosque
18 next to the market and it was called Ansar Al-Sunna Mosque. However, the Masjid
19 Al Sharif is the bigger one in Deleig.

20 Q. [14:45:30] Have you ever prayed at the Ansar Sunna Mosque?

21 A. [14:45:37] Yes.

22 Q. [14:45:40] And the Trial Chamber has heard that the -- the mosque -- the mosque
23 building itself was within a compound. Do you agree?

24 A. [14:45:59] What do you mean inside a compound? I didn't get it. Could you
25 kindly repeat the question.

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1 Q. [14:46:07] Okay. All right. Yes. So there was a -- there was a wall around
2 the outside of a piece of land and the mosque building was within that wall, do you
3 agree?

4 A. [14:46:24] What do you mean by "the wall"? Could you please use another
5 word.

6 Q. [14:46:41] Well, maybe I can -- maybe I can show you an image and see if that
7 helps.

8 Your Honour, can we please have up on the screen now the document at tab 1.
9 DAR-OTP-0219-5483.

10 I'm going to bring up an image taken from up in the sky and -- and together let's see if
11 this helps.

12 A. [14:47:19] Sure.

13 Q. [14:47:22] And if I can ask the court officer, please, to zoom right in, as close as
14 we can, to the right-hand side of the frame. Right. Well, let's -- let's just stop there
15 for a moment.

16 Mr Witness, in the image on the screen -- have you seen this picture before?

17 A. [14:47:56] No, no, but I can see it now.

18 Q. [14:47:59] Okay. So you see that what we're looking at in the centre of
19 the image is the Deleig school, right?

20 A. [14:48:11] Yes.

21 Q. [14:48:12] And to the right of the school, at the far end of the square or open
22 space, is the Ansar Sunna Mosque, right?

23 A. [14:48:26] Yes.

24 Q. [14:48:28] Thank you.

25 Now, Mr Court Officer, perhaps we can zoom as far in as possible to the mosque.

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1 Thank you.

2 Now, Mr Witness, there's the mosque. We see a building with four walls and
3 a -- a roof. I don't know if there's a minaret or not, but you see the building there on
4 the screen?

5 A. [14:49:14] No, not really.

6 Ah, no, there is no minaret.

7 Q. [14:49:23] No. Okay. No, that's fine. But you can see the building. And do
8 you see around the building there's -- there's a black line, or a dark, a dark line that
9 represents a wall or some sort of a fence around -- around the mosque?

10 A. [14:50:09] That was an old area where we would pick up some crops where we
11 were students at school.

12 (No interpretation)

13 Q. [14:50:31] Mr Witness -- Mr Witness, just stop for a second, please.

14 I wonder if Madam Interpreter needs that answer repeating, or perhaps I can ask
15 the question again.

16 THE INTERPRETER: [14:50:38] Yes, if possible, please.

17 PRESIDING JUDGE KORNER: [14:50:40] Yeah, we'll try again.

18 And, sir, can I remind you, there are difficulties with interpretation, so could you try
19 and keep your answers as short as possible.

20 Yes, you'd better ask the question again, Mr Edwards.

21 MR EDWARDS: [14:51:00] Thank you.

22 Q. [14:51:01] The question is really straightforward at this point. Do you see
23 the short wall around the outside of the mosque?

24 A. [14:51:13] Yes.

25 Q. [14:51:15] Can you give us an idea of how high that wall was.

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1 A. [14:51:31] Those of the school, around the school or the mosque -- the mosque?

2 What do you refer to, the school or the mosque?

3 Q. [14:51:41] The mosque, sir.

4 A. [14:51:48] I would say a metre or 1.5 metres or so, more or less. But I cannot
5 tell precisely because I didn't build it or I have no idea whatsoever.

6 Q. [14:52:05] And we see that -- that there is a wall of the mosque itself, the wall of
7 the building of the mosque that faces on to the square, do you see that? My question
8 is: Do you know if that wall had any windows in it?

9 A. [14:52:37] Yes, there was a window inside the mosque through which
10 the worshippers can look out while praying.

11 Q. [14:52:56] Thank you. Now, you first came to Deleig after the attack on your
12 home village?

13 A. [14:53:12] Mm-hmm.

14 Q. [14:53:14] And let me just find your evidence from this morning.
15 Immediately on your arrival in Deleig, where were you and the other members of
16 your family able to spend the night?

17 A. [14:53:46] I had been in Deleig already after my displacement. I was
18 east -- north-east of the Al Sharif mosque. This is Ansar Sunna mosque in the market.
19 But I was in the *umdah* neighbourhood, a neighbourhood called the *umdah*
20 neighbourhood. I was living there.

21 Q. [14:54:12] And immediately on your arrival in Deleig, did you have shelter or
22 were you sleeping just in the street under the open -- just under the open sky?

23 A. [14:54:32] Could you please repeat this question.

24 Q. [14:54:36] Immediately on your arrival from Deleig, having fled your home
25 village, were you living just in the street or were you living in someone's building,

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1 under a tent? Can you help us, please.

2 A. [14:54:58] There is one thing here. How could I have lived in Deleig? Your
3 question means -- your question should be did you leave the village on the same
4 night it was attacked or -- because I was in (Redacted). Our area was burned.
5 So could you please ask the question more accurately in order for me to give you a
6 proper answer.

7 Q. [14:55:36] Your home village is attacked and you make your way to Deleig,
8 right?

9 A. [14:55:48] Not at the same time. I couldn't have moved to Deleig at the same
10 time because burning was happening everywhere. There was a *Awir tree in
11 (Redacted), and we entered there. And there were creeks, so we hid there.

12 Q. [14:56:13] Okay. How many days was it between the attack on your home
13 village and your arrival in Deleig?

14 A. [14:56:23] Around one night.

15 Q. [14:56:27] And then after that night did you then walk to Deleig?

16 A. [14:56:37] Yes. It wasn't far. For example, let me -- it wasn't far.

17 Q. [14:56:44] No, that's fine. Thank you.

18 And then after you arrive in Deleig, where were you able to sleep at nights?

19 A. [14:56:58] When we first went there we had family there in Deleig. So we met
20 them, we went to their homes, they gave us food and water. So we lived with them
21 for a day or two days in their homes before we moved to stay at the school.

22 Q. [14:57:22] And how long did you spend staying at the school?

23 A. [14:57:37] It was tough time at the school, because after a lot of burning people
24 got displaced and came, stayed at the school. So it was crowded, but we
25 didn't -- and have food or water. However, the community in Deleig helped us.

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1 They provided us food and provided medication to sick children. So we stayed
2 there based on arrangements made by the *sheikhs*. They organised us based on those
3 who -- who were recognised by their respective *sheikhs*. So that's how we stayed,
4 based on recognition by *sheikhs*. That guided our organisation.

5 Q. [14:58:19] Thank you very much. My question, though, was how long you
6 spent staying at the school.

7 A. [14:58:33] I'm not sure how long exactly, but we stayed around a month or
8 a little less than a month. Afterwards, we were taken out of the school. I may say
9 the administration of the school and Ja'afar Abd-Al-Hakam spoke and said we should
10 leave the school to students to finish their studies, because it was school time. So by
11 the wall of that same school, there lived other people, they also had to leave and went
12 to their family's homes. Those who had no families stayed in -- in the streets of
13 Deleig and some of us also stayed in some outdoor areas.

14 So it was a tough time before the organisations came and helped us and we left Deleig.
15 There were two camps outside Deleig. Organisations came there a year afterwards,
16 or a little more than a year. So we stayed there. They provided us with food, water
17 and medication and they helped us through many programmes.

18 Q. [14:59:50] Thank you, Mr Witness.

19 Can we please zoom out on this image so that the witness can see the school. Yeah.
20 So I just want to be very clear about this. After you were forced to leave the school,
21 is it your evidence that you were sleeping outside the walls of that school in that open
22 area?

23 A. [15:00:29] Yes.

24 Q. [15:00:31] Okay.

25 A. [15:00:32] In Deleig.

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1 Q. [15:00:33] Yeah. I understand you're talking about Deleig, okay? I
2 understand.

3 And it was while you were in that situation, that precarious situation, that you went
4 to Friday prayers with your brother on the day that you were arrested. Have I got
5 that right?

6 A. [15:01:09] Yes.

7 Q. [15:01:13] Did it much matter to you which mosque you prayed at for your
8 Friday prayers?

9 A. [15:01:24] The *Sheikh* Sharif Mosque, because it was near my -- near the place
10 where I was residing then.

11 Q. [15:01:43] And it was on this day that the Janjaweed surrounded Deleig, correct,
12 and started creating problems for the population?

13 A. [15:02:03] Yes. They surrounded the area and they were arresting men. No
14 one could defend himself in the face of Janjaweed because Janjaweed were armed and
15 had the ability to inspect people. If they find you in the street or even in your home,
16 they would search you and so forth.

17 Q. [15:02:27] Can we please have your statement up again. This is at position 1,
18 tab 1, of the Prosecution list of exhibits -- list of materials, rather. And can we go to
19 paragraph 53.

20 (Counsel confer)

21 MR EDWARDS: [15:03:50] Thank you. Paragraph 53, which is at ERN 2012.

22 Q. [15:04:00] This is from your statement, sir, 2018.

23 You say: "The Janjaweed surrounded Deleig, early in 2004. By that time I was living
24 at Salam camp." Do you say now that that's not accurate?

25 A. [15:04:30] Back then that wasn't the case, but during the interview they asked

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1 me which camp were you at. I told them the Salam camp. It's also called
2 the -- the Sultan Tera camp and also the Salam camp. When the Janjaweed
3 surrounded Deleig, the camps had not yet been established.

4 Q. [15:11:00] Exactly.

5 THE INTERPRETER: [15:04:59] I was -- interrupted sentence.

6 MR EDWARDS: [15:05:04]

7 Q. [15:05:04] Yeah. You say that in 2004 when the Janjaweed surrounded Deleig,
8 the Salam camp hadn't been established yet. But what I want to know then is why in
9 your statement you say that at that time you were living at Salam camp?

10 A. [15:05:24] The interview happened in 2014, during which they asked me where
11 are your family and what are you. I told them the Salam camp. But they did not
12 ask me about details. For example, in 2004, were you in a camp or were you home?
13 Because in 2004 there were no camps, there were no organisations involved to
14 provide us with tents, as happened in 2010 and 2011 when I ended up at the Fallouja
15 and Tera camps. Certain camps are organised on the basis of *sheikhs*. However,
16 when I provided the statement they asked me, on the basis of paper, where does your
17 family live. I told them my parents live at the Salam camp.
18 But they did not ask about details regarding the genocide. Had they asked me about
19 the genocide, I would have told them about Deleig, but they did not ask about
20 the details or about anything pertaining to 2004.

21 Q. [15:06:26] I see. And the Janjaweed who arrested you in the street where you
22 say you were living, they were wearing turbans with face scarves; is that right?
23 Paragraph 58.

24 A. [15:06:56] Yes.

25 Q. [15:06:58] Similar to the -- the turbans with face scarves that we saw on

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1 the photo -- on the -- on that image a few moments ago?

2 A. [15:07:11] Yes.

3 Q. [15:07:13] Are they called *ima* * in Arabic?

4 A. [15:07:20] It's called *ima*. Imam is the imam at the mosque. However, we call
5 it *ima*.

6 Q. [15:07:29] Thank you very much.

7 Now, your evidence this morning was that when you were arrested you were beaten
8 and put in a vehicle. Let me ask you about that. Were you beaten before you were
9 placed in a vehicle?

10 A. [15:08:02] Yes.

11 Q. [15:08:02] Were you beaten once you were in the vehicle?

12 A. [15:08:05] Yes, they beat me, kicked me, the Kushayb soldiers. And they would
13 tell you don't raise your head up and they would put you -- they would have you lay
14 down in the vehicle and you should not raise your head and they beat you.

15 Q. [15:08:24] So you had to lie down in the vehicle as well. How many of you
16 were in the vehicle that transported you from the place where you were arrested to
17 outside the police station?

18 A. [15:08:41] We were four and there were also five or six -- all in all we were five
19 or six, so they took us away together.

20 Q. [15:08:55] And you remember what kind of trucks they were, what kind of
21 vehicles they were?

22 A. [15:09:06] The vehicle was the -- the government Land Rovers. They are
23 the ones they used. It was open back and that's where they would put you.

24 Q. [15:09:24] And what -- what was done to your hands in the truck -- in
25 the vehicle?

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1 A. [15:09:38] At the same -- at that point in time I was young. The -- those who
2 were older, they tied their hands from behind so that they don't run. But I was
3 afraid and I didn't even think about running. I -- they tied my hand with my
4 brother's hand, my young brother, until we reached the point where Ali Kushayb was
5 before the camp.

6 Q. [15:10:05] And were your hands tied -- was one of your hands tied to one of
7 your brother's hands, or both of your hands were tied to both of your brother's hands?
8 Can you give us a bit more detail, please.

9 A. [15:10:26] My hand with my brother's hand. But they had our hands to
10 the back so that we don't run, mine and my brother's.

11 Q. [15:10:44] You see, I'm going to have a look at paragraph -- I want us to have
12 a look at paragraph 59.

13 You -- in your statement, you give a great deal of detail about the vehicle that you're
14 in. You give a great deal of detail about the colour of -- you know, you give detail
15 about the colour of the vehicle, the fact that it's covered in mud, how your hands were
16 tied behind your back, two other detained people. And nowhere in your statement
17 do you say anything about being beaten, either before you were put in the vehicle or
18 once you were in the vehicle.

19 A. [15:11:36] Anywhere. They tied me up and had me in the vehicle. But during
20 the interview with the refugees, they don't ask -- they didn't ask us about these details.
21 They -- it's different from the way the case is handled.

22 Q. [15:11:58] Mr Witness, I want to be fair to you so that you understand what I'm
23 saying.

24 The statement I'm asking you about is the statement that you gave to the Prosecution,
25 not to any immigration authorities. All right? Just so that you understand.

1 A statement that you gave over the course of five days in February 2018.

2 What was it that jogged your memory in the last couple of days that makes you
3 remember suddenly that you were beaten in the street before being placed in
4 the vehicle and beaten once in the vehicle?

5 A. [15:13:02] Well, if something happens to you, you wouldn't forget it. But it
6 should be mentioned in the right context. For example, in the case, I have to tell
7 everything that happened, anything I saw with my own eyes. Even if I forget
8 something, the judge could trigger my memory and I would then remember.
9 Because it's been a long time, so I may forget and I haven't been there in a long time.
10 So anytime I forget something, the judge may trigger my memory, I would then
11 remember and everything would be written down.

12 Q. [15:13:46] But what was it that triggered your memory that suddenly makes you
13 recall now, in 2022, that you were beaten?

14 A. [15:14:02] Nothing in particular. I remembered that myself. Nothing
15 triggered my memory. I remember everything. However, at times, because of
16 the numerous questions asked, or because I end up remembering many things, I may
17 get emotional, cry and forget certain things. But then, when I rest and -- and feel
18 fresh again, I start remembering everything in detail.

19 Q. [15:14:36] When you were brought to the open area near the police station, did
20 you already see men lying face down?

21 A. [15:15:00] So many. Not a small number.

22 Q. [15:15:05] Were some of them sitting up or were they all lying down, face down?

23 A. [15:15:18] Ali Kushayb did not leave a man raise his head. He would beat you.
24 You can't turn neither right nor left. You should face the ground. That applied to
25 everyone.

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1 Q. [15:15:34] Sir, I asked you about sitting. What about kneeling down. Did you
2 see any men kneeling down when you arrived?

3 A. [15:15:49] At first when you kneel they tell you lie down in -- in line with
4 the other people. If you kneel, they tell you, "Well, down, go down, lie down."

5 Q. [15:16:04] Did you see that there were other Janjaweed in the area near
6 the police station?

7 A. [15:16:16] Not at the same time, because then I was afraid. And as -- and
8 the *umdah* saved me from there and I ended up at the school. They took me to
9 the school.

10 Q. [15:16:30] Mr Witness, sorry, again, this may have been -- this may not have
11 been interpreted. I'm going to ask the question again.

12 When you arrived on the vehicle at the area next to the police station, did you see
13 other Janjaweed standing and walking around by the police station?

14 A. [15:16:58] Certainly. Because the Janjaweed, the guards under Ali Kushayb,
15 they were there, they were sitting near him guarding the people who were below
16 them, beating them, surrounding them, so that no one runs away. That's what
17 happened at the time.

18 Q. [15:17:18] And were these Janjaweed standing as well as on horseback?

19 A. [15:17:32] Some of them standing, others on horseback and others in vehicles.

20 Q. [15:17:38] Others on camels?

21 A. [15:17:47] Horses, camels and vehicles. They were guards with Ali Kushayb.

22 Q. [15:18:03] And how many vehicles did you see? Was it just one or were there
23 more?

24 A. [15:18:14] At the same time when I first arrived, there was a vehicle that brought
25 me and there were two there already. But I didn't see more than that at that time.

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1 When I arrived I was in fear and they put you in a state where you can't really think
2 of anything else. They would beat you. They wouldn't let you even look and see
3 the next guy -- the guy next to you. I -- I couldn't look right or left to see who
4 the next guy was. There was no way to see any further.

5 Q. [15:18:53] Did you see the man that you later learned to be -- well, let me put it
6 a different way.

7 Did you see the man that you later came to believe was Ali Kushayb in a vehicle?

8 A. [15:19:19] Could you please repeat the question.

9 Q. [15:19:23] You've told us about seeing a man in the area outside the police
10 station that you later learned was Ali Kushayb. When you first saw him, was he in
11 a vehicle?

12 A. [15:19:46] No. At the same time the Mr Investigator -- I mean, you see someone
13 while you're in a state of fear. You can't focus. You can't determine how the person
14 is sitting. You come, they beat you, throw you in the vehicle. We came out of
15 the vehicle looking down. Suddenly we saw other people and they started beating
16 us. You wouldn't think about how many people -- how many vehicles there or
17 where Ali Kushayb was. As I said, Ali Kushayb is someone I did not know and is
18 someone I don't know when he committed the crime until he was described to me
19 later on in the market.

20 Q. [15:20:30] Did you want to know if any of the people that you saw laying down
21 on their -- on their fronts were people that you knew, friends or family members?

22 A. [15:20:50] Yes, they were all my relatives. I realised that at the end, not at the
23 beginning. Because at the beginning everybody was looking to the ground. You
24 can't recognise anybody. And there were many of them.

25 Q. [15:21:05] And so you -- you come down off the vehicle that you'd been brought

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1 in and you were immediately made to lie down on your front?

2 A. [15:21:21] When I first arrived, they would tell you kneel before you lie down.

3 For example, Ali Kushayb and his folks would ask you where do you come from and

4 so forth. But before that the *umdah* saw me as a young boy, he called on me and told

5 me, "Come here, boy." And there was Ali Kushayb there and I was approaching

6 slowly. Ali Kushayb did not pay attention. When he saw me, he asked the *umdah*

7 who the -- who this -- "Who is this boy?" And the *umdah* said, "I know who this boy

8 is" and he mentioned me by name. So I was a young man and --

9 Q. Mr Witness --

10 A. [15:22:06] -- the *umdah* did not --

11 THE INTERPRETER: [15:22:12] Interrupted sentence.

12 MR EDWARDS:

13 Q. [15:22:15] I'm very sorry for interrupting you. I'm going to remind you of

14 something that the judge stressed earlier, okay?

15 Please just listen to the question and answer the question. We know your account,

16 we know your story, it's not necessary to repeat it dozens of times. Just answer

17 the question that I ask, okay? Thank you.

18 A. [15:22:46] Yes, you are interested in details. If you just want me to say "yes" or

19 "no", I can answer like that. But I'm giving you an answer based on the nature of

20 your question. You've -- you're interested in details, that's why I've been giving

21 details.

22 Q. [15:23:02] Were you surprised to see *Umdah* Adam there?

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

24 Q. [15:23:17] Because he's -- he's Fur, right?

25 A. [15:23:27] Yes.

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1 THE INTERPRETER: [15:23:29] Inaudible.

2 THE WITNESS: [15:23:31](Interpretation) But he was hired by the government,
3 which he accepted in exchange for the title and the money. Everybody -- just like
4 Ali Kushayb. And, in my view --

5 THE INTERPRETER: [15:23:48] Interpreter's observation: Could he please be
6 asked to repeat the answer.

7 MR EDWARDS:

8 Q. [15:23:54] Yeah, Mr -- Mr Witness, you're talking quite fast. Can you repeat
9 that answer just a bit slower so that the interpreter can do his job.

10 What you were saying is that the *umdah* was paid by the government in exchange for
11 the title. And then you started saying something else. Just repeat that, please.

12 A. [15:24:23] Yes. I said the *umdah* was hired by the government to hold that
13 position in return for money in order to cover up what Ali Kushayb was doing. Also
14 Ja'afar Abd-Al-Hakam, he was the governor of the West Darfur state, was supposed
15 to save the Darfur people, he was supposed to save these people so that Ali Kushayb
16 doesn't carry out the genocide. However, these people were all under
17 the government of Khartoum. They held positions, they got money, they had homes
18 and come what may when it comes to us, and we had no means to defend ourselves.
19 Even our own *umdah*, a Fur, as we know for sure, but we may also call him an agent
20 or a lackey for the government. And that's what happened.

21 Q. [15:25:17] All right. Now, in your -- in the statement that you gave to the
22 Prosecutor over five days in February of 2018, you make absolutely no mention of
23 the *umdah* being present with Ali Kushayb outside the police station. Perhaps you
24 can just take it from me that you don't mention it.

25 My question is: Why have you suddenly remembered now, over four years since

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1 you gave this statement, that the *umdah* was present as well?

2 A. [15:26:13] When the people from the Court came to ask me, they asked what I
3 knew and asked about the village and certain things, but they did not ask for
4 a fulsome account. They wanted to know where I came from and what happened to
5 me. They told me that a second team will come for a more fulsome account, which
6 I believe is this day for me to give this account.

7 Q. [15:26:42] Mr Witness, I'm going to -- well, you had five days to give your
8 account, and you were asked to give as much detail in that account as possible,
9 weren't you?

10 A. [15:27:04] Yes, correct. Fine.

11 Q. [15:27:06] So your story now that you didn't realise when you were giving this
12 statement in 2018 that it shouldn't be the fullest possible account, it's just not true, is
13 it?

14 A. [15:27:29] I thought you want -- just like you here, you want me to answer with
15 "yes" or "no", they also asked me for yes or no answers. Just like you here, you're not
16 welcoming detailed answers, as did they. But how could I give fulsome accounts,
17 comprehensive details when I'm not given such opportunity? You can only realise
18 what those details are if I'm given a chance to tell the details.

19 Q. [15:27:57] When you were giving your account over five days in 2018, were you
20 trying to give more detail and the investigators were saying, "No, that's fine, we don't
21 want that detail. Let's hurry it along."?

22 A. [15:28:22] No, they told me, "We're interested in certain details only. Later on,
23 when the judge, when the Court invites you, we would then sit down with you and
24 you would give us more details", because they only had little time available. I too
25 had little time available, I had to care for my children who were in school. Every

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1 day we sat for four or five hours, and so forth.

2 Q. [15:28:52] Why did you give the detail about Sadiq Harun, then? Why did you
3 consider that was detail that was important?

4 A. [15:29:07] Because Sadiq Harun saved me. After the *umdah* took me out of
5 there, he took me somewhere safe, kept me there, and I would not be an ungrateful
6 person to someone who saved my life. That man stayed with me for more than four
7 or five hours in school while I was afraid and crying. And he would tell me, "Be
8 patient, I'll take you to your mother or father." So I remember that good treatment
9 which was life changing for me.

10 Q. [15:29:41] Mr Witness, the *umdah* is the one who saved your life in the first place,
11 isn't he? He's the one who brought you out from where the other men were -- were
12 sitting and lying and said, "Come and sit with me, you're too young." He's the first
13 one to have saved your life, if your account is true.

14 A. [15:30:11] Yes, he saved me, but a criminal is a criminal nonetheless. But I can't
15 say because he saved me then he is not a criminal. He is a criminal nonetheless. He
16 is at the same time the person who saved me and a criminal. I lost my family,
17 money, relatives in my village and area surrounding Deleig. A criminal should be
18 considered a criminal. That he saved me doesn't exonerate him from the crime
19 because he was involved in the crimes of Ali Kushayb. He was an *umdah* and he
20 could have prevented Ali Kushayb from entering there and he could have prevented
21 anybody from committing a crime there. Things would have turned out differently.
22 So that's the crux of the issue.

23 Q. [15:31:04] This morning you said this: "The teacher, Sadiq Harun" -- page 19 of
24 the transcript, your Honour:

25 "The teacher, Sadiq Harun, ... said, 'I know this boy, he goes to my school.' So

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1 the *umdah* said, 'Okay, take me with you.' So he took me, he took me back to
2 the school and hid me there and we stayed there."

3 It was the *umdah's* decision to let you go with the teacher, was it?

4 A. [15:31:49] Yes, correct.

5 Q. [15:31:58] When you were -- before you left the area outside the police station,
6 you saw Ali Kushayb beating the men on the -- on the ground, you say. Have I got
7 that right?

8 A. [15:32:21] Yes.

9 Q. [15:32:24] Was that one of the most scary things you remember seeing outside
10 the police station that day?

11 A. [15:32:41] Yes.

12 Q. [15:32:44] Ali Kushayb beating people and saying that no one is allowed to lift
13 their heads. That must have been terrifying.

14 A. [15:32:59] Certainly, yes.

15 Q. [15:33:02] Were you worried that you would be beaten, possibly, yourself?

16 A. [15:33:12] Very much so. I was so afraid. I wasn't sure I would survive. I
17 thought I would die like my family members who had died. I wasn't sure I would
18 survive. But thank God, here I am.

19 Q. [15:33:35] And I guess you had never experienced anything like that before in
20 your life before this day?

21 A. [15:33:48] Yes.

22 Q. [15:33:50] So it's an important aspect of your account that would certainly be in
23 your witness statement?

24 A. [15:34:05] Yes.

25 Q. [15:34:08] But this witness statement, well, it was read back to you back in 2018,

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1 it was read back to you at the end of those five days, nowhere in your statement do
2 you make reference to Ali Kushayb beating anyone at all. Why not?

3 A. [15:34:40] No. I said it and the interpreter missed. That's at the root of many
4 issues back then. I did not speak English and I had little command of Arabic. I
5 spoke Fur. So it's perhaps the interpreter who missed what I said. I told everything
6 that happened to me regarding my arrest and so forth. And they also told me that
7 there will be another opportunity for me to give more information. So that's what
8 happened.

9 Q. [15:35:20] Just bear with me for a moment.

10 Even when you were giving -- making corrections and clarifications to your account
11 last week, or over the weekend, the statement was read back to you and you didn't
12 make any corrections to say, "Oh, actually, it's important that you know, Ali Kushayb
13 was beating people as well."

14 PRESIDING JUDGE KORNER: [15:36:29] Do you know, Mr Edwards, I think,
15 honestly and truthfully, we've got the point. We're not a jury. I think we can -- and
16 indeed, if this is your last point, presumably you can conclude today.

17 MR EDWARDS: [15:36:45] One of the last points, yes.

18 THE WITNESS: [15:36:56](Interpretation) No problem, your Honour, I'm able to
19 answer.

20 PRESIDING JUDGE KORNER: [15:37:00] Yeah. Thank you very much, sir, but
21 don't worry -- well, all right, as the question was put to you, you can answer it. Why
22 didn't you tell them when you made the corrections?

23 THE WITNESS: [15:37:23](Interpretation) Sometimes the command of standard
24 Arabic could be problematic. I mean, today and yesterday I'm -- I mean, by this
25 present time I have some command of English. The interpreter has probably

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1 a Lebanese accent, or some accent that I find difficult, and I wasn't sure that
2 the lawyer had a full understanding of my account. That's why this morning I asked
3 that the session be delayed a little. I told the judge, or the investigator, that
4 the information from yesterday is probably erroneous, let's look again at the account
5 and consider the details before we start the hearing. That's why we needed to do
6 this -- these corrections, in order for me to give comprehensive information.

7 MR EDWARDS: [15:38:32]

8 Q. [15:38:32] Now I want to move on to your sighting of the man that you
9 understood to be Ali Kushayb in Deleig on the market day.

10 This is from paragraph 76 of the statement, your Honour.

11 Your evidence this morning was that, after this terrifying ordeal outside the police
12 station, you spent a very bad night screaming because you were scared, right?

13 A. [15:39:10] Yes.

14 Q. [15:39:11] And then two days later you go to the market.

15 A. [15:39:20] Not after two days. After some time, but not two days.

16 Q. [15:39:27] Was it a Sunday, a market day?

17 A. [15:39:34] During weekdays, but it wasn't the same day, because
18 the genocide-related thing was on a Friday. On Saturday we saw the dead bodies.
19 Days afterwards it was a tough time and we could not recognise Ali Kushayb.

20 Q. [15:39:58] This is from your statement: "A few days after my cousins -- after --"

21 I'm sorry: "A few days after my cousins and I encountered Ali Kushayb I saw him
22 again. It was market day in Deleig which fell on a Sunday."

23 I'm now going to ask you about that Sunday, sir.

24 You said: "I went to see this Ali Kushayb with my friend Mohammed Ali."

25 A. [15:40:34] Yes.

1 Q. [15:40:46] Sunday at the market is one of the busiest days at the market, isn't it?

2 A. [15:40:54] Yes.

3 Q. [15:40:56] It was that Sunday that you learned the name Ali Kushayb for the first
4 time in your life, right?

5 A. [15:41:12] First time I saw Ali Kushayb in my life, yes.

6 Q. [15:41:25] What was the basis of your friend's knowledge that this person that
7 was pointed out to you was Ali Kushayb?

8 A. [15:41:40] He pointed -- he told me, "Look at that person dressed in military
9 uniform and holding a black stick and with a vehicle, surrounded by his guards, he
10 is -- he's sitting in the middle, that person is Ali Kushayb. He -- that vehicle is his.
11 It has that red flag." That's how he was recognised and that was the first time for me
12 when brother Ali Mohammed Ali described him to me.

13 Q. [15:42:21] Now I understand your evidence about what your friend said. But
14 my question was different: How did your friend know that this was Ali Kushayb?

15 A. [15:42:34] My friend, like the rest of people in Deleig, were familiar with
16 Ali Kushayb because it was an area frequented by many people. They were
17 residents of Deleig. He didn't pass by Deleig. He lived and studied there. He had
18 elder brothers who were also familiar with Ali Kushayb. He knew him very well. I,
19 however, did not know Ali Kushayb. So he was my friend and he told me, "You
20 don't know Ali Kushayb." So we stopped in the street and he described him to me
21 with his military uniform and his stick. So he knew him and he described him to
22 me.

23 Q. [15:43:24] All right. Well, if that's your answer.

24 And on the vehicle you mention a flag. Did you see any other ornaments, anything
25 else on the bonnet of the vehicle?

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1 A. [15:43:44] A distinctive feature, the arm he held or the -- the bags or sacks they
2 put on their vehicles where they carry supplies. And his vehicle was famous for its
3 red flag.

4 Q. [15:44:07] My question was, other than the flag, did you see anything else
5 distinctive on the bonnet of the flag -- of the vehicle. On the hood of the vehicle.
6 Focus on that, please.

7 A. [15:44:32] Well, it's possible that in a state of fear you can't focus on details of
8 a criminal's vehicle like that. We were not standing and staring, we were passing by.
9 We were in a state of fear. We couldn't gather all details.

10 Q. [15:44:53] Okay. So you saw him, you passed by and you carried on your way
11 because you were scared?

12 A. [15:45:04] Yes.

13 Q. [15:45:07] You weren't looking at him for 20 to 25 minutes?

14 A. [15:45:18] No. You can't keep looking for long, otherwise they would notice
15 you. And in a state of fear you wouldn't dare stare at a criminal's vehicle like that.
16 You would be afraid of doing that. So you just look, observe certain things, and
17 that's it.

18 Q. [15:45:44] And what was Ali Kushayb doing? Was he eating? Was he
19 drinking? Was he just standing around?

20 A. [15:45:55] After they patrolled the streets, they were sitting drinking tea. They
21 would usually eat and drink tea there.

22 Q. [15:46:06] Mr Witness, I'm very sorry. I'm not asking what usually happened,
23 my question was, when you saw Ali Kushayb at the market on this Sunday, what was
24 he actually doing for the time that you saw him?

25 A. [15:46:26] Drinking tea at the cafe.

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1 Q. [15:46:31] And was he surrounded by his men?

2 A. [15:46:37] Yes.

3 Q. [15:46:37] And was he sitting at a table?

4 A. [15:46:45] Some of them sitting, others standing, while others in the vehicle.

5 Q. [15:46:54] I'm not interested in the others. Was Ali Kushayb sitting or standing
6 drinking his tea?

7 A. [15:47:03] He was sitting, surrounded by his guards.

8 Q. [15:47:12] And by reference to the dimensions of this courtroom, how far away
9 was he when you saw him sitting drinking tea? Was he more or less than
10 the distance between you and where their Honours are sitting?

11 A. [15:47:41] I don't know how far he was, but I thought about it and I -- and I said
12 approximately it was a metre and a half or 2 metres. It wasn't a long -- a big space.
13 I mean, it's a small marketplace, so the distance couldn't be long. I would say
14 roughly a metre and a half or 2 metres, but I cannot give a specific figure on how far
15 he was.

16 Q. [15:48:10] Paragraph 83, please.

17 Busy market, there are other people shopping in the market on this Sunday, right?

18 A. [15:48:34] Yes.

19 Q. [15:48:36] And people walking back and forth between stalls, between shops?

20 A. [15:48:43] Yes.

21 Q. [15:48:44] Paragraph 83, you say this in your statement: "I was as close as 10-15
22 metres away from him ...".

23 A. [15:48:55] Yes. When they asked me how far he was, I would say I can give an
24 approximate estimate, I'm not sure. I was afraid, so I couldn't know better, and
25 a rough estimate would be 4 or 5 metres. I was afar. I wasn't near him, to protect

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1 myself from him, because I was afraid of him. I couldn't come near him, a metre or 2
2 metres close to him. I needed to be far.

3 Q. [15:49:35] So as well as not wanting to be seen looking at him, you wanted to
4 ensure that he wouldn't see you, right?

5 A. [15:49:51] Yes.

6 Q. [15:49:58] Okay.

7 Just for the last two or three minutes, your Honour, I just want to go back into private
8 session, and then I'll be finished.

9 PRESIDING JUDGE KORNER: [15:50:07] Private session, please.

10 (Private session at 3.50 p.m.)

11 THE COURT OFFICER: [15:50:18] We're in private session, Madam President.

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

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8 (Open session at 4.01 p.m.)

9 THE COURT OFFICER: [16:01:44] We're back in public session, Madam President.

10 PRESIDING JUDGE KORNER: [16:01:47] Thank you.

11 Sir, that concludes your evidence. And on behalf of all the judges, can I thank you
12 for coming to court to give that evidence and reliving, on what any showing, was
13 a deeply unpleasant experience. And I'm glad that you have found a country that
14 has accepted you. And we all wish you a safe return to that country.

15 THE WITNESS: [16:02:32](Interpretation) Amen to that. Thank you very much.

16 PRESIDING JUDGE KORNER: [16:02:35] Yes. Thank you very much.

17 Yes, you can leave the Court now. Thank you.

18 (The witness is excused)

19 PRESIDING JUDGE KORNER: [16:03:12] Yes, all right. So, in fact, Witness P-547
20 will be starting first thing tomorrow morning. It will be viva voce. And I think you
21 said he'll be most of the day in chief, Mr Jeffery.

22 MR JEREMY: [16:03:30] Yes. Yes, Madam President.

23 PRESIDING JUDGE KORNER: [16:03:32] All right. Okay. And it would help if
24 we could have at some stage some sort of guide, plus -- plus -- well, a guide to what's
25 going to be adduced from which parts of the statement. And also, as I say, some

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- 1 kind of chronology and the links between the various organisations.
- 2 MR JEREMY: [16:03:51] Yes, that -- that's being worked on as we speak.
- 3 PRESIDING JUDGE KORNER: [16:03:56] Yes, all right. Yes, thank you very much.
- 4 If there's nothing else, then 9.30 tomorrow morning.
- 5 THE COURT USHER: [16:04:01] All rise.
- 6 (The hearing ends in open session at 4.04 p.m.)