

1 International Criminal Court
2 Trial Chamber I
3 Situation: Darfur, Sudan
4 In the case of The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman
5 ("Ali Kushayb") - ICC-02/05-01/20
6 Presiding Judge Joanna Korner, Judge Reine Alapini-Gansou and Judge Althea Violet
7 Alexis-Windsor
8 Trial Hearing - Courtroom 3
9 Thursday, 14 April 2022
10 (The hearing starts in open session at 9.34 a.m.)
11 THE COURT USHER: [9:34:18] All rise. The International Criminal Court is now
12 in session. Please be seated.
13 PRESIDING JUDGE KORNER: [9:34:40] Yes, good morning, everyone. Can we
14 have the appearances -- actually, we'll start with the representatives for the victims
15 this morning.
16 MS VON WISTINGHAUSEN: [9:34:53] Good morning, Madam President,
17 your Honours. The victims - as yesterday - are represented by my colleague
18 attending remotely, Nasser Amin Abdalla; our associate counsel, Anand Shah; our
19 case manager, Idriss Anbari; and myself, Natalie von Wistinghausen. Thank you.
20 PRESIDING JUDGE KORNER: [9:35:12] Yes, thank you.
21 Defence, please.
22 MR LAUCCI: [9:35:19] (Interpretation) Good morning, Madam President,
23 your Honours. This morning, in addition to Mr Abd-Al-Rahman in the courtroom,
24 we have Madam Camille Divet, evidence reviewer; Mr Ahmad Issa, case manager;
25 and my colleague, Iain Edwards, who is associate counsel; and myself, lead counsel,

1 Cyril Laucci.

2 PRESIDING JUDGE KORNER: [9:35:45] Thank you, Mr Laucci. Prosecution.

3 MR NICHOLLS: [9:35:50] Good morning, Madam President, good morning,
4 your Honours. Julian Nicholls with Claire Sabatini, Pubudu Sachithanandan,
5 Mohanad Elkholy and Laura Morris. Thank you.

6 PRESIDING JUDGE KORNER: [9:35:59] Yes, thank you very much, Mr Nicholls.
7 Yes, good morning, sir. We're going to continue today with the questions from
8 Mr Laucci who started asking you questions yesterday afternoon. If, as I say, you
9 don't understand the question --

10 WITNESS: DAR-OTP-P-0903 (On former oath)

11 (The witness speaks Arabic)

12 THE WITNESS: [9:36:24] (Speaks English) Okay.

13 PRESIDING JUDGE KORNER: [9:36:28] -- then just say so.

14 Yes, thank you very much, Mr Laucci.

15 MR LAUCCI: [9:36:31] Thank you, Madam President.

16 And now I switch to English.

17 QUESTIONED BY MR LAUCCI: (Continuing)

18 Q. [9:36:35] Good morning, Mr Witness.

19 A. [9:36:44] Greetings, sir.

20 Q. [9:36:46] So I carry on from where I stopped yesterday, and, my first question
21 for this morning is to ask you, what is your motivation? What made you decide to
22 appear as a witness in the case of Mr Ali Muhammad Ali Abd-Al-Rahman before this
23 Court?

24 A. [9:37:20] Could you please repeat that.

25 Q. [9:37:24] Why did you decide to be a witness before this Court in this case?

1 A. [9:37:40] Sir, the reason is the -- there are victims. I was in a village. There
2 was burning and killing. They detained me and tortured me. People feel bitter
3 about what happened, I saw that in people. I was a witness in that area and that's
4 why I decided to come here to testify about the things that I either saw with my own
5 eyes or heard about.

6 Q. [9:38:21] Thank you. And once again, thank you for that decision.
7 According to you, who are the individuals bearing the principal liability for the
8 events you describe?

9 A. [9:38:46] I'm acting out of my own responsibility and it is my responsible
10 decision to appear here as a witness.

11 Q. [9:39:13] Let me reformulate the question. In your statement, you mentioned
12 the name of Mr Ahmed Haroun. For you, does he bear some liability for what
13 happened in Darfur that you saw?

14 A. [9:39:38] He certainly does. Because he came and spoke and said things that
15 we saw with our own eyes and also heard about. So certainly he does bear
16 responsibility.

17 Q. [9:39:53] What about Mr Ja'far Abd-Al-Hakkam that you also mention in your
18 statement?

19 A. [9:40:08] Ja'far Abd-Al-Hakkam is responsible for the crimes that occurred in
20 Darfur.

21 Q. [9:40:17] What about Mr Abdullah Al-Tayyib Torshein that you mention as
22 well?

23 A. [9:40:27] Abdullah Al-Tayyib Torshein is an official in the locality of Mukjar, he
24 was a *mu'tamad* or a *muhafez* -- governor in the locality of Mukjar. All the events
25 happened under his watch while he was an official, so certainly he bears

1 responsibility.

2 Q. [9:40:46] I thank you. So during the events that you describe, the Fur
3 community was under attack. Can you tell us, how did the Fur community defend
4 itself?

5 A. [9:41:17] The Fur had nothing to defend themselves with. They only had God
6 to protect them, but there was no other protection.

7 Q. [9:41:29] Was there a defence militia in Tendency?

8 A. [9:41:38] There -- there was no militia to defend Tendency. The militia attacked
9 Tendency.

10 Q. [9:41:54] How come there was no militia in Tendency?

11 A. [9:42:13] There was no one to defend Tendency. Only God would do so.

12 Q. [9:42:21] But did the people in Tendency try to protect themselves and protect their
13 family?

14 A. [9:42:38] They did not have anything to try to defend themselves with. The
15 only thing they did was to run to mountains and to creeks. They had nothing to
16 protect themselves with.

17 Q. [9:42:53] Did the population in Tendency expect to be attacked?

18 A. [9:43:00] They did not know so. They are humble people in their homes and
19 the next thing you know, an attack happened.

20 Q. [9:43:17] But Mr Witness, you said that some time before the first attack on
21 Tendency, you saw by yourself Mr Ahmed Haroun in Mukjar delivering a speech, which
22 you thought you found threatening. I could repeat the special words if you like.
23 You said that you were afraid and that you left the place out of fear. What did you
24 do then? Did you report that speech to your community in Tendency?

25 A. [9:44:06] I -- I went home and I told my folks about what happened, but I did

1 not force the villagers into any particular course of action.

2 Q. [9:44:29] So you reported that speech, that threat. How did the people react?
3 What did they do?

4 A. [9:44:37] I told my -- the only thing I did was to tell my family that I'd been to
5 the market and I heard so-and-so. I did not tell everyone in the village, I only told
6 my household.

7 Q. [9:45:06] Why didn't you tell the whole community?

8 A. [9:45:18] I told my family I'd been -- I had been to the marketplace and I heard
9 so-and-so. That's all I did.

10 THE INTERPRETER: [9:45:50] Mr Laucci, we assure you we rendered your question
11 in multiple understandable forms.

12 MR LAUCCI: [9:45:55] That's fine. Thank you.

13 Q. [9:45:57] So you decided to repeat that to your family only. But wasn't it
14 a message and a threat that was important enough --

15 A. [9:46:13](Speaks English) Yes.

16 Q. [9:46:13] -- to warn the village in its entirety?

17 A. [9:46:25] I see the validity of your viewpoint, but I did not know for sure that a
18 big trouble was on the way and I wasn't the only one in the market. Other people
19 were also present then and there.

20 Q. [9:46:42] Did these other people warn the village?

21 A. [9:46:47] I cannot be sure whether they relayed that to others. There's a lot of
22 folks in the village, I'm not sure if they relayed what they heard in the market to the
23 other villagers.

24 PRESIDING JUDGE KORNER: [9:47:15](Overlapping microphones) Mr Laucci, can
25 we just clarify so we don't have to come back to it. When you were saying "other

1 people", do you mean other people from his village or?

2 MR LAUCCI: [9:47:27] It's true that I assumed so, but it's worth clarifying.

3 PRESIDING JUDGE KORNER: [9:47:31] Yes.

4 When you said you agreed, sir, that other people heard the speech by Mr Haroun,
5 were there other people there that you recognised from your village?

6 THE WITNESS: [9:47:47](Interpretation) I recognised some people. Some of them
7 are deceased, but I don't know everyone who was there. I did not recognise
8 everyone who was there.

9 PRESIDING JUDGE KORNER: [9:48:07] I understand that, but when you say some
10 people are deceased, does that mean that there were people there who lived in the
11 same village as you did?

12 THE WITNESS: [9:48:20](Interpretation) From Tendy, indeed.

13 MR LAUCCI: [9:48:25] Thank you, Madam President.

14 Q. [9:48:26] And then these other people from Tendy who also heard the speech of
15 Mr Haroun, did you speak with them about it?

16 A. [9:48:44] Yes, we spoke about it on the road. We -- we confirmed each other's
17 accounts about what we heard. Yes, we did talk about it.

18 Q. [9:48:55] And nobody had the idea that this was an -- information worth
19 reporting to the village and maybe to the *umdah* of the village?

20 A. [9:49:12] It is an important message indeed, and it should be relayed. However,
21 we did not have any means to defend ourselves. The message was important, yes,
22 but there were no means to defend ourselves anyway.

23 Q. [9:49:30] The ability to defend is one thing, to receive the information that you
24 will probably be under attack is another one. I'm -- for the moment I'm asking about
25 that information. Nobody had the idea of informing the village and the *umdah* about

1 the probability of that attack.

2 A. [9:49:59] The *umdah* is not in the -- doesn't stay in the same locality. He keeps
3 coming and going. When I met him, I told him, and others also told him about what
4 happened. But he was not present. He was not at all times available.

5 Q. [9:50:22] When you told him, what did he do? Was he interested? How did
6 he react?

7 A. [9:50:33] What do you mean exactly?

8 Q. [9:50:37] When you told the *umdah*, "I was in Mukjar, I saw Haroun. I heard him
9 saying that the Fur should be attacked", what was the reaction of the *umdah*?

10 A. [9:50:52] Let me clarify. I did not find the *umdah*. Others who were present
11 told him. The ones I told are only my family and my immediate neighbours, but I
12 did not find the *umdah*.

13 Q. [9:51:20] And after you reported and others reported that information, did you
14 see any kind of organisation within the village to get prepared?

15 A. [9:51:33] There was no preparation. The only preparation is to be ready to
16 leave should anything happen. To run to the mountains or creeks when the
17 government forces approached, but there was nothing else we could do.

18 Q. [9:52:03] How did people prepare to leave?

19 A. [9:52:07] You prepare some supplies. You prepare your children to flee war, to
20 flee the battle and to be able to end up somewhere safe. Those are the only
21 preparations. You only prepare your donkey or your other animals so that you can
22 ride it along with family to leave.

23 Q. [9:52:42] Since Tendy - according to you - had no means whatsoever to defend
24 itself, did the people try to get help from outside?

25 A. [9:52:55] We're only surrounded by mountains. The only thing you do is to go

- 1 to the mountains. That's the safe place where you would go.
- 2 Q. [9:53:16] How far is Tendy from Sindu, please?
- 3 A. [9:53:28](No interpretation)
- 4 THE INTERPRETER: [9:53:30] The interpreters did not understand that.
- 5 MR LAUCCI: [9:53:34]
- 6 Q. [9:53:37] Can you repeat, please, the interpreters did not get you.
- 7 A. [9:53:44] From Tendy to Sindu, it takes about three or four hours.
- 8 Q. [9:53:51] Did you know that there was a base of the SLA in Sindu?
- 9 A. [9:54:01] I was not aware of that and I did not see that.
- 10 Q. [9:54:14] Had you ever been in Sindu before?
- 11 A. [9:54:26] I have not been to Sindu before.
- 12 Q. [9:54:35] And you did not hear in the village people saying that they may try to
- 13 find help and support from Sindu?
- 14 A. [9:55:10](No interpretation)
- 15 MR LAUCCI: [9:55:18] Interpreter, I did not get the interpretation.
- 16 THE INTERPRETER: [9:55:21] Correction --
- 17 THE WITNESS: [9:55:22] I did not hear anyone saying anything like that.
- 18 MR LAUCCI: [9:55:27]
- 19 Q. [9:55:27] Did you hear about other villages, other than Tendy, which organised
- 20 a defence militia?
- 21 A. [9:55:43] I never heard about that. The only protection we had was God, but
- 22 there was no other protection available.
- 23 Q. [9:56:04] Did anybody have weapons in Tendy?
- 24 A. [9:56:10] I never saw any person having a weapon in Tendy.
- 25 Q. [9:56:23] (Overlapping microphones) Did the *umdah* of Tendy have weapons?

1 A. [9:56:30] He did not have any weapons.

2 Q. [9:56:37] Are you aware that according to the law, *umdahs* were authorised by
3 the government of Sudan to hold weapons?

4 A. [9:56:56] I'm not aware of that at all. Not to my knowledge, nor did I ever see
5 anything that confirms that information.

6 Q. [9:57:10] So you did not hear about anyone having a weapon in Tendy, right?

7 A. [9:57:25] I never heard about that at all.

8 Q. [9:57:30] Talking about yourself, are you interested in weapons? Do you like
9 weapons?

10 A. [9:57:49] Could you please repeat that again for me to understand better.

11 Q. [9:57:56] My question is, whether weapons is a topic of interest for you? Do
12 you like to know about weapons and to -- yeah, to know about it?

13 A. [9:58:16] I never carried a weapon in my life. I have no knowledge about what
14 a weapon is like or what it's made of. I never got interested in such thing in my life.

15 Q. [9:58:41] Do you know about any kind of weapons? Would you be able to
16 identify them?

17 A. [9:58:59] When we were in the village, we were aware that the government had
18 weapons because they carried their weapons, different types of weapons. I never
19 carried a weapon myself to the -- I never had weapons to the extent that I can
20 distinguish between different types. But I was able to see that the government did
21 carry weapons.

22 Q. [9:59:23] You could see that -- that generally they had weapons, but you have no
23 personal knowledge about the different kinds of weapons, is that correct?

24 A. [9:59:35] Yeah, I'm aware of types that the government had. They had
25 Kalashnikovs and they had other shoulder-carried weapons.

1 Q. [10:00:01] How did you learn about it?

2 A. [10:00:10] At the time in the village, we would sit together and talk and I could
3 see that they were carrying weapons.

4 Q. [10:00:27] When you say we were sitting together, together with who? With
5 the person carrying the weapons?

6 A. [10:00:39] The soldiers from the Sudanese government. So we lived together in
7 harmony, we would sit and talk. All this was before the troubles started.

8 Q. [10:01:01] If it was before the troubles started, I understand it was before 2003,
9 which makes that --

10 A. [10:01:18] Yes, that was before 2003.

11 Q. [10:01:20] -- which makes that you were a very young man, less than 18 years
12 old. And so you sat together with soldiers --

13 A. [10:01:33] (Speaks English) Yeah.

14 Q. [10:01:35] -- and they explained to you everything about weapons, right?

15 A. [10:01:40] I did not sit with them. But when they came to the village on visits,
16 they sat with our parents, with the elders of the village, and we would hear from
17 them.

18 Q. [10:02:03] So it is with your parents and with the elders that these soldiers were
19 explaining the different names, the different kinds of weapons, and all that sort of
20 things?

21 A. [10:02:23] They do not necessarily speak about weapons. They would talk
22 about different things, and maybe they would discuss weapons. But they do not sit
23 with them and explain how a weapon works. So -- but when soldiers, for instance,
24 talk amongst themselves, we could hear that -- what they were saying, what they
25 were talking about.

1 Q. [10:02:55] And we are talking about discussions that take place in Tendency before
2 the events. Did you often see weapons in Tendency before the events?

3 A. [10:03:09] Before the troubles, the government of Sudan sent people to visit the
4 different villages -- soldiers, and you could hear them talking. But the soldiers
5 would not display the weapons to the -- to the citizens. So before the troubles, that
6 was normal that people from the government of Sudan would come to visit.

7 Q. [10:03:53] Well, let me congratulate you, witness, because with such a very
8 limited source of knowledge about weapons, as the one you explain, you are
9 demonstrating --

10 PRESIDING JUDGE KORNER: [10:04:21] That's making a speech, Mr Laucci. You
11 must ask questions. And let me remind you of what I said at the beginning of the
12 evidence, questions should be short and literally contain one fact per question. But
13 what you're doing now is making a speech.

14 MR LAUCCI: [10:04:49] I was coming to the question. Thank you,
15 Madam President, it's well noted.

16 Q. [10:04:54] At paragraph 26 of your statement, you are able to differentiate
17 a Kalashnikov from a JIM, a RPG, a Dushka, an Howin, a *Rubai*, and you are able to
18 know the number of barrels of heavy machine-guns. Very impressive.

19 Where did you learn that?

20 A. [10:05:34] Yes, that is true, I learnt all this from the government of Sudan.
21 Whenever they visited the area, they talked with the citizens and they would say,
22 "This is this weapon or that," and when they talked about it, it is not because they
23 wanted to teach us about it, but they were normal conversations and you would hear
24 what they say.

25 However, I've never carried a weapon. I've never learnt how to use a weapon, and

1 there were no weapons in our villages.

2 Q. [10:06:21] Thank you. I move to another topic.

3 Are you able to recognise -- recognise the tribe of someone from Darfur when you see
4 that person?

5 A. [10:06:39] Yes.

6 Q. [10:06:42] Thank you. So you said the tribal leader in Tendy was an *umdah*.

7 What position did he take in relation to the conflict? Let me be more specific, did the
8 *umdah* instruct to support the rebellion?

9 PRESIDING JUDGE KORNER: [10:07:14] Instruct the villagers, you mean?

10 MR LAUCCI: [10:07:16] Thank you for that clarification, Madam President. Yes,
11 it's instruct the villagers to support (Overlapping speakers)

12 THE WITNESS: [10:07:24](Interpretation) I've never heard of this.

13 MR LAUCCI: [10:07:27]

14 Q. [10:07:27] Did the *umdah* instruct to support the government of Sudan?

15 A. [10:07:38] No, no. I've never heard of this before.

16 Q. [10:07:46] So there is a conflict going on (Overlapping speakers)

17 A. [10:07:54] You mean, at the village?

18 Q. [10:07:58] I will finish my question, sorry.

19 There is a conflict going on, the Fur population may be attacked and the *umdah* does
20 not say anything about what the population should do or not do. Is that correct?

21 A. [10:08:17] The *umdah* was not really in my presence. I did not hear him or
22 say -- or hear him say anything to people or see him say anything to people. So I -- I
23 do not know about this.

24 Q. [10:08:44] But did you hear people say that the *umdah* had given one instruction?

25 A. [10:08:58] No. As I said, I've never heard anything of the sort.

1 Q. [10:09:04] So despite the fact that you were under attack, no instruction, nothing,
2 coming from the leader of the tribe in Tendy, right?

3 A. [10:09:21] The *umdah* has a responsibility for different areas. He is never really
4 in one place at the same time, so I've never really seen him say anything of the sort to
5 people. I'm not aware of this.

6 Q. [10:09:49] So do I understand correctly that for Tendy, the *umdah* did nothing?

7 A. [10:10:00] This is not something that I have seen with my own eyes. I have not
8 heard him saying or doing anything of the sort.

9 Q. [10:10:12] Do you wish he would have given instruction and helped the
10 population to prepare for the attack?

11 A. [10:10:30] As I said, I haven't heard of it. Whether he said something or didn't
12 say anything, I am not aware of this. I don't know if he said to people, "Leave the
13 village or prepare for the attack", I haven't heard of this. So we were attacked and
14 we fled, but I haven't heard anything being said by the *umdah* to people.

15 Q. [10:11:00] But it's your opinion that he should have done something and helped
16 the population to prepare?

17 A. [10:11:14] I -- as I said, I haven't heard at all whether the *umdah* said something
18 to the people in order to prepare or not. That is not something that I heard.

19 Q. [10:11:36] Thank you. I move to another topic.

20 You explained that after all the traumatic events you went through, and, especially
21 Mukjar, you compiled a list of names for victims and for perpetrators, is that correct?

22 A. [10:12:01] Yes, that's correct.

23 Q. [10:12:09](Overlapping microphones) When did you do that, please?

24 A. [10:12:13] That is correct.

25 Q. [10:12:26] I was asking "when" you did compile that list?

1 A. [10:12:35] Excuse me?

2 Q. [10:12:38] Did you compile this list immediately or sometime later?

3 A. [10:12:54] I prepared it later.

4 THE INTERPRETER: [10:13:09] And I would ask the witness to repeat what he said
5 after "later" -- a note from the interpreter.

6 MR LAUCCI: [10:13:15]

7 Q. [10:13:15] The interpreter would like you to repeat what you said at the
8 end -- after when you said "later"?

9 A. [10:13:25] I did not compile the list straightaway. It is something that took time.
10 So when I remember a name, I would add it. Every time I remember a name, I
11 would add it.

12 Q. [10:13:51] Thank you. When did you start then?

13 A. [10:13:57] I'm not sure exactly when I started. However, maybe in 2015 or
14 2016.

15 Q. [10:14:15] I want to be sure I understood. You said 2015, that would be 12
16 years after the events?

17 A. [10:14:29] Yes.

18 Q. [10:14:37] What prompted you to compile that list 12 years later?

19 A. [10:14:50] When I remember a name, I would add it to the list -- to the list.

20 THE INTERPRETER: [10:15:10] And a note from the interpreter: I would ask the
21 witness to please repeat what he said after adding names to the list.

22 MR LAUCCI: [10:15:19]

23 Q. [10:15:20] Can you repeat, please, for the interpreters.

24 A. [10:15:25] I was not preparing the list with the Court in mind. I didn't know
25 that there would be a case before the Court, but whenever I remembered a name, I

1 added it.

2 Q. [10:15:53] And can you explain why you did that?

3 A. [10:16:05] As I said, when I noted down the names, I added whatever I
4 remembered. That this was a victim or this was a perpetrator without really
5 thinking that in the future, there will be a case before a court.

6 Q. [10:16:36] So if you did not consider the possibility of a prosecution, what
7 was -- for what use did you compile that list?

8 A. [10:17:02] When you have been through something like this and you have been
9 through this experience, it helps that you note things down. However, at the time, I
10 didn't know that there will be a court hearing or a trial.

11 Q. [10:17:34] Thank you. And 12 years after the events, how did you recall these
12 names?

13 A. [10:17:56] I would find the names in the different places and I would note them
14 down.

15 Q. [10:18:07] Which places, please?

16 A. [10:18:17] There are many places from different locations.

17 Q. [10:18:26] Can you explain more? What are the places where you found the
18 names that you put on your list?

19 A. [10:18:38] Sometimes I would find names in Bindisi, in Mukjar, in Garsila. So
20 when I come across a name, I would add it.

21 Q. [10:18:52] (Overlapping speakers) I think I misunderstood you, witness, and I
22 want to clarify. When you say different places, are you referring to the places where
23 these persons that you were remembering were coming from?

24 A. [10:19:13] Which people do you mean?

25 Q. [10:19:16] The people that you put on your list.

1 A. [10:19:27] All these people are from west Darfur. All of us are from west
2 Darfur, and I went to markets in Mukjar, Bindisi, Garsila. I have been to all these
3 markets.

4 Q. [10:19:47] Okay, and so it is when you went to these different places that you
5 name, Garsila, Bindisi et cetera, that you collected names, is that correct? Is it what
6 you describe?

7 A. [10:20:03] No, I was not collecting names. For instance, I would go to the
8 market and I come across names, so I would write it down. But I didn't go there
9 with the purpose of collecting names.

10 Q. [10:20:19] How do you come across these names?

11 A. [10:20:23] If somebody committed a crime, if somebody did something wrong,
12 people talk about this. So that is how I came across the names.

13 Q. [10:20:47] So do I understand correctly, that those lists that you prepared, are
14 based on the information that were given to you in the different places where you
15 went?

16 A. [10:21:09] As I said, I was not visiting places, I was going to the market there.
17 And when I go to the market, I hear people talking and they would say, "That person
18 committed this crime or caused this problem," and I note down the names.

19 Q. [10:21:40] Thank you.

20 So let me summarise to make sure I understand fully.

21 Twelve years about the events -- after the events, you go to places, you hear people
22 saying that X committed a crime, another person was a victim of the crime, and, on
23 the basis of that, you write your list. Is that correct?

24 A. [10:22:13] You would hear people saying things and they would mention names
25 and I would write down the name.

1 Q. [10:22:31] So I understand that the way I describe - and I can repeat if you
2 like - is the way it happened?

3 PRESIDING JUDGE KORNER: [10:22:59] (Overlapping microphones) ... the witness
4 is still getting translation, but again, Mr Laucci, I think the problem is the compound
5 question, and it's not altogether clear when you ask a compound question, what -- to
6 what the witness is saying either yes or no and that's why it's better to split it up.

7 Can I try --

8 MR LAUCCI: [10:23:20] Please.

9 PRESIDING JUDGE KORNER: [10:23:23](Overlapping speakers)

10 Sir, did you make a list of people you heard had been killed by government forces?

11 THE WITNESS: [10:23:43](Interpretation) By the Janjaweed and the part of the
12 government of Sudan.

13 PRESIDING JUDGE KORNER: [10:23:49] Was that list of names people that you
14 personally knew had been killed or that you heard about from other people?

15 THE WITNESS: [10:24:08](Interpretation) I heard people talking about people being
16 killed and they mentioned their names. So whenever I heard a name, I noted it
17 down. It is not always that they are names that I knew myself.

18 PRESIDING JUDGE KORNER: [10:24:29] If you heard the name of the perpetrator,
19 the person who had done the killing, did you also write that down?

20 THE WITNESS: [10:24:41](Interpretation) Yes. If I heard the name -- the full name,
21 then I would add it.

22 PRESIDING JUDGE KORNER: [10:24:48] You made this list as Mr Laucci said - and
23 you said - some 12 years after the event?

24 THE WITNESS: [10:25:03](Interpretation) Yes.

25 PRESIDING JUDGE KORNER: [10:25:06] Does that satisfy you, Mr Laucci?

1 MR LAUCCI: [10:25:13] Let me thank you for the lecture, Madam President.

2 THE WITNESS: [10:25:19](Interpretation) Thank you.

3 MR LAUCCI: [10:25:22] I hope I will be able to do it in such a way in the future.

4 I'm learning.

5 PRESIDING JUDGE KORNER: [10:25:28] All it requires, Mr Laucci, and this is the
6 problem, as I say, because of translation. If you can break the questions down into
7 simple one-fact ones, it's easier to get the answer and everybody then knows what the
8 witness is saying.

9 MR LAUCCI: [10:25:48] I hope it is another topic on which I will be able to surprise
10 you in the future.

11 Q. [10:26:04] When did you hear for the first time about the
12 International Criminal Court?

13 A. [10:26:16] I have heard of the International Criminal Court in 2018 or 2019,
14 approximately.

15 Q. [10:26:31] So you heard about the International Criminal Court - if I understand
16 well - after having compiled your list?

17 A. [10:26:54] I noted down the names before hearing of the ICC, but that is again
18 something that I heard of from people, from the radio. But I did not get a phone call,
19 for instance, telling me about what the ICC is.

20 Q. [10:27:29] Thank you.

21 And when were you contacted by the International Criminal Court for the first time?

22 MR LAUCCI: [10:27:34] I -- is it a question that can be answered in public?

23 Okay.

24 THE WITNESS: [10:27:48] Yes, would you please repeat the question.

25 MR LAUCCI: [10:27:51]

1 Q. [10:27:51] Do you remember when you were contacted by people from the
2 International Criminal Court for the first time?

3 A. [10:28:02] I remember when they contacted me.

4 PRESIDING JUDGE KORNER: [10:28:16] Why don't you put the date to him or -- if
5 you have a date.

6 MR LAUCCI: [10:28:21]

7 Q. [10:28:21] Was it -- I would not ...

8 Can you remember the year?

9 A. [10:28:28] 2021.

10 Q. [10:28:44] Thank you. And this is when you presented your list?

11 A. [10:28:54] No, no.

12 Q. [10:28:57] Since 2018 or 2019, you knew about the Court. You had compiled
13 a list of victims and perpetrators of crimes you witnessed. Did you think about
14 bringing that list to the Court?

15 A. [10:29:38] I have noted the names of victims and perpetrators well before I heard
16 of the existence of the Court.

17 Q. [10:29:59] Correct. And then when you learnt about the existence of the Court,
18 did you think about giving that information to the Court because it was relevant
19 information?

20 A. [10:30:16] You mean, to the Court?

21 Q. [10:30:20] (Overlapping microphones) Yes.

22 A. [10:30:23] After I met them, I gave them the names of the victims and the names
23 of the perpetrators.

24 Q. [10:30:36] Okay. But it is not you who tried by yourself to reach to the Court
25 and provide your list?

1 A. [10:30:56](No interpretation)

2 THE INTERPRETER: [10:31:08] He was asking for a higher volume, so I'm happy to
3 repeat it to him.

4 THE WITNESS: [10:31:18](Interpretation) I did not take action on my own to go to
5 the Court. I realised that they brought this subject up, and, in response to that, I
6 gave them a list of names. Afterwards I met them.

7 MR LAUCCI: [10:31:44]

8 Q. [10:31:45] Thank you.

9 Mr Witness, yesterday - and I refer to page 105 of the realtime transcript, line 17 to
10 18 - yesterday, you told us, I quote:

11 "I am not able to write."

12 How did you do -- to write the list you say you wrote?

13 A. [10:32:26] Well, it's not like actual writing. I am able to just note names, but
14 other types of writing would be difficult for me. But names are possible to note
15 down. I am indeed unable to do other regular writing. Names are simple to note
16 down, so you can do it.

17 I am also able to note down very basic information emanating from the Koran and so
18 forth.

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

20 So you told us -- I'm moving to another topic, you told us that you did not know
21 about the presence of a base of the SLA in Sindu in 2003, is that correct?

22 A. [10:33:41] That is correct, indeed, I was not aware.

23 Q. [10:33:50] Do you know a person named Abd Al-Wahid Al-Nur?

24 A. [10:34:03] Yes.

25 Q. [10:34:05] (Overlapping microphones) What do you know about that person?

1 A. [10:34:09] I heard about him. I heard his name. It was said that there's
2 someone called Abd Al-Wahid Al-Nur. I never met him myself, but I heard his
3 name.

4 Q. [10:34:29] And what was that person doing according to you?

5 A. [10:34:36] I heard that he is a rebel at the Marra mountain -- or Jebel Marra.

6 Q. [10:35:02] So if you say he was in Jebel Marra, I understand you did not know
7 that he and his troops were based in Sindu at the time of the events?

8 A. [10:35:18] I do not have such information.

9 Q. [10:35:27] How is the terrain -- the landscape, sorry, between Tendy and Sindu?
10 Is it a valley? It is a mountain?

11 A. [10:35:49] There are mountains, high mountains. It's all mount- -- it's
12 a completely mountainous area.

13 Q. [10:35:55] (Overlapping microphones) What is the name of that mountain,
14 please?

15 A. [10:36:01] Several mountains, I don't know all the mountains. I know the
16 mountains that are next to Tendy, but I don't know all the mountains all the way to
17 Sindu.

18 Q. [10:36:16](Overlapping microphones) Please start with the mountains you know
19 close to Tendy.

20 A. [10:36:22] The Nabka mountain, Obanga (phon), Soro. These are the Tendy
21 mountains.

22 Q. [10:36:38] And you said you never went to Sindu before the events?

23 A. [10:36:43] I did not go to Sindu before the events, mm-hmm.

24 Q. [10:36:53] Thank you. Which -- my colleague from the Office of the Prosecutor
25 asked you about the tribes that were present in Tendy. You answered Fur and some

1 Masalit. My question is, were there also Arab tribes in Tendy?

2 A. [10:37:28] There were no Arab tribes in Tendy. It was all Fur, some Masalit,
3 but no one else.

4 Q. [10:37:39] You speak about two attacks on Tendy. I will start with the first
5 attack. Do you recall any attack on Tendy -- no, sorry, on the neighbourhood, prior
6 to the first attack on Tendy?

7 A. [10:38:25] In the neighbourhood of Tendy, there was -- there's Korafata, which is
8 west of Tendy, also Segderra, Eberla and Nurly, and also there is Indiri, Arada,
9 Segeger. All of these are around Tendy and they were all attacked.

10 Q. [10:38:53](Microphone not activated) the first attack on Tendy?

11 A. [10:39:06] They were all before the attack on Tendy.

12 Q. [10:39:10](Microphone not activated)

13 THE INTERPRETER: [10:39:15] Microphone, please counsel.

14 MR LAUCCI: [10:39:18](Interpretation) Sorry.

15 Q. [10:39:20] Did the population in Tendy react to these attacks before -- once again,
16 did they try to prepare one way or the other?

17 A. [10:39:30] They have nothing to prepare themselves with. The only
18 preparation they could do was to runaway to the mountains.

19 Q. [10:39:51] When did the first attack on Tendy take place, please?

20 A. [10:39:58] It was in the morning of a day in the fall.

21 Q. [10:40:16] In your statement, you specify 9 August 2003. Is that correct?

22 A. [10:40:26] It might have been on the 9th or on the 8th.

23 Q. [10:40:43] Thank you very much.

24 Any reason why you can remember the date?

25 A. [10:41:03] It was a har- -- we know the time of the farming activity. We know

1 when we plant and when we harvest, so what makes me remember is that in
2 August, there is a beans-related activity. So we know how the farming season
3 moves, that's what makes me remember.

4 Q. [10:41:30] Fair enough. Thank you. You said that Tendency was attacked by the
5 Janjaweed. When did you hear about the Janjaweed for the first time?

6 A. [10:42:00] Well, before that time frame, I did not hear of the Janjaweed.

7 Q. [10:42:10] So was the first attack on Tendency the first time you heard about the
8 Janjaweed, do I understand correct?

9 A. [10:42:28] No. I heard about the Janjaweed when the other towns were
10 attacked by the Janjaweed, and later on they attacked us as well.

11 Q. [10:42:43] And before the war, did you ever hear about the Janjaweed?

12 A. [10:42:52] No, I did not. There was no Janjaweed before the war -- there were
13 no problems before the war, so we never heard of that term before.

14 Q. [10:43:08] Thank you. But then how do you know the attackers were
15 Janjaweed which you barely had never heard about?

16 A. [10:43:24] Well, I heard it from people. People were saying, "It's the Janjaweed,
17 the Janjaweed militia. They are the ones attacking our village and the ones who
18 attacked elsewhere." That's how I heard the term. And I don't know why they are
19 called particularly Janjaweed, I just heard it from others.

20 Q. [10:43:56] Do you know to which tribe the Janjaweed who attacked Tendency
21 belonged?

22 A. [10:44:10] From the Arab tribes.

23 Q. [10:44:22] Are you able to specify which Arab tribe?

24 A. [10:44:29] I am not able to specify the tribe. I only know that they are from an
25 Arab tribe, not specifically a -- who amongst the Arab tribes, just that they came from

1 Arab tribes.

2 Q. [10:44:55] (Overlapping microphones) Do you know what were the Arab tribes
3 present in the region?

4 THE INTERPRETER: [10:45:09] Mr Laucci, we didn't get your question.

5 MR LAUCCI: [10:45:13]

6 Q. [10:45:14] Do you know - even before the war - which Arab tribes were present
7 in the area, in the region?

8 PRESIDING JUDGE KORNER: [10:45:24] Which region? Tendy.

9 MR LAUCCI: [10:45:27] There was no Arab in Tendy, but we could say around
10 Mukjar, I think we are in the Mukjar locality, yes, the Mukjar locality.

11 THE WITNESS: [10:45:41](Interpretation) There were Arab tribes present, I am not
12 able to specify which tribe lived where exactly. I am not able to distinguish among
13 these tribes, so I do not have that information for you.

14 MR LAUCCI: [10:46:19](Interpretation)

15 Q. [10:46:20] You mentioned the Kabaga (phon) mountain, that is north of Tendy,
16 am I right?

17 A. [10:46:32] Correction, Nabka and it's east of Tendy.

18 Q. [10:46:45] What is the name of the mountain at the north of Tendy?

19 A. [10:46:52] It's Soro and Obanga (phon).

20 Q. [10:46:59] I will refer to it as the "Soro" mountain, if you accept.

21 Was the Soro -- was the Soro mountain the one that you mentioned in your statement
22 had being attacked one month before the first attack on Tendy?

23 A. [10:47:26] Not a mountain, it's an area called Soro in addition to the mountain of
24 Soro and it's -- it all belongs to the Tendy village. So the mountain, Soro, where
25 people were attacked, they ran to the Soro mountain, uphill.

1 Q. [10:47:51] I will come to that, witness, but at paragraph 17 of your statement,
2 you mention an air attack on a mountain that took place about one month before the
3 first attack on Tendy. Was it the Soro mountain?

4 PRESIDING JUDGE KORNER: [10:48:15] Paragraph 17 says that it was a month
5 earlier before the second attack in March 2004.

6 MR LAUCCI: [10:48:37] My mistake, Madam President.

7 Q. [10:48:42] Forget my question, it was a mistake.

8 So you went -- when the -- Tendy was attacked for the first time, the population,
9 including yourself, went in -- to the mountain. How long did you stay there?

10 A. [10:49:14] You're asking me about the first attack, right?

11 Q. [10:49:23](Overlapping microphones) Right.

12 A. [10:49:28] Regarding the first attack, we spent a month or a month and a little
13 more at the mountain.

14 Q. [10:49:39](Overlapping microphones) How did you survive there? Did
15 somebody provide you with food?

16 A. [10:49:49] No one provided us with food. Where people got dispersed, some of
17 them went to Mukjar and then went to the mountains. When the Janjaweed attacked,
18 they did not stay still in one place. They went back, they did not stay there, and they
19 were rotating during the month. They went to the farmland and so forth.

20 Q. [10:50:29](Overlapping microphones) a clarification: is it the population that
21 was rotating?

22 A. [10:50:39] The people. That's how they survived. Those who attacked went
23 back -- went away after the attack. They did not stay there. But the village was
24 entirely burnt down. There was nothing left. So the people were at the foot of the
25 mountain survived - and barely managing to get basic supplies from the burnt

1 village - and this continued for a month or a month and a little more, during which
2 they survived off the harvest that remained in the village.

3 Q. [10:51:27] Where did you live in the mountain? Where did you sleep, for
4 instance?

5 A. [10:51:35] On the ground in the open air, on rocks even.

6 Q. [10:51:53] (Overlapping microphones)...during that period of about one month
7 and a half -- in your statement you said two months, but let's say one month and
8 a half, were you attacked in the mountains?

9 A. [10:52:09] We were not attacked while in the mountain.

10 Q. [10:52:16] In your statement as well, you say that in the mountains you met
11 persons from Kodoom who told you that their village had been attacked, is that
12 correct?

13 A. [10:52:33] That is correct.

14 Q. [10:52:37] The attack on Kodoom was before the attack on Tendy, according to
15 what they told you, right?

16 A. [10:52:50] (Speaks English) Yeah, yeah. (Interpretation) Yes, that is correct.

17 Q. [10:53:00] Do you remember how many days before, roughly?

18 A. [10:53:11] I can't be specific on how many days before, but it was certainly
19 before Tendy.

20 Q. [10:53:21] (Overlapping microphones)...in your statement, you seemed to
21 remember that they said Kodoom was attacked four-to-five days before the attack on
22 Tendy. Does that sound correct to you?

23 A. [10:53:35] It could be correct, but I can't be precise. Four or five days seems
24 about right. What I can be sure of is that it certainly preceded Tendy.

25 Q. [10:53:55] And the same people from Kodoom also mentioned that Bindisi had

1 been attacked.

2 A. [10:54:08] That is also correct.

3 Q. [10:54:10] And which of the two had been attacked first? Was it Bindisi or was
4 it Kodoom?

5 A. [10:54:21] The people who told me this said Bindisi was attacked before
6 Kodoom. This is as far as the man who told me this, this is his account.

7 Q. [10:54:40] So to summarise, Tendency was attacked on the 8th or the 9th of August
8 and four-to-five days before, Kodoom had been attacked. And even before that,
9 Bindisi had been attacked. Is that a correct summary?

10 A. [10:55:07] Could you please say that again.

11 Q. [10:55:13] (Overlapping microphones) I will go one step after the other.

12 Tendency is attacked - according to you - on the 8th or 9th of August, is that correct?

13 A. [10:55:24] I cannot be specific on the day that Tendency was attacked. I know that
14 it was attacked in August.

15 Q. [10:55:42] (Overlapping microphones) Okay, but earlier you just said between
16 the 8th or the 9th. Do you want to revisit that?

17 A. [10:55:54] Let me correct that, I might have wrongly expressed this. What I
18 meant is the eighth month, not the eighth day.

19 Q. [10:56:12] And within the month, you have any recollection of which day,
20 within that eighth month?

21 A. [10:56:24] I cannot remember that exactly.

22 Q. [10:56:32] Thank you. And when you came back from the mountains, one
23 month and a half later, you said you came back for harvest, is that correct?

24 A. [10:56:47] Correct.

25 Q. [10:56:50] And how was Tendency when you came back?

1 A. [10:57:01] We found the entire town burnt. We found nothing there. We
2 stayed and we made up makeshift homes using shovels and ashes, and that's how we
3 stayed there.

4 Q. [10:57:34] (Overlapping microphones) What crops did you harvest?

5 PRESIDING JUDGE KORNER: [10:57:42] Mr Laucci, I think we will take the break
6 now.

7 MR LAUCCI: [10:57:47] If you allow me one or two minutes, I'm done with that
8 topic.

9 PRESIDING JUDGE KORNER: [10:57:53] All right, because I'm going to ask you
10 about this. Yes, all right.

11 MR LAUCCI: [10:57:56]

12 Q. [10:57:58] So I repeat the question: What crops did you harvest when you
13 came back from the mountains?

14 A. [10:58:07] It's corn, millet, beans, sesame.

15 THE INTERPRETER: [10:58:10] And the last crop was not recognised by the
16 interpreter.

17 MR LAUCCI: [10:58:25]

18 Q. [10:58:25] Was it a good harvest that year?

19 A. [10:58:33] It was a good harvest.

20 Q. [10:58:38] So I understand that the crops had not been destroyed? Nor burnt?

21 A. [10:58:50] Well, the attack preceded the fall season. It wasn't yet the harvest
22 time, but we went back when it was harvest time and that's how we managed to
23 harvest and find crops. But when the attack first happened, the crops hadn't
24 blossomed yet.

25 Q. [10:59:19] (Overlapping microphones) Thank you. Last question, with what

1 tools did you harvest that year?

2 A. [10:59:28] What do you mean by "tools"? Any examples?

3 Q. [10:59:44] (Overlapping microphones) I'm not asking about which specific tools,
4 but whether the tools were still there in the village for you to work and harvest.
5 That's my question.

6 A. [11:00:00] (Speaks English) Yeah, yeah. (Interpretation) Yes, we went to the
7 Mukjar market. We bought shovels, and when we came back home, we dugged
8 holes. So you dig a hole in the ground and you put the crops there, in the hole.
9 And -- and when you get the beans, you ...

10 THE INTERPRETER: [11:00:38] That was not understandable to the interpreter.
11 But it's a good chance it's --

12 "We bring a container where we can put in the crops."

13 But that's just a -- this is what we suspect it is, but we did not (Overlapping speakers)

14 MR LAUCCI: [11:00:52] Do you want the witness to repeat or (Overlapping
15 speakers)

16 THE INTERPRETER: [11:00:53] Ideally, yes (Overlapping speakers)

17 PRESIDING JUDGE KORNER: [11:01:02] No. No, no. A lecture on farming, Mr
18 Laucci, may be very interesting, but it has nothing to do with this case. We'll take
19 the break now.

20 Sir, thank you. If you would like to go and we'll sit again at 11:35.

21 Could somebody take the witness out, please.

22 THE WITNESS: [11:01:24](Interpretation) Thank you very much.
23 (Witness exits the courtroom)

24 PRESIDING JUDGE KORNER: [11:01:50] Mr Laucci, you've now spent the first
25 session - one and a half hours - on matters that, at the moment, I really fail to see are

1 relevant, in particular, about the first attack in Tendency.

2 Now, you may tell me - as I'm sure you will - there is relevance. I'm simply going to
3 say this, unless you can show that this is relevant to some issue in the case, whether
4 it's his credibility as a witness or some other issue, which we're obviously missing at
5 the moment, then you've wasted an hour and a half.

6 All I'm going to say is this, as I said, it's your time. We've said you can allocate the
7 time as you like, but the witness must complete his evidence today. He cannot be
8 held over until after the Easter recess, and there has got to be sufficient time for any
9 re-examination to take place that's required or any questions from the judges; so you
10 will have to complete your cross-examination no later than 3.30. I hope that's clear.
11 I'm giving you fair warning.

12 MR LAUCCI: [11:03:22] It's noted. I'm a bit surprised about the lack of relevance of
13 the information collected this morning, about, for instance, the fact that the -- all the
14 lists were combined on the basis of hearsay and were written by someone who does
15 not know how to write, but --

16 PRESIDING JUDGE KORNER: [11:03:45] Well, he didn't say that. In fact, to be fair,
17 he said that he had basic reading and writing, and clearly he does because he read the
18 oath, Mr Laucci.

19 MR LAUCCI: [11:04:01] I fully agree with you on the reading part, but yesterday the
20 answer was clear: "I don't know how to write." And that's on record.

21 PRESIDING JUDGE KORNER: [11:04:07] All right, fair enough, you've got that
22 point. But that is one point in an hour and a half, Mr Laucci.

23 MR LAUCCI: [11:04:17] Yes, but the fact that the information was collected 12 years
24 later by talking to people in various markets, I think is also --

25 PRESIDING JUDGE KORNER: [11:04:22] All right --

- 1 MR LAUCCI: [11:04:22] -- an information of relevance to your Court.
- 2 PRESIDING JUDGE KORNER: [11:04:29] -- well, I've no doubt you'll explain to me
3 how the farming principles are relevant as well.
- 4 MR LAUCCI: [11:04:35] It was more a question about -- a lecture about what looting
5 means than a lecture about harvesting. If everything was burnt and looted, I wanted
6 to know where the tools were coming from.
- 7 PRESIDING JUDGE KORNER: [11:04:50] Yes, all right, okay, you've made the point.
8 And clearly if the attack took place in March, and they went back later - as we got
9 your lecture on farming - the crops hadn't grown yet for them to burn down, so you
10 may not have achieved a great deal. But as I said, Mr Laucci, I'm not going to stop
11 you. I'm just going to -- the only thing I'm going to tell you, is, you're going to have
12 to complete your cross-examination by 3.30.
- 13 MR LAUCCI: [11:05:18] This is noted.
- 14 PRESIDING JUDGE KORNER: [11:05:20] Okay. Yes, very well, 11:35, please.
- 15 THE COURT USHER: [11:05:26] All rise.
- 16 (Recess taken at 11.05 a.m.)
- 17 (Upon resuming in open session at 11.35 a.m.)
- 18 THE COURT USHER: [11:35:56] All rise. Please be seated.
- 19 PRESIDING JUDGE KORNER: [11:36:27] Mr Laucci, just before you start.
20 Sir, I understand that some of the difficulty of interpretation is that you drop your
21 voice. If you could try to keep your voice up when you answer the questions
22 throughout the whole sentence, that will help with the interpretation. Okay?
- 23 THE WITNESS: [11:36:51](Interpretation) Sure.
- 24 MR LAUCCI: [11:37:01] Thank you, Madam President.
- 25 Q. [11:37:05] Have you rested, witness?

- 1 A. [11:37:08] Yes, thanks be to God.
- 2 Q. [11:37:10] Very good. I move to the second attack on Tendy.
- 3 When did that second attack take place, according to you?
- 4 A. [11:37:35] In the third month of 2004.
- 5 Q. [11:37:43] In your statement, you are a bit more precise and you say the 25th of
- 6 March 2004. Is that correct?
- 7 A. [11:37:59] Approximately, 24th or 25th of the third month.
- 8 Q. [11:38:08] And what makes you remember that it was on this day?
- 9 A. [11:38:17] I remember because I wanted to go to Mukjar in order to do
- 10 a procedure that has to do with nationality. That's why I remember the day.
- 11 Q. [11:38:40] This is indeed what you told to my colleague of the Prosecution
- 12 yesterday. But in your statement, what you declared was that you knew that date
- 13 based on what other villagers had told you.
- 14 So what is the right explanation, please?
- 15 A. [11:39:14] Not other people. It was my maternal uncle. I was going with him
- 16 for that errand related to the nationality.
- 17 Q. [11:39:31] Thank you. And this time, when Tendy was attacked for the second
- 18 time, the population and yourself fled to a mountain, is that correct?
- 19 A. [11:39:49] Yes, correct.
- 20 Q. [11:39:53] Was it the same mountains -- the same mountain as the first time?
- 21 A. [11:40:04] Yes, in Nabka mountain. We were up in Nabka mountain.
- 22 Q. [11:40:13] Thank you. To be clear, you said that the first time you went to Soro
- 23 mountain at the north of Tendy, and, now, you say for the second attack, you fled to
- 24 the Nabka mountain, that is east of Tendy. Is it correct?
- 25 A. [11:40:36] Yes, correct.

1 Q. [11:40:40] Why did you go to a different mountain compared to the first time?

2 A. [11:40:53] We went to the closest mountain to us. The whole area is
3 mountainous. So when we were attacked, we just fled to the mountain that was
4 closest to us.

5 Q. [11:41:16] Do I understand that Nabka mountain is closer compared to Soro
6 mountain?

7 A. [11:41:29] Yes, the Nabka mountain is the closest mountain to our area.

8 Q. [11:41:38] In your statement, and, yesterday, again, you explained that you went
9 to the Nabka mountain and that you hid at the top of the mountain behind rocks. Is
10 that correct?

11 A. [11:42:07] Yes, correct.

12 Q. [11:42:09] And you say the distance from where you were observing to Tendy is
13 between one kilometre -- one kilometre and a half, that is 15 to 20 minutes' walk?

14 MR SACHITHANANDAN: [11:42:30] My apologies --

15 THE WITNESS: [11:42:33](Interpretation) Yes, correct, it is a close distance.

16 MR SACHITHANANDAN: [11:42:37] I'm not objecting, but I'm inviting Mr Laucci
17 to just give transcript references for key points like this just so that we can -- we can
18 double-check and follow.

19 PRESIDING JUDGE KORNER: [11:42:51] Yes, could you do that, Mr Laucci.

20 MR LAUCCI: [11:42:53](Microphones overlapping)
21 (Counsel confers)

22 MR LAUCCI: [11:43:12] We propose page 20, lines 22 to 25 of the transcript.
23 Is that okay with you, colleague?

24 MR SACHITHANANDAN: [11:43:41] As far as I understand it from the text, he says
25 he cannot assess the distance.

1 PRESIDING JUDGE KORNER: [11:43:46] (Overlapping microphones)... he did
2 say -- I think he said -- I remember when I was reading it last night, he said
3 somewhere else.

4 MR LAUCCI: [11:43:51] Yes, we can propose page 21, lines 7 to 9.

5 MR SACHITHANANDAN: [11:44:05] 15 to 20 minutes, yes, yes, I can see that.

6 MR LAUCCI: [11:44:08] Thank you. Anyway, this was confirmed this morning
7 again by the witness.

8 I will refer to the screening notes, which were part of the documents disclosed by the
9 Office of the Prosecutor. The ERN is DAR-OTP-0215-5313-R02 and I'm on page 3.

10 PRESIDING JUDGE KORNER: [11:44:51] Sorry, could it be put up on the screen
11 because we don't have it.

12 THE COURT OFFICER: [11:45:04] It's coming up on evidence channel 1.

13 MR LAUCCI: [11:45:31]

14 Q. [11:45:35] In this screening note, you say that you were not able to tell -- it's here,
15 just in front of us, yes, a bit up, perfect, line 5, you were not able to tell who was
16 leading the attack, the second attack on Tendy.

17 Do you agree with that?

18 MR SACHITHANANDAN: [11:46:04] (Overlapping microphones) I'm so sorry to
19 rise again. I just want to invite Mr Laucci to perhaps explain what the document is
20 to the witness, just so that the witness knows that he has not signed or had this read
21 back to him.

22 PRESIDING JUDGE KORNER: [11:46:15] I was going to say the way you put it is
23 slightly different. He has been recorded as saying to - I assume the
24 investigator - that he was not in a position. It's not his statement signed by him.

25 MR LAUCCI: [11:46:33] Yes, that's correct.

1 Q. [11:46:36] Do you remember having - and my colleague from the Prosecution
2 would know better - but before your statement was taken, do you remember ever had
3 a discussion with an investigator when you provided a first summary of your
4 evidence?

5 A. [11:47:04] What do you mean? I do not really understand what you are
6 saying about me having talked to an investigator.

7 PRESIDING JUDGE KORNER: [11:47:22] (Overlapping
8 microphones)(Indiscernible)...Mr Laucci.

9 Was he contacted over the phone by an investigator?

10 MR SACHITHANANDAN: [11:47:30] That's correct. The screening was by -- by
11 telephone, I believe.

12 PRESIDING JUDGE KORNER: [11:47:33] And what's the date of it, if I may ask?

13 MR SACHITHANANDAN: [11:47:35] It was in 2020 on the 6th of November.

14 PRESIDING JUDGE KORNER: [11:47:40]

15 Sir --

16 If you don't mind, Mr Laucci.

17 Sir, do you recall having a telephone conversation about a year before you made the
18 statement to the Prosecutor?

19 THE WITNESS: [11:48:04](Interpretation) Yes, I talked with them several times.

20 MR LAUCCI: [11:48:10] Thank you.

21 Q. [11:48:10] And on the basis of that phone conversation that you had with the
22 investigator, the investigator prepared some notes, a summary of what you said,
23 which is not the statement you signed. Is that clear?

24 A. [11:48:29] Correct.

25 Q. [11:48:33] And in that note, the investigator noted that you said that you had not

1 been able to say who was leading the second attack on Tendy. Do you agree with
2 that?

3 A. [11:49:01] No, that's not correct. I said that I know who attacked Tendy -- the
4 person who attacked Tendy.

5 Q. [11:49:19] I take what you say, Mr Witness, that you may have said so in the
6 statement that you signed, but the investigator notes of the first phone conversation
7 say otherwise. Can you say what is the right version?

8 A. [11:49:49] I know the person who attacked Tendy. However, talking on the
9 phone is different because there may have been a language barrier, talking maybe
10 Arabic, classical Arabic or -- or a dialect. But my statement is one.

11 Q. [11:50:11] (Overlapping microphones) The investigator in his notes further
12 writes that the reason you provided for not having been able to identify the leader of
13 the attack was that you were about one kilometre away from the village.

14 PRESIDING JUDGE KORNER: [11:50:41] I'm sorry, I think you need to finish, please,
15 the whole sentence.

16 MR LAUCCI: [11:50:44] I will read it entirely.

17 Q. [11:50:50] So the investigator note, talking about you: "When he escaped he was
18 not in the position to tell who was leading the attack because he was [...] one km away
19 from the village, but" (Overlapping microphones)

20 A. [11:51:14] Correct.

21 Q. [11:51:15] I finish the sentence --
22 "but he believes that KUSHAYB's militia was responsible for the attack."
23 So I let you answer now.

24 A. [11:51:34] Correct. I was in the mountain, up, and Ali Kushayb came with the
25 militias. He came to the market with the vehicles and he got off the vehicle and he

1 had --

2 THE INTERPRETER: [11:52:01] A note from the interpreter: Something in his hand.

3 I couldn't hear the word of what he had in his hand.

4 THE WITNESS: [11:52:09](Interpretation) So I knew that this was Ali Kushayb

5 MR LAUCCI: [11:52:12]

6 Q. [11:52:13] The interpreter did not get what you said, the person you name Ali

7 Kushayb had in his hand. Was it a stick as written in your statement?

8 A. [11:52:27] He had a black stick in his right hand.

9 Q. [11:52:35] Does this black stick form part of --

10 A. [11:52:46] (Speaks English) Yeah.

11 Q. [11:52:50] -- military equipment?

12 A. [11:52:52] (Interpretation) Yes.

13 Q. [11:52:52] What was the purpose of the stick? Any idea?

14 A. [11:53:00] (No interpretation)

15 THE INTERPRETER: [11:53:18] The interpreter heard something about "force." So

16 it would be better if the witness clarifies what he means.

17 MR LAUCCI: [11:53:26]

18 Q. [11:53:27] Can you repeat, please, the interpreter did not understand. And as

19 Madam President asked you, if you could speak a bit louder, that will help. Thank

20 you.

21 A. [11:53:42] The leader of a force holds a black stick in his hand.

22 Q. [11:53:50] Okay. So what you say is that it is normal for the leader of a force to

23 hold a black stick?

24 A. [11:54:06] Yes.

25 Q. [11:54:11] Before -- sorry.

1 Was it the first time you saw the man you call Ali Kushayb?

2 A. [11:54:46] No. I've seen him in Garsila. I had been to the market and I saw
3 him at the market in Garsila, and, during the attack, I could see him in the car and
4 getting out of the car and I recognised him as Ali Kushayb.

5 Q. [11:55:12] I will come back to this first interaction in Garsila later, probably this
6 afternoon. But for the moment, can I summarise that you recognise one person at
7 a distance of 1 kilometre to 1.5 kilometres from you on the sole basis of having seen
8 that person once in a market years before?

9 A. [11:56:01] Yes.

10 Q. [11:56:06] I will take that as...

11 Okay, fine, thank you.

12 How long did you stay in the mountain this time?

13 A. [11:56:28] The period that I stayed in the mountain? Can you repeat.

14 Q. [11:56:39] Yes, sure. After the second attack, you went again in the mountain.
15 My question is, how long did you stay there?

16 A. [11:56:51] After the second attack, we fled to the mountain, then to Sindu.

17 Q. [11:57:12] So how much time did you spend in the mountains?

18 A. [11:57:19] We didn't stay there long. So the same day of the attack, we went to
19 the mountain.

20 Q. [11:57:40] On the day of the attack, you go in the mountain and are you going
21 (Overlapping speakers)

22 A. [11:57:49] Yes, on the day of the attack, I went to the mountain.

23 Q. [11:57:52] (Overlapping microphones) Clear. And did you go to Sindu on the
24 same day as well or some days later?

25 A. [11:58:01] I went to Sindu the same day because we went to the mountain.

1 Then from there to Sindu, because there was nothing left to stay for the villages were
2 burnt down.

3 Q. [11:58:26] How was the situation different from the first time? The first time
4 you go to the mountain, you stay one month and a half rotating. This time you go to
5 the mountain and straight to Sindu. Why this difference?

6 A. [11:58:49] The first time, the Janjaweed attacked and left, but the second time,
7 they stayed in the area for two days and they started searching for people in the
8 mountains. That's why we had to leave straightaway.

9 Q. [11:59:15] Thank you.

10 What did you do when you arrived in Sindu?

11 A. [11:59:22] We stayed for two days. The first day was a Wednesday, then it was
12 a Thursday, and, on Friday, the Janjaweed entered Sindu. So from there, we had to
13 leave to Mukjar via --

14 THE INTERPRETER: [11:59:52] -- a place the interpreter couldn't hear.

15 MR LAUCCI: [11:59:55]

16 Q. [11:59:55] I will come to your travel to Mukjar.

17 When you were in Sindu, did you talk to anyone about the attack on Tendy?

18 A. [12:00:13] No. I did not talk about the attack on Tendy. However, on Sindu,
19 when there was an attack, somebody told me that an attack is coming and it is better
20 if you go with your family to a safe place.

21 Q. [12:00:35] Thank you. But didn't you think that it was important to alert the
22 people in Sindu that there had just been attack three-to-four hours' away on Tendy, so
23 that they could know and prepare themselves?

24 A. [12:01:01] I was not able to do such thing because I was on the move, and they
25 already saw that there were people from other villages who came by, and I was not

1 able to move to report this information to them. It was all visible to everyone.

2 People were getting displaced from one place to the other, so everyone was aware of
3 that. Needless of me or anyone else reporting it in particular terms.

4 Q. [12:01:42] Did you see rebels in Sindu?

5 A. [12:01:51] I did not because I did --

6 THE INTERPRETER: [12:02:06] Inaudible part.

7 THE WITNESS: [12:02:09](Interpretation) Then again, I did not see any rebels there.

8 THE INTERPRETER: [12:02:13] In the middle, there was an inaudible part.

9 MR LAUCCI: [12:02:17] Do you want to ask the witness to repeat (Overlapping
10 microphones)

11 THE INTERPRETER: [12:02:19] If you wish so, yeah.

12 THE WITNESS: [12:02:23](Interpretation) I did not see rebels in Sindu. Therefore, I
13 cannot answer affirmatively. I did not see rebels in Sindu.

14 MR LAUCCI: [12:02:36]

15 Q. [12:02:39] And when Sindu was attacked two days later, was there any
16 resistance?

17 A. [12:02:48] I did not hear about resistance. When I heard that an attack had
18 happened, I moved to Sindu along with -- pardon, from Sindu, along with family, my
19 siblings, and moved to Tendy. I did not hear whether the attack was resisted.

20 Q. [12:03:16] (Overlapping microphones) Did you hear or see fights?

21 A. [12:03:28] I did not see any battles or fights, but I saw the smoke of the village
22 that was burnt. I could see that afar.

23 Q. [12:03:47] So you say you did not see rebels in Sindu. So am I correct when I
24 say that Sindu looked like a normal village with no military presence before the
25 attack?

1 A. [12:04:07] There was no military presence there. I didn't visit Sindu before the
2 attack, but when I went there, I did not notice any military presence.

3 Q. [12:04:22] Thank you.

4 My colleague from the Office of the Prosecutor asked you yesterday some questions
5 about four women you met on your way from Sindu to Mukjar. Do you remember
6 that?

7 A. [12:04:48] I do remember.

8 Q. [12:04:53] And I'm correct when I say that you knew these women from before,
9 right?

10 A. [12:05:05] That is correct.

11 Q. [12:05:08] Do you know if these women had husbands?

12 A. [12:05:16] Two of them were married, and two others were still young ladies,
13 unmarried.

14 Q. [12:05:32] And didn't that surprise you that these four women openly disclosed
15 to you that they had been raped?

16 A. [12:06:00] I was kind of surprised, indeed. It depends on how you see it, and,
17 in our culture, it is difficult to say that someone was raped. But in order to alert
18 people about the danger, it is legitimate to say so.

19 Q. [12:06:23] Thank you. I move to Mukjar.

20 In your statement, paragraph 33, you say that you arrived in Mukjar on the 30th of
21 March, 2004. Do you confirm that date?

22 A. [12:06:52] I do, correct.

23 Q. [12:06:57] Why did you go to Mukjar from Sindu?

24 A. [12:07:07] Given the attacks targeting different places, there was no place safe.
25 So you have to go somewhere where safety is guaranteed by the government.

1 Q. [12:07:25] But was not Mukjar the place where you had heard Ahmed Haroun
2 one month before saying that the Fur should be attacked?

3 A. [12:07:52] Yes.

4 Q. [12:07:56] (Overlapping microphones) Do you know where the Janjaweed who
5 attacked Tendy - and, I understand, Sindu - came from?

6 A. [12:08:11] They came from Garsila, Mukjar, and carried out their attack on the
7 other towns.

8 Q. [12:08:23] So if they were coming, including from Mukjar, and if Mukjar was the
9 place where Ahmed Haroun had said that the Fur should be attacked, didn't you
10 have the impression that you were going straight into the jaws of the lion?

11 A. [12:08:47] There was no other way. It was the next best familiar place. If you
12 end up safe, fine. If not, then it is what it is. You did not have other options. It's
13 just an attempt to be somewhere safe, but there were no other options available.

14 Q. [12:09:30] During that trip, were you -- or other people with you carrying along
15 weapons with them?

16 A. [12:09:49] No. No one had weapons.

17 Q. [12:09:54] So you explained that when you arrived in Mukjar at a checkpoint,
18 you and other men were arrested. Is that correct?

19 A. [12:10:11] Correct.

20 Q. [12:10:16] Yesterday, you mentioned to my colleague from the Prosecution two
21 names of persons who arrested you, it is Abu Bakr Korin and Hassan Juma?

22 A. [12:10:39] That's correct.

23 Q. [12:10:39] (Overlapping microphones) Do you know what was their position
24 and grade, please?

25 A. [12:10:47] I don't know the rank, but I know that they worked for the Popular

1 Defence Forces in Mukjar.

2 Q. [12:11:12] So do you mention these two names because they were the persons
3 with authority there?

4 A. [12:11:20] At the checkpoints, yes, because they were the ones arresting people
5 and sending them to prison.

6 Q. [12:11:36] Yesterday also you said that Hassan Juma, you knew him because he
7 had visited Tendy five-to-six times before. What was Hassan Juma doing in Tendy
8 when he visited it?

9 A. [12:12:01] I don't know. It could be some business for the government. He
10 works for the government, but there was farming -- it could be a farming-related
11 business. So he came in order to carry out such business.

12 Q. [12:12:16] Did he bear weapons when he was visiting Tendy?

13 A. [12:12:22] I never saw him carrying weapons.

14 Q. [12:12:33] Thank you. Do you know why they arrested you?

15 A. [12:12:45] I don't know the reason. It was a lot of us who got arrested. As to
16 the actual motivation behind that, that's something I don't know.

17 Q. [12:12:59] Did they give you a reason? Did they tell you why you were
18 arrested?

19 A. [12:13:06] They did not tell me why. They did not tell me anything.

20 Q. [12:13:14] Did you ask why you were arrested?

21 A. [12:13:27] How could you pose such question. You're afraid for your -- about
22 your fate. You're afraid of yourself even. How could you put such question to the
23 other person.

24 Q. [12:13:48] Do I understand that you were too afraid to ask?

25 A. [12:13:57] Certainly because he could just, you know, hit you and kill you. So

1 it's -- it's very risky to put such question.

2 Q. [12:14:14] But did not you try to claim your innocence? To explain what had
3 happened to you and that you were seeking refuge in Mukjar?

4 A. [12:14:38] Well, it's because of the background of this -- you know, how the
5 government would react when you tell them your account, so I did not know what
6 the outcome could be. I came there suddenly out of fear into this town, and I was
7 afraid of the government, and here I come into the hands of the government again
8 and they just arrested me. It is not an appropriate situation to -- to pose these
9 questions to the government. I do not have a background on this. I don't know
10 how the government could possibly react.

11 Q. [12:15:27] (Overlapping microphones) You didn't know, but your expectation
12 was that if the government put a hand on you, that could have adverse consequences,
13 am I right?

14 A. [12:15:51] That is right. Because it was the first time I was ever arrested. I was
15 escaping war, and, here, I found myself arrested by the government and imprisoned.
16 I was too afraid to ask, and I couldn't think of any reason justifying my arrest. I did
17 nothing wrong.

18 Q. [12:16:15] Were you surprised to see representatives of the government at your
19 arrival in Mukjar?

20 A. [12:16:35] I was not surprised. I was aware that I am coming to the
21 government seeking protection, but instead they arrested me. And I was astonished.
22 Why would they arrest me? Though I am a citizen to whom they are -- for whom
23 they are responsible and instead, they arrest me. How come?

24 Q. [12:17:00] But you did not try to explain that?

25 A. [12:17:11] I did not say that, and I did not say anything else, either.

1 Q. [12:17:17] Thank you. I move on to the place of detention.

2 Were all prisoners in the Mukjar police station held in jails?

3 A. [12:17:45] Yes, they were all inside jail.

4 Q. [12:17:50] At paragraph 34 of your statement, let me take it. You said that
5 some prisoners were also kept outside in the courtyard of the police headquarters.

6 A. [12:18:23] Correct.

7 Q. [12:18:25] How do you explain that you just said they were all in jail?

8 A. [12:18:48] The ones who were -- there were ones in the courtyard. Some others
9 were inside the cells and they were taken out of the cell and loaded onto vehicles, but
10 everyone was in the prison.

11 Q. [12:19:14] Thank you.

12 Did you see any Janjaweed at the Mukjar police station?

13 A. [12:19:35] I was inside jail. The Janjaweed are on camels, I saw some, the ones
14 that were visible from the front door, but most of them I did not -- I could not see
15 because I was sitting inside. I could, however, hear the sound of weapons in town.

16 Q. [12:20:03] I understand that your answer is related to the attack that the
17 Janjaweed would have launched on Mukjar. Am I correct?

18 A. [12:20:20] (Speaks English) Yes. (Interpretation) Yes.

19 Q. [12:20:28] Thank you. My question was different. My question was,
20 irrespective of this attack, were there Janjaweed in the police compound guarding the
21 prisoners?

22 A. [12:20:46] The -- no, the Janjaweed were not guarding the prisoners. The police
23 officers were guarding the prisoners, not the Janjaweed.

24 Q. [12:21:01] Thank you.

25 At paragraph 48 of your statement, you mention on the basis of what you have heard

1 that prisoners were loaded in two batches on trucks and taken away. You mention
2 a first batch of 97 prisoners and a second batch of 37.

3 Do you confirm these numbers?

4 A. [12:21:54] I do.

5 Q. [12:21:58] You said yesterday that the persons were called by a person whose
6 name you don't know, and that they were signed out by another person called Sheikh
7 Muhammad Turgo (phon), is that correct?

8 MR SACHITHANANDAN: [12:22:29] My apologies (Overlapping speakers)

9 PRESIDING JUDGE KORNER: [12:22:29] Where -- where, Mr Laucci, in the
10 transcript?

11 (Overlapping speakers)

12 THE WITNESS: [12:22:34](Interpretation) The name is Sheikh Muhammad Turgo
13 (phon).

14 MR LAUCCI: [12:22:40] (Overlapping microphones) Thank you. And I'm
15 referring to the transcript of yesterday, we will find it.

16 PRESIDING JUDGE KORNER: [12:22:48] I think it may help you, Mr Laucci, if you
17 make a note by the question of where the transcript page is.

18 MR LAUCCI: [12:23:01] Lessons learnt.

19 MR SACHITHANANDAN: [12:23:04] And just an observation, paragraph 48 of
20 course doesn't mention people being loaded up into vehicles, but that of course
21 related to a different question.

22 MR LAUCCI: [12:23:20] Page 54, line 3 to 6 of the transcript of yesterday.

23 Q. [12:23:31] So you just confirmed the name of the person you are able to identify.

24 My question is, did the person you know as Ali Kushayb play any role in that process?

25 The process being to call the detainees out, sign them out and send them to the

1 trucks?

2 A. [12:23:57] Certainly I was able to see Ali Kushayb giving directions with his
3 hands gesticulating, but I did not hear him say anything. I just saw him
4 gesticulating. I did not hear any words coming from his mouth.

5 Q. [12:24:24] Thank you.

6 You mentioned several names of persons who were detained with you in Mukjar.

7 A. [12:24:47] Correct.

8 Q. [12:24:50] All these people you added on your list on the basis of the discussions
9 that you mentioned that took place 12 years later.

10 A. [12:25:22] These people are from my village, and that's why I was able to write
11 down their names.

12 Q. [12:25:30] So you explained that in detention, you identified the persons coming
13 from your village, that's right?

14 A. [12:25:50] Correct.

15 Q. [12:25:53] Does that mean that the other persons not coming from your village,
16 you obtained the name in the discussions that you had when you combined your list?

17 A. [12:26:17] Correct.

18 Q. [12:26:22] Thank you.

19 I come to the specific case of Umdah Yahya Ahmed Zarouk who was from Tendy.

20 You say that the person you name Ali Kushayb, hit Umdah Yahya on his head with
21 an axe - sorry, I'm at paragraph 38 of the statement - that Umdah Yahya fell and that
22 he was thereafter loaded by men on the truck.

23 Do you confirm that?

24 A. [12:27:12] This is correct.

25 Q. [12:27:16] According to you, was Umdah Yahya still alive when he was loaded

1 on the truck?

2 A. [12:27:26] I could not be sure about that. I don't know whether he was alive or
3 dead. He couldn't move. They loaded him on to the truck, that's how it happened.
4 I am not sure as to whether he was still alive or not.

5 Q. [12:27:52] I understand that you did not see Umdah Yahya (Overlapping
6 microphones) stand up after having been hit and go by himself to the truck, am I
7 correct?

8 A. [12:28:05] They hit him with an axe. They threw him onto the truck. He
9 wasn't able to move. But I don't know whether he was still alive. I saw him on the
10 ground when he was hit.

11 Q. [12:28:34] Thank you, Mr Witness. There will be other witnesses from the
12 Prosecution who will come and testify before this Court about Mukjar and about
13 Umdah Yahya.

14 MR LAUCCI: [12:28:53] I will be careful.

15 Q. [12:28:58] Some --

16 PRESIDING JUDGE KORNER: [12:29:03] Sorry -- I'm sorry, Mr Laucci, if what
17 you're about to do is explain to the witness what other witnesses are going to say, you
18 can't do that. It's pure comment. You can simply ask him whether he adheres to
19 his account that this is how it happened, and then if there are contradictions later,
20 that's fine, they're there. But you can't put that to him.

21 MR LAUCCI: [12:29:31] I will let you deal with that, Madam President and judges,
22 that's fine. I stop here.

23 Q. [12:29:38] When you say that Umdah Yahya was hit by the axe, was
24 Mr Abdullah Al-Tayyib Torshein present?

25 A. [12:30:02] He was present, indeed.

1 Q. [12:30:06] (Overlapping microphones) Could you describe him physically,
2 please?

3 A. [12:30:19] He was black, and he was wearing civilian clothe, not military clothe
4 and he was of middle height.

5 Q. [12:30:40] Can you remember who -- what was the position, sorry, of
6 Mr Torshein?

7 A. [12:30:51] Torshein was *mu'tamad* in Mukjar, and also *muhafez*, which is a
8 governor.

9 Q. [12:31:07] As the governor of Mukjar was Mr Torshein the highest authority
10 present at this moment?

11 A. [12:31:18] Correct. He was the highest authority in the Mukjar locality.

12 Q. [12:31:28] Did you see or hear Mr Torshein order the beating of Umdah Yahya?

13 A. [12:31:42] No, I did not hear that because I was inside the prison, so I couldn't
14 hear what was being said.

15 Q. [12:31:51] Which means that you cannot exclude that he ordered so, right? You
16 simply did not hear what was said.

17 A. [12:32:03] Correct. Because he is the highest authority.

18 Q. [12:32:11] Did you see Mr Torshein do something to prevent the beating of
19 Umdah Yahya?

20 A. [12:32:22] No, I haven't seen it.

21 Q. [12:32:30] Did you see Mr Torshein display any sign of disapproval?

22 A. [12:32:43] No. I haven't seen this.

23 Q. [12:32:47] When you were in detention at Mukjar, in the cell, did you ever see
24 Mr Ahmed Haroun?

25 A. [12:33:10] I haven't seen him.

1 Q. [12:33:14] You said that the prisoners who were loaded on trucks were
2 thereafter executed. My question is, is it -- how do you know?

3 Let's do it simple, how do you know they were executed?

4 A. [12:33:58] These were people who were with me in prison. Then they were
5 loaded onto vehicles and they said they will bring them to Garsila. However, they
6 did not go far, maybe after five minutes, other people were loaded. And we were
7 not sure when we were in prison whether they were killed or not, but when we
8 were released from prison, we learnt that they were killed.

9 Q. [12:34:36] How or -- yes, how did you learn that?

10 A. [12:34:48] People said that these people were killed and, of course, there is
11 someone who survived the killing and when I was released from prison, I met him
12 and he told me what happened. He said that, "They lined us up, shot at us, but I
13 survived. But the rest were killed."

14 Q. [12:35:21] Okay, so am I correct to conclude that your knowledge - that these
15 people taken on the trucks were killed - is based on what other people told you?

16 A. [12:35:38] Would you please repeat what you said.

17 Q. [12:35:52] Is it correct to say that you know that these people taken on the trucks
18 were executed only because other people told you that they were executed?

19 A. [12:36:14] People indeed said that they were killed. And when I was released
20 from prison, I heard that they were not brought to Garsila, but they were killed. But
21 one person survived the killing and I met with him, and he told me what happened.

22 Q. [12:36:43] Thank you, Mr Witness.

23 Last question about your detention, and, sorry, I understand it is not a pleasant
24 moment. You said that during the period of your detention, you were yourself
25 tortured by policemen.

1 Did they ask you questions when they were torturing you? Were they trying to get
2 some information from you?

3 A. [12:37:20] They did not ask me anything at all. They didn't ask me anything.
4 They were just torturing me. There were no questions posed.

5 Q. [12:37:41] Did they display any interest in knowing more about the rebellion?

6 A. [12:37:55] I don't know whether they had information about the rebellion or not.
7 That is not something that I know.

8 Q. [12:38:10] My question was whether they mentioned to you the rebellion
9 or - and I know the answer to this other side of the question - if they questioned you
10 about the rebellion?

11 A. [12:38:25] They did not pose any questions at all, and, as I said, they did not ask
12 me anything. Had they asked me something and if I knew the answer, I would've
13 answered. But they didn't ask me anything. And I didn't know why they were
14 torturing me, it was not clear to me why.

15 Q. [12:38:44] Would it be your explanation that they were torturing you out of pure
16 sadism?

17 A. [12:38:58] That I don't know. I cannot really comment on this, why a person
18 would torture someone else.

19 Q. [12:39:15] Thank you.

20 We leave the detention place. You are released, and, yesterday, you mentioned for
21 the first time that you - after some time, one month - went to a place called Khor
22 Talaba?

23 A. [12:39:46] Yes, correct.

24 Q. [12:39:48] In the real-time transcript, page 65, line 11. You mentioned that the
25 name of Khor Talaba was later on changed to Khor Kushef (phon), is that correct?

1 A. [12:40:12] Correct.

2 Q. [12:40:15] Why did the persons change that name?

3 A. [12:40:24] The reason for which the khor name was changed was the mass
4 killing that took place at the hands of Ali Kushayb. So the name was changed from
5 Khor Talaba to Khor Kushef.

6 Q. [12:40:53] What does "Kushef" mean, please?

7 A. [12:41:00] I did not understand your question.

8 Q. [12:41:04] The word "Kushef", does it have a special meaning?

9 A. [12:41:14] The meaning is the mass killing that took place of these people who
10 were taken from prison and killed there. So the place was renamed "Khor Kushef".

11 Q. [12:41:37] (Overlapping microphones) So "Kushef" means mass killing, is it what
12 you say?

13 A. [12:41:47] "Al Kushef" is the name of a person, Al -- Al Kushef.

14 Q. [12:42:01] Thank you. It is the first time, Mr Witness -- yesterday, sorry,
15 yesterday, was the first time you mentioned Khor Talaba and your visit there one
16 month after your release.

17 How come you never mentioned that event to my colleagues in the Office of the
18 Prosecutor?

19 A. [12:42:43] Khor Talaba is close to this area and we went there to -- to clean it.
20 And usually people wouldn't go there -- or they didn't go there because the
21 government prohibited that people go there. However, we went there in order to
22 clean this area for the --

23 THE INTERPRETER: [12:43:19] The word the witness is using is *matar*, that's airport,
24 says the interpreter.

25 THE WITNESS: [12:43:28](Interpretation) And that is -- that is why we went there.

1 MR LAUCCI: [12:43:31]

2 Q. [12:43:31] Thank you.

3 A little bit earlier today, I reminded you the phone conversation that you had with an
4 investigator of the OTP in November 2020. In this conversation, apparently you
5 never mentioned Khor Talaba. Do you confirm so?

6 A. [12:44:05] There was no connection between Khor Talaba and the phone call.
7 The phone call was one thing and Khor Talaba was another thing.

8 Q. [12:44:20] In your written statement, a long one that you've signed, there is no
9 mention of Khor Talaba. Do you confirm so?

10 A. [12:44:33] I did not remember Khor Talaba at all during the phone call or before.
11 I remembered it only yesterday.

12 Q. [12:44:50] And on 5 and 6 April 2022, that is one week ago, you had a session of
13 preparation with the Office of the Prosecutor, we have notes from that preparation
14 session, it's the document DAR-OTP-0222-5192. And in this document, again, there
15 is no mention of Khor Talaba.

16 So did you mention Khor Talaba when you discussed with my colleagues from the
17 Prosecution on 5 or 6 April 2022?

18 A. [12:45:51] Correct.

19 PRESIDING JUDGE KORNER: [12:46:12] Mr Laucci, I'm not clear. Is he saying he
20 did mention it to the Office of the Prosecutor or that it is correct that he never
21 mentioned it?

22 MR LAUCCI: [12:46:20] He -- yes, I wanted to confirm that he did not mention Khor
23 Talaba on 5 and 6 April.

24 PRESIDING JUDGE KORNER: [12:46:29] Yes, I get that, but --

25 MR LAUCCI: [12:46:31] Do you want me to ask --

- 1 PRESIDING JUDGE KORNER: [12:46:32] (Overlapping microphones)... the question
2 you put was: Did you mention Khor Talaba when you discussed with my colleagues
3 from the Office of the Prosecutor on the 5th or the 6th of April.
4 And he said correct.
5 That's what I mean.
- 6 MR LAUCCI: [12:46:45] I'll ask again.
- 7 PRESIDING JUDGE KORNER: [12:46:45] It's not clear what he's --
- 8 MR LAUCCI: [12:46:50] Yeah.
- 9 PRESIDING JUDGE KORNER: [12:46:50] Yes.
- 10 MR LAUCCI: [12:46:51] I ask again the question.
- 11 Q. [12:46:54] Mr Witness, sorry for that. On 5th and 6th April, did you mention to
12 my colleague of the Office of the Prosecutor, "Khor Talaba"?
- 13 A. [12:47:08] Yes. I did mention it to them, because this is the location of a mass
14 killing.
- 15 Q. [12:47:18] Then I'm afraid the next question will be more for the Prosecution, but
16 maybe that's something that we can explore later.
- 17 PRESIDING JUDGE KORNER: [12:47:30] Yes (Overlapping microphones) I think it's
18 the form of the question, again, Mr Laucci. I mean, the better thing is -- would have
19 been to say to him: You didn't actually tell the Office -- I think he agreed earlier,
20 actually, the first time that he mentioned this was in Court because he only
21 remembered it. So I'm not sure this helps anything.
- 22 MR LAUCCI: [12:47:54] Thank you. I will ask that clarification.
- 23 Q. [12:47:58] Was yesterday the first time you mentioned Khor Talaba before my
24 colleagues of the Office of the Prosecutor?
- 25 A. [12:48:16] Khor Talaba is the place where the Fur were -- experienced mass

1 killing. So that's why I mentioned it.

2 (Overlapping microphones)

3 PRESIDING JUDGE KORNER: [12:48:30] Yes --

4 MR LAUCCI: [12:48:30]

5 Q. [12:48:30] But when did you mention --

6 PRESIDING JUDGE KORNER: [12:48:33] Sir, it's just very simple: Is the first time
7 that you talked about this in court yesterday?

8 THE WITNESS: [12:48:45](Interpretation) That is correct. I talked about it
9 yesterday.

10 PRESIDING JUDGE KORNER: [12:48:55] Before yesterday, in court, you hadn't --

11 THE WITNESS: [12:49:03](Interpretation) (Overlapping speakers)

12 PRESIDING JUDGE KORNER: [12:49:03] -- told anybody, had you?

13 THE WITNESS: [12:49:05](Interpretation) I said that there was a *khor* to the north of
14 Mukjar where people were killed, and maybe I did not mention the name, but it is
15 Khor Talaba. So I said that there were people killed at a *khor*, the north of Mukjar.

16 PRESIDING JUDGE KORNER: [12:49:28] (Overlapping microphones) I'm going to
17 put the leading question for you, Mr Laucci.

18 Before yesterday, you hadn't told anybody about that, had you? It was the first time
19 yesterday?

20 THE WITNESS: [12:49:41](Interpretation) Yes, this is correct.

21 MR LAUCCI: [12:49:50] And I go one step further, I try:

22 Q. [12:49:53] Yesterday, is the first time you mentioned that you went - after your
23 release - to Khor Talaba, is that correct?

24 A. [12:50:05] Correct.

25 Q. [12:50:07] Thank you.

- 1 You said yesterday that you went to Khor Talaba to work on the UNAMID airport.
- 2 Is that correct?
- 3 A. [12:50:28] Correct.
- 4 Q. [12:50:32] Who organised -- who organised this work, please?
- 5 A. [12:50:45] The organisation, UNAMID.
- 6 Q. [12:50:50] (Overlapping microphones) It is the UNAMID who told you, "Come
7 and clean the airport"?
- 8 A. [12:51:00] I was staying at home and I got a request that UNAMID asked for
9 people to go clear the airport and I went together with many people. It was a large
10 number of people who went to do this work.
- 11 Q. [12:51:25] Mr Witness, what if I tell you that UNAMID was established on the
12 31st of July 2007 only, that is two years later, compared to the date when you say
13 UNAMID called you to clean the airport?
- 14 A. [12:51:55](No interpretation)
- 15 THE INTERPRETER: [12:52:22] A note from the interpreter: The witness was
16 going very fast.
- 17 THE WITNESS: [12:52:27](Interpretation) So the -- the work was -- the work was
18 done and the UNAMID, I don't know when it was -- when it was established, but
19 this -- this is something that happened before.
- 20 THE INTERPRETER: [12:52:41] And maybe it is worth asking him to repeat again,
21 bit by bit -- note from the interpreter.
- 22 MR LAUCCI: [12:52:50] Please, interpreter, do.
- 23 PRESIDING JUDGE KORNER: [12:52:54] The witness is being asked to repeat his
24 answer.
- 25 MR LAUCCI: [12:52:58] Yes.

1 PRESIDING JUDGE KORNER: [12:53:03] Sir, you said all that very quickly. Can
2 you just say what you said again, but more slowly.

3 THE WITNESS: [12:53:12](Speaks English) Okay.

4 (Interpretation) Okay, I said that the establishment of UNAMID took place at an early
5 stage. However, when they arrived in Mukjar it was later. And also at an earlier
6 stage, we -- the establishment of the airport was started, and it was maybe a month
7 after the mass killing, and then after that, we went to clear the area for the airport.

8 And people went to the *khor* and they were bathing and that is when they found the
9 corpses. That is the same as what I said during the -- giving my witness statement
10 because, of course, I was asked to tell what I saw with my own eyes or what I heard.

11 MR LAUCCI: [12:54:21]

12 Q. [12:54:23] Mr Witness, UNAMID did not exist in 2004 --

13 PRESIDING JUDGE KORNER: [12:54:32] I take it there's going to be an admission to
14 this effect because you can't give evidence, Mr Laucci.

15 MR LAUCCI: [12:54:40] Yes, the next question -- the question that was coming is --

16 Q. [12:54:44] Why are you telling us that you went to Khor Talaba to work for the
17 UNAMID?

18 A. [12:54:54] UNAMID came a month or two months after the mass killing, and
19 then we went to clear the area of the airport and that is when we found the corpses.

20 Q. [12:55:14] And on that opportunity, you found a significant number of corpses.
21 Rotten. It was a horrid vision. And you remembered it only yesterday, you had
22 forgotten it before. Is that what you say?

23 A. [12:55:38] Yes. I hadn't mentioned the name of the *khor* before, but I did
24 mention that there were people killed in the north of Mukjar and the north of Merly.
25 So I did mention that incident, but I did not say the name of the *khor*.

1 MR LAUCCI: [12:56:07] Thank you, Madam President, I propose to take the break
2 now.

3 PRESIDING JUDGE KORNER: [12:56:13] Yes, all right.

4 Sir, there'll be a break now for lunch until 25 past two, so if you'd like to go with the
5 court officer.

6 THE WITNESS: [12:56:29](Interpretation) Thank you very much.

7 (The witness exits the courtroom)

8 PRESIDING JUDGE KORNER: [12:56:57] Mr Laucci, I hate to keep doing this, but
9 you can't just announce, "This is when UNAMID was set up in 2007." I mean, I'm
10 sure you're right, but you must get some kind of -- if you want to put things like that,
11 you need to check that the Prosecution will agree it before that. I mean, I don't
12 imagine there's any dispute about it.

13 MR LAUCCI: [12:57:30] Yes, my apologies. I had taken that as a fact of common
14 knowledge. But we will definitely provide some documents confirming that -- the
15 date of creation of the UNAMID.

16 PRESIDING JUDGE KORNER: [12:57:42] Right. And the other thing is, just so that
17 you know, there's nothing wrong with putting what another witness will say to
18 a witness, provided you don't say, "Witness X is going to say that." You can put to
19 him what you think without explaining that it comes from another witness and ask
20 him whether he wants to change his answer. All right? It's just you can't -- not to
21 mention the problems about naming other witnesses in court.

22 MR LAUCCI: [12:58:10] Yes, I'm learning every day, Madam President.

23 PRESIDING JUDGE KORNER: [12:58:15] All right.

24 Yes, Mr Nicholls.

25 MR NICHOLLS: [12:58:16] Thank you, your Honour, and sorry, this is something

1 maybe for re-examination, but I just wanted to point out when we're talking about
2 Khor Talaba and when this was first mentioned, it got a bit confusing. But the first
3 part was about Khor Talaba and 5th and 6th of April, was it mentioned then. And
4 then it came back to, had it ever been mentioned, and we were talking about the
5 *khor* without the Talaba.

6 And then, your Honour, at page 65, lines 17 to 19, the witness just before that, at 12 to
7 16, and said:

8 I might have mentioned it.

9 [...] *khor* [...] north of Mukjar where people were killed. [...] maybe I did not mention
10 the name, but it [was] Khor Talaba [...]"

11 And then your Honour followed up with:

12 But you've never mentioned that before.

13 And he said -- agreed, but it's paragraph 48 of his statement, it's the "*KHOR*" - not
14 saying Talaba - "to the North of Mukjar". So I just wanted to raise that --

15 PRESIDING JUDGE KORNER: [12:59:16] Right.

16 MR NICHOLLS: [12:59:16] -- because I think it's probably --

17 PRESIDING JUDGE KORNER: [12:59:20] Well, I thought that's what Mr -- sorry, I
18 thought Mr Laucci was trying to put that and it just wasn't getting anywhere. But he
19 wasn't trying to put that, is that what you're saying?

20 MR NICHOLLS: [12:59:29] I don't know, because I couldn't tell, but there was
21 a confusion between talking about Khor Talaba and I think an execution site at a *khor*
22 without the name and -- and so I just wanted to point that out.

23 PRESIDING JUDGE KORNER: [12:59:44] Right.

24 MR LAUCCI: [12:59:45] The breaking news, colleague, was that the witness visited
25 Khor Talaba one month after -- about one month after his release and saw the corpses.

1 That was the breaking news that we never received before yesterday.

2 MR NICHOLLS: [13:00:03] Yes, and I understand that -- and I understand that point,
3 but in the transcript what we read now is that - divorced from that - that this Khor
4 Talaba site was -- was never mentioned, which -- and that's where I think things were
5 crossing over.

6 PRESIDING JUDGE KORNER: [13:00:19] Yes -- no, well, I certainly understood it to
7 be (indiscernible) so, yes -- no. The difference -- yes, what Mr Laucci was putting in
8 which I was attempting finally to get - probably not very helpfully - is that he never
9 before said he'd been there and seen all these bodies. He had mentioned it before, as
10 you say rightly, in paragraph 48 - or he doesn't mention it before. But your point
11 is - and that's what I think was not coming across - is that he never said he went there
12 and you're just carrying on with that.

13 All right, well, I hope that's now clear for the purposes of the transcript.

14 MR NICHOLLS: [13:01:11] No, we can agree that that was not mentioned before. I
15 just meant in the -- just the literal reading of the transcript is that he had never
16 mentioned that location.

17 PRESIDING JUDGE KORNER: [13:01:21] Well, actually, I'll now say 1.30 as we've
18 sat until 1 o'clock and we'll need the full hour and a half, I suppose.

19 Yes, not 1.30, 2.30. 2.30, sorry.

20 THE COURT USHER: [13:01:37] All rise.

21 (Recess taken at 1.01 p.m.)

22 (Upon resuming in open session at 2.34 p.m.)

23 THE COURT USHER: [14:34:13] All rise. Please be seated.

24 PRESIDING JUDGE KORNER: [14:34:37] Yes, Mr Laucci, I remind you you've got
25 until 3:35.

1 MR LAUCCI: [14:34:49] Thank you, Madam President, I anticipate no difficulty.

2 Q. [14:34:56] Good afternoon, Mr Witness, for the final session.

3 I move to the last topic of my cross-examination, which is your identification of the
4 person you name Ali Kushayb.

5 At paragraph 27 of your statement - and that will be on page DAR-OTP-0221-0441,

6 you explained that the first time you met the man you call "Ali Kushayb," was in

7 Garsila about two years before the conflict started. This must have been 2001, is that
8 right?

9 A. [14:36:12] I met him before the start of the conflict, it was in Garsila, in the

10 market, that is correct. And also I met him again after the conflict started, that was
11 in 2010, in the hospital in Garsila.

12 Q. [14:36:41] (Overlapping speakers) to this, let's -- let's focus on the first time for
13 the moment. Thank you.

14 So you went to Garsila. What -- what brought you there? What was your business
15 there?

16 A. [14:36:58] Before the conflict or after the conflict?

17 Q. [14:37:01] 2001? The first time.

18 A. [14:37:06] I went to the market.

19 Q. [14:37:12] (Overlapping microphones) Did you go alone?

20 A. [14:37:20] I went to the market -- the market with other people. There were
21 other people with me.

22 Q. [14:37:30] And why did you go to the market of Garsila?

23 A. [14:37:39] We carried peanut oil, peanut oil on donkeys and delivered it to the
24 market.

25 Q. [14:37:53] Was it a big market?

1 A. [14:37:59] Yes, it's a very big market. It's a very big municipality and this is the
2 market for it.

3 Q. [14:38:08] Was it crowded?

4 A. [14:38:12] Was crowded -- not much, but it was crowded.

5 Q. [14:38:21] And there you say that a person you saw in the market that day,
6 pointed at a man and told you, "This is Ali Kushayb." Is that right?

7 A. [14:38:37] Yes, that's correct.

8 Q. [14:38:40] Why did that person point at the man he designated as Ali Kushayb?

9 A. [14:38:51] Well, the person -- I didn't see the pharmacy, but I was told that he
10 owns a pharmacy and runs a pharmacy in Garsila and also he works with the civilian
11 defence forces. And when there is an official at this level, he's known by everybody
12 and people talk about them.

13 Q. [14:39:18] Thank you. Still at paragraph 27 of your statement, you said -- and I
14 will read the sentence:

15 "I heard that, at the outbreak of the conflict, Ali KUSHAYB was the Leader of the
16 Janjaweed and Commander of the 'PDF', the Popular Defence Force in Garsila."

17 A. [14:39:55] Correct.

18 Q. [14:40:00] (Overlapping microphones) My question is, did people tell you in
19 2001 who was allegedly Ali Kushayb, that he was the leader of the Janjaweed, or was
20 it at the outbreak of the conflict?

21 A. [14:40:21] In 2001, he was not working with the Janjaweed, but after 2003, we
22 heard that Ali Kushayb is a commander of the Janjaweed.

23 Q. [14:40:46] (Overlapping microphones) And in 2001, was he introduced to you as
24 the commander of the PDF?

25 A. [14:41:00] At that time, yes, he was a coordinator in the Popular Defence Forces.

1 That's what I was told.

2 Q. [14:41:18] To be clear, you were told that in 2001, that's correct?

3 A. [14:41:27] In 2001, I heard that he's a coordinator in the Popular Defence Forces.

4 Q. [14:41:36] Mr Witness, in 2001, you are 16 years old. A grown boy, but not yet
5 an adult. Why does someone - who you cannot identify - point at you, a young boy,
6 the commander -- the alleged commander of the PDF?

7 PRESIDING JUDGE KORNER: [14:42:10] He doesn't point at him, the young boy.

8 MR LAUCCI: [14:42:15]

9 Q. [14:42:15] But why is somebody telling to you - that is, a young boy - that this
10 other person in the market is the commander of the PDF?

11 A. [14:42:28] In our country, people who are well known, famous or an official or a
12 well-known trader, people tell you -- talk about him, and they tell us to respect those
13 people. Well, whether you're young, whether you're old, you have to respect such
14 people and that's why this person told me, "This is such-and-such."

15 Q. [14:43:06] And how come did that mark you and you kept a memory of this
16 image of the man in the market years later?

17 A. [14:43:29] You -- well, when these things happen, you -- you remember things.
18 You -- it comes back to your memory that I met this person in such-and-such place.

19 Q. [14:43:43] Do you remember every face you cross in the market for the rest of
20 your life, usually?

21 A. [14:43:56] I remember this one. I remember seeing him in the market.

22 Q. [14:44:02] Was there any specific sign or characteristic that makes -- that you
23 were especially marked by the person you saw that day?

24 A. [14:44:22] At that time, I didn't see any marks on his face or anything like that.
25 But I heard that he has got like a special mark on his ear, and, at that time, he had

1 some white hair, but not much. Just a few hairs. That's all.

2 Q. [14:44:46] And is it the white hair that make -- that you remembered him
3 forever?

4 A. [14:45:00] Sorry, what did you say?

5 Q. [14:45:03] Is it because the person had white hair that you could remember that
6 person forever?

7 A. [14:45:16] No, no. No, this is not the reason. But I just got to know him. I
8 remember now that he had some white or grey hair, but this is not the reason.

9 Q. [14:45:33] Did you identify the tribe of the man that was pointed at you?

10 A. [14:45:50] I didn't come really close to that person, but I know that he is from the
11 Fur tribe because he was speaking in Fur language.

12 Q. [14:46:06] So you could hear what that person was saying? We are talking
13 about -- yes, I want to clarify. You say that the man that was pointed at and called
14 allegedly "Ali Kushayb" was of the Fur tribe?

15 A. [14:46:33] Yes, from the Fur in the Garsila market.

16 Q. [14:46:41] Okay. So the man named "Ali Kushayb" in the Garsila market in
17 2001 is Fur?

18 A. [14:47:10] What, exactly?

19 Q. [14:47:14] (Overlapping microphones) I repeat because I want to make sure that
20 I understood fully and I do not want to misinterpret you.

21 You are at the Garsila market in 2001, and somebody shows a man and tells you,
22 "That man is called Ali Kushayb."

23 A. [14:47:40] Yes, that's correct.

24 Q. [14:47:42] (Overlapping microphones) And that person called "Ali Kushayb" is
25 Fur, is that correct?

1 A. [14:47:51] It was -- he was a person from Fur. I met him in Garsila's market
2 and we sat together and we talked and talked, and then he is the one who told me,
3 "This person is Ali Kushayb."

4 Q. [14:48:08] So you are talking about the person telling you, "That person is Ali
5 Kushayb"? Not Ali Kushayb?

6 PRESIDING JUDGE KORNER: [14:48:20] Really, I think you're just making things
7 worse, Mr Laucci, because it's really quite clear that you're at loggerheads -- not
8 loggerheads, at cross-purposes. He says the man who identified -- that's the word to
9 use -- Ali Kushayb is Fur. He did not I think intend to say that Ali Kushayb was Fur.

10 MR LAUCCI: [14:48:42] So I will repeat my first question.

11 Q. [14:48:46] I go back to my first question: The man called "Ali Kushayb",
12 according to you, what was his tribe?

13 A. [14:48:57] The person who told me or are you asking about Ali Kushayb
14 himself?

15 Q. [14:49:06] (Overlapping microphones) Ali Kushayb himself.

16 A. [14:49:10] I don't know really which tribe he belongs to.

17 Q. [14:49:18] You said that you usually can recognise the tribe of a person from
18 Darfur. How come you could not recognise his tribe for that person that day?

19 A. [14:49:33] I didn't say that I can identify all the different tribes in Darfur. There
20 are so many tribes in Darfur. I can't identify everyone who belongs to different
21 tribes, but Ali Kushayb, I know him, I saw him, but I don't know which tribe he
22 belongs to.

23 Q. [14:49:59] Okay, I am referring to page 14 of the real-time transcript and I'm at
24 lines 8 to 11, the question was:

25 "Are you able to recognise [...] the tribe of someone from Darfur when you see that

1 person?"

2 And the answer was: "Yes."

3 A. [14:50:30] Can you repeat that please, again.

4 Q. [14:50:32] I asked you this morning - and it was a general question - if you are
5 usually able to recognise the tribe of a person from Darfur when you see that person,
6 and your answer this morning was "Yes."

7 A. [14:50:52] No. I didn't say that I can identify all the different tribes in Darfur.

8 There are so many tribes in Darfur. I can't really make the difference. There are
9 maybe 60 or 70 or maybe 100 tribes in Darfur.

10 Q. [14:51:14] (Overlapping microphones) No problem, witness, I leave that point.

11 What if I tell you that according to the Prosecution and several witnesses, the man
12 you call "Ali Kushayb" was entrusted with a position of authority in 2003 only?

13 A. [14:51:50] (No interpretation).

14 Q. [14:51:54] (Overlapping microphones) And I carry on my question, that this man
15 had no position of authority whatsoever in 2001?

16 A. [14:52:04] I heard that he was working as a coordinator for the Popular Defence
17 Forces in Garsila.

18 Q. [14:52:18] (Microphone not activated) and that --

19 PRESIDING JUDGE KORNER: [14:52:18] (Inaudible)

20 (Overlapping microphones) And again, I know I'm interrupting you and I'll let you
21 go on (indiscernible).

22 But I would like to know, sir, what exactly are the Popular Defence Forces? Are they
23 government -- are they regular government soldiers or are they part-time military?

24 THE WITNESS: [14:52:46](Interpretation) They are all part of the military forces. I
25 don't know if they are regular ones or not, I don't know.

1 MR LAUCCI: [14:53:00]

2 Q. [14:53:01] So I submit to you that you said it was the reason why someone
3 pointed at Ali Kushayb was because Ali Kushayb was the commander of the PDF, is
4 that correct?

5 MR SACHITHANANDAN: [14:53:19] I'm sorry, if Mr Laucci could point out where
6 he said that that was the reason. It's not clear to me from the transcript.

7 MR LAUCCI: [14:53:29] Can you scroll up the transcript, it was just now.

8 MR SACHITHANANDAN: [14:53:39] I ask because I think we're conflating two
9 separate issues. One is the issue of identification and the other is the issue of his
10 position of authority. I don't think the witness has yet made the connection between
11 the two.

12 MR LAUCCI: [14:53:59] Do you see the page 74 -- 73.

13 (Counsel confers)

14 MR EDWARDS: [14:54:11] Yes, could I just draw everyone's attention to page 73 of
15 the transcript from line 16, well, I'm not going to read it out, but that's where the
16 reference is found.

17 MR LAUCCI: [14:54:28] And I would add page 74, lines 14 to 15. Is that okay?

18 PRESIDING JUDGE KORNER: [14:54:46] But what he said above, you said -- you
19 translated "coordinator" into "commander", but he said "coordinator" before that. He
20 said that --

21 THE WITNESS: [14:54:54](Overlapping microphones)

22 PRESIDING JUDGE KORNER: [14:54:54] -- he was connected or words to that effect.
23 But the word he used or as translated was "coordinator." You then said
24 "commander."

25 MR LAUCCI: [14:55:17] I'm flexible on "coordinator" or "commander", I'm

1 (Overlapping microphones)

2 PRESIDING JUDGE KORNER: [14:55:19] No, but it's rather difficult -- it's rather
3 different.

4 MR LAUCCI: [14:55:20] No, but what I'm discussing is whether this person was
5 pointed at because he had a position of authority -- whatever that position is.

6 PRESIDING JUDGE KORNER: [14:55:27] All right, what you're suggesting to the
7 witness is that he never had such a position of authority in 2001.

8 MR LAUCCI: [14:55:35] This is the first part, and I will carry on because that person
9 had no such authority in 2001. There is absolutely no reason why this person was
10 pointed at in the market in 2001.

11 PRESIDING JUDGE KORNER: [14:55:55] That is an argument, but it's not a question.
12 I think the only question you can put to him, is, Were you aware, sir, that in 2001, he
13 had no such position. He was not in a position of authority.

14 MR LAUCCI: [14:56:19] Well, the answer to this question would be, No, I was not
15 aware. I was told something different.

16 I leave it.

17 THE INTERPRETER: [14:56:28] Message from the English booth: Could the
18 presiding judge kindly speak into the microphone, the interpreters are having
19 difficulty catching what she says. Thank you.

20 MR LAUCCI: [14:56:41] I move on.

21 Q. [14:56:43] You mentioned that you heard that Ali Kushayb had a special mark
22 on his ear. Can you tell us more about that, please?

23 A. [14:56:58] I heard that he had a mark on his ear, but I didn't see that by my own
24 eye, it's something that I heard from other people. I think somebody said that he
25 had a hole or a cut, something like that, but it's not something that I saw myself.

1 Q. [14:57:14] Thank you. And in 2001, in the market of Garsila, did anybody tell
2 you about another name that this Ali Kushayb had?

3 A. [14:57:37] His real name is Ali Muhammad Abd-Al-Rahman and he is known as
4 Ali Kushayb.

5 Q. [14:57:46] (Overlapping microphones) But this other name, is it, in 2001, in the
6 market of Garsila that you hear it?

7 A. [14:57:59] These are the names that I heard. These are the names that I just told
8 you about.

9 Q. [14:58:04] I'm asking you when you heard the name Ali Muhammad Ali
10 Abd-Al-Rahman for the first time?

11 A. [14:58:17] He is a very well-known person and he is at a very important position,
12 so everybody knew his name. We have to respect people who are in a position of
13 authority and we had to know their names and respect them. We had to know the
14 names.

15 Q. [14:58:39] So do I understand well that the name Ali Muhammad Ali
16 Abd-Al-Rahman was given to you in 2001?

17 A. [14:58:55] Yes, that's what I heard.

18 Q. [14:59:00] Just a moment. Yes, on 5 and 6 April, 2022, during that preparation
19 session that you had with the Office of the Prosecutor - and I'm referring to the
20 preparation log DAR-OTP-0222-5192, and, more specifically, the page 5199, that is the
21 point 31(g), you state that the person you referred to as Ali Kushayb, has for real
22 name, "Ali ABD-AL-RAHMAN", and that you knew him under that name as this was
23 common knowledge.

24 So on the 5th and 6th April, you speak about Ali Abd-Al-Rahman, and today or in
25 your written statement, that is towards the end -- paragraph 61, you speak about Ali

1 Muhammad Ali Abd-Al-Rahman.

2 How can you explain why one day you speak about Ali Abd-Al-Rahman and the
3 other day Ali Muhammad Ali Abd-Al-Rahman?

4 A. [15:01:30] Ali Muhammad Abd-Al-Rahman or Ali Abd-Al-Rahman, it's all the
5 same name, whether I said Ali Muhammad Abd-Al-Rahman or Ali Abd-Al-Rahman
6 only, it's the same person known as Ali Kushayb.

7 Q. [15:01:45] (Overlapping microphones) Correct. But the thing is that when you
8 point at him, in the preparation session or in this courtroom, you speak about Ali
9 Abd-Al-Rahman only without the other parts of the names. Do you have an
10 explanation for that?

11 A. [15:02:07] It's the same name, Ali Muhammad Abd-Al-Rahman.

12 Q. [15:02:19] (Overlapping microphones) When you say it was common knowledge,
13 what was common knowledge that the PDF coordinator was Ali Abd-Al-Rahman?

14 A. [15:02:42] Ali Muhammad Abd-Al-Rahman, the person known as Ali Kushayb,
15 he was working as a coordinator for the defence forces.

16 Q. [15:02:56] This common knowledge, when did it appear?

17 A. [15:03:16] What? The reason?

18 Q. [15:03:31] I say, when did it become common knowledge that the person called
19 Ali Kushayb was also called Ali Abd-Al-Rahman?

20 A. [15:03:48] In the market people talk and they said this person is called Ali
21 Muhammad Abd-Al-Rahman, and he's also known as Ali Kushayb and he is a PDF
22 coordinator. People were just talking amongst themselves, and I learnt about that
23 there, when I was in the market in Garsila. And also after that, I heard people
24 talking about him in other places and they spoke about the fact that he has got some
25 kind of a position.

1 Q. [15:04:40] What is the reason why, at paragraph 61 of your written statement,
2 the four names Ali Muhammad Ali Abd-Al-Rahman appear instead of just Ali
3 Abd-Al-Rahman?

4 A. [15:04:59] Maybe there's a problem with the language or the person who was
5 writing misunderstood me. But I always gave the same person just one name. It
6 might be a language problem, but I always gave one single name.

7 Q. [15:05:22] And is it the name that you gave on the 5th and 6th April, Ali
8 Abd-Al-Rahman?

9 A. [15:05:34] Ali Muhammad Abd-Al-Rahman, this is the name that I gave.

10 Q. [15:05:39] When you met with the investigator of the Prosecution to take your
11 written statement that you signed, who pronounced it for the first time the name Ali
12 Muhammad Ali Abd-Al-Rahman? Was it the investigator or was it you?

13 A. [15:06:03] I think maybe it's a problem, a language problem between Arabic and
14 English. I was giving some information, maybe it wasn't understood correctly.
15 Maybe there was -- there was a mistake, but I didn't change the name, I know that I
16 gave only one name. I didn't change the name.

17 Q. [15:06:33] In the -- can we go to the screening notes, please,
18 DAR-OTP-0215-5313-R02 on page 3.

19 (Counsel confers)

20 MR LAUCCI: [15:07:55] Excuse me, I need a minute. Here it is.

21 Q. [15:08:20] So in these notes, which are taken on the basis of the phone call that
22 you had with the investigator, you are talking about Mukjar and -- when you were
23 detained, that is in 2003, and you say that you did not know him, talking about Ali
24 Kushayb. So I will quote exactly:

25 "P-0903" - that is you - "didn't know him from earlier, but the people in prison with

1 him told P-0903 that this individual is Ali KUSHAYB."

2 A. [15:09:26] When I was in prison, yes, I knew Ali Kushayb. Other people also
3 knew Ali Kushayb in prison.

4 Q. [15:09:36] (Overlapping microphones) Yes, but according to the investigator
5 notes, you said you did not know him by then and it was the first time you saw him.

6 A. [15:09:48] No. I didn't say that I didn't know him when I was in prison.

7 Q. [15:09:55] (Overlapping microphones) So which makes, Mr Witness, that I have
8 to ask you the question: When is it the first time you saw Ali Kushayb? Was it in
9 a crowded market in Garsila in 2001?

10 A. [15:10:18] Yes, in the market in Garsila, that was the first time.

11 Q. [15:10:22] (Overlapping microphones) Was it at a one kilometre distance when
12 you were hiding behind rocks -- behind rocks after the second attack on Tendy on 25
13 March 2004?

14 MR SACHITHANANDAN: [15:10:37] Your Honour, the witness has already
15 answered that he saw him in Garsila. I'm not sure what the purpose is of continuing.

16 MR LAUCCI: [15:10:45] I accept it was pure rhetoric, I move on.

17 Q. [15:10:49] Did the man you call Ali Kushayb play a role in your arrest in
18 Mukjar?

19 A. [15:10:58] Sorry, can you repeat the question, please.

20 Q. [15:11:07] (Overlapping microphones) Did the man you call Ali Kushayb play
21 a role in your arrest in Mukjar?

22 PRESIDING JUDGE KORNER: [15:11:17] Again, I think you need to (Overlapping
23 speakers)

24 THE WITNESS: [15:11:21](Interpretation) I didn't see him. I saw him only when he
25 was outside the door and he was taking people and putting them in the vehicles.

1 This is the day when I saw him.

2 MR LAUCCI: [15:11:35](Overlapping microphones) Madam President, you were
3 about to say something.

4 PRESIDING JUDGE KORNER: [15:11:35](Overlapping microphones) I was going to
5 say because that could mean when he was actually arrested as opposed to when he
6 was in prison, but he got the idea.

7 MR LAUCCI: [15:11:46]

8 Q. [15:11:46] Did the man you call Ali Kushayb play a role in the torture you
9 endured in Mukjar?

10 A. [15:12:00] No, he didn't come inside the detention -- detention room. I didn't
11 see him coming inside the prison.

12 Q. [15:12:12] What was the man you called Ali Kushayb wearing when he was
13 standing in front of the prison cell in Mukjar?

14 A. [15:12:27] He was dressed in civilian clothes.

15 Q. [15:12:36] Thank you, Mr Witness. And since we are still in the screening notes,
16 in your discussion on the phone with the investigator, you said that on that day, in
17 Mukjar, Ali Kushayb wore a khaki uniform.

18 A. [15:13:08](No interpretation)

19 THE INTERPRETER: [15:13:14] Message from the interpreter: I didn't get what the
20 witness just said.

21 MR LAUCCI: [15:13:19]

22 Q. [15:13:19] Please, witness, can you repeat, the interpreter did not get you.

23 A. [15:13:26] It was khaki, but it was civilian. What the government officials wear.

24 Q. [15:13:41] So now you say he was not wearing a uniform, right?

25 A. [15:13:50] (Speaks English) No. (Interpretation) No. When he was standing

1 outside the prison cell, he was wearing some kind of formal clothing, but it was
2 civilian.

3 Q. [15:14:15] I move to the second time you crossed Ali Kushayb -- no, maybe not
4 the second, but the second time you crossed him in Garsila in 2010, and that is at
5 paragraph 27 of your statement.

6 What were you doing in Garsila on this occasion?

7 A. [15:14:49] There was someone who was not well that I took to the hospital and I
8 saw him in hospital. He was dressed in a jalabya and a turban. I don't know if he
9 was visiting the hospital or visiting specific patients there, I don't know.

10 Q. [15:15:17](Overlapping microphones) Thank you, Mr Witness. I will ask you
11 a question, which I would prefer you to answer in public session, but be mindful
12 when you answer not to say which country I'm talking about. But my
13 understanding is that in 2010, you were living in another country, you were no longer
14 in Sudan. Please, if the answer -- if what I ask you the answer is yes, say so without
15 naming the country.

16 A. [15:16:03] (Speaks English) Okay. (Interpretation) Okay. I didn't understand,
17 really, what you said.

18 PRESIDING JUDGE KORNER: [15:16:22] In 2010, were you still living in Sudan?

19 THE WITNESS: [15:16:31](Interpretation) No.

20 MR LAUCCI: [15:16:35] Thank you.

21 Q. [15:16:39] And what if I tell you that the man, that is sitting at the rear behind
22 me and who you say is called Ali Muhammad Ali Abd-Al-Rahman and was
23 nicknamed Ali Kushayb by the time, what if I tell you that that person was no longer
24 in Garsila in 2010, but was living, I would say rather far away, even though it's still in
25 Sudan, but in his home city in south Darfur?

1 A. [15:17:35] In 2010, I saw him by my own eyes in the hospital. I was inside the
2 hospital and he walked in -- into the hospital and he was wearing a jalabya and
3 a turban, that was in 2010.

4 Q. [15:17:56] Thank you. So if I resume, neither you nor him were living in
5 Garsila, but on that day of 2010, you say you met him in the hospital in Garsila.

6 MR LAUCCI: [15:18:23] I have a very -- I mean, I would need two minutes of closed
7 session, Madam President, and after I will be done. I will move to my conclusion.

8 PRESIDING JUDGE KORNER: [15:18:34](Microphone not activated)(Indiscernible)

9 THE INTERPRETER: [15:18:35] Microphone, please, Judge Korner.

10 MR LAUCCI: [15:18:35] (Overlapping microphones) That's what I meant.

11 PRESIDING JUDGE KORNER: [15:18:43] Yes, we will go into private session.

12 Thank you.

13 (Private session at 3.18 p.m.)

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

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Open session at 3.21 p.m.)

10 THE COURT OFFICER: [15:21:11] We are back in open session, Madam President.

11 MR LAUCCI: [15:21:16]

12 Q. [15:21:19] Mr Witness, you -- I reached the end of my cross-examination and I
13 will make -- I will state some conclusion that I'm making on the basis of what you
14 said and I will just ask you to say whether you agree with those conclusions or do not
15 agree without need for saying more. Is that clear?

16 I submit to you that your total lack of knowledge about the rebellion is not credible
17 and gives reasons to believe that you have reasons to hide your actual knowledge
18 about the rebellion. Do you agree with that?

19 A. [15:22:20] I don't know anything about the rebellion. I heard about it in the
20 mountain of Marra, but in my village, I didn't see any rebellion.

21 Q. [15:22:38] (Overlapping microphones) I submit to you that together with your
22 demonstrated extensive knowledge of weapons, your willingness to deny knowledge
23 about the rebellion gives ground to believe that you were an active member of the
24 rebellion by 2003. Do you agree with that?

25 PRESIDING JUDGE KORNER: [15:23:06] Well, I think you better subscribe what

1 you mean by an "active member". Do you mean actually taking part in acts of
2 violence?

3 MR LAUCCI: [15:23:17]

4 Q. [15:23:17] Participating or supporting the rebellion, were you (Overlapping
5 microphones)

6 A. [15:23:28] I have nothing to do whatsoever with the rebellion. I didn't support
7 it, and I don't know anything about it.

8 Q. [15:23:36] I submit to you that your version of what happened in Mukjar, and,
9 possibly in Tendy, relies on the discussions you had 12 years later with various
10 persons and not on what you witnessed personally.

11 A. [15:24:07] I was in an area -- I was just a very simple person. I didn't know
12 anything about rebellion or any military operations. I was just a simple farmer, and
13 then the attack happened and I escaped. But as for any kind of military operations
14 or rebellion, I didn't know anything about it. But I heard that there was a rebellion
15 in Jebel Marra or the mountain of Marra. That's what I heard.

16 Q. [15:24:44] I submit to you that you could not have compiled lists of victims and
17 offenders, as you said, because you don't know how to write.

18 A. [15:25:06] It is true, I can't write. But names I can remember, I can give you all
19 the names one by one. But writing, no, I can't.

20 Q. [15:25:19] Thank you. I submit to you that what you have presented to this
21 Court is nothing more than the common story in circulation about the events in 2003
22 and 2004 that you collected in your discussions with various persons.

23 A. [15:25:50] No problem.

24 Q. [15:25:53] I submit to you that you never saw the man you call "Ali Kushayb",
25 neither in Garsila in 2001 or 2010, nor in Tendy, nor in Mukjar in 2004.

1 A. [15:26:10] I met him, I swear by God.

2 Q. [15:26:16] Finally, Mr Witness, I submit that the first time you heard about Ali
3 Kushayb was during your discussions with various persons 12 years after the events.

4 A. [15:26:31] (Speaks English) No, no. (Interpretation) No, no. Even before the
5 start of the war, I heard his name and I saw him by my own eyes. And after the start
6 of the war, I saw him again.

7 Q. [15:26:48] Mr Witness, I'm done with your cross-examination. I want to
8 thank you for being there.

9 Madam President, it's over.

10 PRESIDING JUDGE KORNER: [15:26:59] Yes, thank you very much, Mr Laucci.
11 Yes.

12 MR SACHITHANANDAN: [15:27:06] Your Honour, I have a very brief -- very few
13 questions on re-examination with regard to the basis of knowledge with regard to
14 certain victims that the witness mentioned.

15 PRESIDING JUDGE KORNER: [15:27:19] You're entitled to re-examine on anything
16 that's been put in cross-examination. You don't need leave.

17 MR SACHITHANANDAN: [15:27:28] Fantastic. Fantastic.

18 Q. [15:27:30] Mr Witness, yesterday, you mentioned that Umdah Adam Husayn
19 was present in the Mukjar prison when you were there. Is that (Overlapping
20 microphones)

21 A. [15:27:46] Correct.

22 Q. [15:27:48] And is it correct that you saw him with your own eyes or not?

23 A. [15:27:58] Yes, I saw him with my own eye.

24 Q. [15:28:02] (Overlapping microphones) You said that Umdah Adam Husayn was
25 beaten. Is that something you saw with your own eyes or not?

1 A. [15:28:14] Not Umdah Adam Husayn. Umdah Yahya is the one who was
2 beaten, but not Umdah Adam Husayn. That's what I said to you. I told you that I
3 saw him being taken out, but I didn't see him being beaten. I didn't see Umdah
4 Adam Husayn being beaten. The one that I saw was Umdah Yahya. He is the one
5 that I saw getting beaten.

6 Q. [15:28:45] (Overlapping microphones) Right. You mentioned yesterday that
7 when people's names were being called out to be put on the vehicles and to be taken
8 away to be killed, that Umdah Adam Husayn's name was called out. Is that correct?

9 A. [15:29:03] Umdah Adam Husayn, as I told you before, he was with me in prison
10 and then his name was called and he was loaded in one of the cars and taken away.
11 He was put in one of the cars.

12 MR LAUCCI: [15:29:28] I just wanted to raise that the specific events that you are
13 referring to were not touched during the cross-examination. So if your questions are
14 about being an eyewitness of things, maybe that's the way to do it without entering
15 into that -- all that detail.

16 PRESIDING JUDGE KORNER: [15:29:51] Well, I was assuming that the -- these
17 questions arise out of what you -- arose or arise of what you asked yesterday. Are
18 you saying you didn't ask anything about this? Because if so, then there's some basis
19 for the objection.

20 MR LAUCCI: [15:30:09] I have no recollection of having mentioned that during the
21 cross-examination, but it was a long one.

22 MR SACHITHANANDAN: [15:30:13] I can clarify. During the cross-examination,
23 Mr Laucci made mention of certain lists of victims and asked questions as to whether
24 the witness's knowledge about the fate of certain victims was direct knowledge or
25 whether it was obtained from other persons and that -- and perpetrators. So

1 that -- that directness or lack thereof is what I am re-examining on.

2 PRESIDING JUDGE KORNER: [15:30:43] Carry on then, Mr Sachithanandan.

3 MR SACHITHANANDAN: [15:30:49]

4 Q. [15:30:49] Mr Witness, yesterday you mentioned that when you were in prison
5 in Mukjar, that you saw Umdah Issa Harun Nour in the prison, is that correct?

6 A. [15:31:04] Correct, he was in prison.

7 Q. [15:31:12] And you mentioned that when people's names were being called out
8 to be put on vehicles and taken out and killed, that Umdah Issa Harun Nour's name
9 was called out, is that correct?

10 A. [15:31:33] Correct. Correct.

11 Q. [15:31:35] You also mentioned that you were in prison in Mukjar with Mohamed
12 Umar Zarruq, is that (Overlapping speakers)

13 A. [15:31:45] (No interpretation)(Overlapping microphones)

14 Q. [15:31:47] And you also mentioned that when people's names were being called
15 out to be taken away from the prison to be killed, that Mohamed Umar Zarruq's name
16 was called out, is that correct?

17 A. [15:32:03] Correct. Correct.

18 MR SACHITHANANDAN: [15:32:11] No further questions, your Honour.

19 PRESIDING JUDGE KORNER: [15:32:14] Yes, well, first of all, I'm going to ask
20 Judge Alapini-Gansou if she's got any questions.

21 JUDGE ALAPINI-GANSOU: [15:32:36](Interpretation) Yes, thank you very much.

22 I'd like to put a number of questions to the witness. Two little questions, in fact.

23 Mr Witness, yesterday, when being questioned by the legal representative for victims,
24 you said on an occasion that you had gone to (Redacted).

25 Is that true?

1 PRESIDING JUDGE KORNER: [15:33:15] Do you want -- I think we need probably
2 to go into private session. Yes. Can we go into private session and we better redact
3 the last ...

4 (Private session at 3.33 p.m.)

5 THE COURT OFFICER: [15:33:34] We are in private session, Madam President.

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

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3 (Open session at 3.40 p.m.)

4 THE COURT OFFICER: [15:40:52] We are back in open session, Madam President.

5 PRESIDING JUDGE KORNER: [15:41:00] Yes.

6 JUDGE ALEXIS-WINDSOR: [15:41:02] Sir, you said you saw Ali Kushayb in Garsila
7 before the events and you told us about it. Can you tell us around what time it was?
8 I'm not asking for an exact time, was it daytime or was it night-time?

9 THE WITNESS: [15:41:27](Interpretation) During the daytime, midday.

10 JUDGE ALEXIS-WINDSOR: [15:41:36] And my last question to you, sir. In the
11 attack on Tedy, in which you and other persons fled, you said you saw Ali Kushayb
12 giving instructions --

13 THE WITNESS: [15:41:57](No interpretation) (Overlapping speakers)

14 JUDGE ALEXIS-WINDSOR: [15:41:59] -- how did you know he was giving
15 instructions? Were you able to hear what he was saying?

16 THE WITNESS: [15:42:07](Interpretation) No, I didn't hear what he said at the time,
17 but I saw him pointing with his hand and the soldiers were following his instructions.
18 They're just following his directions.

19 JUDGE ALEXIS-WINDSOR: [15:42:26] Sir, sorry, that actually leads me to another
20 question. Can you please explain your answer when you said Ali Kushayb was
21 pointing and the soldiers were going. Can you explain to us a bit more, please.

22 THE WITNESS: [15:42:54](Interpretation) For example, he was standing there and
23 then he points with his hand like that, then one person goes to that direction. And
24 then he points to another direction, so another person goes to the direction he pointed
25 to.

1 So I understood from that that he was giving instructions to the soldiers.

2 JUDGE ALEXIS-WINDSOR: [15:43:17] And my last question I promise. You said
3 you could not hear him. Were you able to see him?

4 THE WITNESS: [15:43:27](Interpretation) Yes. I was at -- on the top, on the top,
5 and yes, I saw him from underneath.

6 JUDGE ALEXIS-WINDSOR: [15:43:52] Thank you.

7 Madam President, thank you.

8 PRESIDING JUDGE KORNER: [15:43:58] I'm afraid that I'm going to stay on the
9 same topic because I'm sure it's just me, but I'm having difficulty in understanding
10 exactly where you were and where the man you say is Ali Kushayb was in relation to
11 the town of Tedy, when you say -- you just described him pointing, for the soldiers.
12 You are up on a hill behind the town, is that right? The village.

13 THE WITNESS: [15:44:40](Interpretation) There is a market there, and then there is
14 a mountain close to this market. He was in the market and we were on top of the
15 mountain. We left all the houses and we climbed up the mountain, so we were on
16 the top of the mountain. And then we saw them arriving in their vehicles. And
17 then he got out of the car and he was pointing with his hand in different directions,
18 but then later, we left.

19 PRESIDING JUDGE KORNER: [15:45:12] And you told us earlier, accepting that
20 distances are difficult for you, working out distances, but you thought it was about
21 a kilometre?

22 THE WITNESS: [15:45:28](Interpretation) We are on the top of the mountain, and
23 they were on the foot of the mountain, so I can't tell exactly how far they were from us.
24 But it was the distance between the top of the mountain and the foot of the mountain.

25 PRESIDING JUDGE KORNER: [15:45:49] What makes -- I mean, you told us on

1 a number of occasions and you told Mr Laucci quite firmly this, what makes you sure
2 that the person you saw directing the soldiers was the same person you'd seen in the
3 market, that is to say, Ali Kushayb?

4 THE WITNESS: [15:46:19](Interpretation) He was the same person.

5 PRESIDING JUDGE KORNER: [15:46:31] (Overlapping microphones) And you may
6 have been asked this before, but I just want to confirm, before that incident, how
7 many times do you estimate that you had seen Ali Kushayb in Garsila?

8 THE WITNESS: [15:46:47](Interpretation) We went to Garsila many times, but the
9 first time I saw him, he sat close to me, more than three-to-four hours, because I was
10 unloading the oil and he and a group with him sat close to us.

11 PRESIDING JUDGE KORNER: [15:47:14] (Overlapping microphones) So that's the
12 first time you saw him when you were told who he was. Did you see him again on
13 other days at the market before the incident at Tendy?

14 THE WITNESS: [15:47:29](Interpretation) I didn't see him again.

15 PRESIDING JUDGE KORNER: [15:47:34] (Overlapping microphones) So you only
16 saw him once before you saw him again as you tell us (Overlapping speakers)

17 THE WITNESS: [15:47:43](Interpretation) Just once, in the market of Garsila. And
18 then the second time was in -- during the attack on Tendy.

19 PRESIDING JUDGE KORNER: [15:47:53] Thank you, sir. And then lastly, could
20 you give us some idea of how many people lived in Tendy before the attack? The
21 attack in March of 2004?

22 THE WITNESS: [15:48:12](Interpretation) The number of people in Tendy, I can't
23 really tell, but it was a big number.

24 PRESIDING JUDGE KORNER: [15:48:23] (Overlapping microphones) Roughly, how
25 many houses?

1 THE WITNESS: [15:48:28](Interpretation) Maybe more than a thousand or maybe
2 1,500.

3 PRESIDING JUDGE KORNER: [15:48:35](Overlapping microphones) So it was a big
4 place, you say, Tendency?

5 THE WITNESS: [15:48:42](Interpretation) It's not a town, it's a village, but it's -- but
6 it was a very big village.

7 PRESIDING JUDGE KORNER: [15:48:47] Yes. Thank you very much.

8 Yes, thank you, sir, that completes your evidence. We thank you very much for
9 coming to the Court and for giving the evidence, and we wish you a safe return home.
10 So thank you very much, and you can leave the court now.

11 THE WITNESS: [15:49:10](Interpretation) Thank you. I would like to give my
12 greetings to the presiding judge and the other two judges and all the investigators
13 and the interpreters. Thank you very much for helping me and facilitating my
14 journey to the ICC. And I would like to thank you very much and, hopefully, I will
15 see you again in good health.

16 Thank you very much.

17 PRESIDING JUDGE KORNER: [15:49:51](Overlapping microphones) Thank you
18 very much, sir. If you would like to go with the court officer.

19 (Witness exits the courtroom)

20 (The witness is excused)

21 PRESIDING JUDGE KORNER: [15:50:21] Yes, Mr Nicholls, so next -- not next week,
22 but the 25th onwards, how many witnesses have you got for that week?

23 MR NICHOLLS: [15:50:35] Well --

24 PRESIDING JUDGE KORNER: [15:50:36] Are they -- have we checked that they do
25 speak an Arabic that can be understood and understand it themselves?

1 MR NICHOLLS: [15:50:47] We have done our best with that, your Honour. Things
2 have gotten pushed back slightly because of 651 who might have testified today. I
3 believe -- and there's a holiday in middle of that week, so we're aiming at four
4 witnesses. I think at the moment, honestly, I haven't been following it carefully
5 because I'm in court, but there is some struggling to try fill the week also without
6 having somebody, then have to break for a very long time. You know, it has to kind
7 of end on that Friday, otherwise we're not back till May 9th. So we are -- we are
8 working on it and I'll update as soon as possible.

9 And it may be futile, but again anything that we could do to bring up these four
10 interpreters sooner would make things much easier on everybody and, in particular,
11 the witnesses.

12 PRESIDING JUDGE KORNER: [15:51:55] Are these -- are they Rule 68(3) witnesses
13 all of them? Or is one -- or one or more viva voce?

14 MR NICHOLLS: [15:52:07] Sorry. At the moment they're all 68(3), but we -- yeah.
15 There's one of them who we thought we were going to bring viva voce who may not
16 fit in there. So at the moment, we've got four 68(3).

17 PRESIDING JUDGE KORNER: [15:52:28] All right, well, I mean, I think if you can
18 update the legal officers --

19 MR NICHOLLS: [15:52:30] And I will our colleagues as well.

20 PRESIDING JUDGE KORNER: [15:52:31] -- and obviously, yes, and obviously the
21 Defence. I really -- I hope, appreciating that -- well, really, it'll last till Tuesday, but I
22 think by the middle of next week, the Defence certainly will need to know who's
23 coming.

24 MR LAUCCI: [15:52:51] Indeed. And are you saying that P-718 is no longer on
25 your list for the next week?

- 1 MR NICHOLLS: [15:52:58] That -- that is the issue we're having right now.
- 2 MR LAUCCI: [15:53:01] Good for us to know as soon as possible --
- 3 MR NICHOLLS: [15:53:04] No --
- 4 MR LAUCCI: [15:53:04] -- obviously.
- 5 MR NICHOLLS: [15:53:04] -- I understand. It will be before the middle of next
6 week. I can -- we'll keep working on this over the holiday.
- 7 PRESIDING JUDGE KORNER: [15:53:11] Yes.
- 8 MR LAUCCI: [15:53:12] And if he does not come, who would come in his place?
- 9 PRESIDING JUDGE KORNER: [15:53:16] Well, I think you'll have to, Mr Laucci, I
10 think you better discuss that with Mr Nicholls.
- 11 MR LAUCCI: [15:53:20] Fair enough.
- 12 PRESIDING JUDGE KORNER: [15:53:21] And the Chamber will just take what it's
13 given.
- 14 All right. Then there are still a couple of -- yes, there are still a couple of outstanding
15 matters. There's a joint submission I think on the Registry reply that's going to come
16 at some stage.
- 17 And we've still got your Rule 68(2)(c) matter to deal with and I think that's -- oh, and
18 one Rule 35.
- 19 MR EDWARDS: [15:53:53] Yes, there's a Regulation 35 which I think is due next
20 Tuesday.
- 21 PRESIDING JUDGE KORNER: [15:53:59] Yes, you've got to respond to that.
- 22 MR EDWARDS: [15:54:03] Yes, yes. And I think it's right that the joint submissions
23 has in fact just been filed -- well, in the course of last session, so that should be with
24 you very very shortly.
- 25 PRESIDING JUDGE KORNER: [15:54:17] Right. Yes, well, thank you all very

- 1 much. Can I thank - as I already mentioned and Mr Nicholls was also going to
2 mention - the interpreters who this week have done a very good job and indeed the
3 LiveNote seems to perhaps have been better in the sense of more accurate even
4 uncorrected than it was before.
- 5 And can I wish everybody a happy Easter and see you in, whenever it is, 10 -- no -- 10
6 days' time.
- 7 Can I say that one of the problems I know of this Court trying to accommodate so
8 many trials is the uneven sitting, but I'm afraid that's it.
- 9 Yes, thank you very much. So the next session will be the 25th of April.
- 10 THE COURT USHER: [15:55:14] All rise.
- 11 (The hearing ends in open session at 3.55 p.m.)