

1 International Criminal Court
2 Pre-Trial Chamber I - Courtroom 1
3 Presiding Judge Sylvia Steiner, Judge Sanji Monageng and Judge Cuno Tarfusser
4 Situation Darfur, The Sudan - ICC-02/05-02/09
5 In the matter of the Prosecutor v. Bahr Idriss Abu Garda
6 Confirmation of Charges Hearing
7 Monday, 19 October 2009
8 (The hearing starts at 9:36 a.m.)

9 THE COURT USHER: All rise. The International Criminal Court is now in session.

10 PRESIDING JUDGE STEINER: Please be seated.

11 THE COURT USHER: Please be seated.

12 PRESIDING JUDGE STEINER: Good morning. Pre-Trial Chamber I is now in session.
13 I would like to welcome all the persons that are here present in the courtroom and in
14 the gallery and I would ask please the court officer to call the case.

15 THE COURT OFFICER: Situation in Sudan, Darfur, the Prosecutor v Bahr Idriss
16 Abu Garda, ICC-02/05-02/09.

17 PRESIDING JUDGE STEINER: Thank you. So, as agreed, the Chamber will now
18 authorise the photographers to get into the courtroom for a maximum of two minutes to
19 take pictures. Court officer.

20 (Brief pause)

21 PRESIDING JUDGE STEINER: I would like to welcome the Prosecution - the
22 Prosecution team - Deputy Prosecutor, Ms. Fatou Bensouda. I welcome the Defence of Mr. Abu
23 Garda, to welcome Mr. Abu Garda himself that is present for the confirmation hearing,
24 and also to welcome the legal representatives of victims. I would now ask the parties
25 and participants to introduce themselves and their teams, starting by the Prosecution.

1 The Prosecutor has the floor.

2 MS. BENSOUDA: Thank you, Madam President, honourable Judges. The Prosecution
3 is represented this morning by Mr. Essa Faal, senior trial lawyer; Mr. Ade Omofade, trial
4 lawyer; Jennifer Schense, legal cooperation adviser, and the rest of the Prosecution's
5 team. My name is Fatou Bensouda, Deputy Prosecutor. Thank you.

6 PRESIDING JUDGE STEINER: Thank you, Ms. Bensouda. Just for the sake of the
7 records, could you please introduce the rest of your team?

8 MS. BENSOUDA: Very well, Madam President. Also appearing for the Prosecution
9 is Shyamala Alagendra, trial lawyer; Pubudu Sachithanandan, associate trial lawyer;
10 Victor Baiesu, associate trial lawyer; Eya Macauley, analyst; Desiree Lurf, associate
11 trial lawyer; and the case manager, Biljana Popova.

12 PRESIDING JUDGE STEINER: Thank you very much. I will now turn to the Defence
13 of Mr. Abu Garda. Mr. Khan.

14 MR. KHAN: May it please your Honours, good morning. Mr. Abu Garda is represented
15 by Andrew Burrow, legal consultant; Mr. Anand Shah, case manager; Rose-Marie Maliekel,
16 pro bono legal assistant; and myself, Karim Khan.

17 PRESIDING JUDGE STEINER: Thank you very much. I will turn now to the legal
18 representatives of victims, asking please each legal representative also to inform the
19 Chamber which victims are being represented in this hearing.

20 MS. CISSE: I would like to - yes, I would like to tell you that the translation
21 in French - okay, it is working now. Okay. I am Ms. Helene Cisse, legal representative
22 of victims, 0435, (no interpretation). The victim that I represent -- sorry, I give the
23 floor to my colleague who is present here on my -- beside me.

24 PRESIDING JUDGE STEINER: Thank you.

25 MR. KONÉ: (Interpretation) I am Maitre Koné from Mali, and I represent the

1 24 victims --

2 PRESIDING JUDGE STEINER: Is it possible, please, to inform the Chamber - can
3 you say the number of victims?

4 MR. KONÉ: (No interpretation).

5 PRESIDING JUDGE STEINER: (No interpretation).

6 MR. KONÉ: (Interpretation) It is a long list, Madam. I can give you the list
7 if you would like and then I will give the floor to my colleague, but there are 24.

8 PRESIDING JUDGE STEINER: (Interpretation) It is necessary for the transcript
9 that you tell the Court the number of victims that you represent, clearly, please.

10 MR. KONÉ: (Interpretation) Thank you, Madam Chairman. I represent A60 -- 77,
11 A0511, 512, 513, 05 -- 50, 515, 14, 15, 16, A0517, A0718, 519, 520, 21, 522, 585, 586,
12 5188, A0500, 112 and 10536.

13 MR. ADAKA: Thank you, Madam President, honourable Judges. I represent
14 victims --

15 PRESIDING JUDGE STEINER: First your name, please.

16 MR. AKADA: My names are Frank Adaka. I represent victims number 0552 to 0556,
17 and victims number 0563 to 0578. Thank you.

18 JUDGE TARFUSSER: Which country is that?

19 MR. AKINBOTE: Your Honours, I represent - my names are Akin Akinbote. I
20 represent victims 535 to 551, 535 to 551 and 557 to 562.

21 PRESIDING JUDGE STEINER: Thank you very much. Again, I would -- the Chamber
22 would like to welcome legal representatives of victims whose participation at the
23 confirmation hearing stage is important for all parties involved.

24 This hearing is held before Pre-Trial Chamber I, composed by Judges Sanji Monageng, Judge
25 Cuno Tarfusser and by myself, Judge Sylvia Steiner. Are also present at this hearing

1 the members of Pre-Trial Chamber and Pre-Trial Division legal support: Mr. Gilbert Bitti,
2 senior legal adviser; Ms. Federica Gioia, legal adviser; and Ms. Beatrice Pisani and
3 Silvestro Stazzone; Leila Bourguiba; Ms. Ana Bispo; and Ms. Mary-Anne Power. Also present
4 at this hearing in this courtroom, the interns of Pre-Trial Division, Mr. Francisco
5 Ciampolini, Ms. Marcela Giraldo, Ms. Chianarack Ike and Mr. Simon Grabrovec.

6 I will now turn first to Mr. Bahr Idriss Abu Garda and ask you, Mr. Abu Garda,
7 first of all, to stand up in order for the Presiding Judge to address you a few questions.

8 MR. KHAN: Madam President, before my client does that, I do apologise for having
9 to rise. I did raise with the court officer and also with the computer section of the
10 Court before your Honours rose that we do not have access to the live transcript, and
11 I am disadvantaged as a result. Until that is sorted out, I don't think it is fair that
12 the Defence proceed. It is, of course, exceptionally useful to be able to follow the
13 transcript, rather than only what is said in court. The Prosecution and the other parties
14 have access to Transcend. I think it is only right that this issue is sorted out so I
15 have the same benefit to the same resources.

16 PRESIDING JUDGE STEINER: Mr. Khan, I am informed by the court officer that
17 IT is trying to have this problem sorted out, but I agree with your complaint that you
18 are entitled and your client entitled to follow the hearing and the transcripts. Therefore,
19 this hearing will be suspended until the problem is sorted out. So, I just ask the parties
20 and participants to stay around because maybe it is matter of minutes, but as soon as
21 the problem is solved, we will resume this hearing.

22 MR. KHAN: Your Honour, I am much obliged.

23 THE COURT USHER: All rise.

24 (Recess taken at 9:50 a.m.)

25 (Upon resuming at 10:05 a.m.)

1 THE COURT USHER: All rise. Please be seated.

2 PRESIDING JUDGE STEINER: I would like on behalf of the Court to apologise to
3 all parties and participants to this hearing and also to the public that is on the galleries
4 for this incident, and for the sake of the records to make it clear that the Chamber
5 cannot tolerate that this kind of incident happens again. So the whole equipment must
6 be tested before the commencement of the session.

7 Mr. Abu Garda, could you please confirm to the Chamber that you are going to
8 follow this hearing through the interpretation from English into Arabic?

9 MR. ABU GARDA: (Microphone not activated) (Interpretation) Yes, I can follow
10 the hearing through listening to both English as well as Arabic interpretation. Thank
11 you.

12 PRESIDING JUDGE STEINER: Thank you, Mr. Abu Garda. Have you so far any comment
13 in relation to the interpretation that is being provided to you?

14 MR. ABU GARDA: (Interpretation) The interpretation that I heard so far is good.

15 PRESIDING JUDGE STEINER: If at any point of this hearing you face any difficulties
16 with interpretation, please ask your Defence counsel to inform the Bench. Mr. Abu
17 Garda, I understand that your trip to the seat of the Court was long and tiring. Do you
18 confirm that you are fine and therefore able to follow the hearing and to answer the
19 questions I am going to ask you?

20 MR. ABU GARDA: (Interpretation) Yes, I am in a good condition and I can follow.

21 PRESIDING JUDGE STEINER: (Microphone not activated) Thank you. Then could
22 you please introduce yourself to the Court, and also could you please tell us about
23 whether the conditions of your stay here in The Hague are satisfactory?

24 MR. ABU GARDA: (Interpretation) My name is Bahr Idriss Abu Garda, President
25 of the Resistance Front for the north of Darfur. I am born in Tina, north of Darfur.

1 As to the condition of my stay, it is fine and good, and I can follow up the hearing
2 here inside the courtroom.

3 PRESIDING JUDGE STEINER: Thank you very much. You may sit, Mr. Abu Garda.

4 MR. ABU GARDA: (Interpretation) I would like to thank you very much, as well
5 as all the thanks go to the members of the Court. Thank you.

6 PRESIDING JUDGE STEINER: I would now like to bring up a certain number of
7 points which - just by way of introduction to this hearing, so that everything is very
8 clear between the parties and the participants, and of course for the public to be able
9 to understand what is at stake in this confirmation hearing.

10 First of all, I would like to inform the parties, participants and the public
11 in general that everyone in this courtroom is expected to speak very, very slowly, because
12 we are providing not only translation into French, but also into Arabic in order to allow
13 Mr. Abu Garda to follow the hearing in its entirety. So I would beg all parties and
14 participants to speak very, very slowly, although sometimes it can appear quite boring.

15 I would start by saying that the most important aspect of a confirmation hearing
16 which will be guiding all parties and participants is that a confirmation hearing is
17 not a trial, neither a mini-trial, nor a trial before the trial.

18 Pursuant to Article 61(7) of the Rome Statute, the Chamber shall, on the basis
19 of the confirmation hearing, determine whether there is sufficient evidence to establish
20 substantial grounds to believe that the person committed each of the crimes charged.
21 In this regard, I wish to recall that the confirmation hearing has a limited scope, and
22 by no means can it be seen as an end in itself; but rather, as a means to distinguish
23 those cases that should go to trial from those that should not go to trial. Only in case
24 the charges brought by the Prosecution against Mr. Abu Garda are confirmed after this
25 hearing will a trial be initiated.

1 It is for the Chamber to prepare and to expose a very short summary of the proceedings
2 and of the major decisions taken by the Chamber or by one of the Single Judges, so I
3 will now take a moment to briefly summarise the history of the proceedings in the present
4 case.

5 On 7 May 2009, Pre-Trial Chamber I - composed of my two colleagues who are
6 present here, Judge Sanji Monageng and Judge Cuno Tarfusser, and myself - issued a summons
7 to appear to Mr. Abu Garda (document 1 of the case file) upon request of the Prosecution
8 and the assurance that Mr. Abu Garda was willing to appear voluntarily before this Court.
9 During his first appearance before this Court on a voluntary basis, on 18 May 2009 Judge
10 Cuno Tarfusser, acting as Single Judge, satisfied himself, in accordance with Article
11 60(1) of the Statute, that Mr. Abu Garda had been informed of the charges against him
12 and of his rights pursuant to the Statute and the Rules of Procedure and Evidence.

13 Throughout the following months, Judge Cuno Tarfusser, Single Judge responsible
14 for carrying out the functions of Pre-Trial Chamber I in relation to the proceedings
15 of the situation in Darfur, Sudan and in the case The Prosecutor v. Mr. Bahr Idriss Abu
16 Garda, took a considerable number of decisions regarding the obligations on disclosure
17 of evidence between the parties, and I would like to thank him very much for this.

18 Also, a number of important decisions were taken by Judge Sanji Monageng, Single
19 Judge for all issues related to victims' applications to be authorised to participate
20 as victims in the proceedings related to the Abu Garda case. And thanks to her efforts,
21 we have today more than 70 victims participating, through their legal representatives,
22 in these proceedings.

23 In relation to disclosure procedures, I would like to recall the decision on
24 the system governing disclosure between the parties issued on 15 July 2009, which is
25 document 35 of the case file. The process of disclosure between the parties culminated

1 in the filing by the Prosecution of the document containing the charges and list of evidence
2 on 10 September 2009 (document 91 issued on a confidential and on a public redacted version).

3 For the sake of brevity, the document containing the charges will be referred
4 to throughout these proceedings, and many times, as DCC.

5 On 1 October 2009, the Defence filed its list of evidence in the record of the
6 case. This is document 127 with confidential annexes. In total, the Chamber received
7 86 applications to participate in the pre-trial stage of the case. With two decisions,
8 the first decision on 34 applications for participation, decision 121, and the decision
9 on 52 applications for participation at pre-trial stage of the case, decision 147, the
10 Single Judge Sanji Monageng granted the status of victims authorised to participate in
11 the proceedings to 78 applicants who are therefore now participating in these proceedings.
12 Some of them are still protected by anonymity, while others have requested the Chamber
13 to lift anonymity and their identities, therefore, are known by the Defence.

14 Another important decision taken was the one establishing the modalities of
15 victims' participation at the pre-trial stage of the case, which is decision 136 of the
16 case file. According to this decision, victims have access to all public records of the
17 case, have the right to attend all public sessions of the present confirmation hearing,
18 to make opening and closing statements, to examine witnesses where their identities have
19 been disclosed to the Defence and to participate by way of oral or written motions and
20 submissions in accordance with the Statute and the Rules of Procedure and Evidence and
21 as established in the decision that I just referred to.

22 The confirmation of the charges hearing initially scheduled to start on 12 October
23 was postponed until 19 October, today, upon request of the Prosecution to extend the
24 time limit in relation to the submission of the Arabic version of its list of evidence
25 and of relevant witnesses' summaries, which is document 98 of the case file.

1 There are some principles governing a confirmation hearing, and I will very
2 briefly refer to them. Before the court officer reads the charges in accordance with
3 Rule 122(1) of the Rules, I would like to remind all parties and participants of these
4 principles that will govern all of us, the Prosecutor, the Defence team, the legal
5 representatives and the Judges as well.

6 First, the principle that everyone is presumed innocent until their guilt has
7 been established before this Court. This hearing is a confirmation hearing with the aim
8 of enabling the Chamber to determine whether there is sufficient evidence to establish
9 substantial grounds to believe that Mr. Abu Garda committed the crimes that he is charged
10 with. I would like to emphasise again that this is not a trial and that these proceedings
11 will not end in a final determination of innocence or guilt of the suspect.

12 Second, the burden of the proof is on the Prosecution. In other words, it is
13 up to the Prosecution to provide the Chamber with evidence sufficient to meet the standard
14 provided for in Article 61(7) of the Statute.

15 Third, as in all criminal systems, whether they are national or international,
16 the Defence is entitled to have the final word.

17 Fourth, the confirmation hearing as envisaged by the Statute and the Rules is
18 by definition an oral proceeding, so I would therefore ask the parties and participants
19 to present as far as possible all their requests by oral motion, and only exceptionally,
20 with the authorisation of the Chamber, by written motion.

21 In addition, the Chamber would like to remind the parties and participants that
22 they have certain obligations pursuant to the Statute of the Court, the Rules of Procedure
23 and Evidence and the Code of Professional Conduct for counsels.

24 With respect to the Prosecutor, the Chamber would like to reiterate its solemn
25 undertaking pursuant to Rule 6 of the rules. As far as counsel for the Defence is concerned,

1 the Chamber reiterates its solemn undertaking pursuant to Article 5 of the Code of
2 Professional Conduct for counsels, together with Article 24 of the just-mentioned Code
3 of Professional Conduct which lists the duties of counsel towards the Court. The Chamber
4 expects both parties to respect these provisions and to act in a professional manner.

5 Legal representatives of victims are also bound by the Code of Professional
6 Conduct for counsels and are expected to represent the interest of victims in a manner
7 that is proper and adequate to the modality of participation granted by the Chamber and
8 the rights of the accused.

9 In order to avoid disruption of the proceedings and undue delays in the confirmation
10 hearing, the Chamber decides that during this hearing on any procedural issues presented
11 by the parties and on any requests or motions the Chamber will either discuss the matter
12 from the Bench and immediately issue an oral decision or deliberate the matter outside
13 the courtroom and issue an oral or written decision at a later time.

14 If the parties or participants intend to request leave to appeal in relation
15 to any decision taken by the Chamber during the hearing, the Chamber deems it appropriate
16 to establish a procedure that is consistent with its precedent settled in the Katanga
17 and Ngudjolo case to be followed. Therefore, the procedure for leave to appeal pursuant
18 to Article 82(1)(d) of the Statute, Rule 155 of the rules and Regulation 65 of the regulations
19 of the Court will be the following: Any party may file within the five days time limit
20 provided for in Rule 155 of the rules a written notice of an application for leave to
21 appeal in which the issues for which leave to appeal is requested are identified and
22 the legal or factual reasons supporting the request are specified via their enumeration.

23 Once the application is filed, the party filing it shall have until five days
24 after the last session of the confirmation hearing to file an additional document in
25 support of the application in which the reasons enumerated in the original application

1 may be elaborated upon. As a consequence, the three day time limit to file a response
2 as provided for in Regulation 65(3) of the regulations shall only start running upon
3 the notification of the filing of the additional document in support of the application.

4 This is a procedure that will be allowed by the Chamber. However, it shall
5 not prevent the relevant party from filing an application for leave to appeal within
6 the five days of being notified of the impugned decision in which the reasons for the
7 request for leave to appeal are fully elaborated upon. In this scenario, responses shall
8 be filed pursuant to Regulation 65(3) of the regulations of the court within three days
9 of the notification of the application.

10 So the procedure as provided for in the rules and in the regulations is maintained
11 in case one of the parties so wish. In any case, however, the Chamber will only decide
12 upon the request for leave to appeal after the confirmation hearing.

13 In the view of the Chamber, such procedure will permit the parties to focus
14 their resources on the confirmation hearing to the greatest extent possible and is not
15 contrary to the statutory framework provided for in the Statute and the rules.

16 In relation to the presentation of evidence, the Chamber would like to remind
17 the parties that when they tender a document into evidence they shall indicate to the
18 court officer whether it is a public or a confidential document. In this regard, the
19 parties and participants when they refer for the first time to an item of evidence that
20 is filed in the case record must refer to it by its ERN number. Subsequently, they shall
21 refer to it by the number given by the court officer, the EVD number given by the court
22 officer.

23 I also would like to remind the parties that during public sessions as well
24 as in closed sessions they should refrain from referring to the names of witnesses and
25 victims and refer to them only by their respective numbers. At any time the Chamber by

1 its own motion or upon request of the parties, deeming it necessary, will turn the session
2 into a private or into a closed session.

3 It must be recalled that victims participating in the proceedings have no access
4 to confidential materials. It is true that confidential materials and evidence can be
5 mentioned by the parties without necessarily disclosing the information that needs to
6 be kept confidential. However, if the discussion of such evidence leads to disclosure
7 of information that needs to be kept confidential, the parties are under the obligation
8 to inform the Bench as for the session to be turned into a private or closed session.

9 I think that everything that should be said as an introductory note for this
10 hearing appears to have been said, so I would now like to turn to the court officer who
11 will read out the charges as presented by the Prosecution in the document containing
12 the charges. The court officer, please.

13 THE COURT OFFICER: Count 1: Violence to Life, Article 8(2)(c)(i), Article
14 25(3)(a) and Article 25(3)(f) of the Rome Statute.

15 On 29 September 2007 at the MGS Haskanita in the Haskanita Village, Um Kadada
16 Locality in North Darfur, the Sudan, knowingly and in the context of and associated with
17 an armed conflict Mr. Abu Garda jointly and with JEM forces under his control and SLA-Unity
18 forces killed 12 AMIS peacekeeping personnel and attempted to kill eight AMIS peacekeeping
19 personnel with the knowledge that they were personnel involved in a peacekeeping mission
20 established in accordance with the UN charter and were taking no active part in hostilities
21 and thus entitled to the protection given to civilians under the International Law of
22 Armed Conflict; thereby, committing a crime in violation of Articles 8(2)(c)(i), 25(3)(a)
23 and 25(3)(f) of the Rome Statute.

24 Count 2: Intentionally directing attacks against personnel, installations,
25 materials, units and vehicles involved in a peacekeeping mission, Articles 8(2)(e)(iii)

1 and Article 25(3)(a) of the Rome Statute.

2 On 29 September 2007 at the MGS Haskanita in Haskanita Village, Umm Kadada Locality
3 in North Darfur, the Sudan, knowingly and in the context of and associated with an armed
4 conflict Mr. Abu Garda jointly and with JEM forces under his control and SLA-Unity forces
5 intentionally directed attacks against AMIS peacekeeping personnel, installations,
6 materials, units and vehicles involved in a peacekeeping mission established in accordance
7 with the Charter of the United Nations which were entitled to the protection given to
8 civilians and civilian objects under the International Law of Armed Conflict with the
9 knowledge of the factual circumstances that established that protection; thereby,
10 committing a crime in violation of Article 2 (e) - Article 8(2)(e)(iii) and 25(3)(a)
11 of the Rome Statute.

12 Count 3: Pillaging, Article 8(2)(e)(v) and Article 25(3)(a) of the Rome Statute.

13 On 29 September 2007 at the MGS Haskanita in Haskanita Village, Umm Kadada Locality
14 in North Darfur, the Sudan, knowingly and in the context of and associated with an armed
15 conflict Mr. Abu Garda jointly and with JEM forces under his control and SLA-Unity forces
16 appropriated property belonging to AMIS and its personnel, including vehicles,
17 refrigerators, computers, cellular phones, military boots and uniforms, fuel, ammunition
18 and money without the consent of the owners and for their private or personal use; thereby,
19 committing a crime in violation of Articles 8(2)(e)(v) and 25(3)(a) of the Rome Statute.

20 PRESIDING JUDGE STEINER: Thank you very much. Mr. Abu Garda, were you able
21 to fully understand the charges against you as presented by the Prosecution?

22 MR. ABU GARDA: (Interpretation) Yes.

23 PRESIDING JUDGE STEINER: (Microphone not activated).

24 MR. ABU GARDA: (Interpretation) Thank you.

25 PRESIDING JUDGE STEINER: So now we are going to move to our schedule the first

1 part of this hearing, and we have only 25 minutes left. It is in accordance with Rule
2 122 of the rules for a discussion on issues related to jurisdiction and admissibility.
3 And after that, on issues concerning the proper conduct of the proceedings that could
4 be raised by the Prosecution and Defence.

5 Before I give the floor to the Prosecution, the Chamber wishes to inform that
6 in respect to the pending Prosecutor's request for an order directing the Defence to
7 remove its proposed viva voce witnesses, which is document 170 confidential, the Chamber
8 has filed its decision already this morning. Just to inform the parties that the decision
9 rejects the Prosecution application and orders the Defence to conduct the questioning
10 of its witnesses in compliance with the principles and directions established therein.

11 As for other issues pending before the Chamber, starting from the Prosecution's
12 request seeking reclassification of victims' applications of witnesses under Regulation
13 23 bis of the regulations of the Court, filing 174, the Chamber grants the legal
14 representatives of the five victims who are also Prosecution witnesses in the present
15 case until tomorrow, Tuesday, at 2 in the afternoon to submit their observations on the
16 requested reclassification.

17 Finally, the Chamber was informed of a request from Mr. Koné, legal representative
18 of victims, to have access to confidential documents of the case which however such a
19 request has not been filed as it did not meet the requirements of an official court
20 record - official court document - and therefore could not be registered and filed in
21 the case file.

22 In this respect, the Chamber grants Mr. Koné to properly file such a request
23 by today, by 4 o'clock with the assistance, if need be, of the Office of Public Counsel
24 for Victims. A decision on the request will be issued in due time together with similar
25 requests for accessing confidential documents that are still pending before the Chamber.

1 Having said that, we can now turn to the discussion on issues on jurisdiction, admissibility
2 or issues concerning the proper conduct of the proceedings starting by the Prosecution.
3 Mr. Faal, you have the floor.

4 MR. FAAL: Madam President ...

5 THE INTERPRETER: Your Honour ...

6 MR. FAAL: ... the Prosecution had earlier indicated in a previous filing that
7 it has no issue to raise with regards to jurisdiction and admissibility. And equally,
8 your Honours, considering that the issues that were raised by the Prosecution concerning
9 the proposed viva voce witness by the Defence has already been addressed by your Honours,
10 the Prosecution has no other issues to raise in this part of the proceedings. Thank you,
11 your Honours.

12 PRESIDING JUDGE STEINER: Thank you very much, Mr. Faal.

13 Now I turn to the Defence. Mr. Khan.

14 MR. KHAN: Madam President, your Honours, as indicated by the Defence in our
15 filing of 7 October of this year, we indicated that we didn't feel it necessary to take
16 up your Honours' time on jurisdiction or admissibility issues. There is no issues of
17 procedure either that the Defence needs to raise at this time. I am grateful for the
18 opportunity to address you on that -- on that matter.

19 PRESIDING JUDGE STEINER: Thank you very much, Mr. Khan. According to our
20 schedule for the confirmation hearing that has been filed on 16 October 2009 in the record
21 of the case, decision number 182 of the case file, we are going to proceed for the second
22 part of this session with the opening statements of the Prosecution - with the opening
23 statements of the Prosecution. We are running maybe 15 minutes - no, not yet. We are
24 on time.

25 MR. KHAN: Microphones, your Honour.

1 PRESIDING JUDGE STEINER: My microphone is open. You learned your lessons during
2 the training session that we were all submitted to. Thank you very much.

3 I would like to ask the Prosecution whether it would be possible to anticipate
4 in 15 minutes the beginning of the Prosecution presentation that then could start at
5 11:15 instead of 11:30?

6 MR. FAAL: Your Honours, the Prosecution is ready to proceed according to the
7 direction of your Honours. Thank you.

8 PRESIDING JUDGE STEINER: Thank you very much. Therefore, we will suspend this
9 hearing and we will resume at 11:15 for the present - initial presentation of the
10 Prosecution teams. So the hearing is suspended until 11:15.

11 THE COURT USHER: All rise.

12 (Recess taken at 10:45 a.m.)

13 (Upon resuming at 11:16 a.m.)

14 THE COURT USHER: All rise.

15 PRESIDING JUDGE STEINER: We are resuming this, the second part of the session.
16 We'll have then - according to our schedule, one hour be given to the Prosecution to
17 present his case, opening statements on behalf of the OTP. And after the OTP, one hour
18 will be given also for legal representatives of victims, to be shared among them, for
19 them to make their opening statements. Which means Prosecution has to 12:15, legal
20 representatives of victims from 12:15 to 1:15.

21 Mr. Faal, Ms. Bensouda, you have the floor.

22 MS. BENSOUDA: Thank you, Madam President. Madam President, your Honours, this
23 case is about a deliberate attack against peacekeeping forces in September in Haskanita,
24 Darfur, the Sudan. It is about intentional attack against persons and objects with
25 protected status under international criminal law, a crime under the Rome Statute.

1 This case, Madam President, your Honours, is about the killing of 12 peacekeepers
2 and the ransacking of their camps in Haskanita, and the ensuing dismantling of the camp.

3 The peacekeepers came from Nigeria, Mali, Senegal, Botswana, The Gambia and
4 other countries. They came to serve and to protect fellow Africans in Darfur. Thousands
5 of people who have been the victims of crimes by Sudanese forces and integrated Janjaweed
6 militia. The peacekeepers had been deployed by the African Union to Haskanita to protect
7 the civilians from killings and rapes, to monitor the ceasefire between the government
8 of the Sudan and the rebel forces in Darfur, the Sudan, and to facilitate of the delivery
9 of humanitarian assistance. They were murdered. The base was closed down, leaving
10 thousands of civilians unprotected. Mr. Bahr Idriss Abu Garda, a rebel commander, now
11 stands for his role in that attack.

12 The Prosecution's evidence will show that the peacekeepers had protected status,
13 that Mr. Abu Garda knew of this status and yet he planned and ordered the attack with
14 other co-perpetrators. The attack took place on 29 September 2007. It was a day in the
15 holy month of Ramadan.

16 At approximately 7:30 in the evening, at a time when many of the AMIS personnel
17 were preparing to break their Ramadan fast, Mr. Abu Garda's breakaway JEM rebel forces,
18 together with forces belonging to the SLA-Unity and SLA Abdul Shafie rebel groups, launched
19 an attack on the AMIS peacekeeping forces at the military group site in Haskanita in
20 South Darfur.

21 That evening, about a thousand rebels armed with machine guns, dushkas,
22 rocket-propelled grenades and other heavy weapons stormed the military group site in
23 a convoy of about 30 vehicles. The attack continued until the early hours of the morning
24 of 30 September 2007. Mr. Abu Garda's breakaway JEM rebel forces, together with the rebel
25 forces belonging to SLA-Unity and SLA Abdul Shafie, who we will in the course of these

1 proceedings collectively refer to as the Combined Rebel Forces, deliberately killed 12
2 African Union peacekeepers and injured eight more.

3 The murdered peacekeepers were not killed accidentally nor were they killed
4 in cross-fire. Most of them were shot at close range; they were executed. With ten
5 peacekeepers killed and several more seriously injured, of whom two will later die, the
6 remaining AMIS personnel hid themselves in toilets, they hid themselves in trenches and
7 in other parts of the camp. They hid themselves in other parts of the camps, Madam President,
8 where they thought they could seek refuge.

9 Others fled into the darkness in order to escape the brutality of the attack.
10 With the military group site now at their disposal, the combined forces ransacked and
11 completely pillaged the camp. They looted properties of the African Union and the personal
12 properties of the peacekeepers; from military hardware down to basic possessions, such
13 as mobile phones and military uniforms. Mr. Abu Garda's men and the combined rebel forces
14 then destroyed the installations at the military group site, the MGS.

15 The Prosecution's evidence will show that the peacekeepers' installations and
16 material of the camp were protected persons and objects at all times relevant to the
17 charges. Article 8(2)(e)(iii) of the Rome Statute provides that, and I quote,
18 "Intentionally directing attacks against personnel, installation, material, units or
19 vehicles involved in humanitarian assistance or peacekeeping mission, in accordance with
20 the United Nations Charter, as long as they're entitled to the protection given to civilians
21 or civilians' objects under International Law of Armed Conflict, is a war crime."

22 The Statute builds upon the convention on the safety of the United Nations and
23 associated personnel of 1994, which criminalised attacks on United Nations and associated
24 personnel, except within the context of a peace enforcement operation under Chapter 7
25 of the Charter, when such personnel are combatants. Madam President, at no point did

1 the peacekeepers in Haskanita lose their protected status. The attackers suggested that
2 there was collaboration between the peacekeepers and the Government of the Sudan.

3 The evidence, however, suggests the contrary. In fact, the evidence will show
4 that the attackers were fully aware of the protected status of the African Union camp
5 and its personnel. These rebel groups were part of the agreements establishing the base.
6 They had been there before. They knew the markings. There was no mistake. And the evidence
7 will show that this attack was planned and executed under the command of Mr. Abu Garda,
8 with other co-perpetrators.

9 Each of the groups that participated in the attack had their own motive. Mr.
10 Abu Garda's forces had just split from the mainstream JEM group under its leader, Dr.
11 Khalil Ibrahim. They needed equipment and recognition as a fully-fledged rebel force
12 and an invitation to participate in the upcoming talks in Sirte, in Libya.

13 On the morning of the attack, Government of Sudan forces had attacked the combined
14 rebel forces in the nearby town of Dalil Babiker, inflicting substantial losses on them.
15 Having suffered these heavy loss, the combined rebel forces needed to replenish their
16 depleted stocks of fuel, food and ammunition. It was after the attack by the Government
17 of Sudan forces at Dalil Babiker that Mr. Abu Garda, together with his commanders and
18 the commanders from the SLA-Unity, held a meeting at which they devised a plan to attack
19 the AMIS camp in Haskanita on 29 September 2007.

20 Your Honours, for a long time the international community has struggled to deal
21 with attacks against United Nations and other peacekeeping staff. The attack on MGS
22 Haskanita was widely documented and condemned as the worst of such attacks in Darfur.

23 On 2 October the president of the United Nations Security Council, that is 2
24 October 2007, Leslie Kojo, who was then UN President, Security Council, from Ghana, issued
25 a statement on behalf of the council condemning the deadly attack on the AMIS peacekeepers

1 in the following terms, and I will quote him, "The Security Council this afternoon condemned
2 the murderous attack on African Union peacekeepers in Haskanita, South Darfur, reportedly
3 committed by a rebel group."

4 He also invoked the council's Resolution 1769 of 2007 in which it, quoting,
5 "Demanded the immediate cessation of hostilities and attacks on the African Union mission
6 in the Sudan, AMIS." The council insisted that all parties comply with that demand and
7 cooperate fully with the deployment of the United Nations light and heavy support packages
8 to AMIS, and with the African Union-United Nations hybrid operation in Darfur, UNAMID.

9 On 2 October, 2007, the Peace and Security Council of the African Union also
10 expressed its outrage and condemned in the strongest terms what it referred to as a heinous
11 and cowardly act perpetrated by unidentified elements who are bent on undermining the
12 peace process and further complicate the situation in Darfur.

13 The African Union never re-established the base at Haskanita, leaving the
14 civilians that had depended on its protection defenceless. Madam President, your Honours,
15 in the course of this confirmation hearing, you will hear from the Prosecution witness
16 (Expunged), who told the Prosecution that an attack such as the

17 one on the MGS Haskanita, "has a devastating effect on peacekeeping operations
18 in other countries. The attack on African Union forces in Haskanita portrayed the
19 peacekeepers as legitimate targets. The attack itself was beastly and should not have
20 occurred. The attack sent a very chilling and disturbing message." (Expunged) -- Madam
21 President, may I?

22 PRESIDING JUDGE STEINER: Yes, of course.

23 MS. BENSOUDA: Thank you. Thank you, Madam President.

24 PRESIDING JUDGE STEINER: Just reminding the Prosecution that, as said in the
25 beginning of this hearing, that names should not be mentioned in the courtroom.

1 MS. BENSOUDA: Very well, Madam President.

2 On 26 September 2007, the JEM chairman issued another decree terminating the
3 appointment of Mr. Abu Garda as head of JEM Western Sector and as vice-president. At
4 this time, however, Mr. Abu Garda had already split from JEM.

5 The Prosecution will show that Mr. Abu Garda and his group continued to carry
6 out operations using JEM troops as well as JEM vehicles and equipment. They issued
7 statements and recruited soldiers all under the name of JEM. At this stage, though, Mr.
8 Abu Garda and the commander general had effective command and control of the JEM forces.
9 This was the state of affairs of JEM collective leadership or Abu Garda's JEM, as some
10 will call it, as at the time they attacked the MGS Haskanita on 29 September 2007.

11 Madam President, your Honours, just a few days after they attacked the MGS,
12 Mr. Abu Garda formally announced the creation of JEM Collective Leadership, or Abu Garda's
13 JEM as some will call it, as at the time they attacked the MGS Haskanita on 29 September
14 2007. Madam President, your Honours, just a few days after they attacked the MGS Mr.
15 Abu Garda formally announced the creation of JEM-Collective Leadership and of course,
16 a few days after that, he got the invitation to the first negotiations of the various
17 rebel factions that was held in Juba. On 4 October he reinstated the commander general
18 who was sacked by the chairman of JEM. Your Honours, the other group that participated
19 in the attack on the MGS is the SLA-Unity.

20 Your Honours, the SLA as a movement had suffered many splits in the past, starting
21 from the departure of Minni Minawi in late 2005. Further disputes, however, culminated
22 into further splits leading into the creation of SLA-Free Will, SLA-Classic, Group 19,
23 and of course the remnants of the initial SLA.

24 The evidence would show that in May 2007, commanders of these various breakaway
25 SLA factions came together at a conference in Umrai, where a new group was established.

1 The outcome of this conference was a new faction called SLA-Unity. Another
2 faction that participated in this incident, your Honours, is the SLA Abdul Shafie faction.

3 This is also a splinter group from the original SLA, but the chairman of that
4 faction never joined the SLA-Unity, so he remained as a separate faction based near the
5 Jebel Marra area, the eastern part of Jebel Marra. Your Honours, the evidence will show
6 that these forces had always cooperated together, in particular, in joint operations.
7 The evidence will show that the incident on 29 September was also one of those incidents
8 where these groups cooperated together. The Prosecution would also lead evidence to show
9 that as early as June 2006, these groups had established mechanisms to allow them to
10 cooperate with each other, especially in military operations.

11 Your Honours, the attack is against the African Union peacekeepers in Darfur.
12 In the course of this hearing, the Prosecution will lead evidence to show that AMIS was
13 a peacekeeping force in accordance with the Charter and therefore its personnel,
14 installations, materials, units and vehicles were entitled to the same protection that
15 is accorded to civilians under international law -- under International Humanitarian
16 Law.

17 The evidence would also show that the African Union met all the requirements
18 in order to entitle its personnel to such protection. We would show that it was established
19 with the consent of the host state. It was established pursuant to an agreement which
20 Mr. Abu Garda himself participated in negotiating. It therefore leaves no room for escaping
21 the fact that Mr. Abu Garda was aware of the fact that these individuals had protection
22 because he negotiated that protection.

23 Your Honours, the Prosecution will show that the mission of AMIS was none other
24 than to monitor the humanitarian ceasefire. It was a peacekeeping mission with no
25 enforcement mandate. It received not only the support of the United Nations, but also

1 that of the EU and important states in world politics. Indeed, it was in the process
2 of being transformed into a fully-fledged United Nations mission when the deadly attack
3 on the MGS was carried out on 29 September.

4 Your Honours, the attack was widely reported, describing deaths, injuries to
5 peacekeepers and destruction of the AMIS camp. In the course of this hearing, however,
6 your Honours will hear Prosecution evidence of details of what actually happened before,
7 during and after the attack on the African Union base in Haskanita on 29 September.

8 You would also hear evidence of who the perpetrators were, how they planned
9 the attack, what happened in the camp between the evening of 29 September and the early
10 hours of 30 September 2007. You will hear of the deliberate killings mentioned by Ms.
11 Bensouda and the wounding of peacekeepers by the rebel forces, the coordinated looting
12 and the destruction of AMIS property and installations. The Prosecution will describe
13 what actually happened, as told by witnesses, some of whom were themselves rebel commanders
14 and troops that participated in the very attack. Your Honours would hear directly from
15 two of these peacekeepers who were actual victims of the attack.

16 Your Honours, the attack on the MGS was not just spontaneous. The evidence
17 would show that there were a series of important events that preceded the attack.

18 Your Honours, Ms. Bensouda in her earlier statement did indicate the attack
19 on 10 September 2007 by the GoS forces against the combined rebel forces but, however,
20 soon after that attack, JEM and SLA-Unity troops went to the MGS Haskanita, and they
21 threatened the peacekeepers that if they were attacked again by GoS forces, then they
22 would attack AMIS. In fact, they told them, "If they attack us again, you will pay the
23 price." And indeed, they were attacked again on 29 September in the early hours of the
24 morning and, true to their word, true to their threat, AMIS paid the price for it. They
25 paid the price for having no role in this attack.

1 The evidence would show that soon after the event that I had just described
2 on 10 September between 200 and 280 troops of the Abdul Shafie faction were attacked
3 by GoS forces near a town -- or near Jebel Marra. Having suffered losses, they called
4 upon the SLA-Unity to come to their rescue.

5 Your Honours, the SLA-Unity rescued the SLA Abdul Shafie faction and on 24
6 September 2007 these groups signed an agreement for joint military operation. And from
7 that point onwards, up to and soon after the attack on the MGS Haskanita, those groups
8 carried out joint military operations under the operational leadership, de facto operational
9 leadership, of SLA-Unity.

10 After their rescue the groups moved together towards Haskanita. The evidence
11 will show, and this is quite an important issue that would have to be dealt with in the
12 confirmation, that at this point this group met with Mr. Bahr Idriss Abu Garda at Dar
13 es Salaam. While at Dar es Salaam, Mr. Abu Garda had meetings with the commander of the
14 SLA-Unity, as well as the commander of JEM who was with him at the time.

15 They spent a few days in Dar es Salaam and they all moved together towards Haskanita.
16 Mr. Abu Garda spent the night with his troops in Haskanita, whereas the SLA-Unity commander
17 and his troops moved on to Dalil Babiker. On 29 September 2007, as mentioned earlier,
18 the combined rebel forces were attacked by the GoS and there the combined rebel forces
19 suffered heavy losses in that attack, including loss of personnel and equipment. It was
20 soon after this attack that Mr. Abu Garda and the other commanders planned the attack
21 against the MGS Haskanita at a meeting.

22 Your Honours, the Prosecution evidence will show that soon after that meeting
23 the commanders ordered their troops to carry out the attack. In the course of the hearing
24 you would hear first-hand accounts of the victims of the killings in particular the
25 peacekeepers, which will describe the gruesome nature of this attack. When they took

1 control of the attack, your Honours, as the evidence will show, Mr. Abu Garda's forces
2 engaged in large-scale looting of the MGS. The evidence would show that they looted anything
3 they could carry, from suitcases to uniforms, from clothes to cash, all the savings of
4 these peacekeepers who went to Darfur, just in the cause of humanity. They even looted
5 cellular phones and jewellery. They also took the food supplies of the peacekeepers,
6 their vehicles, their arms and their fuel. Anything and everything they could carry,
7 they took away.

8 Your Honours, the Defence may allege that the peacekeepers who lost their lives
9 in the service of humanity were unintended victims of a crossfire. The evidence would
10 show that that is far from the case. The Defence may -- you may even hear that the Defence
11 argue that they were legitimate targets of attack because they were collaborating with
12 the GoS. The evidence will clearly show that this was not the case, there was no reason
13 for this attack, other than the motives that we have outlined before.

14 Your Honours, the Prosecution evidence would establish that there was no
15 collaboration between AMIS and the GoS which was engaged in the destruction, in a campaign
16 of destruction of its own people. The Defence may even claim that Mr. Abu Garda was nowhere
17 present at the meeting where the attack was planned or has any role to play in the attack.
18 Well, the evidence would show quite clearly that that is not the case. Mr. Abu Garda
19 is the architect, he is the planner of this particular attack.

20 Your Honours, in the course of the presentations that would be made by the OTP
21 we would show all the evidence to show Mr. Abu Garda's role in this attack; how he planned
22 the attack in meetings attended by commanders of JEM and SLA-Unity; how the plan was
23 executed by troops under his control and troops under the control of the SLA-Unity and
24 SLA Abdul Shafie faction.

25 The evidence would also show that at the material time AMIS, the African Union

1 forces, were indeed the intended targets of the attack. They were the intended targets
2 of the plan. We will present evidence to show Mr. Abu Garda's coordinated and essential
3 contributions towards the realisation of the crimes.

4 Your Honours, the Prosecution charges Mr. Abu Garda not only as the architect
5 of the attack, but additionally as an indirect co-perpetrator. In this regard, the
6 Prosecution would show that at all material times the JEM breakaway faction remained
7 a hierarchically-organised group, with defined structures and a chain of command.
8 Leadership, decision-making and control of the troops was vested in Mr. Abu Garda. It
9 was this authority over his troops that Mr. Abu Garda exercised to ensure compliance
10 with his orders to commit the crimes charged.

11 Your Honours, you will recall at the -- that at the initial appearance of Mr.
12 Abu Garda on 18 May 2009, he did say, when asked what was his profession, he said -- he
13 introduced himself to this Court as a political commander, quote-unquote. Well, your
14 Honours, this term acknowledged both the political and actual authority Mr. Abu Garda
15 had over his troops, through whom he committed the crimes. The Prosecution will demonstrate
16 that the power structure that existed in JEM, Abu Garda's JEM and SLA-Unity groups was
17 such that there was almost automatic compliance by Mr. Abu Garda's subordinates with
18 the orders that he and his other commanders would issue to these people.

19 Your Honours, during the course of this hearing, the Prosecution's evidence
20 will show that the attack, as mentioned by Ms. Bensouda, was not a mistake. Neither were
21 the peacekeepers caught in a crossfire of any sort. We would show that Mr. Abu Garda's
22 forces knew of the presence of AMIS in Haskanita as their representatives had been to
23 the camp on several occasions. They knew that there was no other belligerent party that
24 had a camp in the area. They also knew that there were -- AMIS had distinct markings
25 which clearly identified it as an African Union camp.

1 And finally, your Honours, the evidence would show quite clearly that when they
2 attacked AMIS, that was the intended target. No mistake. They threatened before. They
3 told them they would be punished if they were attacked; and truly, they did. And finally,
4 your Honours, we would lead evidence to show that the statements made by the commanders
5 just before the attack clearly would dispel any notion of a doubt that in fact the intended
6 target was to attack AMIS.

7 At the end of the day, your Honours, after a presentation of all the evidence,
8 the Prosecution is convinced that your Honours would be satisfied that sufficient
9 evidence to establish substantial grounds to believe that Mr. Abu Garda committed the
10 crimes charged have been laid.

11 Thank you, your Honour.

12 PRESIDING JUDGE STEINER: Thank you, Mr. Faal. You finished on time, and I thank
13 you and the whole Prosecution team also for that.

14 I would like now to turn to the legal representatives of victims and ask who
15 is going to address the Court representing victims in this occasion? Or whether the four
16 of you will share?

17 MR. KONÉ: Your Honour, we intend to do it severally. We will split ourselves
18 and do it severally, each of us taking 15 minutes and 15 minutes. Thank you, your Honour.

19 PRESIDING JUDGE STEINER: Maître Cisse, you are the first one then.

20 MS. CISSE: (Interpretation) Yes, your Honour. My colleagues have asked me
21 to go first. First of all, I would like to thank you, your Honour, for giving me the
22 opportunity here to speak on behalf of the victims that I represent. The victims that
23 I represent have asked me to be their voices with you to be able to express their views
24 and their specific concerns due to the fact that their interests have been seriously
25 injured in accordance with the provisions of 68(3) of the Rome Statute.

1 Through this Article 68(3) of the Rome Statute, the International Criminal
2 Court is the primary international court to open the door to the participation of victims,
3 because it has understood that beyond the important task of fighting against impunity
4 for such serious crimes as war crimes, including in an armed conflict of a
5 non-international character as has been seen in the Sudan since 2002, it is of importance
6 that international justice can bring justice to those who have personally suffered.

7 This confirmation of charges hearing constitutes the first important step in
8 this justice, and this is why the Senegalese victims that I represent put a lot of hope
9 into international justice which you represent in this important case at this stage in
10 the confirmation hearing.

11 These victims that I represent are -- some of them are members of the African
12 Union peacekeeping mission in Sudan, AMIS, and also Senegalese police, CIVPOL, as with
13 civil observer status - this is the case of Victim A09 - and they also belong to the
14 military observer corps in Senegal. This is the case A012. These victims were non-armed,
15 as is the case for all police and military observers of these groups in Haskanita.

16 These victims, therefore - this first category of victims - have suffered
17 material harm. These victims have been de-possessed by the armed violence. They've lost
18 personal goods and also within the framework of AMIS they have also lost the amounts
19 that they've saved day-by-day, they have lost cameras, they have lost their clothing,
20 they've lost their computers and their uniforms, shoes and other goods as well.

21 These acts of pillaging and looting which were suffered by the victims were
22 committed by -- in a systematic way, after they'd taken possession of the Haskanita camp
23 after the attack on 29 September 2007, but beyond this material injury the victims that
24 I represent, as well as the police observers, they also wish to stress the fact that
25 they have suffered a moral and professional injury as well, because above all these are

1 members of the African Union peacekeeping mission and they came very confidently and
2 really believing firmly in their mission to consolidate peace and also to oversee the
3 ceasefire of 8 August 2004 and other agreements as well.

4 And so they therefore -- well, the base was closed, it was demoralised, it was
5 frustrated, and this moral injury and professional injury is noted in the fact that there
6 was a loss of credibility on the part of the mission which was aiming to protect the
7 civilian population in this attack.

8 Men who were sent by the international community and by the African community
9 as well for this community, they have also lost their lives in addition to that. That
10 is the reason why I'm also representing victims who had relatives and they had fathers,
11 mothers. This is the case of Victim -- well, 09 is the end number. I also represent
12 minors as well. This the case --

13 THE INTERPRETER: The numbers are too fast for the interpreter to catch any
14 of them at the moment. Please slow down for the numbers so the interpreter can get some
15 of them.

16 MS. CISSE: Also a police officer --

17 PRESIDING JUDGE STEINER: Maître Cisse, I'm sorry to interrupt you. The
18 interpreters ask you please to speak slowly.

19 THE INTERPRETER: The interpreter kindly requests with regards to the numbers
20 specifically. Thank you.

21 MS. CISSE: (Interpretation) I would thank you. It is true that when I speak,
22 I tend to forget this.

23 So this is the case of also the -- all the close relatives, the police officer,
24 Senegalese police officer, the CIVPOL observer force, deliberately and cowardly killed
25 in his dormitory where they found him and shot bullets at night while this person was

1 not armed and they found this body bullet-riddled on the bed.

2 And it is important to render justice to these victims, because the right to
3 life of their parents, their relatives was ripped from them. The wives, the children,
4 the parents not only are affected by the loss of those dear to them, the moral injuries
5 suffered, but also and above all in a state of material loss and financial loss, which
6 is severe because the victim was the only breadwinner in the family and in Africa, in
7 particular, when the family support - the breadwinner - falls, a whole family sees their
8 conditions of life fall into precarity (sic).

9 And this is the case of the wife, this is the case of the children who are without
10 resources who risk being expelled at any time from their housing and the perspectives
11 for education and the future of these minors is very difficult.

12 This is the reason why these victims have hope in you such that the confirmation
13 hearing, which is starting this morning, will make it possible for them to bring this
14 case before the Trial Chamber so that justice can be delivered so that they can also
15 obtain reparations for the harm suffered and, more specifically, ultimately the victims
16 who are members of the security forces and the armed forces with observer status of the
17 African Union, which I represent, that they -- that this decision will make it possible
18 for them, or they hope, to be able to go forwards towards the Trial Chamber and that
19 a decision which will be a beacon for international justice and, when it comes to these
20 peacekeeping forces, that they will understand that international justice can protect
21 and must protect those who protect the civil population.

22 Thank you, your Honour.

23 PRESIDING JUDGE STEINER: Thank you very much.

24 MR. KONÉ: (Interpretation) Your Honour --

25 PRESIDING JUDGE STEINER: (Interpretation) For the record, please could you

1 identify yourself?

2 MR. KONÉ: Counsel Brahim Koné is my name. Your Honour, President, ladies and
3 gentlemen Judges, the event of the International Criminal Court has been a strong signal
4 in international criminal justice. It is also true that the International Criminal Court
5 represents a historic step forward in the efforts to bring leaders to respond to human
6 rights allegations in the humanitarian field.

7 The fact for the -- that the Security Council has submitted this case to the
8 International Criminal Court does testify to the fact that there is a growing need there
9 within the international community no longer to tolerate impunity and amnesty and also
10 to try to establish international law.

11 Whatever the limits and imperfections of that, the International Criminal Court
12 has changed the face of international justice and constitutes a great source of hope
13 for victims; most of whom have never had a right to justice and reparations.

14 As the Prosecution highlighted, Article 8 of the Statute speaks about
15 intentionally directing attacks against persons employed within the framework of a
16 peacekeeping mission under the United Nations Charter. The attack on 29 September 2007
17 against the military base of Haskanita is a perfect example of this. At the time that
18 the attack occurred, the client was working for the African Union in the peacekeeping
19 position to save other human lives, and one of the soldiers who I represent, the inheritors
20 of or descendants of, it is a numerous family of 23 people. He was the only support of
21 these 23 people and he was very seriously injured. They all lost their goods. These
22 victims have suffered enormous harm, both in moral and material terms, and they call
23 for reparations and this is why I am here before your Court.

24 With regards to the parts of the dossier, in particular the arguments put forward
25 by the Prosecutor and the different testimonies, the different investigations by the

1 Prosecutor have made it possible to prosecute Abu Garda, who is appearing before your
2 Court this morning. In light of the evidence, we think that the charges against Abu Garda
3 are sufficient to be referred to the Trial Chamber and we depend on the wisdom of the
4 Pre-Trial Chamber.

5 Thank you, your Honour.

6 PRESIDING JUDGE STEINER: (Interpretation) Thank you, counsel.

7 MR. ADAKA: Madam Presiding Judge --

8 PRESIDING JUDGE STEINER: Could you please identify for us, please?

9 MR. ADAKA: My name is Frank Adaka.

10 Thank you, Madam Presiding Judge, your Honours. I would wish to start this
11 brief statement by describing in general terms who the victims I represent are. They
12 comprise ten dependents of two soldiers who were killed during the attack and 11 other
13 members of the Nigerian armed forces who were injured during that same attack.

14 Your Honours, the victims who I represent bore the direct consequences of that
15 unfortunate incident. They're all citizens of the Federal Republic of Nigeria, who left
16 their country to take part in what was supposed to be a peacekeeping and humanitarian
17 mission in Darfur, Sudan.

18 In Darfur they were deployed as members of the AMIS protection force. They
19 were consequently tasked with protecting the military observers' group site, MSG, located
20 at Haskanita. Your Honours, they were certainly not engaged or directly involved in what
21 could be described as an armed conflict by any stretch of imagination.

22 Your Honours, having seen these victims and having had the opportunity to interact
23 with them firsthand, I do not think the time available for this opening statement would
24 be sufficient to properly describe their plight in great detail.

25 For dependents of those killed during the attack, they have lost the comfort

1 of husband, father, provider and breadwinner. For those injured as a result of the attack,
2 it will suffice to state here that one of them lost the use of his limbs, another lost
3 the use of his eyes, while others suffered various degree of injuries as well as physical
4 and psychological harm.

5 These harms have somehow hindered the pursuit of their military careers to the
6 fullest extent possible. It may also be important here to state that they lost virtually
7 all the properties they took to the Sudan: money, mobile phones and other equipment.

8 For the victims who are alive to tell their stories, they bear the additional
9 burden of having to remember that very bad experience when they were attacked by persons
10 who they erroneously assumed they were working in concert with as partners in the quest
11 for peace in Sudan.

12 Your Honours, of course the victims I represent are well aware that a criminal
13 trial of this sort cannot restore lives of deceased, neither can it restore lost limbs
14 or even restore lost body parts. Also, a criminal trial cannot totally wipe out the bad
15 memories of that attack.

16 Knowing the limitations of what a criminal trial of this sort can achieve, a
17 question may then be asked: Why are we then representing -- why am I then representing
18 the victims here? In answer to this question, I wish to state that we are glad to have
19 this opportunity to be here, mainly for the following reasons which I shall itemise.
20 There are five of them.

21 The first is the victims I represent want to know the entire truth about the
22 circumstances of that attack on 29 September 2009 (sic).

23 Second, they also want to know the identity of the attackers. Where the individual
24 identity of the attackers cannot be uncovered, the victims I represent would like to
25 know at the very least the leaders of the group that attacked them and who may be held

1 responsible for the attack by way of command responsibility.

2 Third, the victims also hope that if this trial helps to unravel the truth about
3 the attack -- sorry, the victims also hope that this trial helps to unravel the truth
4 about the attack so that the perpetrators can be appropriately punished as required by
5 the Rome Statute of the ICC.

6 On the other hand also, where the accused person is exculpated, the victims
7 would like the Office of the Prosecutor to initiate further investigations to unravel
8 the real perpetrators of the attack. Accordingly, it's our view here that the victims
9 I represent their interests do not -- are not exactly similar to the Prosecution's.

10 Fourth, some of the victims I represent are also aware that the peacekeeping
11 mission in Darfur is still ongoing and some of their colleagues in the Nigerian armed
12 forces are still deployed in that mission. Accordingly, these victims also want their
13 sad experiences told to the world in a most forthright manner. They expect that this
14 will send a very loud message that the international community has declared zero tolerance
15 for unprovoked attacks on innocent members of peacekeeping forces.

16 In other words, they expect that this trial will help to counteract impunity
17 so that their fellow soldiers who currently are making enormous sacrifices in peacekeeping
18 missions around the world would not suffer the same fate which they suffered at Haskanita.

19 Finally, in the event of a conviction, the victims I represent would hopefully
20 seek reparations. However, I wish to point out that what is most important for them is
21 the symbolism of the concern showed by the international community for their plight.

22 Thank you very much.

23 PRESIDING JUDGE STEINER: Thank you very much, Mr. Adaka. Now Mr. Akinbote --

24 MR. AKINBOTE: I am very grateful.

25 PRESIDING JUDGE STEINER: -- you have the floor.

1 MR. AKINBOTE: Your Honour, Madam President, and your Honours, I represent
2 victims who are in three categories: Those who have lost their breadwinners forever;
3 one who, though very young, will never be able to know the joy of physical closeness
4 to a husband who has lost the ability for any sexual rapport. A third category is one
5 lady who -- whose husband has been declared missing in action.

6 My clients feel pain; and as the Prosecution has pointed out, that it was just
7 not a mere attack, but a well-planned, premeditated attack and ruthlessly carried out,
8 resulting in the death of 12 soldiers and the wounding of eight others. When we say
9 "breadwinner" in Africa, and in our society in Nigeria in particular, you are referring
10 to that person who not only is providing for his immediate nuclear family, is also providing
11 for his parents, for his relations, cousins, nieces, and so on. That is the meaning of
12 the breadwinner in Africa. And to lose one breadwinner, it means 20 or more dependents
13 have lost a means of livelihood. That is the meaning of a breadwinner in Africa.

14 I feel highly pained two Saturdays ago when I met the widow of a soldier missing
15 in action. I was almost in tears when she said I should remember, and let this Court
16 know, that the other widows have had the benefit of a befitting burial for their husbands.
17 She, up to now, does not know whether the husband is dead or alive. She does not know
18 what to tell her children. She gave me the impression, and I do believe her, that missing
19 in action is more painful than one who is declared dead. She said she keeps dreaming
20 of when her husband would walk home, alive. She said she cannot stand the pains of thinking
21 that he was already dead. Those are the three categories of the victims I represent.

22 I must also draw the attention of this Court to the fact that in our society
23 there is no social security; that is, numerous dependents can fall back on and no life
24 insurance that they can benefit from. This is the fear they have for the future, for
25 the future of their little ones who they have looked forward that one day they would

1 be in higher positions than their fathers, than the breadwinners, but today they are
2 not sure of the education of the little children. They are not even sure that the needs
3 of these little children will be met. That is their plight. That is the reason why they
4 seek justice in this Court.

5 The world has gone beyond people taking up arms for whatever reasons, not in
6 a combat situation; to go and attack ruthlessly peacekeepers is a grievous offence under
7 the Rome Statute. It's an unpardonable act that my clients feel that I should convey
8 to this Court. They look forward to justice being done. They look forward to the trial
9 of this matter beyond this stage so that, at the end of the day, their pains, their feelings,
10 will be assuaged. They will know that their breadwinners did not die in vain.

11 And they've also asked me to convey to this Court that if justice is not done,
12 if conviction is not the final verdict of this Court, how would future perpetrators of
13 these heinous crimes be deterred from their intention; that this case should serve as
14 a deterrence to others that the world is no longer prepared to tolerate this kind of
15 massacres of peacekeepers.

16 We hope, Madam President, your Honours, that the proceedings will not be in
17 vain. That will be all. I'm very grateful.

18 PRESIDING JUDGE STEINER: Thank you, Mr. Akinbote.

19 So, the second session of this morning came to an end -- has come to an end.
20 We still have a third session in the afternoon in which Defence will make its opening
21 statement at three o'clock.

22 I -- as I did in relation to the Prosecution, I would like to ask Mr. Khan whether
23 it would be possible for him to anticipate, maybe in 15 minutes or even half an hour,
24 your presentation.

25 MR. KHAN: Madam President, your Honours, I'm much obliged, as always. I'm

1 content, with your leave, to respond immediately. I have some remarks that should take
2 about 15 -- 10 or 15 minutes at most, maybe less. And then, with your leave, my client
3 will give an unsworn statement from the dock. That portion will take 30 minutes to 40 minutes
4 at most. So, your Honours, with your leave, perhaps, I am more than happy to deal with
5 my response, my part of the opening now. It's a matter, of course, wholly within Your
6 Honours' discretion.

7 PRESIDING JUDGE STEINER: Mr. Khan, since you ensure that you are not going
8 to use more than 15 minutes, I just would like to remind you that the amount of time
9 allocated to the Defence will not be modified, which means that in the afternoon session
10 Mr. Abu Garda will have 45 minutes, maximum, to make his unsworn statement. If that is
11 fine with you, we could then proceed. If you prefer, we can start in the afternoon and
12 then you have the whole hour. It's up to you, Mr. Khan.

13 MR. KHAN: Your Honour, I'm content just to proceed now.

14 PRESIDING JUDGE STEINER: Is that fine with the Prosecution?

15 MR. FAAL: Yes.

16 PRESIDING JUDGE STEINER: Is that fine with the Legal Representatives? Then
17 you have the floor, Mr. Khan.

18 MR. KHAN: Madam President, your Honour, I'm most grateful. I think perhaps
19 it's appropriate to start where my learned friend, Mr. Akinbote, left off.

20 PRESIDING JUDGE STEINER: I'm really sorry, Mr. Khan. You can proceed.

21 MR. KHAN: Not at all, Madam President.

22 My learned friend for the fourth set of victims stated and expressed the desire
23 that, if there was not a conviction in this case, then everything would be in vain. There
24 are, of course, two observations in reply to that:

25 As your Honour pointed out, raised succinctly at the outset, the purpose of

1 this confirmation hearing is not to determine the guilt or innocence of my client, but
2 simply to determine whether or not this case should end now or whether or not the Prosecution
3 have made a sufficient showing to justify taking up more of the Court's time and having
4 the case proceed to trial.

5 It is appropriate, in fact, to start with the victims. And on behalf of my
6 client, we do express our condolences to all those families that have suffered the loss
7 of loved ones, whose lives have been scarred and family life and contentment torn apart.
8 Any loss of life is to be lamented, and it is lamented by all on the side of the Defence,
9 and by my client in particular.

10 So whilst we welcome fully the involvement of the victims' representatives,
11 we join them, and indeed, in our respectful submission, we have a shared interest in
12 getting to the truth. In that regard, at page 40, line 5, my learned friend Mr. Adaka,
13 for the third set of victims, stated that he would be enjoining the Prosecution at the
14 appropriate time to initiate further investigations to unravel the real perpetrators
15 of the attack. Such investigations indeed may be necessary, but your Honours must simply
16 determine whether or not at this juncture the Prosecution have presented reliable and
17 sufficient evidence. The Defence say they have not.

18 Your Honour, it's always a most pleasant experience to listen to my learned
19 friend Madam Prosecutor and also Mr. Faal. And as always, I listen carefully. And I
20 couldn't help but smile at my learned friend Mr. Faal's anticipation of certain Defence
21 arguments that may or may not be presented. I am happy to say that I can keep him in
22 suspense a little longer, because it is not my intention to take up your Honours' time
23 on the list of possible scenarios or possible Defence arguments that he has detailed.

24 It is our submission that when your Honours put the magnifying glass to the
25 Prosecution case, you will find it does not pass muster. It does not withstand scrutiny.

1 The Prosecution case is, of course, convenient. They talk about my client's
2 split from JEM and the assumption of command as if it were a seamless, continuing exercise.
3 And the fallacy, perhaps, of the Prosecution case is, in some respects, in however small
4 a manner, brought into stark relief by the comments of my learned friend, Mr. Faal. He
5 did refer at page 32, line 21 to the comments that my client made on 18 May 2009. At
6 that time, of course, he was asked to give his job description, his occupation in May
7 of this year.

8 My learned friend, of course, seeks to supplant that job, that comment of my
9 client, and superimpose it on the events two years previously, the events, of course,
10 on 29 September 2007. Once again, the Defence will say the Prosecution falling into the
11 trap of a convenient, superficially attractive case which will fall apart and will not
12 withstand proper judicial scrutiny.

13 Your Honour, my learned friend Mr. Faal, at page 22, line 18 to 21 states, and
14 I quote, "Abu Garda carried this attack through members of his breakaway JEM rebel forces.
15 The attack was pursuant to a plan formulated by Abu Garda himself." Bold words, strong
16 submissions, a high opening. At the end of the day, your Honours, you will have the task
17 to determine whether or not those assertions, in fact, are based on reliable evidence.

18 The Defence say the evidence presented by my learned friend sitting opposite,
19 for all their hard work, for all their diligence is deficient; it is unreliable, it is
20 incomplete and deficient; just not in the abstract, but evidentially deficient when one
21 looks at the nature of evidence that is being presented to you. They, of course, have
22 an obligation to present the core evidence, the best evidence they've got to show that
23 my client has a case to answer that merits judicial determination at trial.

24 Rather, the reality is very different from the case presented by the Prosecution.
25 My client did not order the attack on MGS Haskanita. He did not encourage it. He did

1 not aid and abet it. He did not support it. He didn't take part in that attack at all,
2 all contrary to the submissions put forward by my learned friends sitting opposite. In
3 fact, the opposite is the case. Rather than condoning or encouraging that attack, he
4 went on record and roundly condemned it.

5 Your Honours will have to review the evidence and look at the conduct of my
6 client. In stark contrast, in fact, to Dr. Khalil Ibrahim, very respectfully, of course,
7 referred to by my learned friends opposite, who has a history of opposing international
8 involvement in Sudan, my client has constantly encouraged it.

9 And it is pursuant to that belief that he has been compelled to assist the victims
10 who are all the people of Darfur, all the people of Sudan who have hope in their hearts
11 for a better tomorrow, a brighter future, where the rights of all are guaranteed by the
12 law; that he, himself, felt compelled to submit to the law, submit to your Honours'
13 jurisdiction, to enter the lion's den of the Prosecution and to face, without fear, his
14 accusers who sit opposite. And he does that, your Honours, with the confidence that these
15 proceedings are determined and will be adjudicated over by a completely independent
16 Pre-Trial Chamber who are desirous of getting to the truth.

17 Your Honour, my learned friend, at page 30, line 15 refers to an attack or an
18 incident between JEM and the SLA and the Sudanese army on 10 September 2007, and he refers,
19 quite properly, to threats that were made to the peacekeepers immediately thereafter.
20 Indeed, he goes further and says these threats were honoured because, as a result of
21 the further attack by the Sudanese army, the base was indeed attacked.

22 Your Honours will, we suggest, pause for thought when assessing the veracity
23 of that argument, and they will consider that in the many months prior to that attack,
24 rather than planning and orchestrating and directing troops on the ground, my client
25 was not in Haskanita for those many months prior to September. He wasn't in North Darfur.

1 He wasn't in South Darfur. He wasn't in Sudan at all. He was in Arusha and
2 Libya and other African countries as part of the political wing of JEM and his functions
3 there.

4 In short, your Honours, it will be unsafe, unnecessary and unjustified, the
5 Defence say, for this case to be allowed to continue after you've heard all the evidence
6 and independently assessed it.

7 Your Honours, at this point, I have nothing further to add. After lunch, with
8 your leave, my client will make an unsworn statement from the Bar table in accordance
9 with Article 67. Your Honours, unless I can assist further, those are my preliminary
10 and very skeletal comments.

11 PRESIDING JUDGE STEINER: Thank you very much, Mr. Khan. The Chamber would like
12 to ask whether it would be possible to resume the afternoon session at 2:30.

13 MR. KHAN: Your Honour, that is perfectly fine with the Defence. We are most
14 grateful.

15 PRESIDING JUDGE STEINER: The Prosecution? Legal representatives?

16 Then this afternoon, after giving the necessary break mainly to our interpreters,
17 to whom we as always thank very much for their hard work, we are resuming this afternoon
18 at 2:30 for the continuation of the Defence opening statements.

19 So the hearing is now suspended until 2:30.

20 (Luncheon recess taken at 12:54 p.m.)

21 (Upon resuming at 2:33 p.m.)

22 PRESIDING JUDGE STEINER: Good afternoon. We are resuming this first day of
23 session of the confirmation hearing in the case of the Prosecution v Mr. Abu Garda. As
24 agreed during the morning session, now we will have Mr. Abu Garda using the final amount
25 of time allocated to the Defence for its opening statements. So I would like to invite

1 Mr. Abu Garda to make his unsworn statement for the remaining time, no more than 45 minutes.
2 Thank you.

3 MR. ABU GARDA: Thank you, Madam the President, your Honours. My name is Bahr
4 Idriss Abu Garda. I would like to apologise, Madam the President, to speak in English,
5 although English is my third language and I am not fluent in English, but I will try
6 to speak in English because I believe that you can understand me better when the speech
7 is direct without making any translation. But if I found some difficulties in some points,
8 I will try to explain it in Arabic language.

9 Madam the President, your Honours, while I pleased to be able to address you
10 and the Court, I thank you very much for that, but I don't believe that I rightfully
11 belong here, or to be here, because I done nothing to come here. Actually, I commit nothing,
12 but I came here because I believe in justice and I believe in the rule of law.

13 If my presence here improve in any -- it helps in any means to improve the situation
14 in my country, Sudan, particularly the situation of my suffering people in Darfur, and
15 encourage others to come and cooperate with the International Criminal Court, or let
16 others, those who have committed real crimes for our nation, our people of Darfur in
17 Sudan, come to this Court, I will be satisfied.

18 Madam the President, your Honours, I am Bahr Idriss Abu Garda. I was born in
19 a small village called Nana. It is in locality of Tine, North Darfur. I married 15 years
20 ago. I have five children: two girls, three boys.

21 And also I would like to add something about my education. In the Prosecution
22 DCC they mentioned the degree, which is correct, but also in addition to that I have
23 a Bachelor degree in business studies from the University of Neelain. Also I have a
24 postgraduate diploma in international relations from the University of Khartoum. I
25 started doing my Masters research, but it stopped due to the problem that happened in

1 Darfur. I am the chairman of the United Resistance Front (URF). Since URF established
2 in January 2008, right now URF is a movement - rebel movement - or the front that coalition
3 of revolutionary movements activating or operating in Darfur make this coalition and
4 now it came integration of these movements. Those who are fighting because there is
5 oppression and there is marginalisation in Sudan, especially in Darfur, since they are
6 independent right now.

7 We are coordinating all the efforts, but our main target is to get peace and
8 to get our rights in Sudan, to have some say over our rights in power and whilst in Sudan.
9 And mainly, I made efforts with my colleagues to establish URF because the main
10 organisations, rebel organisations, in Darfur became more fragmented, more and more
11 fragmented, and became less and less effective in achieving the stated goals. And also
12 the movement in Darfur became less disabling and also became less partners in ongoing
13 process for efforts in achieving peace in Darfur. This is why with the other objectives,
14 me and my colleagues established URF in January 2008.

15 I realise it doesn't make any sense for those who know nothing about me, Bahr,
16 except what has been told by the Prosecution, because what I've been told by the Prosecution
17 doesn't have any relation with what I am saying, but the reality is that this is what
18 we did and why we established URF. And the Prosecution saying that I am splitted from
19 larger organisation, which is JEM, I am a splinter and leading splitting group, it is
20 totally not correct. It is not true at all. I was dismissed from my position as
21 vice-president and secretary for Darfur region, in Darfur. Then after that, I will explain
22 later, but I never split from JEM.

23 Why I have been dismissed from JEM, because I oppose the undemocratic process
24 of practising the -- dealing with the movement, the concentration of power, in one hands,
25 really, in JEM - really in JEM - from long time, especially at that time, the main power

1 of running the movement in hands of one man, Khalil Ibrahim, and his brothers, I oppose
2 this, and this make some tension between Khalil and myself. This leads to dismissal and
3 that dismiss happen, but I never -- I never split from JEM.

4 The incident which directly lead to my dismissal is that the decision of Khalil,
5 of sacking Banda, the chief command, I oppose that decision because it is not taken in
6 consideration the information he placed on it and also, in the rebel movements, the coherence
7 is very important because the rebel movements, you cannot -- you cannot ask for the loyalty
8 of your troops by force but you need to understand the environment they are living, because
9 this kind of decisions will destroy the movement, will lead to further fragmentations,
10 and also, it is not justice because the movement itself, called Justice and Equality
11 Movement, and we are trying to bring justice to our people because we have been oppressed
12 and marginalised for long time. And, at the same time, if we practise within ourself
13 that injustice, I think that is unfair. This is why I oppose, and just I said opposing
14 by saying that we need to sit down to resolve the problem.

15 And also, Madam, the President, any movement want to be survived and successful
16 and achieve its goals, like what we are doing in Darfur. If take arbitrary decisions,
17 like sacking people important inside the movement, like what Khalil did. When he came
18 back, within four or five months, he put more pressure on the speaker of the parliament
19 of JEM, went to Khartoum and he sacked the commander-in-chief and he sacked the vice-president.
20 It cannot survive; with this kind of arbitrary decision, cannot make the movement coherent.
21 This is why we try to discuss this, to resolve the problem, but he didn't accept that.
22 But there is not any plan or any splitting at all.

23 After my dismissed from JEM, actually, it is very difficult for me because I
24 have been invest all my time, all my experience, all my efforts in Darfur and for future
25 of Sudan, in founding JEM, in 2000. I am one of the founders of JEM and try to solve

1 our problem in that case. It's very difficult what I can do after that. I haven't any
2 option, except I establish my own movement with my colleagues. This is happened after
3 the dismissal, not before.

4 Actually, we started from the scratch because many of the JEM leaders, the JEM
5 leadership, they didn't join our new organisation. Very few people, approximately
6 something about four or three persons of the former leaders of JEM who joined our new
7 organisation, so it is difficult at that time for us, but we succeeded at the end to
8 build a very strong organisation because we have good relation on the ground at the time
9 we are in the field. This let us to discuss many of the rebel movement on the ground,
10 and we established URF, which is, I said, the coalition of the movement and become integrated,
11 so this is help us to establish a strong movement.

12 And now we are -- URF is involving in the peace process in Dohar in the coming
13 three months after we complete more unification which is we started in Addis Ababa. And
14 even now I am coming from Libya because we have meeting of unification process led by
15 General Scott Gration, a special envoy of President Obama and the Libyan authorities.
16 We are trying to make more unification, to make one body in order we can negotiate the
17 Government of Sudan in proper way. This is what we are doing now.

18 Madam the President, concerning the events, concerning the events that I face,
19 the charges, I must be clear at the outset. I would like to explain that. I haven't
20 any relation with that incident, attacking, planning for the attack, preparing for this
21 attack happened in Haskanita, or carrying out directly this incident, or get benefit
22 of anything, any material, from that incident is not correct. Actually, I haven't any
23 relation with that. Certainly, not only I haven't any relation with planning or
24 preparing or anything, but even at that time I was dismissed from my position in JEM
25 and I have been long time outside. Approximately nine months I have been outside of the

1 field. Since December 2006, when I went to Chad, and Khalil came from outside, we have
2 been together between Abeche and ADRA in Chad. Approximately from January to March we
3 have been together. I handed to Khalil everything, all the power delegated to me by Khalil
4 in his absence. All the power I possessed at that time, I handed to him. And in March
5 I went to N'Djamena, and from there I went to Libya. From Libya, I went to Tanzania.
6 This is combined of some personal business and the movement business, but I have been
7 outside of the field all the time, the nine months. I haven't been there at all.

8 And I have been involving at that time political affairs rather than -- after
9 I handed all these things to Khalil, I have been involved in political affairs, rather
10 than any more relation with the field, and at that time I led our delegation, delegation
11 of JEM to Arusha, Arusha consultations, Arusha in Tanzania, had been held the
12 consultation in Arusha, I led JEM delegation to there. And also I would like to emphasise
13 that I am a politician, and in JEM, we have a clear distinction between the two wings
14 of our organisation at that time. We have a political wing and a military wing, and there
15 is a clear, clear responsibilities and authorities for each two wing.

16 This is what we had been practising on the ground at the time I had been
17 responsible. I had been in the field since May 2004, until Khalil came in December 2006,
18 I handed it, everything over to Khalil from January to March 2007.

19 Before, when I had been in the field, we had been practising and putting in
20 consultation all these political wing and the military wing, and try to work in harmony.
21 This actually happened because in our time - and you can go back to the reports of the
22 CFC and the organisations working in Darfur - there is less violence. Actually, there
23 is no violence had been committed from JEM at this time because we are doing our best
24 to make disabling and order our troops and our people in the field.

25 But Khalil, when he came back, everything confused. Even after he sacked Abdullah

1 Banda, the chief commander, he appointed himself as commander-in-chief. This happened
2 and he confused all this; the clear distinction between the two wings itself.

3 And also, Madam the President, your Honours, you put into consideration that
4 the -- you put in consideration that the movements like I saw on the ground in Darfur
5 and the movement which have been involved, they are very fragile and there are political
6 beliefs - strong political beliefs - that make the people together. Sometimes just they
7 can left and go home, or go to another movement. Even this maybe it is clear when I went -- when
8 I have been read the witnesses' statements also I think many of them mentioned that.
9 This is a reality, so because of that we need always to make a good very flexible - very
10 flexible - in order to survive your movement, not a matter of forcing, or enforcing,
11 or by force you can do your work.

12 This happened. I have example when in 2005 some of our troops in Muhajeria
13 area, they fled with approximately about 20 vehicles. They went to Chad. At that time
14 I went to them in Amari area and tried to convince them that, "Please don't do this."
15 In those discussions, even those soldiers they press me to swear on Koran that we are
16 lying and we are not clear. The political leader is not clear. I did that. I swear
17 on Koran. I am saying that what we are saying or doing is correct. We are not lying.
18 We are not cheating everybody.

19 This, maybe it is very difficult for everybody can understand this, how the
20 soldiers oppress the vice-president of the movement to swear. Okay, this maybe in the
21 military, if you go back to the military system, it is very difficult to understand,
22 but our reality in Darfur we need to do all these things in order to make the movements
23 coherent.

24 In 2007 - in 2007 - the situation within the JEM troops is very difficult because,
25 when Khalil went to Haskanita area and he attacked, some of the troops and he fled from

1 the area and the rest of the troops has been scattered. There is disorder. When I went
2 there -- and I want to be -- I want to tell you that from Arusha, when I went to Libya,
3 I went to N'Djamena, I stayed a month approximately. Then I start to go to the field
4 in order to contribute to find a solution for the problem happened there, because there
5 is misunderstanding between Khalil and our troops in the area because of the sacking
6 of the chief in command.

7 I tried to resolve this problem and because of that I start from N'Djamena.
8 I spent three days in the way to the border, two of them in Abeche. This is in 10 September.
9 In 10 September we start from N'Djamena. We spent two days in Abeche. I promised to
10 meet Abdullah Banda in the border inside Sudan, because he has been also asked from the
11 troops to go there. So, as I have been working after sacking of Abdullah Banda, I doing
12 my work in JEM and because of that I tried to go to find a solution for the problem.

13 But unfortunately, when I went to Tina area, Khalil threatened that if I cross
14 the border he will kill me. This he told to some people to Tina and he said that I have
15 three options. Either I go back to N'Djamena, or to go to the Chadian authorities in
16 Tina or to some relatives in Tina, but if I cross the border to Sudan he kill me. Although
17 that he promised some of our constituencies and some relatives in Tina area, in the refugees
18 in Tina area, that he will come to Tina and I should come there in order to solve the
19 problem and reconcile the issue. This is what he told to the people, but actually he
20 told some people that if I cross the border he will kill me.

21 Anyway, I went to Guhr Guhr. From Guhr Guhr we start -- we spent four to five
22 days in Guhr Guhr. Then we start with our forecasts to go to Haskanita area in order
23 to find a solution for the problem.

24 We spent one night in a place called Tougui, about 100 kilometres from Guhr
25 Guhr, and then also we went to Abuliha. From Abuliha, we -- yes, okay. We went to

1 Abuliha. This place we went there because we have some relations there. This area
2 controlled by SLA Minni Minawi, but we have some relations with the commanders who are
3 in charge of this area and because the JEM is very dangerous we need somebody to lead,
4 to guide, in narrow ways.

5 So I, with my two cars - I have only two cars - went from N'Djamena. The second
6 car I rented from my relative. These are two cars I have and only about 20 people with
7 me. Abdullah Banda also has two cars. These are the four cars we start going from Guhr
8 Guhr and now we are near Kutum. From there we went to Kafod and Shegera (phon) and across
9 the valley of Shegera (phon) we spent the night in Tabit - near Tabit - and then we went
10 to Dar es Salaam, which is Katal.

11 We spent also five to -- four to five days in Katal. Then we start to Haskanita
12 on 28 September. We reach Haskanita at the morning 29 -- at the morning. We went inside
13 Haskanita and just after less than an hour the war erupted in Dalil Babiker. Some of
14 SLM-Unity, a delegation led by the vice-president Ahmad Jibril Kubur. He came just to
15 say, "Welcome to me." Even we did not complete our greetings, because they received a
16 call that there is war in Dalil Babiker and they are coming to us, Haskanita, and their
17 aeroplane or aircraft above us. This is why I went out of Haskanita towards Jebril Abdola
18 site with only my two cars.

19 With only my two cars, I went about 40 kilometres outside Haskanita. I spent
20 the night there. From there, at the night, we heard shelling and there is weapon firing.
21 I tried to get the information. I tried many Thuraya phones. I failed, except I found
22 somebody called Bushara Fodal (phon) Abdullah. I believe he is now in jail in Khartoum.

23 He told me that there is an attack on AMIS -- attack on AMIS base. I told him,
24 "Who is doing that?" He told me that, "It is rebels and many people." I told him that,
25 "It is wrong." I told him that, "If you are there, you don't understand the consequences

1 of what happening there."

2 The consequences I mean -- I don't mean the consequence of myself, Bahr, but
3 I mean the consequences regionally, internationally, and the only part that gets the
4 use of that is the Government of Sudan, because by attacking the AMIS base means the
5 international community can do less to participate in solving the problem in Darfur and
6 also can do less in participating by troops to make a peace and protection for our people
7 in the IDPs. So, because of that I told him that it is wrong and it has consequences.

8 This is -- I get this information from that and I went towards Adola area.
9 Everybody, or most of the people I saw him in Haskanita. Haskanita there is -- actually
10 there is SLM-Unity troops, it's correct, and some scattered JEM troops and also it is
11 correct, but at that time I haven't -- the Prosecutor is saying that I splitted(sic)
12 from JEM and I have forces there. It is totally not correct and coming from the journey
13 of eight months this is my first day. It is my first time in Haskanita. Even before,
14 I never been in the area of Haskanita.

15 So, because of that I went to the area of Adola. Many people came there and,
16 in the way I am going to Adola, actually I saw many of JEM scattered troops and SLA troops
17 and even some of the AMIS vehicles, but I never asked. It is not my responsibility because
18 I haven't any power. I have just my two cars, what I can do, but I am -- I am going to
19 Adola.

20 After sacking me, I think from there I can start do something. As I told that
21 as a politician I invest all my efforts and time in this work it is very difficult to
22 stay aside, but I have to be involved in that work and so because of that
23 JEM-CL - JEM-Collective Leadership - had been established in Adola on 4 October.

24 Before there is not any plan, there is not any discussions, there is not any
25 decision of making a new movement, but after Khalil fled from the area after he closed

1 All the doors we haven't any option except we have our own movement. This is why we
2 established JEM-CL - JEM-Collective Leadership. After that, some time approximately 10
3 October, we get an invitation from the SPLM, the Sudan People Liberation Movement, to
4 go to Juba, not in order to make talks in order to make unification process where we
5 start establishment of the URF.

6 And I am very strange that the Prosecutor is saying that we have been -- he
7 is saying that we attacked Haskanita in order to get recognition and to get material.
8 It is unwise. I don't think that international community accepts somebody who attacked
9 the AMIS personnel in order to get recognition and they came later recognise them to
10 go to Juba and go to Sirte. I don't think it is correct. It is not correct totally.
11 We established the JEM leadership because we have no option. Khalil closed all the doors.
12 This is after we established -- in very few time, after we went to Juba, we tried to
13 make a unification because we believe in unification, so because of that we did that.

14 And also I would like to talk about our relationship with the international
15 organisations on the ground. Actually I kept very good relation with the international
16 organisation, especially AMIS and humanitarian organisations. Just I would like to give
17 three -- two examples. Two examples.

18 When I was in the field, some of our troops in Muhajeria area, taken three
19 vehicles belong to the Italian organisation ADRA. This is organisation that is responsible
20 for this organisation, Madam Barbara. She called me. She took helicopter and came in
21 to Shegeg Karo where I was there. I promised her to bring back these vehicles and I
22 backed -- these are -- one is drilling water machine vehicle. The second is tanker, water
23 tanker. The third is truck for carrying things. I returned it back to her, and that
24 make very good relations with many organisations, not only ADRA.

25 And the second example. We released the 39 hostages of AMIS had been taken

1 by a movement called Revolutionary Command -- Revolutionary Field Command. They took
2 all these 39 vehicles, 39 AMIS people, with their vehicles in Tina area. We have nothing
3 to do with that. But because General Okongo (phon), the first commander from Nigeria
4 at that time, he called us in order to help. This is why we made that mission.

5 We returned back. We released all 39 people with their eight vehicles. We
6 returned back to General Okongo. And in that mission I personally suffered because I
7 lost my chief security. My chief of my unit, security unit. Hamid Jamal Numit (phon).
8 He has been killed in that mission. So it is unfair that if I myself doing all these
9 things, returning back, if vehicles have been captured by our people, if we lost people
10 like Hamid Jamal Numit, in order to release Hamid's people and to return back the
11 vehicles, how we can plan to attack them? It is not correct. Actually, it is not correct
12 and at the last, I would like to send my condolence to the families of the victims.

13 I have been, I condemned this attack at that time. I did it many times and
14 still I condemning now. And I hope we -- I hope that justice can bring the real people,
15 those who commit this crime, back to the trial. And I would like to thank Madam the President
16 and the Court for listening me patiently.

17 Thank you very much.

18 PRESIDING JUDGE STEINER: Thank you very much, Mr. Abu Garda. I am sure the
19 Chamber listened to you very, very carefully. And I very much also appreciate that you
20 kept yourself within the time allocated to you.

21 Having said that, this third part of the session has come to an end. The hearing
22 will be -- Mr. Khan?

23 MR. KHAN: Madam President, I do apologise for interrupting. I just wanted to
24 indicate with your leave before the proceedings of today are formally adjourned, perhaps
25 for five minutes, maybe even less, if we could go into private session, there is one

1 issue that I would seek to raise. Your Honour, either we can do it today or we can do
2 it tomorrow morning perhaps. It's a matter for your Honours.

3 PRESIDING JUDGE STEINER: Mr. Khan, the Chamber needs a clarification. Would
4 you like to go to closed session because to go into closed session we need to suspend
5 the session for at least half-an-hour in order for the equipments to be changed. If it
6 is only private session, which means that just only the public cannot listen to what
7 you are going to say, then it can be done immediately.

8 MR. KHAN: Madam President, I think private session would suffice. It's a brief
9 matter.

10 PRESIDING JUDGE STEINER: Then I ask please, the court officer, to turn this
11 session into private session.

12 THE COURT OFFICER: Private session.

13 (Private session at 3:16 p.m.)

14 (Expunged)

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1 (Expunged)

2 (Open session at 3:26 p.m.)

3 THE COURT OFFICER: Public session.

4 PRESIDING JUDGE STEINER: In relation to the Defence motion, an oral decision
5 will be issued tomorrow morning, at the beginning of the first session at 9:30 in the
6 morning.

7 Before closing today's session, I would like to remind the parties and
8 participants of the training we received in which it was -- the parties and participants
9 were requested to be here, if possible, half-an-hour before the commencement of the
10 hearing, in order to have their equipments and the system tested.

11 In order to avoid the problem we had this morning, I would remind merely the
12 Defence to please, to be here or send someone in your name to be here half-an-hour before
13 the hearing because the equipment can be tested only after the relevant party or
14 participant has logged on. Otherwise, it cannot be tested. So that's the reason why
15 today we had this delay. So I would highly recommend the legal representatives, members
16 of the Prosecution and Defence team, to be here in advance, in order to log on and to
17 have their equipments tested.

18 If we don't have any other issues to deal with in this session, we are going
19 to suspend the session. That will be -- we will continue tomorrow morning at 9.30, when
20 the Prosecution will start with the presentation of its evidence.

21 I thank very much all parties and participants, our interpreters, and this
22 session is suspended to tomorrow.

23 THE COURT USHER: All rise.

24 (The hearing ends at 3:30 p.m.)