

1 International Criminal Court  
2 Pre-Trial Chamber I - Courtroom 1  
3 Presiding Judge Sylvia Steiner, Judge Sanji Mmasenono Monageng and Judge Cuno  
4 Tarfusser  
5 Situation Darfur, The Sudan - ICC-02/05-02/09  
6 In the matter of the Prosecutor v. Bahr Idriss Abu Garda  
7 Confirmation of Charges Hearing  
8 Wednesday, 21 October 2009  
9 (The hearing starts at 09:32 a.m.)  
10 (Open Session)

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

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

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

18 PRESIDING JUDGE STEINER: Thank you very much. So I welcome the  
19 Prosecution team, the Defence of Mr. Abu Garda, Mr. Abu Garda himself, legal  
20 representatives of victims. We have today a representative of VWU. I would like -- I  
21 would ask all of you to identify yourselves and your teams, starting by the Office  
22 of the Prosecution. Ms. Bensouda.

23 MS. BENSOUDA: Thank you, Madam President. Madam President, the  
24 representation of the Office of the Prosecutor is the same. Same representation.  
25 Unless Madam President would want me to list the individual names.

1           PRESIDING JUDGE STEINER: Thank you very much, Ms. Bensouda.

2           MS. BENSOUDA: Very well.

3           PRESIDING JUDGE STEINER: You don't have to.

4           MS. BENSOUDA: Thank you.

5           PRESIDING JUDGE STEINER: Mr. Khan?

6           MR. KHAN: Madam President, your Honours, good morning. I can do no better  
7 than to follow the lead of the Deputy Prosecutor and save Court time. The Defence  
8 composition is the same as yesterday. I am grateful.

9           PRESIDING JUDGE STEINER: Thank you very much, Mr. Khan.

10          Legal representatives of victims?

11          MR. KONÉ: I am Counsel Brahim Koné, legal representative of victim 110,  
12 192 and 110. Thank you.

13          MS. CISSE: Hello. My name -- I am Héléne Cisse, counsel. Does the Court  
14 want us to repeat the numbers?

15          PRESIDING JUDGE STEINER: It's not necessary.

16          MS. CISSE: Thank you.

17          MR. ADAKA: Good morning, Madam Presiding Judge, your Honours. My names  
18 are Frank Adaka, and I represent victims number 0552 to 0556 and victims number  
19 0563 to 0578. Thank you.

20          MR. AKINBOTE: May it please your Honours, my name are Akin Akinbote,  
21 and I appear for the same set of victims as I did yesterday.

22          PRESIDING JUDGE STEINER: Thank you very much. The representative of  
23 victims -- witnesses and victims unit?

24          MS. MICHELS: Good morning, your Honours. My name is An Michels. I am  
25 the psychologist of the Victims and Witnesses Unit.

1           PRESIDING JUDGE STEINER: Welcome, Ms. Michels.

2           So, before giving the floor to the Prosecution for its presentation, the  
3 Chamber will deliver its decision on Ms. Cisse's -- Maître Cisse's request of  
4 yesterday.

5           In the decision of 19 August 2009 (decision 55), the Chamber established  
6 Friday, 11 September 2009, as a deadline for the filing for applications for  
7 participation in the proceedings. In the decision ordering the parties to submit  
8 their observations on the 52 applications for victims' participation issued on 16  
9 September 2009 (decision 106), the Single Judge recalled in the operative part that,  
10 and I quote, "Additional applications at this stage of the proceedings will not  
11 be accepted."

12           The Chamber also notes that the application mentioned by Maître Cisse  
13 was never transmitted to it by the VPRS due to the fact that VPRS itself received  
14 it after the expiration of the deadline. Therefore, and without prejudice for the  
15 possibility of the applicant to submit again the application at a later stage of  
16 the proceedings, in case the Chamber confirms the charge, rejects Maître Cisse's  
17 request to consider application number a/0655/09.

18           According to the schedule, we will start today with the examination of  
19 the first witness called to testify by the Prosecution. Before asking the court  
20 usher to bring the witness, I would like to recall for the sake of the proper conduct  
21 of this hearing that the present witness will speak in Mandinka language. Translation  
22 will be provided to him, but the consequence is that his interrogation process will  
23 take a bit longer than usual. The parties and participants, in case the participants  
24 want to question the witness, will have to speak very slowly.

25           Most important, after any question and after the answer, the parties and

1 participants need to pause for around three, four seconds before starting speaking  
2 again and also to pause between sentences, in order to give to Mandinka interpreter  
3 time to finish his translation.

4           It must also be recalled that although the witness is giving his testimony  
5 in open court, the practice of this Chamber established that no names of witness  
6 or victims are mentioned. The reason behind this determination is to grant an  
7 additional protection, not only for the witness himself, but also to their families  
8 that are in their home countries that may be harassed if their identities are revealed  
9 through the identification by all media of the name and surname of the said witnesses.

10           Finally, the Chamber also informs about the presence, as you now know,  
11 for the purpose of assisting the witness in case he needs of a psychologist of VWU.  
12 The Chamber also expects the parties and participants to treat the witness with  
13 all due respect he deserves.

14           Having said that, I would like the court usher to bring the first witness  
15 into the courtroom.

16           MR. KHAN: And Madam President, perhaps with your leave, whilst that's  
17 being done, a very small note. I have read the report of the Registrar on access  
18 to live transcripts by the Defence dated 19 October. Your Honours, I do apologise  
19 formally for coming to Court only 15 minutes before the start on the first date  
20 and, to the extent that occasioned any delay, I do apologise. But I do wish to  
21 make it clear that in paragraph 3, perhaps your Honours would be left with the impression  
22 that Defence counsel was being rather unreasonable.

23           The concern wasn't only that we could not annotate or note the LiveNote  
24 transcript, but of course the main utility is being able to scroll up and read what's  
25 been said. So, to that extent, the Registrar's submission perhaps is not complete,

1 and I didn't want the Court to think that we had been, on this side, difficult.  
2 I hope your Honours forgive me for rising and addressing you on that point whilst  
3 the witness was being brought in. I am grateful.

4 (Witness enters courtroom)

5 PRESIDING JUDGE STEINER: Your clarification is always welcome, Mr. Khan.

6 The Chamber welcomes the witness. The Chamber welcomes you.

7 Before we start, I would ask Prosecution whether we can assign to  
8 Witness 0416 a pseudonym, to be used only for the purpose of -- of his examination  
9 and cross-examination, rather than calling him by a number. As Presiding Judge,  
10 I don't feel it respectful to the witness to be called or referred to by a number.

11 So Mr. Faal, can you suggest any pseudonym to be used only during this  
12 session?

13 MR. FAAL: Your Honour, thanks for passing the responsibility to the  
14 Prosecution. We would have been quite happy to use whatever pseudonym your Honours  
15 choose. The only thing that comes to mind, your Honour, is to call him Mr. Witness  
16 while I question him, but we can give him another name. Mr. James, for instance,  
17 we can call him Mr. James. And perhaps your Honour may -- I respectfully ask that  
18 your Honour explain why we choose to call the witness "Mr. James" so that he would  
19 be aware and would not be at a loss if suddenly I turn to him and call him "Mr.  
20 James". Thanks, your Honour.

21 MR. KHAN: Madam President, I am glad we have got a psychologist in the  
22 room, and it would be interesting to know what the psychologist thinks of my learned  
23 friend's choice of pseudonym. But, your Honour, leaving that aside, as a matter  
24 of housekeeping and on a serious note, the Defence note that the witness statement  
25 details that this witness has been traumatised. The Defence do not want to add

1 to any trauma or anxiety that the witness may feel.

2 Two witness statements have been prepared by this witness, and there is  
3 no objection at all if my friend wishes to put those witness statements to Mr. James - if  
4 we decide upon that as the pseudonym - and he can adopt it and those statements  
5 can stand as his examination-in-chief. That would be a humane way of reducing,  
6 to the degree possible, any trauma and anxiety that the witness may feel, and that  
7 is something certainly we on the Defence are very much alive to. And we hope that  
8 our helpful suggestion will contribute to alleviating any concerns and difficulties  
9 that the witness may have.

10 Your Honours, once again, thank you for allowing me to stand and address  
11 you on that small housekeeping matter.

12 PRESIDING JUDGE STEINER: Mr. Faal?

13 MR. FAAL: Your Honour, please allow me to consult with the Deputy  
14 Prosecutor. Thank you.

15 (Prosecution counsel confer)

16 PRESIDING JUDGE STEINER: Mr. Faal?

17 MR. FAAL: Thanks, your Honour, for giving me the floor. Your Honour,  
18 the Prosecution thanks the Defence for being so mindful and so concerned about the  
19 trauma this witness may have suffered. Your Honours, under the rules, it is indeed  
20 possible for a confirmation hearing for the Prosecution to rely solely on the  
21 statements of the witnesses without having to call them. But your Honours, the  
22 Prosecutor made a deliberate choice. The Prosecutor is aware of the rules that  
23 he does not have to call the witness. The decision to call the witness was a deliberate  
24 one, intending the Court to hear for themselves what the victims went through and  
25 what actually happened in Haskanita.

1           If the Prosecution should now agree to the proposal of the Defence it  
2 means, therefore, that the Prosecution would be sacrificing the very reason why  
3 it decided to call the witness in the first place. For that reason, the Prosecution  
4 suggests that it would proceed and examine the witness as initially planned. But  
5 your Honour, the Prosecution is also mindful of the fact that the questioning may  
6 have an impact on the witness. In that regard, the Prosecution would try to sorting  
7 the questions and avoid also those areas that would re-traumatise the witness.

8           In that case, I would refrain from showing pictures and video footage  
9 to the witness, in the understanding that when I reach those portions where I should  
10 have presented these materials to the witness, I would ask the Court to just accept  
11 the fact that this witness has identified previously the footage that he was shown  
12 by the investigators, and the fact that he is in the video, he would, if shown in  
13 court, be able to identify himself in the video and also to identify those scenes  
14 in the video that go to collaborate the statement he provided to the Prosecutor.

15           If there are no problems with that, if Defence agrees with that procedure,  
16 then I will proceed accordingly and shorten his testimony.

17           Thank you, your Honour.

18           MR. KHAN: Madam President, your Honours, there is no objection at all  
19 to the proposal put forward by my learned friend and no objection will be taken  
20 on these technicalities by the Defence.

21           PRESIDING JUDGE STEINER: Legal representatives of victims, they have  
22 a word also on this issue? Would you like to make any observations?

23           MR. ADAKA: Your Honour, we have no observations. We align ourselves with  
24 the Prosecution. We would like to listen to the viva voce testimony. Thank you.

25           PRESIDING JUDGE STEINER: So this preliminary issue, then, is now overcome.

1 First I would like to ask the witness whether it would be agreeable for  
2 the witness to be called as "Mr. James", or whether you prefer to be called by the  
3 number assigned to you by the Prosecution, which is number 416?

4 THE WITNESS: (Interpretation) 416, your Honours.

5 PRESIDING JUDGE STEINER: The witness will be referred to as "Witness  
6 416."

7 Witness 416, you are before Pre-Trial Chamber I. You are called to give  
8 your testimony in the case of the Prosecution v Mr. Bahr Idriss Abu Garda. You  
9 are going to be questioned first by the Prosecution, then if legal representatives  
10 of victims so wish by them and in the afternoon by the counsel for the Defence.  
11 I ask you: Have you been informed about the procedures related to your testimony  
12 in Court?

13 THE WITNESS: (Interpretation) Yes, your Honour. I was duly informed.

14 PRESIDING JUDGE STEINER: I would like to ask the court officer to inform  
15 which channel we have for the translation. It's channel 5. Just to inform that  
16 interpretation -- interpretation into English is on channel 5. Interpretation into  
17 French is channel 2. Interpretation into English is channel 1, into French channel  
18 2, into Arabic channel 3 and into Mandinka channel 5. Is that correct?

19 Witness 416, I would like you now to stand up in order for you to swear  
20 in in accordance with Article 69 of the Statute and Rule 66 of the Rules of Procedure  
21 and Evidence. In respect to this solemn undertaking I would like to ask you whether  
22 you prefer to make your swearing in Mandinka, or would it be fine for you to make  
23 it in English?

24 THE WITNESS: (Interpretation) I would prefer to make the solemn  
25 declaration in English, your Honour.



1           PRESIDING JUDGE STEINER: So, please, could the court usher proceed to  
2 the taking of the solemn undertaking of the witness.

3           THE WITNESS: I solemnly declare that I will speak the truth, the whole  
4 truth and nothing but the truth.

5           PRESIDING JUDGE STEINER: Thank you very much. You, please, may sit. Only  
6 for the purpose of the formal identification of the witness, I now ask the court  
7 officer to turn this hearing into private for a few minutes. Immediately after  
8 the formal identification, the questioning of the witness will start in open session.

9           THE COURT OFFICER: Private session.

10 (Private session at 9:57 a.m.)

11 (Expunged)

12 (Expunged)

13 (Expunged)

14 (Expunged)

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Open session at 9:58 a.m.)

20           THE COURT OFFICER: Open session.

21           PRESIDING JUDGE STEINER: Mr. Witness, do you feel at ease?

22           THE WITNESS: (Interpretation) Your Honour, I am feeling very well at  
23 ease.

24           PRESIDING JUDGE STEINER: If at any moment you don't feel any longer at  
25 ease, please do not hesitate to inform the Chamber. If at any time you have problems

1 with interpretation also, please inform the Bench. As I said before, you will have  
2 to answer the questions that the Prosecution is going to ask you. The Prosecution  
3 wants to hear you in relation to the case brought before us against Mr. Abu Garda,  
4 who is today present in the courtroom. The Defence will have the opportunity also  
5 to ask you some questions, as well as the legal representatives of victims. Also,  
6 a Judge may also put some questions to you.

7 We will start now with your questioning and the Prosecution has the floor.  
8 Mr. Faal.

9 MR. FAAL: Madam President, thank you.

10 WITNESS: WITNESS DAR-OTP-P-0416

11 (Witness answered through interpreter)

12 QUESTIONED BY MR. FAAL:

13 Q. Mr. Witness, my name is Essa Faal. I represent the Prosecution and I  
14 have a few questions for you. Are you married, Mr. Witness?

15 A. Yes, I am married.

16 Q. Do you have children?

17 A. Yes, I have children.

18 Q. How many children do you have?

19 A. I have four children.

20 Q. You told the Court earlier what your profession was, that you are a police  
21 officer. For how long have you served as a police officer?

22 A. 14 years. Sorry, 16 years.

23 Q. During this period, did you have the opportunity to work outside The Gambia?

24 A. Yes, I had that opportunity.

25 Q. Good. When was that?

- 1 A. It was in June 2007.
- 2 Q. In which organisation did you work in June 2007?
- 3 A. AMIS.
- 4 Q. Could you tell this Court what AMIS means?
- 5 A. African Mission In Sudan.
- 6 Q. When did you travel to the Sudan?
- 7 A. 5 June 2007.
- 8 Q. In what capacity did you serve with AMIS?
- 9 A. I was there as a peacekeeper.
- 10 Q. For how long did you serve with AMIS?
- 11 A. I started with AMIS from June to December.
- 12 Q. December of which year?
- 13 A. 2007.
- 14 Q. When did you leave Darfur to return to The Gambia?
- 15 A. On 4 June 2008.
- 16 Q. What did you do from December 2007 to June 2008?
- 17 A. I became a member of the hybrid UNAMID Mission.
- 18 Q. I would now ask a few questions about your service with AMIS. How did  
19 you come to be part of AMIS?
- 20 A. AMIS personnel came to my country. I underwent a test. It is a listening  
21 comprehensive section. Also it was more of a report writing section, and also a  
22 face-to-face interview and afterwards I then went for a driving test. As long as -- as  
23 soon as you pass all these foregoing tests, then you have the green light to go  
24 to AMIS.
- 25 Q. Where were you first taken when you joined AMIS?

- 1 A. You mean when I arrived in Darfur?
- 2 Q. Where specifically in Darfur did you go to?
- 3 A. Labado.
- 4 Q. Before going to Labado, did you have or did you go to any other town before  
5 deployment to Labado?
- 6 A. Yes, indeed. I was at Al Fashir, the AMIS headquarters.
- 7 Q. What, if anything, did you do in Al Fashir?
- 8 A. I went through a one-week induction course there.
- 9 Q. Did you do any other induction before your final deployment?
- 10 A. From Al Fashir I was deployed, but prior to that I underwent another induction  
11 course.
- 12 Q. Where was that?
- 13 A. In Nyala. In Nyala.
- 14 Q. What was the induction course about, do you remember?
- 15 A. To show us how we have to perform our duties and how the surroundings  
16 look like.
- 17 Q. After Nyala you deployed to Labado, is that right?
- 18 A. No, when I left Nyala we went to Haskanita.
- 19 Q. But in Labado, what did you do in Labado?
- 20 A. Well, we did not do anything in Labado. We only stayed at the camp.
- 21 Q. Did you have to do an induction again in Labado?
- 22 A. Yes. It was -- when I was in Labado I went to Nyala, but it was at Nyala  
23 that I was informed that I would be transferred to Haskanita. After the induction  
24 at Nyala, I continued to Haskanita.
- 25 Q. Could you tell the Court what -- in which month were you deployed to

1 Haskanita?

2 A. The induction was in August, but then I was -- I took up my position in  
3 Haskanita in September of that same year.

4 Q. Did you have a particular position in Haskanita?

5 A. Yes, I was the assistant motor transport officer, AMTO.

6 Q. In this position, who did you report to?

7 A. The station commander for the AMTO, is that what you mean, sir?

8 Q. Yes, exactly that is what I mean. What nationality was the MTO?

9 A. The MTO came from Senegal.

10 Q. What were your responsibilities as AMTO?

11 A. I was there at the cars which are put under my care. When they went for  
12 patrols, I was the one who allocated the cars to go on patrol. So I had to make  
13 sure that the vehicles were in good conditions. Also, I was the one responsible  
14 for fuelling these cars. Now, if there were any accidents involved, I was the one  
15 responsible to -- to report to my superiors who were at the sector headquarters.  
16 Then they would also inform AMIS headquarters who would send people to conduct  
17 investigations on the ground to find out how the accidents happened.

18 MR. FAAL: Your Honour, Madam President, with your permission, I just  
19 wish to make a correction in the transcript. The penultimate question was, "What  
20 is the nationality of the MTO," not "AMTO". And also in the answer, it appeared  
21 that AMTO is written instead of MTO. I -- perhaps as a matter of housecleaning,  
22 your Honours, do we correct the transcript as we proceed? Or should we gather all  
23 the points and seek to correct them at the end?

24 Whatever is convenient for your Honours is fine by us. Thank you.

25 PRESIDING JUDGE STEINER: I think the transcripts can be corrected at

1 the end. We should proceed.

2 MR. FAAL: Thank you, Madam President.

3 Q. Mr. Witness 416, you just told the Court that among your responsibilities  
4 were assigning vehicles for patrol. While you were in Haskanita, did the members  
5 of the -- of AMIS stationed there have the opportunity to go out on patrol?

6 A. No. They had no opportunities of going out on patrols.

7 Q. Do you know why that was the case?

8 A. When we arrived, our station commander told me that they would like to  
9 go to patrols, but the villagers never allowed them to go on patrol, because they  
10 were told not to go there. They -- when they encountered problems, they would inform  
11 the AMIS officers, who would inform our superiors to monitor the situation. So  
12 they were not needed to go on those patrols.

13 Q. You said your responsibility was to look after the vehicles. How many  
14 vehicles did your unit have?

15 A. These were three double-cabins and also one Toyota Buffalo, and so the  
16 total of cars we had was four.

17 Q. Apart from the CivPol that you mentioned, were there any other services  
18 or officers represented in AMIS at Haskanita?

19 A. Yes, indeed.

20 Q. Which services were those?

21 A. MILOB, as well as the Protection Force.

22 Q. Mr. 416, can you tell the Court what MILOB stands for?

23 A. MILOB are military observers.

24 Q. What does CivPol stand for?

25 A. CivPol stands for civilian policeman.

1 Q. Do you recall what the mandate of AMIS was at the time of your deployment?

2 A. Our -- when we arrived, we were briefed on how we should go about confidence  
3 maintenance, confidence -- between IDPs and the police officers to ensure that these  
4 two groups worked together. And also to look at the comprehensive ceasefire agreement.  
5 So any obstacles to this agreement, our role was to investigate them. And then  
6 we would make a report to the local police. And, after that, whatever these local  
7 police did was beyond our understanding and was beyond our mandate.

8 Q. As far as you know, was there -- were there any other AMIS bases in Darfur  
9 besides Haskanita?

10 A. Well, there were many. There were many.

11 Q. Do you know how many?

12 A. You had eight sectors there.

13 Q. In which sector were you assigned?

14 A. I was based in Sector 8.

15 Q. And where was its headquarters?

16 A. It was headquartered in Al Deain.

17 Q. You told the Court the nationality of the -- of the A -- of the MTO. Excuse  
18 me. Of the MTO, the Motor Transport Officer. Were there other nationalities  
19 represented at the MGS Haskanita?

20 A. Yes, they are there, other nationalities.

21 Q. Could you name them?

22 A. Some came from Cameroon. Some came from Ghana.

23 Q. Do you recall other nationalities that were represented there?

24 A. CivPol, one of them was from Niger.

25 Q. How about members of the Protection Force?

1 A. The Protection Force came from Nigeria. All of those in the force came  
2 from Nigeria. The head of this was from Mali. One other was from Gambia. Botswana.  
3 And some also came from Rwanda.

4 Q. As a CivPol officer in AMIS, were you armed? Did you have a weapon?

5 A. Our arms were pens and papers.

6 Q. Were there any personnel in AMIS at the MGS Haskanita who were armed at  
7 the time of your deployment there?

8 A. Yes. The Protection Force members who came from Nigeria.

9 Q. Do you know whether they were allowed to use their arms?

10 A. The superior told us that they should not shoot at people. And even if  
11 they were shot at, they should not retaliate because they were not there to fight,  
12 they were there as peacekeepers.

13 Q. As a CivPol officer, did you have wear a uniform?

14 A. Yes, indeed, I had a uniform.

15 Q. Can you describe the type of uniform you -- you wore?

16 A. These were white uniform -- black uniforms, sorry. The trousers and the  
17 shirt, and we had green AMIS beret, as well as an armband and there was an image  
18 of the Africa continent and the armband was green in colour.

19 Q. Was this uniform standard for all the CivPols who were present there?

20 A. No. Well, from which country -- I mean, you wear the uniform of the country  
21 you originated from.

22 Q. You said a moment ago that there is an armband depicting the African continent.  
23 Was that standard for all CivPol officers?

24 A. Yes, indeed. All CivPol officers wore it. The protection MILOB also do  
25 it. I mean, as well as they also wear the beret and the band which were the same.



1 The only differences was the uniforms, but the berets and the armbands were identical.

2 Q. Correct me if I am wrong: You were saying that all the officers in Haskanita  
3 wore their national uniforms; is that right?

4 A. Yes, indeed. They wore their national uniforms, the ones they brought  
5 from their own respective countries.

6 Q. But every single one of them had to wear the green beret and the armband  
7 showing AMIS; is that right?

8 A. Yes, indeed. That's correct.

9 Q. Let me take you back to the issue of vehicles. You said you had four  
10 vehicles under your charge. Were there any other vehicles at the MGS?

11 A. Yes, indeed. There were other cars.

12 Q. Do you know how many?

13 A. I don't know.

14 Q. Can you describe these cars?

15 A. White vehicles with AMIS boldly written on them in black, but the cars  
16 were white in colour, and each vehicle had an AU flag.

17 Q. Mr. Witness, is it possible for you to give us a description of the MGS  
18 Haskanita compound?

19 A. Yes, I am -- I can. MGS Haskanita was not far from Haskanita, but there  
20 was a valley between the two. But the location with the village is more or less  
21 the same. There are two entrances; one is from the Haskanita end and the other  
22 entrance was where the planes used to land. MGS Haskanita, the camp itself had  
23 five guard posts, five guard posts.

24 Q. You told the Court earlier that there were MILOBs, CivPols and Protection  
25 Force members at the MGS. Were there any other people at the MGS who did not belong

1 to the CivPols, MILOBs or military or -- or the Protection Force?

2 A. Yes, indeed. There were others.

3 Q. Can you tell the Court who they were?

4 A. Language assistants were there, as well as PAE workers.

5 Q. Were there representatives of the parties in the camp when you were there?

6 Were there any representatives of the government or the rebel parties in the MGS  
7 Haskanita while you were there?

8 A. I did not find those people in Haskanita. I did not meet any government  
9 representative in camp Haskanita. I did not meet any rebel representatives. The  
10 only people we met there were the language assistants and the PAE personnel.

11 Q. So as far as you know, there were no --

12 MR. KHAN: Objection, your Honour. Your Honour, my learned friend should  
13 not lead on a question that is so much in dispute.

14 PRESIDING JUDGE STEINER: Let me see the -- oh, the translation. Yes.  
15 You can rephrase the question, please, Mr. Faal.

16 (Expunged)

17 (Expunged)

18 (Expunged). Mr. Witness, Mr. Witness, while you were

19 at the MGS Haskanita, were there any other people living in the camp besides CivPol,

20 MILOBs and Protection Force members?

21 A. Yes, other people were there. PAE personnel, as well as the language  
22 assistants.

23 Q. Besides these people, there are no other people in the camp?

24 A. No. There were no other people in the camp.

25 Q. When you arrived in Haskanita in September, did any major incident occur

1 while you were at the MGS?

2 A. Yes, indeed. Something happened there.

3 Q. Can you tell the Court?

4 A. In one day in the month of September, I heard an aircraft hovering towards  
5 Haskanita, and immediately we heard a bomb. And then we saw people from the village  
6 coming towards the camp. We can say maybe around 500 people, or even the whole  
7 village came towards the camp to show us their anger.

8 Q. When they arrived, did they say anything to AMIS?

9 A. Yes, indeed. They told us something. They told us that we were not needed  
10 there.

11 Q. Was that the only thing they said?

12 A. No. They said we were not needed there because the planes were bombing  
13 them whilst we were not doing anything, so they did not need us. They want us to  
14 leave. And that if we did not leave, any time a plane drops bombs, they will come  
15 and attack us. Our superior who was there, the MGS commander of MILOB, he was known  
16 as Colonel Kamara. So he told them that we will look at the issue and then talk  
17 to our staff. So this was done. And he sent messages. He wrote to our people in  
18 Al Deain who transferred the information to Al Fashir. So two days later, a BBC  
19 journalist came with his language assistant and they went and looked at the place  
20 which was destroyed, bombed.

21 Q. After this incident, did you see any visitors come to the camp?

22 A. Yes. After that, other people did come to the camp. They came in two  
23 vehicles. They were five in number. One of them had SLA written on the vehicle.  
24 So the five people did not come inside the camp, they stayed at the gates. So our  
25 commander came and talked to one of the individuals who alighted the vehicle. When

1 he came back, he told us that SLA and JEM have joined forces, and that they will  
2 walk henceforth together.

3 Q. After that incident in September when you saw the plane bombing did -- do  
4 you recall of another incident on 29 September?

5 A. Yes, indeed. 29 September in the morning we saw the plane flying in the  
6 area again and later we heard it drop a bomb. We were scared since the villagers  
7 had told us that they would attack us if the plane bombed them, so we were scared.  
8 So in the morning - and this was during the month of Ramadan - some of us were going  
9 to the mosque to break our fast, and we heard gunshots around the communication  
10 area. When there was rapid bomb fire, we were shot at and we went to our hiding  
11 places.

12 Q. Witness, let's take it step-by-step and perhaps for the benefit of the  
13 interpreter if you could also slow down.

14 A. Very well.

15 Q. Let's start about the morning of 29 September 2007. What happened that  
16 morning?

17 A. In the morning, we saw the plane flying towards the Haskanita area and  
18 then we heard a bomb being dropped. From where we were, we were scared. This was  
19 during the month of Ramadan, because there was an earlier threat that if the plane  
20 bombed their village again we would be attacked. So since that morning, up to the  
21 afternoon, evening, we did not see them. So it was when we were going to conduct  
22 the evening prayers, that is when we heard shots, or I mean gunshot sounds, near  
23 the communication room. We ran helter skelter. The gunshots intensified and people  
24 looked for hiding spaces, hiding where they can fight, and so those who were able  
25 to go out did go out.

1 Q. Do you remember the time you heard the first gunshots; what time it was  
2 when you heard the first gunshots?

3 A. It's 1905 hours. 5 after 7.

4 Q. At this stage, did you realise what was going on?

5 A. No, at that time I did not know, but when the gunshots intensified we  
6 said that -- we remembered the threat made by the villagers that, if the village  
7 was bombed again, we would be attacked. This was what came to my mind.

8 Q. What did you do?

9 A. Well, I ran away. I hid in a trench - in a trench - which was not far  
10 from the fence. This is where I hid myself.

11 Q. Were you alone in that trench?

12 A. I was there with five people: three Protection Force officers and two  
13 CivPol officers.

14 Q. As far as you know, were there -- was there any shooting inside the MGS?

15 A. Are you saying within MGS itself? No, but shots were fired from outside  
16 towards MGS, but I did not see anybody fire shots from MGS outside.

17 Q. Did the attackers enter the camp, as far as you know?

18 A. Yes, they did enter the camp.

19 Q. What did you see them do, or did you see them do anything when they entered  
20 the camp?

21 A. Well, though I did see people, but I cannot recognise them. But when  
22 the gunshot incidents took place, started, we heard some soldiers. He was driving  
23 the APC. He wanted to go forward, but then he could not. It was reversing and  
24 so the cars which were behind were hit where we were hiding. This area was where  
25 the planes alighted -- the tollgate where the planes landed. So we saw these

1 individuals and so they took those cars and took them away. When I saw them, I  
2 was scared and we thought that they could find our hiding place and even shoot us.  
3 So we were not even -- we were scared to look at them. We did not open our eyes,  
4 because we were in the trenches.

5 Q. Do you know what, if anything, happened to the vehicles that you were  
6 charged with?

7 A. The vehicles were hit by the APC.

8 Q. Did anything happen to those vehicles afterwards?

9 A. The -- all the vehicles were taken away.

10 Q. Do you know who took them away?

11 A. I do not know them. I do not know who took those vehicles away.

12 Q. Do you know whether the taking of the vehicles had anything to do with  
13 the attack?

14 A. Could you -- could you explain, counsel? I do not understand you.

15 Q. You indicated earlier that the vehicles were taken away. Do you know  
16 whether the vehicles were taken by those who attacked, or were they taken by any  
17 other people?

18 A. Yes, I can say those who took the cars were the attackers.

19 Q. You earlier mentioned that someone was driving the APC. He could not  
20 move it forward and he was driving in reverse. Do you know what happened to that  
21 person?

22 A. Well, I don't know. But I heard that some people were killed in the APC,  
23 but I am not sure whether it was him or not. So I am not sure whether he was the  
24 one killed in the APC, or not.

25 Q. But -- but do you know whether there was any person killed in the APC?

1 MR. KHAN: Your Honour --

2 THE WITNESS: (Interpretation) I was told. That was what I was told.

3 MR. KHAN: Your Honour, just for the record, are we talking about the  
4 APC that was seen to reverse, or one of the other two APCs that were on the base?

5 MR. FAAL: I will put that to the witness, your Honour:

6 Q. You indicated earlier that you were told that someone was killed in the  
7 APC. Were you told in which APC he was killed?

8 A. No, I was not told in which APC. All he told me is that somebody had  
9 been killed in the APC.

10 Q. At the time the attack started, you said you went and hid yourself in  
11 the trench and you were there with other people. What, if anything, happened at  
12 the trench, the trench where you were hiding?

13 A. They found us at the trench and then shots were fired.

14 Q. As far as you can recall, did you hear the attackers say anything before  
15 they started firing shots?

16 A. Yes, before they started shooting they did say something. When they came,  
17 we heard them talking towards the front side. So we heard them on the other side  
18 of this trench, so they were asking for guns. They were telling us, "Give us the  
19 guns. Give us the guns."

20 Q. After asking for guns, did anything else happen?

21 A. Yes, they shot at some of them. They shot at some people. And where I  
22 was, I heard them say "Gun, gun, if you do not respond, you will be shot." But  
23 when they got there, our CivPol officer called Emmanuel called them. "I am CivPol  
24 officer, I do not have any gun. I am from Cameroon." So they left him and then  
25 came to the soldier who was sitting next to me, and they shouted, "Gun, gun." He

1 did not respond, and then they shot him. And before they shot him, they said "Allah  
2 Akbar." They came to my side, and they said, "Gun, gun," and I lay still, and they  
3 shouted me "Allah Akbar." They fired at me. Then they continued asking people  
4 for their weapons. But then the shooting stopped at me. Afterwards, I did not  
5 hear any shooting. Then they came back to me. They took me out of the trench.  
6 They saw blood on me and then they threw me back into the trench.

7 PRESIDING JUDGE STEINER: Mr. Faal, sorry to interrupt. I think the court  
8 reporter is having some troubles with the speed. There are some references that  
9 were translated to us, but are not in the transcripts. The reference to someone  
10 saying, "Allah Akbar". Is that possible for the transcript to be completed now  
11 or at a later stage? I am informed that it will be edited at a later stage. I  
12 would just like to ask witness, please, try to speak a little bit slower. Thank  
13 you very much.

14 MR. FAAL: Thank you, Madam President.

15 (Expunged)

16 (Expunged)

17 (Expunged)

18 (Expunged)

19 (Expunged)

20 MR. FAAL: May I proceed, Madam President? Yes, with your permission,  
21 Madam President, I now proceed.

22 Q. Do you know who these attackers were?

23 A. They were coming to attack us, as suspected it was those people.

24 Q. You mentioned earlier that at -- after the attack by government planes  
25 later that day the villagers came to the MGS. Were those villagers civilians, as



1 far as you know?

2 A. There were civilians, but amongst them there were people who were members  
3 of the rebel group.

4 Q. So when you said that those people who threatened us, you believe those  
5 are the people who attack you, who do you mean? Who were you referring to by "those"  
6 people?

7 A. If I see the photographs of those people, I could recognise them. But  
8 when they came, we were able to recognise many of them. And two people actually  
9 spoke, but it was not Ūngar (phon) who proffered the threats. The person who made  
10 the threats, if I see his photograph, I would be able to recognise him.

11 Q. Do you know whether this person belonged to a particular organisation?

12 A. No, I do not know to which organisation these people belonged.

13 Q. Do you know whether that person was a civilian?

14 A. Yes. Well, in any case, the way they were speaking, we wouldn't say they  
15 were civilians. They wouldn't behave in that way.

16 Q. Was he dressed in a particular manner?

17 A. No. They had a jacket only.

18 Q. Okay. From your experience in Darfur and Haskanita area, are jackets  
19 associated with any kind of people?

20 A. Yes. The way of dressing was different. Some were wearing large gowns  
21 without turbans, but for the JEM were wearing vests. That is what they were wearing,  
22 the first group was the SLA.

23 Q. From what you have just said, would you say that the person who made the  
24 threat you saw wearing the jacket, would you say that person was civilian or he  
25 belonged to one of these groups you've just mentioned?

1 A. No. He was not wearing a jacket or a flowing gown; he was simply wearing  
2 a close-fitting T-shirt.

3 Q. While you were in Haskanita, have you ever had the occasion to see any  
4 members of the rebel groups?

5 A. When I was in Haskanita, the rebel groups used to come to Haskanita.

6 Q. During the demonstration that you mentioned, do you know whether members  
7 of the rebel groups were also present there?

8 A. Yes. They were amongst those who had come to demonstrate.

9 MR. KONÉ: Madam President, I am sorry. I have just had -- seen an error  
10 in the transcript. Abu Garda's name was just mentioned. If this can be expunged.  
11 There is a reference to, "No, he was not wearing a vest," point 10. That is number  
12 10 -- line 10. "No, he did not have a jacket," and I think Abu Garda's name was  
13 mentioned there.

14 PRESIDING JUDGE STEINER: The name of Mr. Abu Garda, the suspect in this  
15 case, has not been expunged of any public documents. There is no -- no reason for  
16 expunging the name of Mr. Abu Garda.

17 Mr. Faal, you can proceed.

18 MR. KHAN: And your Honour, more importantly, more pertinently, and for  
19 the record, lest there be any uncertainty, my client's name was not mentioned once  
20 by this witness.

21 PRESIDING JUDGE STEINER: Thank you, Mr. Faal.

22 MR. FAAL: Thank you, Madam President.

23 Q. So, Mr. Witness, correct me if I am wrong, you told the Court moments  
24 ago that members of the rebel groups were also present during the demonstration  
25 at the MGS in Haskanita; is that correct?

1 A. Yes, that is correct.

2 Q. You told the Court earlier that you were also shot and later the -- the  
3 attackers came, picked you up, saw the blood on you and then they dropped you again  
4 in the trenches; is that correct?

5 A. Yes, that is true.

6 Q. Do you recall what happened after that?

7 A. Afterwards, they left.

8 Q. And then what happened to you?

9 A. I continued lying inside the trench. I did not get up, right up to the  
10 next morning. The Cameroonian, Emmanuel, asked Karim whether I was still alive,  
11 and Karim said, "Yes." He touched my body, and he said, "Yes, he's still alive."  
12 I was lying in the trench up 'til the following morning. Those of us who had fled  
13 the base had returned. And they were trying to find out who had died, who had been  
14 killed, who was injured, and they tried to assist them. They removed their bodies,  
15 to gather them in one place. I stood up. I crawled away, and I was taken to the  
16 tent where the injured people were. The Nigerian soldier who was next to me, and  
17 who been shot, had stayed in the trench. His friends went to look for him. They  
18 realised that he was dead. They took away the body and put it together with all  
19 the other dead bodies. I had not been aware that he was dead. It was when I saw  
20 him there that I realised that he had died.

21 Q. Do you know how many people were killed?

22 A. Ten people had been killed, because there were seven of the soldiers who  
23 had been killed, then two observers and one CivPol.

24 Q. Do you know how many people were injured?

25 A. Seven people were seriously injured. The Protection Force members had

1 six injured people. I myself from CivPol was injured, and that made seven. And  
2 we were transported to the Khartoum Hospital.

3 Q. Can you tell the Court what kind of injuries these other personnel suffered?  
4 And, please, don't mention names of those individuals, just the injuries.

5 A. Two of them had been shot in the stomach, two others on the thigh. One  
6 had been shot in the thigh, in the head and stomach, and his left leg was broken.  
7 I did not know about the injury of the others. As far as I'm concerned, I was shot  
8 in the back and the bullet passed through and came out on -- through my chest.

9 Q. You told the Court earlier that when the attack started some of the AMIS  
10 forces ran away. In the morning some people -- some returned. Did all of them  
11 return?

12 MR. FAAL: Your Honours, the witness --

13 Q. Did all those who fled return in the morning?

14 PRESIDING JUDGE STEINER: You don't have interpretation, Mr. Witness?  
15 No interpretation?

16 THE WITNESS: No interpretation.

17 THE INTERPRETER: Can the Prosecutor kindly repeat the question, please?

18 MR. FAAL: Hello? Hello? Can you hear me?

19 THE INTERPRETER: Yes, sir.

20 MR. FAAL: May I proceed? May I proceed?

21 PRESIDING JUDGE STEINER: I am trying -- the interpreters are asking you,  
22 please, to repeat the question.

23 MR. FAAL: Thanks very much, your Honour.

24 Q. I will repeat the question. You told the Court earlier that once the  
25 attack started, some members of the MGS --

1 THE INTERPRETER: From the interpreter, we can hear the Prosecutor very  
2 well. We have no problem.

3 PRESIDING JUDGE STEINER: Interpreters --

4 THE INTERPRETER: The Prosecutor can proceed, says the Mandinka  
5 interpreter. We can hear everything.

6 PRESIDING JUDGE STEINER: So the interpreters can hear, but apparently  
7 the witness cannot hear the interpretation.

8 MR. FAAL: Your Honour, nothing is coming out in channel 5, which is supposed  
9 to be the channel through which the interpreter broadcasts to the witness. Could  
10 the interpreter, please, say something on channel 5? Channel -- channel 5 is mute.

11 THE COURT OFFICER: Could you please repeat your question? We will check.

12 THE INTERPRETER: From the Mandinka interpreter, the microphone cannot  
13 be switched on any longer.

14 MR. FAAL:

15 Q. You told the Court that once the attacks started many members of AMIS  
16 fled?

17 THE INTERPRETER: Can the President request the Prosecutor to wait, says  
18 the Mandinka interpreter.

19 MR. KHAN: Madam President, I wonder if perhaps it would be useful, given  
20 the technical problems that once again are bedevilling us, if it's an appropriate  
21 time to take the break, and perhaps these can be solved when we come back. I think  
22 it's -- we are due a break at this point. It's a matter, of course, for your Honours.

23 PRESIDING JUDGE STEINER: Let me just make sure that it's something that  
24 cannot be solved immediately.

25 THE INTERPRETER: From the interpreter, the microphone into Mandinka is

1 not functioning, says the interpreters in the Mandinka booth.

2 Interpreter, I cannot listen also.

3 MR. FAAL. Madam President, the Prosecution has no objection to a short  
4 suspension.

5 THE INTERPRETER: Everything is fine now, says the Mandinka interpreter.

6 PRESIDING JUDGE STEINER: Then let's suspend, anticipate the break, I  
7 would like maybe -- sorry? Unless, unless --

8 (Brief pause)

9 PRESIDING JUDGE STEINER: So now I can -- I can listen to Mandinka. So  
10 I think we can proceed. Thank you.

11 MR. FAAL: Okay. Thank you, Madam President. Thank you, Madam President.  
12 I will now repeat the question, if that is all right, Madam President.

13 Q. You told the Court earlier that when the attack started, many members  
14 of AMIS fled, and in the morning they returned to the camp. Did all of them return?

15 A. Many of them came back, but some did not return to the base. They continued  
16 their flight right up to headquarters at Al Deain.

17 Q. Do you know whether all of them succeeded in going to Al Deain?

18 A. I do not know whether all of them arrived there or not. All I know is  
19 that one person who was an observer from Gambia told me that those who were with  
20 him all arrived at headquarters.

21 Q. Do you know whether AMIS was able to account for all its personnel who  
22 were based in Haskanita?

23 A. I do not know.

24 Q. After you were shot, were you alert up to the time you were -- up to the  
25 morning when you crawled out of the trench?

1 A. I was conscious, but I had closed my eyes. And I was lying down inside  
2 the trench until the following morning, when I left that trench to go into the tent.

3 Q. Were you able to see?

4 A. Yes. There was pain all over my body at that time.

5 MR. FAAL: Your Honour, I regret to say that because I understand the  
6 witness's language, I regret to say that the interpretation that was given was not  
7 accurate. And I think I heard the witness say "dizzy", and that did not come out  
8 in the interpretation. Even if I did not understand the language, I think I could  
9 pick that up from the words used by the witness. He used the English word that  
10 "I was feeling dizzy," which did not come out in the interpretation. Perhaps that  
11 is something I could take up with the witness again to see if he could repeat it.  
12 Thank you.

13 PRESIDING JUDGE STEINER: Please, repeat the question.

14 MR. FAAL:

15 Q. Can you describe how you felt after you were shot?

16 A. Yes. I was feeling dizzy. I could not see anything. I could not move  
17 about myself. But if I wanted to stand up, I would have fallen, so I crawled to  
18 the tent.

19 Q. How many injured persons were --

20 MR. FAAL: No, your Honour, I withdraw that, because I think the witness  
21 did say the number of people injured who were in the tent. Thank you.

22 Q. You told the Court earlier that the vehicles were driven away. Apart  
23 from the vehicles, do you know if anything else was taken away?

24 A. Yes, they took the -- our property. They took our uniforms, our food.  
25 They took everything away. The foodstuffs belonging to the PAE were all taken away.

1 Even the beds were taken away. In the morning, we even saw villagers arrive with  
2 their camels and they took away the mattresses. I do not know whether all that  
3 property was taken away by the villagers or by those who attacked us. I do not  
4 know.

5 Q. Do you see a distinction between the villagers and those who attacked?

6 A. The villagers were wearing their traditional clothes. These were not  
7 people wrapped up right up to the neck. They were not wearing vests. They were  
8 dressed in their traditional attire.

9 Q. And who were those who were wrapped up to their necks and were not wearing  
10 traditional clothes?

11 A. These were members of the SLA group.

12 Q. Do you know if they have anything to do with the attack?

13 A. Yes, I saw some people the following morning. Two people, when I was  
14 in the tent, I heard a vehicle arriving, but it did not come right up to where we  
15 were, but there were two people who came near us. They were wearing sports shoes,  
16 but they were also wearing Nigerian uniforms. So they were turbaned right down  
17 to the neck, and these people were carrying AK-47s. They came to the tent where  
18 I was, and they said, "Our apologies." They said, "Sorry, sorry."

19 Q. And is it -- was it your testimony that those people were from the SLA?

20 A. They could have been members of the SLA because of the turbans that they  
21 had on their heads. They could have been members of the SLA, but they were wearing  
22 Nigerian uniforms with the Nigerian flag.

23 Q. To the best of your knowledge, do you know what happened to the installations  
24 and buildings in the AU camp during the attack or after the attack, for that matter?

25 A. There was a lot of destruction. Many buildings were burned down. The



1 officers' mess. They burned down the refectory. I do not know whether they took  
2 away things from there. The mosque was burned down. The offices were turned inside  
3 out, and many of the buildings were actually burned to ashes. So there was a lot  
4 of destruction in many places.

5 Q. To the best of your knowledge, do you know whether the attackers at the  
6 camp knew that the base they were attacking was an AU camp?

7 A. Yes. Those who attacked it were fully aware, because at that location  
8 there was only that base alone, and there was barbed wire surrounding the camp.  
9 The tents were blue and white, and then the UN flag was flying -- or rather, the  
10 AU flag was flying over the base, so everybody there knew that the base belonged  
11 to the African Union. And after the attack, if they did not know they wouldn't  
12 have taken away the property from the base.

13 Q. Why did you say that?

14 A. Because there was AMIS written quite visibly on our vehicles. The vehicles  
15 were white in colour, and if you did not know that it was an AMIS site, and you  
16 attacked the site and went there, and they saw white vehicles with AMIS written  
17 on it, and you saw the AMIS flag, if you had not had the intention of attacking  
18 AMIS, you would not have taken away the property. And if they took away the property,  
19 it is because they knew that it belonged to AMIS.

20 Q. You told the Court earlier that you were shot. Did you receive any treatment  
21 for your injuries?

22 A. I was taken to the hospital.

23 Q. Which hospital was that?

24 A. It is known as Al Faisal Special Hospital, and it is in Khartoum.

25 Q. You described the injuries of the others. Could you tell the Court the

1 type of injuries you sustained?

2 A. I was shot in the back, and the bullet came out through my chest.

3 Q. Are those scars still visible?

4 A. Up until today, it is still possible to see those scars.

5 Q. Do you recall during meetings with the staff of the Office of the Prosecutor  
6 when you were interviewed whether you showed those scars to the investigators?

7 A. I showed them the scars.

8 Q. Did they take any photographs?

9 A. Yes, they took photographs.

10 MR. FAAL: Your Honours, earlier on, I did indicate that we would not  
11 show any photographs to the witness, and the Defence duly obliged. So I will just  
12 perhaps mention the ERN numbers of documents I would have showed him but would refrain  
13 from doing so in view of the earlier ruling.

14 PRESIDING JUDGE STEINER: Is that acceptable by the Defence?

15 MR. KHAN: It is indeed, your Honour.

16 THE INTERPRETER: The interpreters kindly take this opportunity to request  
17 the Prosecution to take a longer break after the witness has spoken, as we are operating  
18 on relay. It makes it extremely difficult to provide proper interpretation unless  
19 we do so. Thank you very much for your understanding.

20 MR. FAAL: Point noted, and my apologies.

21 Q. Apart from the photographs taken of you by the investigators, did you  
22 provide them with any documents?

23 A. Yes, there were certain documents. There were documents which we were  
24 provided in hospital when I was in the hospital, as well as the -- all the documents  
25 which were provided at the hospital do show how I was injured. So, yes.

1 MR. FAAL: Your Honours, the Prosecution would wish to put in the record  
2 the following documents. They won't be showed to the witness, but just would be  
3 put in the record, if that is okay. Thank you very much.

4 It's DAR-OTP-0165-0412, EVD-OTP-0180; DAR-OTP-0165-0408, EVD-OTP-0176.  
5 Next document, DAR-OTP-0165-0409, EVD-OTP-0177. The next document is  
6 DAR-OTP-0165-0410, EVD-OTP-0178. The next document DAR-OTP-0165-0399,  
7 EVD-OTP-0169. Next document, DAR-OTP-0165-0400, EVD-OTP-0170.

8 Your Honours, the witness has already described the destruction of AMIS.  
9 I would still put those documents in without showing them to the witness.

10 Next document, please. DAR-OTP-0164-0697, EVD-OTP-0139. Next document,  
11 DAR-OTP-0164-0698, EVD-OTP-0140. Next document, DAR-OTP-0164-0706, EVD-OTP-0142.  
12 DAR-OTP-0164-0707, and the EVD number is EVD-OTP-0143. Next document,  
13 DAR-OTP-0164-0710, EVD number EVD-OTP-0145. The next document DAR-OTP-0164-0711,  
14 and EVD number EVD-OTP-0146. Next document, DAR-OTP-0164-0720, EVD number  
15 EVD-OTP-0151. Next document, DAR-OTP-0164-0721, EVD number EVD-OTP-0152. Next  
16 document, DAR-OTP-0164-0901. The next document is -- I would provide the EVD number  
17 of these last two documents, your Honour.

18 PRESIDING JUDGE STEINER: Mr. Faal, I am informed that we have just a  
19 few minutes of the recording left. So --

20 MR. FAAL: Well, I have just two documents left and about three questions  
21 more. Can I, perhaps, be --

22 PRESIDING JUDGE STEINER: I don't think we have time on the tape. We will  
23 have to change maybe the tape.

24 MR. FAAL: Much obliged, your Honour.

25 PRESIDING JUDGE STEINER: How long it takes to change the tape?

1 (Brief pause)

2 PRESIDING JUDGE STEINER: Mr. Faal, I'm also informed that after two hours  
3 the interpreters are entitled to a break. Would it be possible for you to complete  
4 your questioning after a half-an-hour break?

5 MR. FAAL: Much obliged, your Honour. Much obliged. We would proceed --

6 THE INTERPRETER: No microphone from the Prosecution.

7 MR. FAAL: My apologies, your Honour. We would proceed as your Honour  
8 has just mentioned. We have no objection to that. Thank you.

9 PRESIDING JUDGE STEINER: Therefore, we are going to suspend this part  
10 of the hearing for half an hour. The Prosecution will finalise its questioning.  
11 It must be said that, according to the schedule, the legal representatives, if they  
12 requested so, would have half-an-hour session to put questions to the witnesses -- to  
13 the witness. So far, the Chamber has not received any such request. Shall we  
14 understand that none of the legal representatives wishes to question the witness?

15 MS. CISSE: (Interpretation) Your Honour, we have thought that as to the  
16 time which were accorded to us, that we would issue our application to be authorised  
17 to ask questions.

18 PRESIDING JUDGE STEINER: Therefore, the Chamber will decide after the  
19 break, taking into account that the legal representatives will have to share among  
20 them the time initially allocated.

21 Before we adjourn the hearing, I would ask, please, the court officer  
22 to accompany Mr. Witness to the waiting room since the witness also deserves a break.

23 (The witness stands down)

24 PRESIDING JUDGE STEINER: So, this hearing is now suspended. We will  
25 resume at 12:00.

1 THE COURT OFFICER: All rise.

2 (Recess taken at 11:28 a.m.)

3 (Upon resuming at 12:00 p.m.)

4 THE COURT USHER: All rise.

5 PRESIDING JUDGE STEINER: Please be seated. We are resuming and I would  
6 like people to call -- the court officer, please, to let the witness in.

7 (The witness entered court)

8 PRESIDING JUDGE STEINER: Mr. Faal, you have the floor to finish your  
9 presentation.

10 MR. FAAL: Thank you, Madam President. Madam President, I have two more  
11 pictures to put in the record. The first one is DAR-OTP-0164-0901-R01, EVD number  
12 EVD-OTP-0329. The last picture is DAR-OTP-0164-0882, the EVD number is EVD-OTP-0159.

13 And your Honours, the video-clips which the Chamber agreed could be put  
14 into the record, but not played for the witness. The reference is as follows: Excerpt  
15 10, time code 00:08:28 to 10:12, EVD reference EVD-OTP-0559. And the last one is  
16 excerpt 13. The reference number is - or the time code, rather, is from 11 minutes  
17 to 12 minutes 34 seconds. And the EVD number is as follows: EVD-OTP-0562.

18 Your Honours, I have just three questions remaining.

19 Q. Mr. Witness, you told the Court earlier that the vehicles, food items,  
20 fuel and other things were taken by the attackers from the MGS Haskanita, and the  
21 question is: Was anything of yours taken during the attack?

22 A. (No interpretation)

23 MR. FAAL: Madam President, I can't hear any translation, any  
24 interpretation in English.

25 PRESIDING JUDGE STEINER: Could, please, the interpreter on channel 5

1 say something? Thank you very much. We have already.

2 MR. FAAL: Thank you. May I repeat the question, Madam President?

3 PRESIDING JUDGE STEINER: Yes.

4 MR. FAAL:

5 Q. The question is: Was anything of yours taken during the attack?

6 A. (No interpretation)

7 THE COURT OFFICER: Mr. Faal, could you please repeat your question?

8 MR. FAAL:

9 Q. The question --

10 PRESIDING JUDGE STEINER: Microphone, please.

11 MR. FAAL: I am sorry, Madam President:

12 Q. I repeat the question: Was anything of yours taken during the attack?

13 A. (No interpretation)

14 PRESIDING JUDGE STEINER: I can listen to the Mandinka interpreter, but  
15 not the translation into English on channel 1.

16 THE INTERPRETER: Hello. Can you hear the English interpreter? Can you  
17 hear the English interpreter?

18 MR. FAAL: Madam President, may I repeat the question again.

19 Q. The question is: You told the Court earlier that during the attack the  
20 attackers took away vehicles, food items, fuel, and so forth. The question is:  
21 Was anything of yours taken during the attack?

22 A. Yes, indeed. My belongings were taken.

23 Q. Could you tell the Court what those belongings entailed?

24 A. My two uniforms, the pair of uniforms I had were taken away. My boots,  
25 my civilian clothes, my bags, my passport, my national ID card. All of these items

1 were taken away. Apart from the clothes I was wearing, everything else was taken  
2 away.

3 Q. Thank you. Can you tell the Court whether, after the incident, whether  
4 you heard about who the attackers were?

5 A. No, I did not hear that.

6 Q. And the last question from me is: Can you tell the Court, if at all,  
7 you and/or any member of your family was affected by this incident?

8 A. Yes, my family members were affected. They thought I was going -- I was  
9 dead. And since they were young, they did not want -- they didn't know what would  
10 happen if I died.

11 Q. How were you personally affected by this incident?

12 A. Well, it was very, very difficult for me, and I thought about my family,  
13 you know. My father left when I was very, very small, so I would not want my kids  
14 to go through the same thing. So it was very, very painful for me.

15 MR. FAAL: No further questions for this witness. Thank you.

16 PRESIDING JUDGE STEINER: Thank you, Mr. Faal. Although the Chamber has  
17 not received any formal request from legal representatives of victims to question  
18 the witness, what should have been done in advance, the Chamber allocated some time  
19 in case such a request come. Now, because we are in our first day and the Chamber  
20 wishes legal representatives to have a meaningful participation, I would now ask  
21 whether victims' representatives want to pose any question to the witness? But  
22 it is an exception. In other cases the Chamber will wait for the formal request  
23 before the hearing. So I am asking now, legal representatives, whether they are  
24 going to use the rest of the time allocated to them to pose questions to the witness?

25 MR. KONÉ: (Interpretation) Thank you, Judge President, for your

1 understanding with regards to us. We are taking this into account for the following  
2 part of this hearing. We just have a few questions we would like to ask. Not all  
3 legal representatives shall ask questions. There will be two interventions and  
4 reassure yourself that most of our concerns have already been addressed by the witness.  
5 We just have certain concerns that we would like to express. Thank you.

6 QUESTIONED BY MR. KONÉ:

7 Q. Good day, witness. I am Counsel Brahima Koné, the legal representative  
8 of the Malian victims in this case. I would just like to mention three points to  
9 you. Have you been a witness of the murder of Major Jumbai (phon) of Mali?

10 A. No, I was not a witness to that incident. I did not see the incident  
11 with my very eyes.

12 Q. Were you informed of the circumstances in which that person was killed?

13 A. Yes, it was stated that he was killed at the toilets.

14 Q. And what was the reason for that?

15 A. Well, I would not know that.

16 Q. The last question is: What happened to the head of the military base  
17 of Haskanita, Colonel Kamara?

18 A. I don't know what happened to Colonel Kamara.

19 MR. KONÉ: (Interpretation) Thank you, witness. Thank you, your Honour.  
20 I have finished, thank you.

21 MS. CISSE: (Interpretation) Yes, thank you. I would like to thank you,  
22 your Honour. I would also like to ask a couple of questions to the witness:

23 Q. The first question: Is you said that you were running in the trenches  
24 and that you were with CivPol officers and military observers. Were there CivPol  
25 officers and observers from Senegal with you in the trenches?



1 A. No, they were not in the trenches with me.

2 Q. Thank you very much. Second question, have you heard about the  
3 circumstances in which the Senegalese and CivPol police officers were killed?

4 A. Yes, it was Ibrahima Juf who told me that this officer in question was  
5 killed in the tent. He came to where I was and asked for him and then he went and  
6 looked for him, so it was when he went to the tent he found him and then he came  
7 back and told me that, "I have seen this gentleman in the tent and he was killed."

8 Q. The last question is: Have you given details with regards to the  
9 circumstances in which he was killed?

10 A. No, he did not tell me that.

11 MS. CISSE: (Interpretation) Thank you very much.

12 MR. ADAKA: Thank you, Madam Presiding Judge. Your Honours, I have just  
13 one question.

14 PRESIDING JUDGE STEINER: Mr. Adaka, you have the floor.

15 MR. ADAKA: Thank you, Madam Presiding Judge. Your Honours, I have just  
16 one clarification:

17 Q. Mr. Witness, my names are Frank Adaka and I represent the Nigerian victims  
18 of the attack you just talked about. I want to clarify certain issues with you.  
19 Can I go ahead?

20 A. Please go ahead.

21 Q. Do you recall you said on the morning after the attack certain persons  
22 in military uniforms with Nigerian badges sympathised with you? Do you recall that?

23 A. Yes, indeed, that is true.

24 Q. Do you recall what languages they spoke?

25 A. They spoke in English. They said, "Sorry."

1 Q. Okay. In your own estimation, were they part of the attackers?

2 A. Yes, indeed, because if you were not an attacker you would not take people's  
3 uniforms and wear them whilst they don't belong to you.

4 MR. ADAKA: Thank you.

5 PRESIDING JUDGE STEINER: Mr. Akinbote, you have the floor.

6 MR. AKINBOTE: Your Honours, just one question:

7 Q. Mr. James, would it be correct to say that the attack was uncalled for?

8 A. Indeed it was not called for, because we were not responsible for that.

9 MR. AKINBOTE: That will be all. That will be all.

10 PRESIDING JUDGE STEINER: Thank you very much. Your microphone, please.

11 Mr. Witness, we are going to suspend now our session. Mr. Khan, first.

12 MR. KHAN: Yes, Madam President. Of course, once again it is entirely  
13 a matter of the discretion of the Bench, but what I was proposing - and perhaps  
14 it would be a proposal that would be welcomed on all sides - is that we proceed  
15 immediately to the cross-examination of the Defence and that way perhaps the afternoon  
16 could be set aside for other matters that all the parties no doubt have to do for  
17 tomorrow's hearing, or sorry for -- yes, for tomorrow's hearing. So, your Honour,  
18 I am ready and able to cross-examine now.

19 PRESIDING JUDGE STEINER: Have you an estimation on how long it would  
20 take for you to cross-examine the witness, Mr. Khan?

21 MR. KHAN: Your Honour, I will be short. I would hope ten minutes, in  
22 that region. It really does depend upon the pace I find when I start asking questions  
23 of the witness, because I am going to try and speak more slowly than usual. It  
24 will be in the region of ten and at most 15 minutes to be cautious, I hope.

25 PRESIDING JUDGE STEINER: We have to consult with our interpreters, because

1 now it is time for them to have the lunch break of an hour-and-a-half. So we would  
2 have seven minutes as a matter of fact and so please, court officer, make consultation.

3 MR. KHAN: Well, your Honour, I am willing to be flexible. I think everybody  
4 has a lot of work to be getting on with. I will endeavour to fit my questioning  
5 into the time that is available until the interpreters require their break. I hope  
6 that is of assistance. So if your Honours tell me how long do we have before the  
7 interpreters need their break, I will fit my questions into that space of time.

8 PRESIDING JUDGE STEINER: We are talking, Mr. Khan, about questions and  
9 answers, taking into account that everything must be questioned and answered very  
10 slowly. You have, as a matter of fact, ten minutes, not one minute more than that.  
11 Do you feel you are able to do -- to question and to have the answers in that space  
12 of time?

13 MR. KHAN: Your Honour, if it is such a rigid timeline, I am loathe to  
14 incur the wrath of the Bench by the answers that I get from the witness eating into  
15 the ten minutes. So whilst I was trying to assist, I was trying to help all parties,  
16 I think the prudent course in these circumstances, if the interpreters can't carry  
17 on for a few more minutes, will be to adjourn until the afternoon. There is no  
18 other option.

19 PRESIDING JUDGE STEINER: Thank you for your understanding. Also, the  
20 Bench is subject to some rules that are to be followed. So I am going to suspend  
21 the hearing at this point and we are going to resume at 2 o'clock in the afternoon.

22 First I would ask, please, the court officer to escort the witness out  
23 of the courtroom.

24 (The witness stands down)

25 PRESIDING JUDGE STEINER: So, this session is suspended to 2 o'clock in

1 the afternoon.

2 (Luncheon recess taken at 12:24 p.m.)

3 (Upon resuming at 2:00 p.m.)

4 THE COURT USHER: All rise.

5 PRESIDING JUDGE STEINER: Thank you. Please be seated. Good afternoon.

6 Let's start with the third part of today's session. And I, please, would like to  
7 ask the court officer to bring the witness in.

8 (The witness takes the stand)

9 PRESIDING JUDGE STEINER: Good afternoon, Mr. Witness. Are you still  
10 feeling at ease?

11 THE WITNESS: No, your highness, your Honours. No, your Honours.

12 (Interpretation) Yes, Madam President. Yes, I feel fine, and we can proceed.

13 PRESIDING JUDGE STEINER: Thank you very much, Mr. Witness. So now I am  
14 giving floor to the Defence counsel. Mr. Khan, you have the floor.

15 MR. KHAN: May it please your Honours.

16 QUESTIONED BY MR KHAN:

17 Q. Witness, my name is Karim Khan, and I am the Defence counsel for Mr. Bahr  
18 Idriss Abu Garda who sits behind me. Do you understand.

19 A. I do not know the person that you are indicating to me.

20 Q. Yes. You understand that I represent him?

21 A. No, I did not know that you are representing him.

22 Q. You know that now, I hope.

23 A. Yes. Now, I know.

24 Q. Good. You will be pleased to note I will not need to keep you very long,  
25 so hopefully - however good or bad lunch was - before too long you will be enjoying

1 home cooking again. I hope that's welcome news.

2 Now -- now, as I - before I start my questions, the Prosecutor referred  
3 to the fact that for 16 years I believe you were a police officer. That is correct,  
4 isn't it?

5 A. Yes, that is correct.

6 Q. And in that capacity, you no doubt have testified previously in other  
7 proceedings before today; is that correct?

8 A. No, I have never been a witness in a court of law.

9 Q. I wanted to make the point that the proceedings from the Defence will  
10 be very similar to the questions that have been asked previously by the Prosecution;  
11 so hopefully, this will all be very painless. Now, going to the thrust of your  
12 evidence, is it correct to say that the first international experience you ever  
13 had was when in June 2007 you moved from your home country to Sudan? Your job in  
14 Sudan was your first international experience; is that right?

15 A. Yes, that is correct. That was the very first time I was travelling out  
16 of Gambia.

17 Q. And the training that AMIS gave you at the outset amounted to a one-week  
18 induction course in Labado? That is the training you got - sorry, a one-week training  
19 course you were given in Al Fashir. That is the only training you were given before  
20 you were moved to the field in Labado. That is right, isn't it?

21 A. Yes. It was only one week of training that we had in Al Fashir before  
22 going to Labado.

23 Q. And in Labado, your functions were administrative in nature; is that right?

24 A. No. When I arrived there, I did not have any duties. I was simply there.

25 Q. Am I correct that in Labado you and all members of CivPol were confined

1 to the base; is that right?

2 A. Yes, we were confined to the base.

3 Q. You never had the opportunity in Labado to move about, mix with the civilian  
4 population in Darfur, did you?

5 A. No, I did not have that opportunity.

6 Q. And a time came when you were moved from Labado to Nyala. That is correct  
7 also, isn't it?

8 A. I left Labado and I went to Nyala for an induction course of one week.

9 Q. And after that one-week induction course, you moved then to Haskanita  
10 in September of 2007. So we have the chronology correct, do we?

11 A. Yes, that is correct.

12 Q. And like in Labado, in Haskanita you were confined to the base, weren't  
13 you?

14 A. Yes, I never went out. I was confined to the base.

15 Q. In fact, you never once went to the village of Haskanita, for example,  
16 did you?

17 A. No, I never went to the Haskanita village.

18 Q. And the CivPol vehicles were sitting idle in the Haskanita base because  
19 they were not being used because nobody was leaving the camp, were they?

20 A. Yes. No one left the camp. And the vehicles did not go out, so they stayed  
21 at the base.

22 Q. And whilst you were there in Haskanita in September 2007, you and your  
23 colleagues in CivPol and MILOBs were aware that the civilian population close by  
24 were being bombed from the air by the Government of Sudan forces. You knew that  
25 and you heard that, didn't you?

1 A. Yes, I heard about that.

2 Q. And despite that bombing, am I correct that nobody left the safety of  
3 the base to see how these civilians were faring after that bombing attack? Nobody  
4 left at all, did they?

5 A. No. No one went out to cross-check what was going on.

6 Q. You had -- you were given no training in MGS Haskanita when you arrived,  
7 were you?

8 PRESIDING JUDGE STEINER: Mr. Khan --

9 THE INTERPRETER: Could you kindly repeat?

10 PRESIDING JUDGE STEINER: Could you please rephrase your question in order  
11 not to use leading questions to the witness?

12 MR. KHAN: With your leave, your Honour, no. This is cross-examination  
13 and it is perfectly proper to ask leading questions. This is a party, an adverse  
14 party, a witness called by the Prosecution. I have shown the witness utmost respect,  
15 but it is normal practice in cross-examination to be allowed to ask leading questions,  
16 and I am doing so -- I am cross-examining, but I hope your Honours will agree I  
17 am not examining crossly.

18 PRESIDING JUDGE STEINER: Yes. Just putting the questions in a manner  
19 not to put the answer in the mouth of the witness. This is what I meant.

20 MR. KHAN: Your Honour, I will try - I will endeavour - but I fundamentally,  
21 with the greatest of respect, depart from your Honour's injunction. In all courts,  
22 including the ICC, the Yugoslav Tribunal, the Rwandan Courts, as well as multiple  
23 domestic practices, there is a clear distinction between the examination-in-chief  
24 and cross-examining.

25 This witness is called by my adversaries, the adversaries of my client

1 who are the Prosecution, and it is perfectly proper and it has been condoned in  
2 cases before the European Court of Human Rights that in cross-examination leading  
3 questions are permissible.

4           And so your Honours, I am not doing anything remarkable. I am following  
5 the same practice that the Defence who stand here in the Charles Taylor case adopt,  
6 that the Defence in the Yugoslav Tribunal adopt, and indeed the position that the  
7 Prosecution adopt when they cross-examine Defence witnesses. So your Honours, I  
8 would ask with your leave, if I have clarified myself, that I be allowed to carry  
9 on.

10           PRESIDING JUDGE STEINER: Mr. Khan, you are allowed to carry on. Just  
11 bear in mind that we are not in the ICTY and we are not in a common law court. We  
12 are at the International Criminal Court. We have our own proceedings. So I am  
13 not interfering with the way you would cross-examine the witnesses - the witness.  
14 I am just asking you to avoid putting in the witness' mouth your answers. I think  
15 you could understand my point and we could proceed without making polemics on this  
16 issue.

17           MR. KHAN: Well, your Honour, do forgive me -- and I will continue as  
18 required, but it is a fundamental issue going to the conduct of the proceedings.  
19 It really is a fundamental issue and I do maintain for the record -- and of course,  
20 I fully respect and I am fully deferential to the regime put in place by the Rome  
21 Statute. I am, of course, aware of it.

22           But, your Honour, I am not -- and forgive me if I am remiss, but I am  
23 not aware of any authority or commentary on the Rome Statute or the Rules of Procedure  
24 and Evidence which prohibit the use of cross-examination when one is addressing  
25 and seeking to elicit the truth from a party called by another witness. It is quite



1 normal. It is absolutely unremarkable.

2 Your Honours will, of course, rule and the record will speak for itself,  
3 and in due course may be reviewed, but it is a matter -- it is a matter that I do  
4 take issue with. And I do, with respect, ask my objection and my significant  
5 reservations and concerns to be recorded for future use because it does, in my  
6 respectful submission, affect the ability of the Defence to properly put its case  
7 and to test and challenge both the evidence and also to elicit evidence in the most  
8 timely manner.

9 Your Honours, of course, I have tried to save time, and it is common practice  
10 that by use of leading questions one can get to the nub of the issue far more quickly.  
11 Your Honour, I have said enough and I think I will move on.

12 Q. Witness, were you given any training in MGS Haskanita? And let me clarify:  
13 Were you ever sat down and given a formal presentation as to the ambit and role  
14 of CivPol, the Protection Force and the military observers? Was there any formal  
15 training - any formal induction in place - or was it very much --

16 A. I did not receive any such training. What happened is that upon my arrival,  
17 the base commander gave me information on what had happened. I was told that we  
18 were not authorised to go out into the village and that we had to stay inside the  
19 base. That is what I was told.

20 Q. I am most grateful, sir. Now, you say that matters were rather tense  
21 in that the civilians surrounding Haskanita displayed some hostility to all of you  
22 in AMIS; is that correct?

23 A. Yes, that is true.

24 Q. When you describe in your evidence a threat being made, when the 500 or  
25 so villagers from Haskanita came to the camp in September, were you or the people

1 in the base -- "you" being CivPol, the military observers and the Protection  
2 Force -- were any of you given guidance as to what should be done if the camp was  
3 attacked?

4 A. Can you kindly repeat your question, please?

5 Q. Did anybody with - of course I will. Did anybody in a position of  
6 responsibility at the camp undertake any role-playing, any scenarios with you, so  
7 that everybody would know where they should go and what they should do in the event  
8 that the camp was indeed attacked?

9 A. Yes. The base commander told me something of the sort, but no one else  
10 said anything, that is, apart from him.

11 Q. And what did the base commander tell you?

12 A. What type of thing do you want?

13 PRESIDING JUDGE STEINER: Mr. Faal?

14 MR. FAAL: Sorry, Madam President, for interrupting. I just wanted to  
15 help clarify an issue. Perhaps there is a misunderstanding between the interpreter  
16 and the witness. The witness said "station commander," and it was said in English,  
17 and the interpreter conveyed "base commander." And that led to a confusion and  
18 misunderstanding of the witness as to the relevance of that question. Thank you,  
19 your Honour.

20 PRESIDING JUDGE STEINER: Mr. Khan?

21 MR. KHAN: I am most grateful to my learned friend, Mr. Faal, for putting  
22 me right.

23 Q. Sir, let me endeavour, once again, to put the question more precisely.  
24 What were you told to do in the event that the base was attacked?

25 A. We were shown places where we were supposed to hide.

1 Q. And those places being the trench; is that right?

2 A. Yes, that was one of the places.

3 Q. Thank you, sir. And was -- well, were any other places mentioned?

4 A. We were shown the trenches.

5 Q. Do you know if any guidance was given to the Protection Force as to what  
6 positions they should take up in the event of an attack or was it all left to the  
7 heat of the moment for them to decide where they should go and what they should  
8 do?

9 A. I am not aware of what happened on the other side.

10 Q. Had you ever heard from any of your colleagues that were at the base that  
11 the Nigerian peacekeepers who were present on the base had not even zeroed their  
12 rifles at the time of the attack? Are you aware of that, or not?

13 MR. KHAN: Your Honour, perhaps the usher can assist the witness.

14 Apparently, the volume is undulating in a manner that is causing the witness some  
15 difficulty or making him disconcerted?

16 PRESIDING JUDGE STEINER: Thank you, Mr. Khan, for calling the attention  
17 of the Bench.

18 THE WITNESS: The volume is going up and down.

19 PRESIDING JUDGE STEINER: He is saying that the volume is going up and  
20 down.

21 THE WITNESS: Yes, that is good.

22 MR. KHAN:

23 Q. Is that okay, sir?

24 A. It's okay, sir.

25 Q. So I don't think you answered my last question, and so let me put it again:

1 Had you heard from anybody the suggestion that the Nigerian peacekeepers who were  
2 working hard at the camp had not even been instructed to zero their rifles which,  
3 of course, you may think is normal practice? Had you heard of that suggestion,  
4 or not?

5 A. No, I was never informed of that.

6 PRESIDING JUDGE STEINER: Mr. Khan, with your permission. Mr. Faal?

7 MR. FAAL: Your Honour, the Prosecution would ask that the Defence rephrase  
8 the question. It is too vague even for a very fluent person in English. The question  
9 needs to be rephrased for a better understanding. It was definitely very ambiguous.  
10 The witness could not understand the gist of the question; and hence, his response.  
11 Thank you.

12 MR. KHAN: Your Honour, once again, I am grateful to my learned friend's  
13 guidance. I will move on to another point.

14 Q. Sir, in the time you were at the camp, was it -- did you observe any practice  
15 whereby Protection Force officers would go every day or would go regularly to practise  
16 live-firing, or did they not, in fact, practice firing their guns? Can you help  
17 the Court, or you don't know about that issue?

18 A. I never saw any such thing.

19 Q. You see, on the -- on 29 September, of course it was a very frightening  
20 experience for you all, and we express our condolences on behalf of my client for  
21 that and for the injury you sustained, I want you to know that, but it seems that  
22 the prevailing situation in Haskanita, within MGS Haskanita, was not only confused  
23 but involved a great deal of panic. Would that be a fair assessment, in your opinion?

24 PRESIDING JUDGE STEINER: Mr. Faal?

25 MR. FAAL: Again, Madam President, I just regret that I had to get up

1 to say that the question is so imprecise that the witness would be at a loss how  
2 to answer. There was confusion in Haskanita at what time? Was it at the time of  
3 the attack, before the attack? The question is so imprecise. Thank you.

4 MR. KHAN: Your Honour, I will endeavour, once again, with my learned  
5 friend's kind guidance.

6 Q. When the --

7 PRESIDING JUDGE STEINER: Mr. Khan, if you allow me, it is far from the  
8 Presiding Judge the intention to interfere with the line of cross-examination. It  
9 just appears - it is the opinion of the Presiding Judge - that because the witness  
10 is not able to read the transcripts, that maybe the questions are too long. And  
11 then it's making it more difficult for the witness to know to which part of the  
12 question he is answering. It's been confused even for us.

13 Then I would suggest very -- in a very humble way for you to put some  
14 shorter questions maybe for the witness to be able to answer.

15 MR. KHAN: Your Honour, I will do precisely that.

16 Q. And I would also suggest, Witness, perhaps if you don't look at the transcript  
17 and give me your full attention, I will speak slowly and I will try to ask shorter  
18 questions, but sometimes it is difficult to multi-task. So let me try again. You  
19 have given evidence that when the fighting started on the evening of 29 September,  
20 you saw an APC of AMIS going backwards, rather than forwards. Did that appear to  
21 you at that time to be because the driver was understandably nervous or was panicking?

22 A. I saw the APC driving backwards and hitting other vehicles. I do not  
23 know in which state the driver was. I do not know whether it is because the driver  
24 did not know how to drive. I have no idea.

25 Q. I am grateful. And when you arrived in MGS Haskanita, how many people

1 were on the base, sir? Do you know, or don't you know?

2 A. No, I do not know the number.

3 Q. Would you agree with me that the vast majority of those present were  
4 Protection Force personnel? Would that be correct, or you don't know?

5 A. Yes, they were the majority.

6 Q. And besides the Protection Force and CivPol and MILOBs and PAE, there  
7 was also a subcontractor called Amzar that were present in the camp; is that right?

8 A. Yes, Amzar and PAE were together.

9 Q. I don't know, Witness, how good you are with names, but would it be a  
10 fair assessment to say that when you arrived in MGS Haskanita, it took you some  
11 time to know who everybody was, to get to know who was who and who was doing what?  
12 Would that be a fair assessment, or not?

13 A. Yes, it was difficult for me to distinguish between the various people.  
14 I did not know all of them and, in fact, I did not stay for long there. I was there  
15 for less than a month.

16 Q. And there's no suggestion at all, sir, that there is anything to apologise  
17 for, for not knowing everybody straightaway. It is absolutely normal. But is it  
18 correct also that in your capacity as assistant transport officer, you didn't actively  
19 go out -- sorry, you didn't actively meet people that came to the camp? That wasn't  
20 part of your job description, was it, sir?

21 A. That is right, it wasn't part of my functions.

22 Q. And knowing, of course, it would take some time to know all the people,  
23 the AMIS, the Protection Force, the CivPol personalities, the MILOBs personalities,  
24 the PAE personnel and the Amzar catering staff, it could well be the case that other  
25 people were present on that camp -- other people were present at the camp whom you

1 didn't know. Is that possible?

2 A. No, outside the linguistic assistants, I didn't know others who were at  
3 that time there on the base.

4 Q. Yes, I understand you didn't know any others and you didn't meet any others.  
5 My point is a little different: It is possible, isn't it, sir, that perhaps other  
6 people overlapped with you and you didn't get to know them? That's fair, isn't  
7 it?

8 A. Yes, people could come who I didn't see, who I didn't know.

9 Q. You see, I think fairness demands that I put it very -- in fact, let me  
10 move on, Witness. You describe a man in September that threatened the base. Do  
11 you remember the incident I am referring to?

12 A. Yes.

13 Q. He is part of the group that came to the camp and said effectively, "If  
14 we in the village are bombed again, we will attack the camp." That's correct, isn't  
15 it?

16 A. No, we won't bomb the village.

17 Q. Forgive me, Witness, I am sure it was completely my fault, and I apologise  
18 for that. What I am putting to you is that after the village was bombed by the  
19 Government of Sudan, a group of civilians numbering about 500 came to the camp and  
20 demonstrated. Do you remember that?

21 A. Yes.

22 Q. And do you remember one individual amongst that group who said very clearly,  
23 "If we are bombed again, we will attack MGS Haskanita"? Am I getting it right,  
24 or am I getting it wrong?

25 A. Yes, you are right.

1 Q. And this person you have said was wearing civilian clothes, namely, a  
2 T-shirt and jeans. That's right also, isn't it?

3 A. Yes, a black T-shirt and jeans.

4 Q. That person that threatened you was identified by you in a photograph  
5 that you showed the Office of the Prosecutor. Do you remember that, sir?

6 A. (No interpretation)

7 MR. KHAN: Your Honour, I didn't get a translation.

8 PRESIDING JUDGE STEINER: We neither.

9 MR. KHAN:

10 Q. Witness, can we just try -- I do apologise. Could you just try and give  
11 your answer again, sir.

12 A. Could you repeat your question, please?

13 Q. Yes, of course. Yes. You pointed out the person that threatened you in  
14 a photograph when you were interviewed by the Office of the Prosecutor. Do you  
15 remember pointing out that person that made the threat in September?

16 A. Yes, yes.

17 Q. That person that made the threat never identified himself as a rebel,  
18 did he?

19 A. No, he didn't say that.

20 Q. The person that made that threat was not wearing the head scarf - the  
21 turban - that covers the chin and the face that you have described as being distinctive  
22 to rebels, did he?

23 A. No, he wasn't wearing that.

24 Q. Understanding of course, sir, that you are under oath, a fair assessment  
25 would be that that person could just as easily be part of the disgruntled villagers



1 and he could just as easily have been a civilian as anything else. Isn't that right,  
2 sir?

3 A. Yes, that is true, but if I said that he was -- this is what I said. Somebody  
4 who wasn't a rebel couldn't say such a thing.

5 Q. Yes. So your conclusion, sir, that he was a rebel, was because he expressed  
6 an intention to do violence to the AMIS base. That is the reason why you have concluded  
7 that he could have been a rebel, is that right?

8 A. Yes, because today if I say I am going to kill so-and-so, I am going to  
9 do that, the next day I am going to kill that person who -- what are you expected  
10 to understand from that?

11 Q. Yes, I am grateful. Now, Witness, just finally I will move -- I am sorry,  
12 I do apologise sincerely, I have taken much longer than I had intended and so do  
13 forgive me for that. I am just going to talk, ask you a few questions about what  
14 happened when you were in the trench. I hope you forgive me for that. You go on,  
15 please.

16 A. I was in the trench for a very long time. At what time of my presence  
17 in the trench would you like to refer to?

18 Q. Well, I will refer to just one or two snapshots, with your permission.  
19 You have said that a colleague of yours from CivPol was in the trench and he was  
20 challenged by the people with guns and he said, "I am CivPol. I am from Cameroon  
21 and I don't have a gun." Do you remember that? Is that correct, or have I got  
22 it wrong?

23 A. That's what he said.

24 Q. And --

25 PRESIDING JUDGE STEINER: Mr. Khan, I am sorry.

1 Mr. Faal.

2 MR. FAAL: Madam President, yet again, I regret rising in the middle of  
3 the questioning, but I would implore my colleague from the other side when he cites  
4 either from the witness statements or from the transcript he cites the sentence  
5 in whole. The witness said they asked him for gun. He said, "I am a CivPol from  
6 Cameroon. I have no gun, I have no money." It is only fair that the full statement  
7 be put to the witness instead of just be chopped in half depending on what counsel  
8 wants. Thank you.

9 MR. KHAN: Your Honour, I apologise if my learned friend has had to turn  
10 into a jack-in-the-box during this cross-examination. Of course, any inadequacies  
11 and errors in my cross-examination can be remedied perhaps later, but your Honour,  
12 I will put it in totality, as advised by my learned friend.

13 Q. Sir, is it correct that this individual, this colleague of yours, told  
14 those with guns that "I am from Cameroon. I am CivPol. I do not have a gun. I  
15 do not have money," and he was not shot, was he? Have I got the full picture now,  
16 or am I missing something, sir?

17 A. (No interpretation)

18 Q. I do apologise, if you could perhaps give your answer again because it  
19 was not translated. If you could bear with us and try once more, I'd be grateful.

20 A. You asked me if what you said was true, if the things happened like that.  
21 It's true. Yes, they did.

22 Q. I am most grateful, sir. Now, the individual next to you that was shot,  
23 he was from the Protection Force; is that right?

24 A. Yes.

25 Q. Protection Force personnel carried AK-47s, also known as Kalashnikovs,

1 is that right?

2 A. Yes, it is true. These were AK-47 rifles.

3 Q. And were you aware, sir, of any injunction given to soldiers in the Protection  
4 Force or in other armies that they are not to be parted from their rifles? Are  
5 you aware of such an injunction at the time you were in MGS Haskanita, or not?

6 A. (No interpretation)

7 Q. I'm sorry, if you could give your last answer once again, I'd be grateful.

8 A. I said that I didn't know. No, I didn't know.

9 Q. But when this individual was challenged, this member of the Protection  
10 Force, he kept silent, is that right?

11 A. No, he didn't say anything. He didn't reply.

12 Q. And Protection Force officers ordinarily carried AK-47s; is that right?

13 A. Yes, sometimes you saw them carrying the rifle, but sometimes not.

14 Q. Now, I know, Witness, that in the heat of the attack, understandably,  
15 you may have kept your head down in the trenches, but would I be correct in saying  
16 that during the attack members of the Protection Force did fire back in self-defence?  
17 They did fire back? Is that right, or is that wrong, or do you not know?

18 A. No, I wasn't -- I don't know somebody who fired or responded by firing.

19 Q. And that is from the vantage point being in the trench, is that right?

20 A. I was in the -- I was in the trench, as far as I am concerned.

21 Q. And you say in your statement, sir, and it is paragraph 57 for the benefit  
22 of the Prosecution, that you don't know if anybody was killed in friendly fire.  
23 Is it possible that somebody was killed in friendly fire and you simply don't know  
24 because you were in the trench? Is that possible, sir?

25 A. I don't know anything about what happened. I don't know who shot or not.

1 The person who was -- I didn't see the person who was killed next to me.

2 MR. KHAN: I am most grateful. Witness, we are very grateful indeed that  
3 you have made the trip to The Netherlands, and I've got no further questions for  
4 you. Thank you so much.

5 PRESIDING JUDGE STEINER: Mr. Faal.

6 MR. FAAL: Your Honour, perhaps not so fast. The answer given by the witness  
7 is completely different from what was translated, and may I ask that the witness  
8 perhaps repeat his answer and it be translated. Your Honour, I just apologise.  
9 It just so happens that I understand the language very well and can also hear some  
10 of the words the witness used in English. It's in the interests of justice and  
11 also in the interests of the victim - of the witness - to have his words properly  
12 put in the record. In this particular instance, I do not believe that was the case.  
13 Thanks, your Honour.

14 MR. KHAN: Your Honour, can I just say for the future, because it is now  
15 the second time my learned friend has stood up, that members of the Bar must be  
16 most slow to purport in any way to give evidence, and whilst I don't take issue  
17 with it on this occasion, the correct approach, in my respectful submission, is  
18 simply to stand up and say, "Your Honours, there may have been a mistake in translation,"  
19 without prepping either the interpreters or the witness, however inadvertently.

20 The safer and more prudent option, in my respectful submission, in the  
21 future, where we have a witness that one party has the benefit of knowing the language  
22 to, is simply to stand up and say "Your Honours, perhaps there's been a misunderstanding  
23 and an error in translation" and very neutrally the question can be put again. Your  
24 Honours, I have got no objection for the witness to repeat his answer.

25 PRESIDING JUDGE STEINER: Mr. Khan, maybe it could be better for you to

1 repeat the question.

2 MR. KHAN: Yes. Your Honours, I mentioned earlier the witness' -- the  
3 difficulty to remember names. I can't remember what I did 30 seconds ago, so I  
4 apologise for taking the time.

5 Q. Witness, my last question was: When you were interviewed by the Prosecution,  
6 you stated that you didn't know whether or not anybody was killed in friendly fire.  
7 You didn't deny that possibility. Understanding that you were in a trench and your  
8 vantage point was limited, is it possible that certain people were killed in friendly  
9 fire and you are unable to speak to that issue because of where you were?

10 A. No, I wasn't able to see what happened, if that happened or not.

11 MR. KHAN: Yes, I am grateful. Your Honours, I have got no further question  
12 of this witness. Sir, once again, I am sorry for taking longer than I had hoped,  
13 and I hope you forgive us for that.

14 PRESIDING JUDGE STEINER: Mr. Khan, you had two hours allocated to you;  
15 so meaning that you didn't take too long?

16 MR. KHAN: Well, your Honour, I didn't; but at the same time I don't believe  
17 in filling time or I try not to fill time simply because it is available. And I  
18 had, of course, indicated very remissly before the break that I was going to try  
19 to finish this in under 15 minutes. So to that extent, I owe everybody an apology  
20 if I misrepresented.

21 PRESIDING JUDGE STEINER: Now, I would like to ask my fellow colleagues  
22 whether they have any questions to put to the witness. Starting by Judge Sanji  
23 Monageng.

24 JUDGE MONAGENG: I just have one question for clarification, and this  
25 is with regard to Amzar. The witness said Amzar and PAE were together. Could he,

1 perhaps, tell us exactly what he means? What is "they were together"?

2 THE WITNESS: Amzar and PAE were the same thing. We can't make a distinction  
3 between Amzar and the PAE. Amzar was for the food and the others, vehicles, generators,  
4 et cetera. Amzar were the cooks, but everything came under PAE.

5 PRESIDING JUDGE STEINER: Judge Cuno Tarfusser?

6 JUDGE TARFUSSER: Just one question.

7 Witness, you said you arrived in Haskanita at the beginning of September.  
8 Can you remember the exact day you arrived in Haskanita?

9 THE WITNESS: No, I can't remember the exact day.

10 JUDGE TARFUSSER: Now, just because you remember exactly that at 7:05  
11 the attack began, and you remember 4 November that the memory stick was stolen and  
12 on 5 June that you travelled from Gambia to Sudan, so I thought you could remember  
13 also the exact day of the arriving at Haskanita.

14 THE WITNESS: I don't remember the date exact.

15 JUDGE TARFUSSER: Okay. Thank you very much.

16 PRESIDING JUDGE STEINER: I also would like to ask a question.

17 In paragraph 12 of the witness statement - for the record,  
18 DAR-OTP-0156-0384 - you said that you was appointed as a Motor Transport Officer,  
19 MTO, in MGS Haskanita. You said that you were in charge of all the vehicles in  
20 Haskanita station allocated to the CivPol. There were four in total. Do you confirm  
21 this information, witness?

22 PRESIDING JUDGE STEINER: Yes, Mr. Khan?

23 MR. KHAN: Your Honour, just trying to assist, and in fairness to the  
24 witness, he did, of course, provide a second supplementary statement on 24 and 25  
25 July. And if I make take the liberty, that's DAR-OTP-0169-0004. I was checking

1 I wasn't speaking too fast.

2 Your Honour, the witness did clarify his evidence in one or two material  
3 respects, and it may be only fair to put the revised version to the witness if any  
4 question at all is considered appropriate. Your Honour, I hope that helps.

5 PRESIDING JUDGE STEINER: Maybe I don't have at hand this second version.  
6 Thanks.

7 MR. KHAN: And it's paragraph 5, your Honour.

8 PRESIDING JUDGE STEINER: I thank very much for Mr. Khan. Let me just  
9 check whether the information is exactly the same.

10 QUESTIONED BY PRESIDING JUDGE STEINER:

11 Q. So in paragraph 5 of this document DAR-OTP-0169-0004, you said that you  
12 was appointed as Assistant Motor Transport Officer, AMTO, in MGS Haskanita. That  
13 you was in charge of all the vehicles in Haskanita Station allocated to the CivPol.  
14 There were four in total. Is that correct, witness?

15 A. Yes, it is true. Four vehicles.

16 Q. These were four vehicles allocated to CivPol. Were there more vehicles  
17 in the Haskanita compound?

18 A. Yes, there were other vehicles. A lot of vehicles, apart from these four.

19 Q. These other vehicles were allocated to whom?

20 A. The Protection Force and others and to the observers, MILOBs, and PAE  
21 as well also had vehicles.

22 Q. Were these vehicles only for transportation of persons and goods?

23 A. Vehicles were for patrols.

24 Q. Could you try to describe what kind of vehicles you had in Haskanita for  
25 patrols?

1 A. These were double-cabin Toyotas and Toyota Land Cruisers known as Buffalos.  
2 All the vehicles were painted in white with the inscription "AMIS" on the bodies  
3 of the vehicles.

4 Q. Are you talking about the vehicles that were allocated to CivPol?

5 A. All the vehicles -- all the vehicles that were in the base had the inscription  
6 "AMIS." There were also three troop transport vehicles, the APCs.

7 PRESIDING JUDGE STEINER: Thank you very much, witness. I don't think  
8 I have any other questions. My colleagues? Mr. Faal, have you --

9 MR. FAAL: No questions, your Honour.

10 PRESIDING JUDGE STEINER: Mr. Khan?

11 MR. KHAN: Your Honour, no. I am most grateful.

12 PRESIDING JUDGE STEINER: Mr. Witness, the Chamber, the Court, thanks  
13 you very much for your presence in this courtroom today, giving your testimony on  
14 the facts that are under the scrutiny of this Chamber. We apologise for any  
15 inconvenience caused, and we wish you a prompt return to your country, to your family,  
16 with our thanks very much.

17 I would ask, please, the court officer to escort the witness out of the  
18 courtroom. Thank you very much again.

19 THE WITNESS: Thank you very much, also.

20 (The witness is excused)

21 PRESIDING JUDGE STEINER: So today's session has come to an end. I would  
22 like to thank the Prosecution team, Defence counsel team --

23 MS. CISSE: (Interpretation) Madam President, I apologise. The legal  
24 representatives of the victims requested me to present a motion to you under 91(3)  
25 of the Rules of Procedure and Evidence to tell you that the legal representatives



1 of the victims would like to examine the witnesses of the Prosecution and the Defence  
2 who will be forthcoming.

3           Since you asked us to make oral applications, that is the reason that  
4 we are making this application to you now, because the legal representatives of  
5 the victims believe that the testimonies could affect the interests of the victims  
6 in Mali, Nigeria and Senegal in the course of these proceedings. Thank you.

7           PRESIDING JUDGE STEINER: Mr. Faal?

8           MR. FAAL: Madam President, your Honours, the Prosecution has no objection  
9 to legal representatives questioning Prosecution witnesses. However, I just wish  
10 to draw attention to the provisions of Rule 91(3)(a) which require that the legal  
11 representatives should provide a written note of the questions; and in that case,  
12 the questions shall be communicated to the Prosecutor.

13           It would be helpful if that could be done, but we leave it entirely in  
14 your Honours' discretion. We do not want to create any obstacles for participation  
15 of legal representatives, but we just thought that if that could be done, that would  
16 be helpful. Thank you, your Honour.

17           MR. KHAN: Your Honour, perhaps with your leave I can take the pleasure  
18 at least once this afternoon in trying to correct my learned friend, Mr. Faal, as  
19 I have been corrected so many times. 91(3)(a), of course, is not couched in mandatory  
20 terms; it is permissive. And so it is a matter for the exercise of the Trial Chamber's  
21 discretion. In relation to the two upcoming witnesses and the Defence witness,  
22 there is no objection were your Honours minded to grant the application.

23           PRESIDING JUDGE STEINER: Mr. Faal, usually we don't grant leave to reply.  
24 The Chamber is already well-informed to take a decision on the matter. Please,  
25 let's not --

1 MR. FAAL: Much obliged, Madam President.

2 (Pre-Trial Chamber confer)

3 PRESIDING JUDGE STEINER: In relation to a request made by Mr. Faal from  
4 the Prosecution, the Chamber takes notice of the observations made by Mr. Khan from  
5 the Defence that Rule 91(3)(a) just states that the Chamber may require the legal  
6 representative to provide a written note of the questions. And in that case, the  
7 questions shall be communicated to the Prosecution; and if appropriate, the Defence  
8 shall be allowed to make observations within a time limit set by the Chamber.

9 As we could see from today's questioning by the legal representatives,  
10 we faced no problems at all that could justify the Chamber at this point in time  
11 to impose on legal representatives the obligation to present previous written notes  
12 about the questions and to take the observations from the Defence.

13 Therefore, in relation to the questioning of Prosecution witnesses, Defence  
14 needs not to present any previous written note of the questions.

15 In relation to the questioning of Defence witness, the Chamber will take  
16 a decision in due time, taking into account that the Chamber has already decided  
17 such statement or such testimony will be given in closed session, and so the Chamber  
18 is still to decide whether legal representatives of victims will be allowed or not  
19 to participate in a closed session.

20 Therefore, the decision now is taken in relation to the two Prosecution  
21 witnesses still to be heard tomorrow and Monday. In relation to the third witness,  
22 the Chamber will take a decision in due time. Is that correct?

23 So, I would like -- I will start again. I will try again to say thanks  
24 for the Prosecution team, for the Defence team, legal representatives of victims,  
25 for the legal support of Pre-Trial Chamber I and Pre-Trial Division. This hearing

1 is suspended until tomorrow morning at 9:30, in which we will have the examination  
2 by the Prosecution of its second witness, that is Witness 446 confirmed. So, this  
3 hearing is suspended.  
4 (The hearing ends at 3:11 p.m.)