

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 Thursday, 22 October 2009  
9 (Hearing starts at 9:34 a.m.)  
10 (Open session)

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

12 PRESIDING JUDGE STEINER: Good morning. Pre-Trial Chamber I is now in  
13 session. I would like to welcome all persons that are here today in the courtroom,  
14 including Mr. Abu Garda, and also in the public gallery.

15 I would ask, please, the court officer to call the case.

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

18 PRESIDING JUDGE STEINER: Thank you very much. I would now ask the parties  
19 and participants to introduce themselves, starting by the Office of the Prosecution.  
20 Mr. Faal.

21 MR. FAAL: Madam President, your Honours, good morning to all. The  
22 Prosecution is today represented by the following: Ade Omofade, trial lawyer;  
23 Shyamala Alagendra, trial lawyer; Victor Baiesu, associate trial lawyer; Pubudu  
24 Sachithanandan, associate trial lawyer; Desiree Lurf, associate trial lawyer;  
25 Biljana Popova, case manager; and my name is Essa Faal, senior trial lawyer. Thank

1 you, your Honour.

2 PRESIDING JUDGE STEINER: Thank you very much. Now I turn to the Defence.

3 MR. KHAN: Madam President, your Honours, good morning. The Defence of  
4 Mr. Abu Garda is represented by: Andrew Burrow, legal consultant; Anand Shah, case  
5 manager; and myself, Karim Khan.

6 PRESIDING JUDGE STEINER: Thank you very much. Legal representatives of  
7 victims.

8 MR. KONÉ: (Interpretation) Good morning, Madam President. My name is  
9 Brahima Koné. I represent victims numbers 170 to 172 and 136.

10 MS. CISSE: (Interpretation) Good morning, Madam President. I am Héléne  
11 Cisse from the Senegal Bar. I represent victims 434, 435, 566, 580 and 589.

12 MR. ADAKA: Good morning, Madam Presiding Judge. Honourable Judges, my  
13 names are Frank Adaka and I represent victims number 0552 to 0556 and victims numbers  
14 0563 to 0578. Thank you.

15 MR. AKINBOTE: Good morning, Madam President. Your Honours, my names are  
16 Akin Akinbote and I represent the same clients as yesterday.

17 PRESIDING JUDGE STEINER: Thank you very much.

18 (Brief pause)

19 According to our schedule, today we'll have the examination of the second  
20 witness called to testify by the Prosecution, Witness 446. I wish to remind the  
21 parties and participants and to inform the public that the Chamber, in the decision  
22 on the Prosecution application for protected measures of 22 September 2009,  
23 Document 117 of the case file, has ordered the following protective measures to  
24 be put in place for Witness 446:

25 1. The name and any other information which could lead to the

1 identification of the witness will be expunged from the public records of the case.

2           2. Mr. Abu Garda himself, his Defence and all other participants in the  
3 confirmation hearing proceedings be prohibited from disclosing the identity and  
4 other identifying information related to Witness 446 to a third party.

5           3. The broadcast of the testimony of Witness 446 during the confirmation  
6 hearing will be altered both in terms of image and voice such that the members of  
7 the public watching or listening to the proceedings will not be able to identify  
8 the Witness.

9           4. The pseudonym in this case can be the number of the witness, 446,  
10 will be used whenever we refer to the witness during the confirmation hearing.

11           5. Any part of the proceedings that may require the witness's name,  
12 identity or any identifying features to be discussed will be conducted in closed  
13 session.

14           For that purpose, I will now ask the court officer to go for a few minutes  
15 in closed session in order to allow the witness to come into the courtroom. As  
16 soon as the witness is seated, we will go back into public session.

17           MR. KONÉ: Madam President, with your leave, I would like to raise a concern  
18 from the legal representatives of the victims. Yesterday in the courtroom we made  
19 an application to be able to participate in the examination of witnesses and on  
20 the principle there was no objection.

21           Now regarding the Defence witness, you have in all sovereignty decided  
22 that his examination will take place in closed session and that you were going to  
23 decide on the possible participation of the legal representatives in his examination.  
24 We would like to underscore the fact that the examination of this witness is a crucial  
25 aspect of these proceedings and, without any knowledge of the strategy of the Defence,

1 we can say that they will systematically try to destroy the evidence adduced by  
2 the Prosecution and this could affect the interests of our clients. Pursuant to  
3 Article 68 of the Rome Statute, under Rule 89 of the Rules of Procedure and Evidence  
4 that stipulate that there has to be fairness, we would like to be able to be authorised  
5 to participate in that examination in the interests of our clients. Thank you.

6 PRESIDING JUDGE STEINER: So, as yesterday, this Chamber will take all  
7 arguments into consideration and we will issue a decision on due time.

8 Now, I ask again the court officer to turn the session into closed session  
9 in order to allow the witness to enter the courtroom.

10 (Closed session at 9:44 a.m.)

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6 (Open session at 9:48 a.m.)

7 THE COURT OFFICER: Open session.

8 PRESIDING JUDGE STEINER: Thank you very much.

9 Good morning, Witness 446. Witness 446, you are before Pre-Trial Chamber  
10 I of the International Criminal Court. You are called to give your testimony in  
11 the case of the Prosecutor v Mr. Bahr Idriss Abu Garda. You are going to be questioned  
12 first by the Prosecution, then by the legal representatives of victims and in the  
13 afternoon by the counsel for the Defence. The Judges may as well put questions  
14 to you. Have you been informed about the procedures related to your testimony in  
15 Court?

16 THE WITNESS: I've been informed.

17 PRESIDING JUDGE STEINER: In accordance with Article 69 of the Statute  
18 of the Court and Rule 66 of the Rules of Procedure and Evidence, you are required  
19 to give an undertaking as to the truthfulness of the evidence you are going to give  
20 today. I also remind you that, in accordance with Rule 66.3 of the Rules, the Court  
21 has jurisdiction over the offence of giving false testimony before it when under  
22 the obligation to tell the truth. Have you understood, Mr. Witness, the seriousness  
23 of your undertaking?

24 THE WITNESS: Yes.

25 PRESIDING JUDGE STEINER: Thank you very much. I then ask you, please,

1 to stand up not for the whole testimony of course, but only during your swearing-in  
2 that will proceed with the assistance of the court officer.

3 Please stand up, Witness 446.

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

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

10 Mr. Khan, you have something?

11 MR. KHAN: Your Honour, no. I rose prematurely. I do apologise.

12 PRESIDING JUDGE STEINER: Private session, please.

13 (Private session at 9:52 a.m.)

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14 (Open session at 12:03 p.m.)

15 THE COURT OFFICER: Open session.

16 PRESIDING JUDGE STEINER: Thank you. Witness 446, do you feel at ease?

17 Please speak in the microphone.

18 THE WITNESS: I am okay.

19 PRESIDING JUDGE STEINER: If at any moment you do not feel at -- longer

20 at ease, any longer at ease, please do not hesitate and inform the Chamber.

21 The Prosecution, please, to start its examination.

22 MR. OMOFADE: I am grateful, your Honour.

23 WITNESS: WITNESS DAR-OTP-P-0446

24 QUESTIONED BY MR. OMOFADE:

25 Q. Good afternoon, Mr. Witness.

1 A. Good afternoon.

2 Q. My name is Ade Omofade. I am representing the Prosecution today and I  
3 will be asking you some questions on behalf of the Prosecution. Do you understand?

4 You have already given the Court certain information in closed session.  
5 What is your nationality?

6 A. I am a Nigerian.

7 MR. OMOFADE: I beg your Honour's pardon. Leave this. I am grateful.

8 Q. Are you married?

9 A. No, I'm single.

10 Q. It may be an obvious question, but do you have any children?

11 A. No.

12 Q. What languages do you speak?

13 A. Okay. I speak my local language, which is Hausa.

14 Q. Thank you. What is your occupation at the moment?

15 A. I'm a military officer.

16 Q. For how long have you served with the military?

17 A. Five years.

18 Q. And do we take it that this is with the military in Nigeria?

19 A. Correct.

20 Q. Could you tell the Court briefly, if you can, what training you underwent  
21 in order to become a military officer?

22 A. I attended the Nigerian Defence Academy. For five years I went through  
23 a training programme, and the programme is in such a way that you combine it with  
24 military training. After five years I was sent to the field; that is to go and  
25 work.



1 Q. Okay. Is it correct that you held a number of positions within the Nigerian  
2 military and there came a time when you were deployed to AMIS? And I take it this  
3 is not disputed.

4 A. Correct.

5 Q. When were you deployed to AMIS?

6 A. In April 2007.

7 Q. Do you recall the exact date in April?

8 A. I stepped down in Darfur on 24 April 2007.

9 Q. Without stating anything, what was the arm of AMIS that you were deployed  
10 to?

11 A. The Protection Force.

12 Q. And are you able to help us with what AMIS was in Sudan for?

13 A. I was meant to understand that AMIS was to supervise the adherence to  
14 the Darfur Peace Agreement and also to safeguard the delivery of humanitarian supplies  
15 in Darfur.

16 Q. The peace agreement you've told us about, what were the parties to this  
17 peace agreement, if you can tell us?

18 A. I was meant to understand that the factions to the conflict and also the  
19 Government of Sudan were all parties to this Darfur Peace Agreement.

20 PRESIDING JUDGE STEINER: Mr. Omofade, I am sorry to interrupt you. Would  
21 it be possible to have a short break between the answer and your next question,  
22 in order to facilitate the interpretation into Arabic.

23 MR. OMOFADE: I will endeavour.

24 Q. You were telling us about the parties to the conflict and you mentioned  
25 the Government of Sudan. Do you know the other parties to the conflict?

1 A. I -- based on the briefing I received, I understand that the Sudanese  
2 Liberation Army seeks signatories to the conflict. That is how far I know.

3 Q. Any other parties that you recall?

4 A. No.

5 Q. Where in Darfur were you deployed to?

6 A. I was deployed in Haskanita. That was Delta Company.

7 Q. And do you recall what part of Darfur this was?

8 A. This -- it was the southern part of Darfur.

9 Q. Now, prior to your deployment to Darfur - this was obviously an engagement  
10 outside of Nigeria - were you required to undergo any particular training or induction?

11 A. Yes.

12 Q. Could you help us, please, as to what training and/or induction you were  
13 required to undergo?

14 A. We were trained about what we were expected to see on the ground, practically.  
15 We were trained on convoy drills, skill at arms. Also, we were being briefed about  
16 the background to the Darfur crisis. We were also briefed on our rules of engagement  
17 and also our mandate.

18 Q. How long did this training last?

19 A. About one month.

20 Q. And where did you have it?

21 A. In Kaduna State, Jaji, in Nigeria.

22 Q. And was this a particular institution?

23 THE COURT OFFICER: Sorry to interrupt. The interpreters did not hear  
24 the answer to your previous question. Could you please repeat the previous question.

25 MR. OMOFADE: The question? I apologise, the question was:

1 Q. And where did this training take place?

2 A. In Nigeria. In Kaduna State, Jaji, in particular.

3 Q. My follow-up question was: Was this a particular institution in Nigeria?

4 If it was, can you help us as to the name?

5 A. Yes. It's a particular institution, an institution meant for training  
6 or for peace support operation. It's called the Peacekeeping Centre, Jaji.

7 Q. Now, in response to my earlier question, you mentioned that you were trained  
8 on the rules of engagement. Can you help us as to the nature of the training you  
9 received on the rules of engagement?

10 A. We were meant to understand that we were not to engage in direct combat  
11 and that we can only defend our -- defend ourselves. Also, we were meant to know  
12 that it is an observer mission. We are meant to protect the military observers  
13 and also to protect our camp.

14 Q. I am going to take you back slightly and ask you, when you say you were  
15 meant to defend yourselves, what did you understand this to mean?

16 A. I understand that if my life or that of my men is threatened, that is  
17 directly threatened, I should do what I can do to defend ourselves.

18 Q. You've told us that you were part of the Protection Force. You've also  
19 told us that you were there to protect military observers, am I correct?

20 A. Correct.

21 Q. Can you tell us who the military observers were?

22 A. The military observers are military observers from different countries.  
23 I was meant to understand that their job was to carry out investigative patrols.  
24 In the situation where there is a violation of any ceasefire agreement, or any procedure  
25 of the AMIS that is not followed, the military observers are meant to investigate

1 and report back to the appropriate superior authority.

2 Q. And was there any other component to the peacekeeping mission, apart from  
3 the Protection Force and the military observers?

4 A. Yes, sir, we had a logistic company called the Pacific Architects and  
5 Engineering. They were meant to provide logistic requirement like our laundry,  
6 our food, and also there is a subcontractor under the Pacific Architects and Engineers  
7 called the Amzar. They were responsible for providing us with our food, basically.

8 Q. But talking specifically about peacekeepers themselves, apart from the  
9 Protection Force and the military observers, was there any other unit that composed  
10 the protect -- sorry, the peacekeeping force?

11 A. We also have the civil police from different African countries; as far  
12 as I can remember, from Ghana, Senegal.

13 Q. What was their function?

14 A. Their function was also to work with the military observers and they also  
15 constitute investigative patrols.

16 Q. Now, as a member of the Protection Force, you were required to obviously  
17 defend yourself, if necessary, and protect the other components of the peacekeeping  
18 mission. Is that correct?

19 A. Correct.

20 Q. Did this mean you were armed?

21 A. Yes.

22 Q. When I say "you", I refer to the Protection Force generally. Was the  
23 Protection Force entirely armed?

24 A. Yes.

25 Q. And the other components, the CivPols, the civilian police officers, and

1 the military observers, were they armed?

2 A. No.

3 Q. Now you were deployed to Haskanita, you've told us. Could you help us  
4 with the location of Haskanita in relation to other towns, or villages?

5 A. Haskanita is the name of a village close to my camp. The village is  
6 about -- about two kilometres north of my camp. At the south side of my camp, I  
7 have my airfield. Also southeast of my camp, about eight kilometres southeast,  
8 there is a village called Dalil Babiker. Directly to my east and west is basically  
9 open ground characterised by shrubs, little shrubs, and coming back to the north  
10 side of the camp there is a depression. When you rise from the depression, you  
11 see the Haskanita village.

12 Q. Now, apart from the town or village of Dalil Babiker that you referred  
13 to, do you recall the name -- and, of course, Haskanita town. Do you recall the  
14 name of any other nearby town or village?

15 A. There were some villages that were a little bit far from my camp. There  
16 is one village called Mazrup (phon) and there is another village called Um Suna ,  
17 but they were much further from my camp.

18 Q. The Haskanita area, you've told us that you recall the parties to the  
19 conflicts in Darfur. Are you able to recall which of these parties was in control  
20 of the Haskanita area when you were deployed to Darfur?

21 A. When I was deployed to -- to Darfur, the Sudanese Liberation Army were  
22 in full control of Haskanita village and the environs.

23 Q. Did you have cause in the performance of your duties to interact with  
24 the local community in Haskanita?

25 A. As at when I was deployed to Haskanita, I inherited a situation that was

1 tense so we could enter -- physically visit Haskanita village for -- to interact  
2 with the locals. It's just that there were times the Chief of Haskanita, called  
3 the Umda, visited my camp.

4 Q. But did you leave the camp to go into the surrounding areas on any occasions?

5 A. As far as I can remember, during the early days of the patrols I was able  
6 to go on patrols to join the militia observers for patrols and that way I was able  
7 to pass through Haskanita village and other villages.

8 Q. And how regular were these patrols in the early time that you talk about?

9 A. The patrols came from -- came from the group site commander, and we rarely  
10 go on patrols, maybe twice a week, but it came to a time patrols were suspended  
11 because the environment was very tense.

12 PRESIDING JUDGE STEINER: Mr. Khan?

13 MR. KHAN: Your Honour, perhaps the witness can just turn off his microphone  
14 to make sure there is no danger of voice pollution.

15 Your Honour, just a small note. At the transcript at page 27, there has  
16 been an error in the LiveNote. The witness said that he couldn't go to Haskanita.  
17 I just wanted to make that clear. May I have the reference again?

18 MR. BURROW: Line 11.

19 MR. KHAN: Line 11, your Honour.

20 PRESIDING JUDGE STEINER: Mr. Omofade, could you check with the witness  
21 whether he said that he could go to Haskanita, or he couldn't?

22 MR. OMOFADE:

23 Q. When I asked you a question earlier, you gave a response as to whether  
24 or not you were able to go to Haskanita town. What was your response?

25 A. I was not able to visit Haskanita town. I only mostly passed through

1 during patrols.

2 Q. I want to take you to the camp of the AMIS peacekeepers itself. You've  
3 already told us how it related to the surrounding villages and areas. Could you  
4 tell us the size of the Protection Force within the camp?

5 A. The Protection Force consist of 123 men.

6 Q. The military observers?

7 A. The military observers can be between 10 to 20.

8 Q. The civilian police?

9 A. The civilian police were about five -- were about five, or more than five.

10 Q. Now, without naming names significantly, can you help us as to the  
11 relationship of the peacekeepers with the other personnel that were within the camp  
12 and you've referred to PAE and Amzar?

13 A. The relationship within the camp was cordial and professional and  
14 everything as far as working in the camp was okay.

15 Q. Did it always remain this way?

16 A. Yes, it always remained this way, not until the time when attacks started.

17 Q. Did PAE have any local staff serving with them? By "local," I refer to  
18 Sudanese.

19 A. Yes, the PAE had local staffs working with them.

20 Q. What was the relationship like between the Sudanese staff and the  
21 peacekeepers?

22 A. The relationship was okay. Sometimes we, the Protection Force, have to  
23 do our job, but averagely our relationship was okay. It was average.

24 Q. You've told us about the parties to the conflict. Were there any  
25 representatives of these parties within the Haskanita camp?

- 1 A. Yes, there were representatives to the party.
- 2 Q. Help us as to which representatives there were.
- 3 A. We had the Sudanese Liberation Army representative staying with us in  
4 our camp.
- 5 Q. Do you recall his name?
- 6 A. Yes.
- 7 Q. Can you tell us, please?
- 8 A. We had one Lieutenant Colonel Haroun and we had one Lieutenant Colonel  
9 Abdulaziz.
- 10 Q. Are these representatives of the Government of Sudan?
- 11 A. No, these are representatives of the Sudanese Liberation Army.
- 12 Q. Were there any representatives of the Government of Sudan?
- 13 A. Yes, we had a representative from the Government of Sudan.
- 14 Q. What was their name, or names?
- 15 A. I could remember Captain Bashir and also Captain Abdul Malik, who later  
16 became a major whilst still working in the camp. They were always alternating.
- 17 Q. Briefly, if I may ask you, can you describe the structures within the  
18 camp?
- 19 A. The camp is composed of white tents. Also, there were other buildings  
20 in red -- in red bricks. Also we had some caravan-like structures in white, mainly  
21 offices, and the camp is surrounded by concertina wire fences and we had to get  
22 to the north and south side of the camp.
- 23 Q. You've mentioned the SLA being in charge, or being in control of the Haskanita  
24 area. Did you have cause to interact with this rebel group while you were in MGS  
25 Haskanita?



1 A. Yes, we were able to interact with the SLA, provided we had their  
2 representatives in our camp.

3 Q. So this interaction, would you go to meet them, or would they come to  
4 meet you?

5 A. They would come to meet us.

6 Q. In the camp?

7 A. Yes.

8 Q. (Microphone not activated) ... visits by rebel members. Would you as  
9 peacekeepers keep any records, notes, minutes, photographs of them?

10 A. Yes.

11 Q. Could you tell us, please, the first of these visits that you recall since  
12 you were deployed to Haskanita?

13 A. I could remember some time around July we had a visit from a member of  
14 the Sudanese Liberation Army. He called himself a police commissioner. This was  
15 one of the early visits I could remember.

16 Q. You've said July and I suppose it's an obvious matter, but is that July  
17 2007?

18 A. Yes, July 2007.

19 Q. Without naming names, how many of you - the peacekeepers - did this police  
20 commissioner meet with?

21 A. Any time there is a visit, he meets with -- with the MILOBs, that is the  
22 military observers, always in presence, and also the CivPols are always at the meeting  
23 too.

24 Q. Now this particular visit in July, what was discussed?

25 A. When the Police Commissioner visited us in July, he talked about an attack

1 somewhere around the village and he also talked about a new splinter group called  
2 the Sudanese Liberation Army United Movement.

3 Q. Do you recall any other visit apart from this visit?

4 A. Yes.

5 Q. When was the next visit that you recall?

6 A. I could recall some time around late July or early August, the police  
7 commissioner visited in company of one Mohamed Usman. They visited and the subject  
8 was also this new splinter group called the Sudanese Liberation United Movement.

9 Q. Now in the first meeting, as well as the second one, did any of these  
10 individuals mention anything about the Sudanese Liberation Army United?

11 A. During the first visit and the second visit that name was mentioned.

12 Q. Can you tell us what this new group was about?

13 A. They said they were a splinter group of the Sudanese Liberation Army and  
14 that they were not signatories to the Darfur Peace Agreement, but they were ready  
15 to work with us.

16 Q. Now this second meeting, again without naming names, who was present?

17 A. Most of the military observers were present. The civil police and I was  
18 present also.

19 Q. Were you present in the first meeting?

20 A. Yes.

21 Q. Did there occur any further visits after this meeting with Mohamed Usman  
22 in late July?

23 A. After the first visit by the police commissioner, the second -- I could  
24 remember the second visit he came in company. The police commissioner came with  
25 Mohamed Usman.

1 Q. You've said you were present in that meeting. Could you describe  
2 Mohamed Usman to the Court, please?

3 A. Mohamed Usman is dark. He is chubby. He was of few, few words, maybe  
4 because he is not too good in English. His height, he is -- I think he is more  
5 than five feet. He always dressed the turban-like dressing and sometimes he wear  
6 robes and that's how he dressed.

7 Q. How long were you in his company during this meeting at the end of July?

8 A. About one hour, or thereabouts.

9 Q. And this kind of meeting --

10 MR. KHAN: Your Honour, I do apologise, but for the sake of accuracy the  
11 witness' testimony is that it took place at the end of July, or the beginning of  
12 August, so perhaps my learned friend can be specific so that the question reflects  
13 the testimony given.

14 MR. OMOFADE: I've just clarified and I believe my friend is correct.

15 Q. The time I'm asking you about, when you were in the company of Mohamed  
16 Usman, is it correct that it was towards the end of July, or early August?

17 A. It is correct that it was towards the ending of July, or the early times  
18 of August.

19 Q. Could you tell the Court if you recall any other visits by rebels, or  
20 their representatives, that occurred after this?

21 A. Yes, I recall other visits.

22 Q. When did this occur?

23 A. I could remember some time around August, late August, we had a visit  
24 by one Abdulaziz Osher.

25 Q. (Microphone not activated)

1 A. Yes, I was present.

2 Q. I believe I ought to repeat that question for the record. Were you also  
3 present when he visited?

4 A. Yes, I was present.

5 Q. Now around this period, July/August, what was the situation like in  
6 Haskanita and its surrounding areas?

7 A. Around this time, the environment was tensed. At this time patrols  
8 were -- investigative patrols were suspended because we had orders that the rebels  
9 controlling the area had said that we should not -- we should suspend patrols. Also,  
10 at this time there were Government of Sudan occupation in that area and so at this  
11 time the area was tensed.

12 Q. Okay. Now, you've mentioned a gentleman called Abdulaziz Osher?

13 A. Yes.

14 Q. Which rebel group did he belong to?

15 A. He belongs to the Justice and Equity Movement, JEM.

16 Q. And did he tell you why he had come to visit you?

17 A. Yes.

18 Q. What did he say?

19 A. He said JEM is now in the area, in the Haskanita area, and they are working  
20 with the splinter group, that is the Sudanese Liberation United Movement, and that  
21 they are now controlling the area.

22 Q. What was the reaction of those of you that were peacekeepers present during  
23 the meeting to this information?

24 A. We were surprised because we expected the representatives of the Sudanese  
25 Liberation Army in the camp to tell us what is happening, but the visit was an impromptu

1 visit from this Abdulaziz Osher that JEM is in the area. We failed -- to this time we  
2 never had any information that JEM was in control of this area.

3 Q. Do you recall if any photographs were taken during this visit?

4 A. Yes, photographs were taken.

5 MR. OMOFADE: With your leave, your Honour, might I ask that the court  
6 officer display on the screen DAR-OTP-0169-0856-ROE. The corresponding EVD number,  
7 your Honours, is EVD-OTP-462 and it's a confidential document.

8 PRESIDING JUDGE STEINER: This being a confidential document, I ask the  
9 Prosecution whether legal representatives of victims can have access or not?

10 MR. OMOFADE: There is no difficulty with legal representatives of victims  
11 having access. Your Honours, this is a document that was actually annexed to the  
12 statement of this witness and mentioned in the statement, so it may well be that,  
13 depending on how the procedures have worked so far, they already have the documents  
14 with them.

15 PRESIDING JUDGE STEINER: Victims until now had access only to public  
16 documents, not confidential documents, and the Chamber decided that access to  
17 confidential documents would be analysed on a case-by-case basis.

18 MR. OMOFADE: Your Honour, there is no difficulty with the legal  
19 representatives of victims having access to this document.

20 PRESIDING JUDGE STEINER: Thank you.

21 MR. OMOFADE: I am waiting for the document to display on the screen.  
22 Perhaps I ought to move on and come back to this. I am mindful of the time.

23 PRESIDING JUDGE STEINER: You can continue, Mr. Omofade.

24 MR. OMOFADE: Your Honour, quite timely it now appears on the screen.

25 Q. Mr. Witness, if you look at the photo in front of you --

1           PRESIDING JUDGE STEINER: Sorry, Mr. Omofade, we need to check whether  
2 everyone has the photo. I don't have, for instance.

3           THE COURT OFFICER: Could everyone press PC1, please, on their remote  
4 control.

5           PRESIDING JUDGE STEINER: Just check whether the witness has it.

6           MR. OMOFADE: The witness has the photo displayed in front of him.

7 Q.       Do you recognise the scene depicted in this photograph?

8 A.       Yes.

9 Q.       Can you tell us what it depicts?

10 A.       This was a -- this was a photograph taken immediately after that same  
11 meeting with Abdulaziz Osher.

12 Q.       The photograph, can you point out to the Court which one of these is Abdulaziz  
13 Osher?

14 A.       Yes.

15 Q.       Could you indicate in terms of numbers, or who he is standing next to?

16 A.       He is central in this photograph with black waist belt. He is standing  
17 next to a man that has the MGS commander in mufti and the other person on his right  
18 in uniform.

19 Q.       So, do I take it from your description that he is the man standing next  
20 to the gentleman who appears to be in plain clothes next to that gentleman?

21 A.       Correct.

22 Q.       And he is in camouflage?

23 A.       Yes.

24 Q.       Now, I don't propose to ask you about much more in this photograph, but  
25 the man on the far right of the photograph, also in what appears to be army camouflage,

1 are you able to identify him?

2 A. Yes.

3 Q. Who is that?

4 A. That is Captain Bashir.

5 Q. And that's the GoS representative, is it?

6 A. Yes.

7 Q. Now, one final matter with this photograph. In the background, to the  
8 right of the photograph, we'll see a structure that appears behind the white car  
9 with what appeared to be red windows or doors. Do you know what that structure  
10 is?

11 A. Yes.

12 Q. What is it?

13 A. That is the PAE office.

14 Q. Thank you. Now, to the left -- sorry, to the right-hand side of the  
15 gentleman you've identified as Abdulaziz Osher there appears to be another man in  
16 civilian clothes. Do you know who he is?

17 A. Come again with that question.

18 Q. To the right-hand side of Mr. Usher, if you count the second person to  
19 his right, civilian clothes - not the gentleman whose face is redacted - do you  
20 know who that gentleman is?

21 A. Yes.

22 Q. Who is he?

23 A. He -- he was the JEM sector commander for Haskanita.

24 Q. Who also attended the meeting?

25 A. Yes, he attended the -- that meeting.

1 Q. Now, in terms of the conflict within Darfur, what was its impacts, or  
2 what was going on in the Haskanita area around 6 July -- September?

3 A. On 6 September 2007, as far as I can recall, there was a demonstration  
4 by the Haskanita locals led by the -- by the faction protesting the presence of  
5 AMIS in Haskanita.

6 Q. You say "led by the faction." Which faction are we talking about?

7 A. The splinter group of Sudanese Liberation Army, which is called the Sudanese  
8 Liberation Army United Movement.

9 Q. How did you know this demonstration was led by this faction?

10 A. Amongst the demonstrators, you -- we can ID individual rebels among them  
11 and also after - (Expunged) this demonstration, the Umda of Haskanita I  
12 believe - that is the chief - (Expunged) that it wasn't their intention to stage  
13 this demonstration, but catalysed by the rebels.

14 Q. Before we go on to the demonstration itself, just for the benefit of those  
15 of us with no military training what did you mean by "ID"?

16 A. Okay, just identification.

17 Q. And these rebels that you say were part of the demonstration did you identify  
18 them by their clothing, or by recognising their faces?

19 A. It's by their faces.

20 Q. How were they dressed?

21 A. Most of them wore white robes, white cloth-like. Some of them dressed  
22 in other colours like brown and other colours, but most of them were in white.

23 Q. What was the nature of the demonstration? Was it peaceful, or was it  
24 violent?

25 A. At first the demonstration was -- was not physically violent, but in -- in



1 terms of words -- it's a violent demonstration, in terms of words, but not physically.

2 Q. What were the violent words spoken?

3 A. They said we should leave this position, that is the Haskanita, that they  
4 don't want to see us there. We should leave immediately and they don't want us.

5 MR. OMOFADE: Your Honours, I wonder if a photograph could be shown to  
6 the witness. It is document DAR-OTP-0164-0877-R01 and for the benefit of the record  
7 I read out the EVD number, EVD-OTP-0379. It's a public document. I wonder if this  
8 could be displayed, please.

9 (Brief pause)

10 MR. OMOFADE: Might I confirm that everyone has the photograph displayed?

11 Q. Do you recognise the scene in the photograph in front of you?

12 A. Yes.

13 Q. Can you tell us what scene it depicts, please?

14 A. That was the scene of the demonstration on this day, 6 September.

15 Q. (Microphone not activated) ... you see in the background of this photograph  
16 a number of individuals in white robes?

17 A. Yes, correct.

18 Q. Who were these people?

19 A. They were the local demonstrators. As I told you, they are mixed with  
20 the rebels.

21 Q. We also see what appears to be a white banner towards the front of the  
22 photograph. Do you see that, Mr. Witness?

23 A. Yes.

24 Q. Are you able to make out any of the writing on that banner?

25 A. Yes.

1 Q. Can you tell us some of what you can read?

2 A. The banner says, "No AU from today. Welcome UN."

3 MR. OMOFADE: Your Honours, that photograph can now be taken off the screen,  
4 please.

5 Q. You told us about this demonstration, that some of the words that were  
6 uttered by the demonstrators were threatening words. You've also told us that they  
7 said you should leave. Is this the extent of the threatening words that were uttered?

8 A. Yes.

9 Q. After this demonstration, what was the situation like as regards the  
10 conflict around Haskanita area?

11 A. At this demonstration they protested that -- some of the complaints they  
12 made was that government forces was carrying out bombardments and the African Union  
13 was not able to -- to stop that. (Expunged) what our mandate was  
14 and that we can -- we are neutral. We can only witness this bombing and report  
15 back to the appropriate superior authority. After this demonstration, the government  
16 forces are still continue bombardment.

17 Q. You've told us that (Expunged) explained your mandates and they were still  
18 insisting that you leave. What did you understand the implication to be if you  
19 did not leave?

20 A. The implication of that is that probably we are going to have a violent  
21 attack, or violent demonstration, and we will not have the cooperation of the Haskanita  
22 people. That is what it means.

23 Q. Now, you've told us that even after this demonstration Government of Sudan  
24 bombardments continued in the area.

25 A. Yes.

1 Q. What kind of bombardments?

2 A. They are -- they are aerial bombardments. Militarily the aircraft, Antonov  
3 aircraft, most were white, fly over Haskanita area, and I suppose they were bombarding  
4 rebel locations within Haskanita environment.

5 Q. At this time, were you as peacekeepers able to leave the camp?

6 A. No.

7 Q. So - and it may be obvious - how were you able to tell the nature of these  
8 bombardments?

9 A. Most of the time when this bombardment is going on, there is shaking movement  
10 of -- of this ground. Also, some structures in my camp is being shaking. At this  
11 time most -- most of (Expunged)  
12 (Expunged) the headquarters to -- to get  
13 them -- get them posted of -- on what is going on at that time.

14 Q. Now, moving on. On 10 September, 2007, were you still deployed to MGS  
15 Haskanita at this time?

16 A. Yes.

17 Q. Do you recall anything of significance that happened on this date?

18 A. Yes.

19 Q. Could you help the Court, please?

20 A. On 10 September there was a clash between Government of Sudan forces with  
21 combined forces of the Sudanese Liberation Army United Movement and JEM. This clash  
22 started about 10, thereabout, in the morning, that is 10 a.m., about 300 metres  
23 north of my camp. We could see the movement of both rebels, and government forces.  
24 Those I suppose it would be called the point sections, that is, the forward units.  
25 Up to the time they made contact by that, shooting and firing had been going on.

1 Q. And on the same day, how long did this confrontation last?

2 A. The initial confrontation, as I said, after the forward units had contacts,  
3 this confrontation lasted for about an hour or thereabouts before there was some  
4 slight break before other confrontation took place that same day.

5 Q. Do you know how it ended?

6 A. I have an idea of how it ended.

7 Q. Can you tell us how it ended?

8 A. As after the first confrontation, based on my personal assessment, from  
9 where I was studying the confrontation, the rebels cut off the Government of Sudan  
10 forces. They were able to do this by outflanking the government troops far, far,  
11 some kilometres away, but because my camp is situated in such a high ground we could  
12 see, to some extent, the way the rebels were able to outflank the government forces  
13 and they were able to cut off the government forces in contact from the depth. By  
14 "depth", I mean the other body of the government forces that were not in contact.  
15 And they were able to push the other body of the government forces that were not  
16 in contact, they were able to push them back; this is by fire, by firefight, of  
17 course, and the point, the point section, or the point body of the government troops,  
18 by that I mean the body of the government troops that was in contact, that were  
19 cut off, they were overwhelmed.

20 Q. Okay, thank you very much. That would suffice. Do you know what happened  
21 after this confrontation?

22 A. Yes. After this confrontation, at about 8 p.m., the combined forces of  
23 JEM and the Sudanese Liberation United Movement approached my camp.

24 Q. Now, without giving names of individuals that came to the camp, can you  
25 tell us how many of them came?

1 A. I could not say the actual number but there were about eight, or more  
2 than, but there were other groups that were outside my camp in which they deployed  
3 or they surrounded my camp like they were outside.

4 Q. And would you say they were senior members of the group, or what one could  
5 regard as foot soldiers?

6 A. The ones that came to my camp, they were commanders of the -- of the combined  
7 forces.

8 Q. And who -- and again I remind you not to name individuals, but what were  
9 the composition of the individuals they met at your camp?

10 MR. KHAN: Your Honour --

11 PRESIDING JUDGE STEINER: One moment, Mr. Witness.

12 Mr. Khan.

13 MR. KHAN: Madam President, I am most grateful. Perhaps it would be useful  
14 if the witness could be guided that he is perfectly free -- in fact, it would be  
15 welcome by all sides if he mentioned the names of the rebels. The injunction of  
16 my learned friend is not to mention the AMIS personnel, but he can, and indeed should,  
17 mention as far as possible the rebels that he met, or the rebels that he saw.

18 MR. OMOFADE: I am grateful to my friend for his indication. Your Honours,  
19 on this particular occasion - and it might be for reasons that your Honours will  
20 recall - I would ask that names not be mentioned of rebels, and I say no more.

21 PRESIDING JUDGE STEINER: Mr. Khan, the Chamber considers that when you  
22 have time to examine the witness you were allowed to ask questions, for instance,  
23 of whether one of these rebels could, or could not, be your client, but in relation  
24 to other persons the Chamber grants the Prosecution request not to reveal the names  
25 in order not to prejudice further or ongoing investigations.

1 MR. KHAN: Your Honour, so be it. I am grateful.

2 MR. OMOFADE: I am grateful, your Honour. If it does assist my friend,  
3 the witness has mentioned the name I recall of Abdulaziz Osher and Mohammed Usman  
4 and so there have been names mentioned.

5 Q. Mr. Witness, the meeting that took place on 10 September, these commanders  
6 that came to the camp, were they armed?

7 A. Yes.

8 Q. Did they retain their arms while they were in the camp?

9 A. Yes.

10 Q. Would this be normal practice?

11 A. No.

12 Q. Were photographs taken of this meeting, to your recollection?

13 A. Yes.

14 MR. OMOFADE: Your Honours, at this point might I ask the court officer  
15 to kindly display DAR-OTP-0164-0977, the EVD number being EVD-OTP-0387. Your Honours,  
16 it's a public document.

17 THE COURT OFFICER: Can you please kindly confirm the ERN number once  
18 more.

19 MR. OMOFADE: I will do that again. DAR-OTP-0164-0997.

20 THE COURT OFFICER: Is it public, or confidential?

21 MR. OMOFADE: If the court officer could indicate when everybody has it?  
22 Okay.

23 Q. Do you have the photograph displayed in front of you?

24 A. Yes.

25 Q. Are you able to recall the scene depicted in that photograph?

1 A. Yes.

2 Q. Can you tell us what is shown?

3 A. This was the day of the meeting, after the clash on 10 September. This  
4 was the normal conference room.

5 Q. The conference room in the MGS Haskanita?

6 A. Yes.

7 Q. The individual in the photograph, do you know who he is?

8 A. By name, no, but he is in the company of the combined forces that came  
9 to visit us on this day and this time.

10 MR. OMOFADE: I am grateful. The photograph can be taken off the screen,  
11 please.

12 Q. What was discussed during this meeting, please?

13 A. On this day, the -- the leadership of that group demanded that we stop  
14 meet Bashir, to them, that government forces have attacked them, and they were able  
15 to -- to push the government forces. They also told us this day that they captured  
16 the commander of the government force by name, General Kamara, that they would want  
17 us to submit Captain Bashir to them.

18 PRESIDING JUDGE STEINER: Mr. -- sorry, Mr. Omofade. Could you please  
19 repeat -- ask the witness to repeat his answer, because here it's stated, "that  
20 we stop should meet Bashir." So I think it's not what the witness said, "we stop  
21 should meet."

22 MR. OMOFADE: I will try again, your Honour.

23 Q. Could you repeat your answer, please? What was discussed during this  
24 meeting?

25 A. Yes, the leadership of the -- of the group demanded that we should submit

1 Bashir to them.

2 Q. It may be obvious, but "Bashir" being the Government of Sudan  
3 representative --

4 A. Correct.

5 Q. -- in the camp?

6 A. Correct.

7 Q. Did they say why they wanted you to submit Bashir?

8 A. They said since the government forces have attacked them and killed their  
9 personnel, Bashir can no longer stay in that camp and that Bashir is to be submitted  
10 to -- to them. That Bashir is not supposed to be in that camp.

11 Q. And did they say what could happen if you did not comply with their demands?

12 A. They said they were going to treat us like enemies.

13 Q. What did you understand this to mean?

14 A. That means we -- we are going to be killed.

15 Q. Did they say so, in so many words?

16 A. They -- they said that not directly "I am going to kill you", but they  
17 said if we don't submit Bashir to them we are enemies and they are going to treat  
18 us like enemies.

19 Q. What was your response - and I say "you" as the peacekeepers - to this  
20 demand?

21 MR. KHAN: Your Honour, of course I think the question more accurately,  
22 as nothing has been agreed by the Defence, is "you" as the Protection Force, or  
23 "you" as AMIS, is more neutral and perhaps more accurate at this stage.

24 MR. OMOFADE: Your Honours, I take my friend's point onboard, but obviously  
25 those that were present in this meeting, that the witness has referred to, were



1 what we are collectively referring to as the peacekeepers on the MGS Haskanita base,  
2 so it seems quite obvious when I say "peacekeepers" that I'm respect -- I'm referring  
3 to those that were present during the meeting.

4 PRESIDING JUDGE STEINER: I think you can proceed, Mr. Omofade. It's quite  
5 clear that you were referring collectively and not for individuals belonging to  
6 this or that group.

7 MR. OMOFADE: I am grateful, your Honour.

8 Q. So, Mr. Witness, do you recall the question?

9 A. You can repeat that question.

10 Q. What was your response - and I say "you" as in the peacekeepers present  
11 during the meeting - to this request to surrender Captain Bashir?

12 A. It -- normally the MGS, that is the military observers at the MGS,  
13 traditionally they tried to talk the leadership of these rebels into coming to a  
14 diplomatic conclusion. Normally, when all forms of conditions have been exhausted,  
15 I'm always called in to -- to assist, and it also happened on that day. So (Expunged)  
16 (Expunged) the leadership was that it is not possible, (Expunged) to hand over  
17 Captain Bashir to you. (Expunged)

18 (Expunged)

19 (Expunged)

20 MR. OMOFADE: Pause there, Mr. Witness, please. I beg your pardon. I  
21 wondered, your Honour, if there there was an indication from the Bench. That is  
22 why --

23 PRESIDING JUDGE STEINER: Sorry, it was not for the witness. It was for  
24 the court officer.

25 MR. OMOFADE: I beg your Honour's pardon.

1           PRESIDING JUDGE STEINER: I'm sorry if I disturbed.

2           MR. OMOFADE: Yes, your Honour.

3           THE WITNESS: (Expunged) that it was wrong and that Captain Bashir  
4           is under AMIS protection and it was wrong (Expunged) to hand over Bashir  
5           to them.

6           MR. OMOFADE: Okay, I am mindful of the time.

7           Q.           Can you help us, in a few sentences, what steps you took - and I say "you"  
8           as collectively the peacekeepers - to address the concerns raised during this meeting?

9           A.           (Expunged) the leadership of the rebels that they should understand and  
10          that Bashir could not be handed over to -- handed over to them and that we are -- we  
11          are witness to the clash between their group and the Government of Sudan and we  
12          were appropriately going to report to the headquarters what happened.

13          Q.           And did you report to the headquarters?

14          A.           Yes.

15          Q.           What steps did the head -- what steps did the headquarters take to address  
16          this report?

17          A.           (Expunged) by the headquarters that all -- all steps are being taken by  
18          the -- by AMIS to see how everything is going to be resolved, but (Expunged)  
19          (Expunged) from the group site commander and sometimes from the -- from the sector.

20          Q.           But as regards Captain Bashir himself, what steps if any did the headquarters  
21          take?

22          A.           Yes, at the end of the day the rebels said we should remove our Captain  
23          Bashir from the camp within 48 hours. We got that information back to the headquarters  
24          and the headquarters rightly told us that arrangement is being made to send in a  
25          chopper - a helicopter - to come and pick up Bashir within 48 hours.

1           PRESIDING JUDGE STEINER: Mr. Omofade, I am sorry to interrupt you, but  
2 we need now to have a break, the so-called lunch break. That will take one-and-a-half  
3 hours and after that you will continue your examination of the witness.

4           So, I'm suspending at 1:30 this session. We will resume at 3 in the afternoon.  
5 The hearing is suspended.

6           THE COURT USHER: All rise.

7 (Luncheon recess taken at 1:30 p.m.)

8 (Upon resuming at 3:06 p.m.) (Closed session at 3:06 p.m)

9 (Expunged)

10 (Expunged)

11 (Expunged)

12 (Expunged)

13 (Open session at 3:07 p.m.)

14           PRESIDING JUDGE STEINER: Yes, we are now in open session.

15           Mr. Faal?

16           MR. FAAL: Madam President, your Honours, the Prosecution wishes to make  
17 an application. Madam President, it appears that the Prosecution would be needing  
18 a bit more time with this witness. We are hoping that perhaps we would need between  
19 15 and 20 minutes to be able to go through all the remaining issues with the witness.

20           We have discussed the matter during the lunch break with counsel for the  
21 Defence and he has graciously agreed for us to use 15 or 20 minutes of the time  
22 allocated to the Defence. We have also agreed that should in case they would need  
23 an extra time for the cross-examination, the Prosecution would not oppose a request  
24 by them for commensurate additional time.

25           The Prosecution is also willing to take time from the next witness, who

1 has been allocated two hours. The Prosecution would not mind spending less time  
2 with that witness just to compensate for the added time that we would be asking  
3 for. It is possible, Madam President, your Honours, that we may not need it, but  
4 we just want to ensure that we have enough time to be able to deal with the remaining  
5 issues.

6 We hope that this request would not cause any inconveniences and that  
7 it would be received with favour by your Honours. Thank you.

8 PRESIDING JUDGE STEINER: Mr. Faal, you mean the half-an-hour that you  
9 are entitled to plus 30 minutes, which means one hour?

10 MR. FAAL: Yes, Madam President, but I do expect that we would need no  
11 more than 15 to 20 minutes additional time. Thank you.

12 PRESIDING JUDGE STEINER: Mr. Khan, you know that soon after the Prosecution  
13 finishes his examination we have 30 minutes allocated to legal representatives of  
14 victims. In any case, we would have only 30 minutes left on today's session for  
15 the Defence and we would have to continue tomorrow morning. What I am asking you  
16 is, in case the Chamber agrees with the request from the Prosecution, would you  
17 be -- would it be agreeable for you to have your two hours in the session tomorrow  
18 morning?

19 MR. KHAN: Your Honour, I think that's a very sensible and pragmatic  
20 approach. I'm grateful.

21 PRESIDING JUDGE STEINER: Yes, because we cannot ask our interpreters  
22 to stay here more than the time they are allowed by their rules to stay, so I very  
23 much appreciate your spirit of cooperation.

24 MR. KHAN: Not at all. And, in fact, in all candour I would much prefer  
25 to start tomorrow, rather than start for 10 or 15 minutes today and then have a

1 break. I think for my purposes it's a more satisfactory approach. And I do apologise,  
2 I was out of the sight of the witness and I hope he forgives me. I didn't mean  
3 any discourtesy.

4 PRESIDING JUDGE STEINER: Therefore, if this solution is agreeable for  
5 all parties, we will have now the Prosecution continuing with its examination, bearing  
6 in mind that 30 minutes must be left for the examination by Witnesses. Examination  
7 by counsel for the Defence will take place tomorrow at 9:30 and for the time allocated  
8 to him, meaning two hours. Mr. Faal? Mr. Omofade?

9 MR. OMOFADE: Thank you for the indication both from my friend, Mr. Khan,  
10 and from your Honours.

11 Q. Mr. Witness, before I recommence the questions that I was posing to you,  
12 might I just mention more of a housekeeping matter. You may have noticed that there  
13 is quite a lot of equipment within the Court and it so happens that when I ask you  
14 questions and you give your responses sometimes there appears to be an overlap.  
15 What I would ask therefore that you do, as far as possible at least, is to pause  
16 briefly after my questions before you pose your response. I understand it's quite  
17 a difficult to take all of this on board. Even some of us on this side of the room  
18 occasionally fall foul. Do you understand?

19 Before the adjournment, we were at the point where you say the rebels  
20 had visited Haskanita camp on 10 September 2007 and issued an ultimatum of 48 hours  
21 for Captain Bashir to be removed from the MGS Haskanita. You also told the Court  
22 that the headquarters of AMIS had proposed to send I believe your words were a chopper,  
23 or a helicopter, to evacuate him. The question therefore is did that helicopter  
24 actually arrive?

25 A. The helicopter didn't arrive at the proposed time. The headquarters told

1 us it -- it was going to come because of some hitches from this side of the rebels.

2 Q. Okay. What was the proposed time that it was meant to come?

3 A. The -- the rebels gave us an ultimatum of 48 hours and the headquarters  
4 told us they are making arrangements to send a chopper within 24 hours. And we -- we  
5 communicated that part to the rebels, because initially the rebels had told us that  
6 there will be no flights in Haskanita area or else it will be gunned down. So in  
7 case we have a helicopter coming in we had to inform the rebels, which we did, but  
8 the rebels they declined and told us they are going to shoot any helicopter they  
9 see around Haskanita.

10 Q. For the rebels to shoot a helicopter down, if it was around the MGS Haskanita,  
11 they would have to be close to the MGS Haskanita, would they not?

12 A. Repeat that question.

13 Q. (Microphone not activated) ... a helicopter down that landed near the  
14 MGS Haskanita, are you suggesting --

15 THE COURT OFFICER: Sorry, the question was not heard. Can you please --

16 MR. KHAN: And, your Honour, whilst my learned friend puts it for the  
17 third time, perhaps he wishes to think about reformulating the question.

18 MR. OMOFADE:

19 Q. Where -- where were the rebels at this time that they threatened to shoot  
20 down the helicopter?

21 A. The rebels are the one controlling the ground apart from -- from my camp,  
22 so most -- most of the times they are at Haskanita village and other parts of Haskanita.  
23 They mostly move -- the areas are now mostly static.

24 Q. Okay. As of 10 September, when you called for a helicopter, were there  
25 any rebels close to the MGS Haskanita?

1 A. Yes.

2 MR. OMOFADE: Your Honours, I wonder if at this point the court officer  
3 could kindly display on the screen - I will give the ERN number - DAR-OTP-1690-0865  
4 and the EVD number, EVD-OTP-0471. And, your Honours, it is a public document. Your  
5 Honours, the picture appears on my screen here. I don't know if everyone has access  
6 to it?

7 Q. Mr. Witness, do you have the picture in front of you?

8 A. Yes.

9 Q. Do you recall the scene depicted in this photograph in front of you?

10 A. Yes.

11 Q. Could you describe to the Court what is happening in this scene?

12 A. After we communicated to the rebels that a helicopter was coming within  
13 24 hours and they told us that they are going to bring down any helicopter they -- they  
14 see, we communicated back to the headquarters and the headquarters said they were  
15 going to negotiate with the leaders of this group. After about five days or so,  
16 the headquarters gave us a green light for helicopter to land. As at this day the  
17 helicopter landed and, normally, (Expunged) secure the airfield before helicopter  
18 lands. When the helicopter landed, the rebels came out from their hideout and  
19 surrounded (Expunged) and the helicopter. (Expunged) was called in on my radio  
20 (Expunged) had to go to the airfield to talk to the rebels and find out what was  
21 happening. At this stage --

22 Q. Pause there, Mr. Witness. So this scene in the photograph, is it a scene  
23 from that day when the helicopter arrived?

24 A. Yes.

25 Q. The individuals we see in the photograph - and leave aside for the time

1 being the two gentlemen with helmets on - those in the vehicle to the left of the  
2 photograph, who were they?

3 A. They were rebel soldiers.

4 Q. Do you know which rebel group they belonged to?

5 A. I believe they belonged to the Sudanese Liberation Army United Movement.

6 Q. I am grateful. That picture can be taken off the screen. Mr. Witness,  
7 did the helicopter eventually arrive and take Captain Bashir away?

8 A. Yes.

9 MR. OMOFADE: I would be grateful for another picture to be shown on the  
10 screen, please. The ERN number is DAR-OTP-0164-1024-ROE, the EVD number EVD-OTP-0407  
11 and, your Honours, this is a confidential document. Might I also mention in the  
12 same breath that the Prosecution has no difficulties with the legal representatives  
13 of victims seeing this photograph. I wonder if that could be displayed, please.

14 Q. Mr. Witness, can you confirm that you have the photograph appearing in  
15 front of you?

16 A. Yes.

17 Q. What you may notice, Mr. Witness, is that the images of a number of  
18 individuals have been blocked out of that photograph. Even if you are able to recognise  
19 who they are could I ask you not to mention their names in open court, but leaving  
20 that aside what is the vehicle that we see behind these individuals standing in  
21 the photograph?

22 A. The vehicle is one of (Expunged) vehicles.

23 Q. Sorry, my mistake probably. Do we see what appears to be a form of aircraft  
24 in this photograph?

25 A. Yes.



- 1 Q. Who did this aircraft belong to?
- 2 A. This aircraft belonged to AMIS.
- 3 Q. Do you know when this -- what this scene depicts?
- 4 A. This was the time the aircraft came to take Bashir.
- 5 Q. Did Bashir leave in this helicopter?
- 6 A. Yes.
- 7 Q. Were the rebels present when the helicopter left?
- 8 A. Yes.
- 9 MR. OMOFADE: Your Honours -- okay.
- 10 Q. Mr. Witness, I take you now to 29 September 2007. Can you confirm whether
- 11 you were still serving at the MGS Haskanita on this date?
- 12 A. Yes.
- 13 Q. By this time, what was the relationship between the rebel groups in the
- 14 area and the Government of Sudan troops?
- 15 A. At this point the tension has increased and the -- the rebels have already
- 16 threatened that, if the Government of Sudan forces attack them, they are going to
- 17 attack us. So, on that 29th government forces attacked a rebel location about 8
- 18 kilometres southeast of my camp.
- 19 Q. You said the rebels were attacked by the Government of Sudan about 8
- 20 kilometres away. Do you know whether this was in a village town, or just in the
- 21 open space?
- 22 A. It was in the village town.
- 23 Q. Which village are we talking about?
- 24 A. The village is called Dalil Babiker.
- 25 Q. And how did you, the peacekeepers, come to know of this attack?

1 A. At first we heard a loud noise of explosion and we saw smoke - black smoke - in  
2 the air. We started observing and later we saw fleeing locals from that village  
3 in -- in which (Expunged) soldiers had to ask them what -- what is their reason  
4 for fleeing and they told us this confrontation at the village, so they had to flee  
5 for safety of their lives.

6 Q. Did -- did you have any apprehension as peacekeepers about this attack,  
7 bearing in mind the threats that you just alluded to from the rebels?

8 MR. KHAN: Your Honour, before the witness answers may I ask my learned  
9 friend - because I don't like being like a jack-in-a-box - that this is the last  
10 leading question that he puts?

11 PRESIDING JUDGE STEINER: Mr. Omofade, please?

12 MR. OMOFADE: Your Honours, if my learned friend insists it's leading.

13 Q. You have just told us about the threat that was issued to you by the rebels,  
14 that if they were again attacked you would be attacked. You learned of this attack  
15 by the Government of the Sudan forces on rebel positions in Dalil Babiker, so the  
16 question is what was going through your minds at that time?

17 A. What was going through my mind was that I -- I was trying to evaluate  
18 the rebel threats and, since I was now working alone, (Expunged) had to contact  
19 the headquarters and get clarifications that Dalil Babiker had been attacked, so  
20 shall I expect an attack? The headquarters said they were not sure I am going to  
21 be attacked, because the peacekeeping forces is a neutral force so there should  
22 be no reason for me to be attacked, but all the same (Expunged)  
23 (Expunged).

24 Q. Apart from phoning the headquarters, did any one of the members of MGS  
25 Haskanita, to your knowledge, contact any of the rebels?

- 1 A. Yes.
- 2 Q. Who was contacted?
- 3 A. The group site commander tried calling rebel commanders in the field.
- 4 He told me that the response of the rebel commander was unfriendly, and that is
- 5 what he told me.
- 6 Q. Do you know which commanders he contacted?
- 7 A. I am not sure, but I believe he tried to contact Abdulaziz Osher.
- 8 Q. This is Abdulaziz Osher of JEM?
- 9 A. Yes.
- 10 Q. Taking us further into the day of 29 September, at about 7 p.m. where
- 11 were you?
- 12 A. I was -- I found myself -- it was the middle of the camp, trying to ensure
- 13 my and others dinner.
- 14 Q. And what time of the year was this on 9 September?
- 15 A. It was during the Ramadan fast.
- 16 Q. To your knowledge, what time would Muslims break their fast during Ramadan?
- 17 A. Muslims break their fasts when the sun sets. At that period the sun starts
- 18 setting from 7 and above, maybe to 7, 7:15, 7:30.
- 19 Q. So, you are in the middle of the camp and some of the other individuals
- 20 in their camp are arranging to have their dinner.
- 21 A. Correct.
- 22 Q. Did anything of significance happen after that?
- 23 A. Yes.
- 24 Q. (Microphone not activated) ...
- 25 A. As -- as about that time we were on alert, we called it stand-to, and

1 I ordered that since it is time to -- to break fast, some of these soldiers in the  
2 trenches be relieved and so that they can have dinner in a traditional way. And  
3 in that time (Expunged) was alerted from one of (Expunged) that they had seen  
4 rebel movements in vehicles somewhere around the north side of my camp, so I concluded  
5 the rebels are traditionally coming for meeting. I said, "Okay, as soon as they  
6 come close to -- let me know so that I could usher them to the conference room."

7 PRESIDING JUDGE STEINER: Mr. Omofade --

8 MR. OMOFADE: Yes, your Honour.

9 PRESIDING JUDGE STEINER: -- sorry to interrupt. I will ask the court  
10 officer for a while to go into private session.

11 THE COURT OFFICER: Private session.

12 (Private session at 3:34 p.m.)

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14 (Open session at 3:40 p.m.)

15 MR. OMOFADE: I'm grateful, your Honours.

16 Q. Mr. Witness, we left off at the point where some of the peacekeepers observed  
17 that rebels were heading towards the camp. Did they eventually arrive at the MGS  
18 Haskanita?

19 A. (Microphone not activated) ... arrived.

20 Q. (Microphone not activated) ... after that?

21 MR. KHAN: Your Honour, I think the Transcend transcript didn't catch  
22 the last answer of the witness and perhaps the witness can be given the opportunity  
23 of repeating the last answer.

24 PRESIDING JUDGE STEINER: And, Mr. Omofade, usually you were starting  
25 your question before opening your microphone, which means that we have just half

1 of your question. Could you please repeat the last question and allow the witness  
2 to the last answer.

3 MR. OMOFADE: Your Honour, I take full responsibility.

4 Q. The question, Mr. Witness, was did the rebels eventually arrive at the  
5 camp?

6 A. The rebels never arrived at the camp.

7 Q. Did -- what happened afterwards?

8 A. While the Protection Force commander was waiting to get signal that the  
9 rebels had arrived at the camp so that he could usher them in, this should be between  
10 7 and 7:15 p.m. So, the Protection Force commander and the men heard some heavy  
11 gunshots and explosions. At this point, the Protection Force commander tried to -- to  
12 observe what was going on so as not to mistake clashes between rebel groups and  
13 government forces for -- for a direct attack on MGS Haskanita. After some seconds  
14 of observation, the shots of the fire was too accurate on MGS Haskanita and the  
15 Protection Force commander concluded it was a direct attack on Camp Haskanita. The  
16 Protection Force commander issued orders for Protection Force to defend the camp  
17 and defend them -- themselves, as the case may be.

18 Q. Where were you when these shots started?

19 A. The Protection Force commander was -- it was the middle of the camp  
20 at -- observing the men. And, when I heard the gunshots, the Protection Force commander  
21 had to dash down or cover from being hit. The commander was trying to communicate  
22 to the troops and, at the same time, the Protection Force commander was trying to  
23 reach to the radio room so as to get communication. As the commander looked toward  
24 the radio room, I was crawling there ahead and I heard a large explosion and the  
25 radio -- the radio room was down to rubbles.

1           PRESIDING JUDGE STEINER: Mr. Omofade, just one second for the court officer  
2 to verify what's going on with this noise.

3           Thank God, nothing serious. We can proceed.

4           MR. OMOFADE: Your Honours, I'm grateful. I bear in mind the observations  
5 made earlier, your Honours, and I do think it might be appropriate to continue in  
6 private session. I wonder if my friend on the other side has the same observations?

7           PRESIDING JUDGE STEINER: Do you have something else, apart from what  
8 you have already said, Mr. Khan?

9           MR. KHAN: Your Honour, are we still in public session?

10          PRESIDING JUDGE STEINER: We are.

11          MR. KHAN: Well, your Honour -- your Honour, I made my remarks. If one  
12 looks at the questions asked, of course, a degree of vacillation may take place  
13 between the first person and the third person that puts the witness in a difficult  
14 position. I go back to my earlier submission that with proper and focussed questions  
15 this problem could easily be mitigated, but when one does -- when one does keep  
16 switching from the first person to the third person it puts the witness in an invidious  
17 position and I don't blame the witness at all.

18          Your Honours, I would ask that we do continue in public session and my  
19 learned friend try perhaps once again, as far as possible, to ameliorate the risk  
20 of matters getting into the public domain that should not. And perhaps, once again,  
21 if one looks at the answers given, on occasion it may be useful to interrupt the  
22 witness and break the answer down so all the time the risk is minimised.

23          Your Honour, I have nothing else to add. I am grateful.

24 (Pre-Trial Chamber confers)

25          PRESIDING JUDGE STEINER: Mr. Omofade, you insist in your request? If



1 you insist, the Chamber at the end we will grant, because at the end even the Chamber  
2 now is confused on who is who, because sometimes is used the first person, sometimes  
3 a title, sometimes a plural and at the end I think there will be more confusion  
4 to know who is doing what, unless you can again refine your questions in a manner  
5 that allows the witness to give answers that --

6 MR. OMOFADE: Your Honour, I believe my colleague, Mr. Faal, wants to  
7 address you.

8 PRESIDING JUDGE STEINER: Please, Mr. Faal.

9 MR. FAAL: Your Honour, I believe that all of us are concerned. Inasmuch  
10 as the Prosecution is equally interested in ensuring that there is public proceedings,  
11 it's quite obvious that it is very difficult under the circumstances. The answers  
12 we are getting are not just -- the problems are not just elicited by the questions.  
13 The problem stems from the fact that the person is being expected to give an account  
14 of different entities without naming who those entities are. It naturally, sometimes,  
15 leads to confusions, and it may -- if we continue in this manner it is very likely  
16 that something may slip out which may bring to the public knowledge this information  
17 that we are trying to keep confidential.

18 We have tried to keep these proceedings public, as far as we can. At  
19 a point, I receive prompts from members of the team indicating that we are not succeeding.  
20 This is not for want of trying, so we suggest that in -- inasmuch as we are all  
21 interested in ensuring public proceedings, the protection of the witness is equally  
22 important.

23 We have tried. we are not succeeding. I suggest therefore, your Honours,  
24 that we go into private session at this -- for the rest of the proceedings, just  
25 in the interest of protecting certain interests. Thanks, Madam President.

1           PRESIDING JUDGE STEINER: We are then -- because the Prosecution has only  
2 ten minutes to finish its examination of the witness, if we continue with this problem  
3 the ten minutes will not be sufficient. In order to avoid, then, these problems  
4 and to ensure protection already granted by the Chamber to the witness, we are going  
5 into private session.

6 (Private session at 3:51 p.m.)

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10 (Closed session at 4:31 p.m.)

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13 (Open session at 4:32 p.m.)

14 THE COURT OFFICER: Open session.

15 PRESIDING JUDGE STEINER: Thank you very much. So I would like to thank  
16 the Prosecution team, Defence team, legal representatives of victims. I would like  
17 to thank very much the interpreters for a double -- double work of today allowing  
18 us to at least finish in great extent the schedule, the proposed schedule.

19 This hearing now will be adjourned and we will resume tomorrow at 9:30  
20 in the morning for the Defence examination of the second Prosecution witness. The  
21 hearing is adjourned.

22 THE COURT USHER: All rise.

23 (The hearing ends at 4:33 p.m.)

24

25