

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 Friday, 23 October 2009
9 (The hearing starts at 9:33 a.m.)
10 (Closed session)
11 (Expunged)
12 (Expunged)
13 (Open session at 9:34 a.m.)
14 THE COURT OFFICER: Open session.
15 PRESIDING JUDGE STEINER: So Pre-Trial Chamber I is now in session. I
16 would like to welcome all those that are here today in the courtroom, including
17 Mr. Abu Garda, also the public in the gallery, to welcome our witness that is already
18 in the box, in his box.
19 Please, court officer, could you call the case.
20 THE COURT OFFICER: Situation in Darfur, Sudan, the Prosecutor v Bahr
21 Idriss Abu Garda, ICC-02/05-02/09.
22 PRESIDING JUDGE STEINER: Thank you very much. I will ask now the parties
23 and participants to introduce themselves, starting by the Office of the Prosecutor.
24 Mr. Faal.
25 MR. FAAL: Madam President, your Honours, good morning to all. The

1 Prosecution is today represented by Mr. Ade Omofade, trial lawyer; Shyamala Alagendra,
2 trial lawyer; Victor Baiesu, associate trial lawyer; Pubudu Sachithanandan,
3 associate trial lawyer; Desiree Lurf, associate trial lawyer; Biljana Popova, case
4 manager; and myself, Essa Faal, senior trial lawyer. Thank you, Madam President.

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

6 Mr. Khan, for the Defence.

7 MR. KHAN: Good morning, your Honours, and everybody in and around the
8 courtroom. Mr. Abu Garda is represented by Andrew Burrow; Anand Shah;
9 RoseMarie Maliekel and myself, Karim Khan.

10 PRESIDING JUDGE STEINER: Thank you very much. Legal representatives of
11 victims, please.

12 MR. KONÉ: (Interpretation) Yes, good morning, Madam President. I am
13 Mr. Ibrahim Koné from the Malian Bar, legal representative of victims number 170
14 to 192, and 436. Thank you.

15 MS. CISSE: (Interpretation) Good morning, Madam President. My name is
16 Helene Cisse, from the Senegalese Bar, and I am legal representative of victims
17 numbers 434 to 435, and 456 to 463, and 579 and 580, and I thank you.

18 MR. ADAKA: Good morning, Madam Presiding Judge, honourable Judges. My
19 names are Frank Adaka and I represent victims number 0552 to 0556 and victims number
20 0563 to 0578. Thank you.

21 MR. AKINBOTE: Good morning, Madam Presiding Judge. My names are Akin
22 Akinbote and I appear for the same set of victims as yesterday.

23 PRESIDING JUDGE STEINER: Thank you very much. According to the changes
24 agreed upon by the parties on yesterday's session, today the Defence of Mr. Abu
25 Garda will examine the second witness called to testify by the Prosecution, Witness

1 446. We will then resume on Monday according to the schedule for when the Prosecutor
2 will examine its third witness.

3 I wish to remind the parties and participants and to inform the public
4 that, as said yesterday, Witness 446 is a protected witness, subject to the following
5 protective measures as authorised by the Chamber in the decision on the Prosecution
6 Confidential Application For Protective Measures of 22 September 2009, decision
7 117 of the case file.

8 First, the name of any other information which could lead to the
9 identification of the witness will be expunged from the public records of the case.

10 Second, Mr. Abu Garda himself, his Defence, and all other participants
11 in the confirmation hearing proceedings, are prohibited from disclosing the identity
12 and other identifying information relating to Witness 446 to a third party.

13 Third, the broadcast of the testimony of Witness 446 during the confirmation
14 hearing will be altered both in terms of image and voice, such that members of the
15 public watching or listening to the proceedings will not be able to identify the
16 witness.

17 Fourth, the pseudonym of 446 will be used when referring to the witness
18 during the confirmation hearing.

19 Fifth, any part of the proceedings that may require witness name identity
20 or any identifying features to be discussed will be conducted in closed or private
21 session.

22 Bear in mind that the difficulties faced yesterday, I wish to remind Mr. Khan,
23 the Defence team, that whereas the general principle is to conduct the hearing in
24 public session, the Chamber will turn into private session, if needed, in order
25 to protect the witness' identity or any identifying information, and that on the

1 basis of Article 68(1) that imposes on the Court as a whole the duty to protect
2 witnesses in a way that is not prejudicial to, or inconsistent with, the rights
3 of the suspect.

4 Good morning, Witness 446.

5 THE WITNESS: Good morning.

6 PRESIDING JUDGE STEINER: You are before Pre-Trial Chamber I. You are
7 called to continue giving your testimony in the case of the Prosecution v Mr. Bahr
8 Idriss Abu Garda. Today you are going to be questioned by the counsel for the Defence.
9 The Judges also may put some questions. As said yesterday, Mr. Witness, in accordance
10 with Article 68 of the Statute and Rule 66 of the Rules of Procedure and Evidence,
11 you were required to give an undertaking as to the truthfulness of the evidence
12 you are going to give in court. You, yesterday, were also reminded that, in accordance
13 with Rule 66, paragraph 3 of the Rules, the Court has jurisdiction over the offence
14 of giving false testimony before it when under the obligation to tell the truth.
15 I want to inform you, Mr. Witness, that you are still under oath and therefore under
16 the obligation to tell the truth. Do you understand that you are still under oath?

17 THE WITNESS: Yes.

18 PRESIDING JUDGE STEINER: I ask the parties whether they deem it necessary
19 to proceed again to the formal identification of the witness, or whether we can
20 proceed immediately to the questioning.

21 MR. KHAN: Your Honour, I am content to proceed directly to the questioning.

22 MR. FAAL: No objection, your Honour.

23 PRESIDING JUDGE STEINER: Thank you.

24 Mr. Witness, 446, do you feel at ease?

25 THE WITNESS: Yes.

1 PRESIDING JUDGE STEINER: Again, I say that if at any moment you do not
2 feel at ease any longer, please do not hesitate in informing the Bench.

3 Mr. Khan, you can start examining the witness.

4 MR. KHAN: I am grateful, Madam President, your Honours.

5 WITNESS: WITNESS 446 (Resumed)

6 QUESTIONED BY MR. KHAN:

7 Q. Witness, as you heard a moment ago, I am the Defence counsel for Mr. Abu Garda,
8 and I have some questions for you. Do you understand that?

9 A. Yes.

10 MR. KHAN: Madam President, with your leave, perhaps we could go into
11 private session for a moment.

12 PRESIDING JUDGE STEINER: Court officer, let's go into private session.

13 (Private session at 9:44 a.m.)

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13 (Open session at 9:46 a.m.)

14 THE COURT OFFICER: Open session.

15 MR. KHAN:

16 Q. Witness, when you spoke to the Prosecution, you refreshed your memory
17 from personal diaries, didn't you?

18 A. Correct.

19 Q. Did you give those personal diaries to the Office of the Prosecutor?

20 A. No.

21 Q. Did the Office of the Prosecutor ever ask you for those personal diaries?

22 A. They asked if I have my personal diaries, and I told them yes.

23 Q. Let me try again. Did the investigators you spoke to ask if they could
24 take copies of your diaries, or did they not ask that question?

25 A. No.

1 Q. You also refreshed your memory at the time you made your statement from
2 your personal notes and your various official correspondences that you had in your
3 possession; isn't that correct?

4 A. Correct.

5 Q. Did the -- did you give those documents to the Office of the Prosecutor?

6 A. No.

7 Q. Did the investigators from the Prosecutor's office ever ask you from those
8 documents from which you refreshed your memory?

9 A. Repeat that question.

10 Q. Did the investigators that you spoke to ever ask you if they could take
11 copies of the official correspondence that you had in your possession?

12 A. I was not asked.

13 Q. I am grateful. And you also refreshed your memory from information that
14 was received by you from soldiers; isn't that the case?

15 A. Correct.

16 Q. You didn't give those papers to the investigators, did you?

17 A. No.

18 Q. Because those investigators didn't ask you for those documents, did they?

19 A. No.

20 Q. I am grateful. Witness, you described yesterday that from the base of
21 MGS Haskanita one could see the town or the village below. That's correct, isn't
22 it?

23 A. Repeat that question.

24 Q. From MGS Haskanita, you could see the village?

25 A. Correct.

1 Q. You were close enough to the village that, when it was bombed, the ground
2 shook where you were located; isn't that right?

3 A. Correct.

4 Q. You were close enough - I am just going to pause. You were close enough
5 from the village that when it was bombed from the air the buildings that you were
6 staying in also shook; isn't that right?

7 A. Correct.

8 Q. It's correct to say that Haskanita was in your immediate vicinity; isn't
9 that right?

10 A. What do you mean by "immediate"?

11 Q. It was very close to you, wasn't it? It was -- you could see it from
12 where you were based and you were close enough to feel some of the impact that it
13 felt when it was bombed; is that right?

14 A. Correct. Correct.

15 Q. Is it correct, sir, that the mandate of AMIS included protecting civilians
16 under imminent threat in your immediate vicinity?

17 A. Repeat that question.

18 Q. Of course, I will. Is it correct that your understanding of your terms
19 of engagement - your responsibilities, in a general sense - extended to protecting
20 civilians under imminent threat in your immediate vicinity?

21 A. I want you to be explicit with the word "imminent."

22 Q. You say in your statement, Witness, that your mandate included protecting
23 civilians. Is that right or is that wrong?

24 A. Right.

25 Q. Thank you. When you arrived at MGS Haskanita, being part of the Protection

1 Force, it is correct that members of the Nigerian -- sorry, Nigerian members of
2 the Protection Force had not even zeroed their rifles. You know what --

3 MR. KHAN: Your Honours, let me start again.

4 Q. Witness, you know what it means to "zero" one's rifle, don't you?

5 A. Correct.

6 Q. Is it correct that you had not zeroed your rifle when you arrived in
7 Haskanita?

8 A. Correct.

9 Q. (Expunged) had not zeroed their rifles in Haskanita either, had they?

10 A. Correct.

11 Q. And the last time the rifles had been zeroed was when they were in Nigeria.
12 Isn't that right?

13 A. Wrong.

14 Q. When do you say the rifles were zeroed?

15 A. Do you want me to explain?

16 Q. I want you to tell me when was the last time the rifles were zeroed?

17 A. The rifles we used in Darfur, we inherited it.

18 Q. Right. I think that is clear enough. They were never zeroed by you?

19 A. Correct.

20 Q. There was no quick reaction unit established within MGS Haskanita, was
21 there?

22 A. There was no quick reaction unit in Haskanita.

23 Q. And that is despite the fact that many threats had been received by AMIS
24 in Haskanita?

25 A. Correct.

1 Q. No role-play was conducted in which the men were trained what to do under
2 different scenarios; is that right?

3 A. Wrong.

4 Q. Did you practice in such a manner?

5 A. Correct.

6 Q. What did that practice entail?

7 A. We practised on convoy drills and also taking cover in the trenches around
8 the camp.

9 Q. Witness, I am not talking about convoy drills; I am talking about training
10 as to where people should go and what people should do in the event that an attack
11 was launched on the base itself. Do you understand?

12 A. Correct.

13 Q. And some training was conducted, you say?

14 A. Correct.

15 Q. And that was -- that amounted to what?

16 A. We have a trench system around the camp and (Expunged) were briefed in
17 such a way that if there is an attack, everybody knows which part of the trench
18 he is to be and what to do at a particular time.

19 Q. So you are saying everybody knew where they should go and what they should
20 do?

21 A. Correct.

22 PRESIDING JUDGE STEINER: Mr. Khan, may I interrupt for one second? May
23 I ask, please, the court officer to turn into private for just one second?

24 (Private session at 9:56 a.m.)

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

19 THE COURT OFFICER: Open session.

20 MR. KHAN:

21 Q. Witness, there was a broken APC at the camp; is that right?

22 A. Broken? I don't understand that.

23 Q. How many APCs were there at MGS Haskanita?

24 A. Three.

25 Q. How many worked, in the sense that they were mobile?

1 A. They were all mobile.

2 Q. All three were in good working order. Is that your evidence to this Court?

3 A. No.

4 Q. What is your evidence to this Court about these APCs?

5 A. I cannot ascertain the serviceability of those APCs, because we never
6 used them throughout our stay until the 29th.

7 Q. But, Witness, I am perplexed, so please help me. You said a moment ago
8 that you had conducted role-play and scenarios regarding the defence of MGS Haskanita.
9 Surely, such role-play would have involved moving the three heaviest, strongest
10 pieces of equipment in the possession of AMIS at that base. Am I wrong?

11 A. Wrong.

12 Q. The reason you didn't move these APCs is because proper and diligent steps
13 were not taken so as to be prepared if there was an attack. Isn't that the case,
14 Witness?

15 A. Wrong.

16 Q. Witness, may I just pause for a moment and ask you something? You've
17 read the statement given by the -- you've read the statement you gave the Prosecution,
18 haven't you?

19 A. Correct.

20 Q. You've read it many times; is that right?

21 A. Correct.

22 Q. Perhaps it's fair to say that you've almost memorised your statement;
23 Is that a fair assessment?

24 A. Yes.

25 Q. May I ask you to try your best not to try and remember what is in that

1 statement, but try and tell their Honours the truth as to what you remember during
2 your stay in Haskanita. Can you do that for us?

3 A. Yes.

4 Q. The Protection Force officers in MGS Haskanita were given 30 rounds each
5 as their standard combat load; is that right?

6 A. Wrong.

7 Q. How many rounds do you say they were given?

8 A. They were given two magazines each; that is, everybody had about 60 rounds.

9 PRESIDING JUDGE STEINER: Mr. Khan, I am sorry again to interrupt you.
10 I received information that the speed of the questions is too fast for interpreters
11 and court reporters, so the Chamber would very much appreciate if you could slow
12 down your pace a little bit. Thanks.

13 MR. KHAN: Your Honours, I take that admonition, and it is thoroughly
14 deserved. So I do apologise to the interpreters and the stenographers, and I will
15 try again.

16 Q. Witness, would you agree that a standard combat load -- let me put it
17 again. This was your first operation, is that right, outside Nigeria?

18 A. Correct.

19 Q. What is the usual standard combat load of the Nigerian army? Do you know,
20 or are you not aware of the number?

21 A. In the manual, there is many variables that I don't have offhand, so --

22 Q. There is in the Nigerian military a standard combat load as to when -- as
23 to how many rounds are issued with a rifle. Are you aware of how many rounds in
24 Nigeria are issued with a rifle? "Yes" or "no."

25 A. Yes.

1 Q. And could you enlighten us; could you tell us how many rounds were so
2 issued?

3 A. Do you mean the rounds that were issued to us when going for the mission
4 or the rounds that were supposed to be issued to us?

5 Q. Both. Let's deal with them one-by-one, Witness. How many rounds do you
6 say should have been issued to you?

7 A. About 120 rounds.

8 Q. How many rounds were issued to you?

9 A. Based on what (Expunged) had in stock, (Expunged) able to physically issue
10 a maximum of 60 rounds, though there were some reserves in the armoury.

11 Q. Knowing that many threats had been made to the camp, had further
12 supplies - further munitions - been requested from AMIS headquarters?

13 A. No.

14 Q. Why not?

15 A. Based on our procedure, the headquarters is meant to assess (Expunged)
16 ammunition reports, which we usually sent on a monthly basis.

17 Q. But, Witness, knowing that so many threats had been received against MGS Haskanita,
18 surely (Expunged) have thought it prudent to make sure that at least (Expunged)
19 were given the minimum number of bullets ordinarily required to protect themselves?

20 MR. OMOFADE: Your Honours, I rise rather reluctantly, bearing in mind
21 I interrupt my friend's flow, but I do think that there might be need if certain
22 questions are going to be put, that we do this in private session, your Honours.

23 MR. KHAN: Yes, I stand corrected. Your Honours, I will be more diligent,
24 and I am grateful to my learned friend for correcting me. Your Honours, I've got
25 no objection to going into private session for a few moments.

1 PRESIDING JUDGE STEINER: Court officer, let's go into private session,
2 please.

3 (Private session at 10:07 a.m.)

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15 (Open session at 10:16 a.m.)

16 THE COURT OFFICER: Open session.

17 MR. KHAN:

18 Q. Witness, you said in private session a moment ago that the situation was
19 tense when you entered - when you arrived in Haskanita in April - in Haskanita.
20 Haskanita itself had about five to 10,000 inhabitants, is that correct?

21 A. Correct.

22 Q. You witnessed many bombings and attacks on Haskanita village and the
23 surrounding area, is that right?

24 A. Correct.

25 Q. The Umda of Haskanita complained to officials in MGS Haskanita that his

1 villagers, the civilians, did not feel secure; is that right?

2 A. Correct.

3 Q. And this sustained bombardment and fear, I put it to you, led to the
4 demonstrations on 6 September 2007 that you witnessed; would you agree with that?

5 A. I wouldn't know the motive of the Haskanita villagers, but that happened.

6 Q. Thousands of men, women and children you say came to the camp to express
7 their disappointment, dismay and anger at what was going on; is that right?

8 A. I cannot ascertain if the Umda or the leaders of the rebel demonstration
9 group were speaking the views of those children and women, but these incidents
10 happened.

11 Q. One always gets a sense of occasion. Did you get a sense when you saw
12 these thousands of people that you describe as to whether they were happy, or annoyed?

13 A. Based on my personal assessment, some of the people in the demonstration
14 were not happy and some I cannot describe how they feel.

15 Q. And amongst the people that were not happy were men and women, civilians.
16 Is that right, or not?

17 A. No, I could say the person I observed that was not happy was the spokesperson.
18 I observed that.

19 Q. The spokesperson for the village?

20 A. Yes.

21 Q. I am grateful. Witness, you describe that on 10 September you saw a bombing
22 of MGS - you saw bombing of Haskanita village; is that right?

23 A. Before I answer that, those bombings happened around Haskanita village
24 and maybe if you say Haskanita village maybe I want to clarify if you mean the target
25 was Haskanita village?

1 Q. In the locality that you were based?

2 A. Correct.

3 Q. And you know that two Government of Sudan helicopters took part in that
4 operation?

5 A. Correct.

6 Q. These Government of Sudan helicopters were what colour?

7 A. They were, as far as I can remember, they were military colours, somehow
8 brownish or green.

9 Q. Are you aware of bombings that you could see from MGS Haskanita involving
10 Government of Sudan aircraft, Antonovs, that were painted white?

11 A. Based on (Expunged) intelligence, I suppose it was a government
12 helicopter - government Antonov planes.

13 Q. I am sorry, could you repeat?

14 PRESIDING JUDGE STEINER: The correction of the transcript.

15 MR. KHAN: Yes, I was going to ask the witness if he could repeat his
16 answer, your Honour.

17 Q. Witness, I am sorry we didn't catch your answer. Let me put the question
18 again: Are you aware of white Antonov aircraft operated by the Government of Sudan
19 being used in bombing missions?

20 A. Based on (Expunged) intelligence, that is correct.

21 Q. Are you aware during the time you were in Haskanita that the Government
22 of Sudan also used white helicopters in such missions?

23 A. I don't understand that question.

24 Q. In the months that you were in Sudan, were you aware of the Government
25 of Sudan using white coloured helicopters to bomb civilians or rebels?

1 A. No, I am not aware of government helicopters. I only know about Antonov
2 white planes.

3 Q. Had you heard from any colleagues that the Government of Sudan had been
4 using white helicopters in such missions?

5 A. I cannot remember.

6 Q. The prohibition on flights that you say was made by the rebels had been
7 in force for some time, hadn't it?

8 A. Correct.

9 Q. As far as you are aware, did it have anything to do with the fact that
10 the rebels thought that the Government of Sudan was using aircraft in AMIS colours
11 to kill?

12 A. Repeat that question.

13 Q. Did you think the prohibition that was put in place on flights had anything
14 to do with a fear by the rebels that the Government of Sudan was engaging in bombing
15 missions using aircraft and helicopters painted white in AMIS colours?

16 A. As far as I can say, I cannot speak for the rebels or the government forces.
17 I can speak for my commander and what I can do; but for the intentions or the motives
18 of the rebels or government, I cannot really say the purpose of some of their actions.

19 MR. KHAN: Your Honour, perhaps I could ask the witness, with your leave,
20 to put the microphone closer to his mouth, because sometimes I am finding it difficult
21 to hear.

22 Q. Witness, it is a directional microphone, so you have to have it pointed
23 directly towards your mouth. You had intelligence sources -- sorry, let me put
24 it again. Within MGS Haskanita, was any provision made for gathering intelligence?

25 (Expunged)

1 (Expunged)

2 Q. Witness, of course I know you are an army officer, and so I am sure you
3 are used to speaking loudly and giving commands. If you could be so kind as to
4 try and keep your voice up, I would find it very helpful, indeed. Could you try
5 and do that? Pretend you are talking to another soldier. So speak a little louder,
6 if you can.

7 A. No, there is no problem with that. I will speak louder.

8 Q. Thank you. And from the intelligence facilities, the intelligence sources
9 that were in place in MGS Haskanita, didn't you hear that this --

10 PRESIDING JUDGE STEINER: Sorry, just one minute, Mr. Khan.

11 (Brief pause)

12 Yes. Again, Mr. Khan, it is a problem with the limit of number of redactions
13 that can be made in a public transcript. And maybe I would like you to pay attention
14 on whether it would be better, in order to facilitate the Defence questioning, to
15 go into private session?

16 MR. KHAN: Your Honour, I am content to go into private session for a
17 moment. I am grateful.

18 PRESIDING JUDGE STEINER: Court officer, let's turn into private session,
19 please.

20 (Private session at 10:29 a.m.)

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3 (Open session at 10:54 a.m.)

4 MR. KHAN: I am grateful.

5 Q. Witness, I'm going to read a line of your statement, in the hope that
6 it refreshes your memory. And you say that after Captain Bashir leaves, "Bashir
7 was replaced by another GoS representative." Do you remember saying that to the
8 Prosecution?

9 A. Correct.

10 Q. Thank you. Do you remember that person's name?

11 A. As far as I can remember, we have Major Abdul Malik in the camp.

12 Q. And that major had been in the camp alternating with Captain Bashir for
13 many months; is that right?

14 A. Correct.

15 Q. And after Captain Bashir left, you received information that Mohammed
16 Osman had indicated that if there was one more attack by the Government of Sudan
17 upon them, they would attack - the rebels would attack - MGS Haskanita. Do you
18 remember receiving that information?

19 A. Correct.

20 Q. And as a result, you called Mohammed Osman to come and see you, didn't
21 you?

22 A. I did not call him.

23 Q. Somebody from AMIS called Osman on the phone and he came to visit; is
24 that right?

25 A. I cannot remember that, but I remember the MGS commander, after we received

1 that information, the headquarters ordered that we should try to get through to
2 the leadership of the rebels which the MGS commander was coordinating.

3 Q. And Osman came to the camp, didn't he?

4 A. Mohammed Osman visited Haskanita camp.

5 Q. Did Mohammed Osman, when he came to the camp, tell you that he believed
6 that the government of Sudan was getting intelligence from the camp?

7 A. I cannot remember him telling me that.

8 Q. Let me read a paragraph of your statement, and perhaps it will more accurately
9 help you refresh your memory.

10 Your Honours, it is paragraph 75.

11 Witness, you said this in your statement to the Prosecution: "We called
12 Osman on the phone and he came to visit us. We tried to explain to him what our
13 powers were, that we had diplomatic means only. Osman said he believes that the
14 Government of Sudan is getting intelligence from our camp. His lieutenants said
15 this is why they will attack us if the Government of Sudan attacks them again."

16 Does that help you remember what was said?

17 A. Yes, I remember that paragraph.

18 Q. Is that the truth?

19 A. Yes.

20 Q. And so the position is, that even after Captain Bashir had left, there
21 were continuing concerns on the part of the rebels about the purpose to which these
22 representatives -- let me put it again. It's a very bad question. Even after Captain
23 Bashir had left, the rebels thought that Government of Sudan representatives were
24 still using the base to attack them?

25 A. Those are some of the concerns we hear from the rebels.

1 Q. Did you do anything as a result of these concerns and the threat that
2 had been made?

3 A. Yes.

4 Q. Could you be so kind as to tell their Honours what you did?

5 A. What (Expunged) did was, that (Expunged) got this information to the headquarters,
6 and (Expunged) waited for the headquarters to tell (Expunged) what steps to take.

7 PRESIDING JUDGE STEINER: Sorry, Mr. Khan. Court officer, let's turn
8 again into private session, please.

9 (Private session at 11:00 a.m.)

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Page 42 - Expunged - Closed session.

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5 (Open session at 11:39 a.m.)

6 THE COURT OFFICER: Open session.

7 MR. KHAN: I'm grateful.

8 Q. Witness, we must move promptly. You'll be glad to hear we have only about
9 15 left, so please try your best to answer questions as clearly as possible, and
10 I will also try my best to ask questions as clearly as possible. Do we have an
11 agreement?

12 A. No problem. I will try.

13 Q. We were talking before the break about Abdulaziz Osher. Is it correct
14 that on 10 September when the rebels came to you, they said that they had captured
15 a Government of Sudan general?

16 A. Yes.

17 Q. You said yesterday that person's name was General Kamara. Could it have
18 been General Khamal?

19 A. I think I said Khamal.

20 Q. I'm grateful for that clarification. And are you aware that at that time
21 Ibrahim Khalil, himself, was in close proximity to Haskanita? Are you aware of
22 this?

23 A. Who is this Ibrahim?

24 Q. Have you ever heard of Ibrahim Khalil, the head of JEM, Dr. Khalil Ibrahim?

25 A. I cannot remember who the person is. But I know, I dare say, there's

1 a name like that in the leadership of JEM, but I stand to be corrected.

2 Q. As far as you are -- were you aware that two days -- well, on 8 September,
3 that he had a meeting with the United Nations and African Union in the Haskanita
4 area? Are you aware of that?

5 A. I was not copied such information, so I am not in position to verify this.

6 Q. Are you aware that Abdulaziz Osher is the brother of Khalil Ibrahim?

7 A. No, I am not aware.

8 Q. On 29 September 2007 when the attack started, you say in your statement
9 that you tried to get hold of Mohammed Osman; is that right?

10 A. As far as I can remember, we -- we tried to get to the leadership of the
11 rebel groups which are -- include, of course, Mohammed Osman and others.

12 Q. So the answer is "yes," in light of the time constraints. You say that
13 you then tried to contact Abdulaziz Osher, and he picked up the phone, and said,
14 "We better not bother him while he was fighting." Do you remember saying that in
15 your statement?

16 A. I remember saying that.

17 Q. Is that the case?

18 A. From the information I got that day from the Lieutenant Colonel Kamara,
19 as I can --

20 Q. Just one moment, please. Can we move to another issue? The attack itself
21 started just after 7:00 p.m.; is that right?

22 A. Correct.

23 Q. You describe a sustained military assault on the base involving rockets
24 and rifle fire, is that a fair assessment?

25 A. Correct.

1 Q. That assault lasted for a considerable amount of time before the attackers
2 entered the camp; is that right?

3 A. Correct.

4 Q. (Expunged)very properly gave orders -- very properly -- orders were given
5 that individuals should fire back on the attackers. Are you aware of such an order
6 being given?

7 A. Correct.

8 Q. One of the first targets that was hit was the communication centre; is
9 that right?

10 A. Correct.

11 Q. Is that the location where the Government of Sudan representatives used
12 to go to contact their government?

13 A. No.

14 Q. They had a Thuraya phone; is that right?

15 A. I suppose.

16 Q. Well, did they or didn't they?

17 A. I suppose.

18 Q. Witness, how many people were killed, as far as you are aware, from what
19 you saw or from what you heard, by the hours of shelling, the rocket fire and firearms?
20 Are you aware of how many people were killed before the rebels entered the camp?

21 A. As I can remember, and from statements and information I got, one person -
22 (Expunged)lost some -- one person in the radio room. That was during the attack.
23 And I was not able to get other information 'til after the attack I was able to
24 know the number of people that were killed.

25 Q. Yes, Witness. Just trying to be quick, even after the attack, from whatever

1 source, were you able to form an impression as to how many people were killed before
2 the attackers entered the camp by artillery, by rockets, by any other means? How
3 many were killed before they entered the camp?

4 A. Based on my personal assessment, I believe about three, three or thereabouts,
5 were killed before the rebels entered the camp.

6 Q. And I'm grateful. And I must correct the transcript of yesterday. My
7 learned friend let some evidence in. Is it correct when you described yesterday
8 hearing about seven people killed you didn't - as Mr. Omofade said - you didn't
9 actually see them being killed? You heard about them afterwards; is that right?

10 A. Correct.

11 Q. You can't tell the Court under oath exactly how they were killed; is that
12 right?

13 A. Correct.

14 Q. Are you aware that once the firing started, soldiers, Protection Force
15 personnel inside the camp, fired at rebels who were also inside the camp? Are you
16 aware of that?

17 A. Repeat that question.

18 Q. Once the rebels entered MGS Haskanita, are you aware that Protection Force
19 personnel fired at them?

20 A. I was not aware that -- after the rebels have entered the camp, I was
21 not aware if any of the soldiers fired the rebels inside the camp.

22 Q. So it could have happened; is that right?

23 A. It's a possibility, yeah, it's not a possibility, I can't say.

24 Q. And it's right, isn't it, that if bullets are fired and miss their targets,
25 there can be friendly fire. That's also a possibility, isn't it?

1 A. It's a possibility.

2 Q. Witness, moving very swiftly on, who -- how did you feel --

3 MR. KHAN: Your Honour, do I have until 12? I'm grateful.

4 Q. Witness, I will cut quite a bit in the interest of time and move to my
5 final questions.

6 You've described a number of people that -- that threatened MGS Haskanita
7 and painted a picture of discontent on many quarters. Who do you individually hold
8 responsible for the fate that befell (Expunged) men on 29 September 2007?

9 A. Personally, based on my assessment, I believe the combined rebel groups
10 were responsible for this attack.

11 Q. And which individuals -- Witness, which individuals do you say were the
12 architects of that attack, the people that planned it and directed it? What are
13 their names?

14 A. I cannot pick individuals, but I can -- I can only say individuals that
15 have threatened. But directing or coordinating the -- the attacks, I cannot know
16 who are those that --

17 Q. Okay. Witness, let me just try and put three names to you. It may be
18 a more prudent course. Would it be a correct assessment if I asked you the question:
19 Who do you believe is responsible for the event and events, and why do you believe
20 this? If I -- if I put it to you that your answer would be you hold the Sudanese
21 Liberation Army -- Liberation Army United Movement and the Justice and Equality
22 Movement in Haskanita led by Mohammed Osman - also known as Janjaweed - Mohammed
23 Abdulaziz Osher and Abdulrahaman Fadul Ton as the people responsible? Is that
24 a statement that you feel able to agree with?

25 A. What I can say is that these individuals you mentioned were players prior

1 to this attack. So it is left for investigations to conclude the primary
2 responsibility to these attacks. Mohammed Osman was seen participating. Abdulaziz
3 was reported to me seen. That is the people that was reported to -- to me. So
4 I, maybe with investigations --

5 Q. I'm grateful, and I apologise for cutting you off. That's Abdulaziz Osher
6 you are talking about that it was reported to you that he was also participating?
7 That's Abdulaziz?

8 A. In the parties to this conflict, we have many Abdulaziz. We have Abdulaziz
9 who is a representative of the SLA. And we have Abdulaziz --

10 Q. I know there's a lot of them. I'm simply saying the people that you say
11 and have said are responsible, would they include Mohammed Osman, Abdulaziz Osher
12 and Abdulaziz Rahaman Fadul Ton. "Yes" or "no."

13 A. I cannot directly answer this question, because I -- I cannot say what
14 I didn't see with my own eyes. Only I can say Mohammed Osman.

15 Q. Did anybody tell you that Abdulaziz Osher participated in that attack?

16 A. I was told that Abdulaziz participated. And personally, I investigated
17 by questioning this person. And the manner in which he explained this Abdulaziz,
18 I concluded it was Abdulaziz on the side of the SLA.

19 Q. I'm grateful.

20 MR. KHAN: Your Honours, with your leave -- Mr. Abu Garda, please stand
21 up.

22 Q. Do you see the gentleman behind me?

23 A. Yes.

24 Q. Did you see him anywhere in Haskanita between April and September 2007?

25 A. Personally, I cannot remember seeing him.

1 Q. Did you ever see him in MGS Haskanita at any time?

2 A. I cannot remember seeing him.

3 Q. Was he ever a part of any group that threatened AMIS in any way, shape
4 or form?

5 A. I cannot remember anything like that on my side.

6 Q. You never heard that he was in command of forces that attacked you, did
7 you?

8 A. I have never heard anything like that or remember.

9 Q. And on the night in question, on 29 September 2007, you didn't see this
10 man, did you?

11 A. As far as I can remember, I didn't see him.

12 MR. KHAN: Your Honours, I have no further questions.

13 PRESIDING JUDGE STEINER: Thank you, Mr. Khan. We do have three minutes.
14 I would like to ask my colleagues whether they would like to put any questions to
15 the witness. Judge Monageng? Judge Tarfusser?

16 Just for the sake of clarification, with the -- if the Defence does not
17 oppose, I'll put a short question that was of the interest of the Prosecution to
18 clarify a -- one question put by the Defence, but just under the authorisation of
19 the Defence I'll do it.

20 MR. KHAN: Your Honour, I think perhaps I shouldn't be put in that position.
21 I think the most honourable and professional way is, I will leave it to the Bench
22 to decide if the questions are worth putting.

23 PRESIDING JUDGE STEINER: Thank you. In relation to documents handed by
24 the witness to the Prosecution, the question would be whether --

25 MR. KHAN: And your Honour, I do apologise. The only caveat is, I would

1 ask your Honours to make sure that any question put is not in a leading form. Obviously,
2 I don't know how it was written by my learned friend. So it should be neutrally
3 put. On that issue, I am adamant.

4 PRESIDING JUDGE STEINER: Court officer, please, could you give this
5 to the Defence to see whether the format is appropriate.

6 (Brief pause)

7 MR. KHAN: Your Honour, in relation to the second question, it should
8 be "what, if any."

9 PRESIDING JUDGE STEINER: So the question is whether you had your diary
10 with you when you were interviewed by the Prosecution, yes or not?

11 THE WITNESS: I had my personal diaries with me, but there is this pocket
12 notebook I had. I didn't come with it.

13 PRESIDING JUDGE STEINER: Where there attempts, if any, that were made
14 by the Prosecution to get access to your diary.

15 THE WITNESS: No. I was just told, maybe in future the diary would be
16 of importance. That was what I was told.

17 PRESIDING JUDGE STEINER: Thank you very much. So we came to an end to
18 the questioning of Witness 446. We came to an end. I would like on behalf of the
19 Court to thank very much the Witness 446 for being here, for being questioned during
20 two days.

21 I would like to thank also the parties and participants to this hearing.
22 And most, and foremost, to thank very much to the interpreters that were indulgent
23 with the Chamber and the parties today, giving us the opportunity to finalise the
24 questioning of Witness 446.

25 So before I suspend the session, the session has to go into closed in

1 order to allow the witness to be taken outside the courtroom.

2 (Closed session at 12:00 p.m.)

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23 (Open session at 12:02 p.m.)

24 THE COURT OFFICER: Open session.

25 PRESIDING JUDGE STEINER: So we are again in open session. Again, I would

1 like to thank very much to the parties and participants to the hearing -- to this
2 hearing, to the interpreters, court reporters, stenographers, to the staff members
3 of the Pre-Trial Chamber and Pre-Trial Division, the representatives of the Registry.

4 This hearing is suspended. We will resume on Monday at 9:30 for the
5 questioning of the third Prosecution witness. So the hearing is suspended. Have,
6 everyone, a wonderful weekend.

7 THE COURT USHER: All rise.

8 (The hearing ends at 12:03 p.m.)