

1 International Criminal Court
2 Pre-Trial Chamber I - Courtroom 1
3 Presiding Judge Sylvia Steiner, Judge Sanji Monageng and Judge Cuno Tarfusser
4 Situation Darfur, The Sudan - ICC-02/05-02/09
5 In the matter of the Prosecutor v. Bahr Idriss Abu Garda
6 Confirmation of Charges Hearing
7 Tuesday, 20 October 2009
8 (The hearing starts at 9:33 a.m.)
9 (Open session)

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

11 PRESIDING JUDGE STEINER: Good morning. I welcome all parties and
12 participants that are present here in this second day of the confirmation hearing
13 in the case the Prosecution v Mr. Abu Garda. I would ask, please, the court officer
14 to call the case.

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

17 PRESIDING JUDGE STEINER: Thank you very much. For the record, I would
18 like to ask, again, the parties and participants to introduce themselves, starting
19 by the Office of the Prosecutor. Ms. Bensouda?

20 MS. BENSOU DA: Thank you, Madam President. Madam President, the Office
21 of the Prosecutor is represented by Mr. Essa Faal, senior trial lawyer; Mr. Ade
22 Omofade, trial lawyer; Shyamala Alagendra, associate trial lawyer -- sorry, trial
23 lawyer; Desiree Lurf, associate trial lawyer; Victor Baiesu, associate trial lawyer;
24 Pubudu Sachithanandan, associate trial lawyer; and Jennifer Schense, cooperation
25 adviser; and the case manager, Biljana Popova. I am Fatou Bensouda, Deputy

1 Prosecutor.

2 PRESIDING JUDGE STEINER: Thank you very much.

3 Mr. Khan, good morning. Could you please introduce yourself and your
4 team?

5 MR. KHAN: Good morning, Madam President, your Honours. Representing
6 Mr. Abu Garda, who sits behind, is Andrew Burrow, legal consultant; Mr. Anand Shah,
7 our case manager; RoseMarie Maliekel, pro bono legal assistant; along with myself,
8 Karim Khan.

9 PRESIDING JUDGE STEINER: Thank you very much. Please, the legal
10 representatives of victims, introduce yourselves and, please, the numbers of victims
11 you represent.

12 MS. CISSE: (Interpreted) Thank you, your Honour. I am Counsel H  l  ne
13 Cisse and I represent victim number 434, 435, 436, 438 to 432 and I would, without
14 going away from the proceedings, I would like to inform the Court that we would
15 like to make some comments relating to some of the concerns that the legal
16 representatives of victims have with regards to the interests of our clients.

17 MR. KONE: (Microphone not activated)

18 THE INTERPRETER: Microphone.

19 MR. KONE: (Interpretation) Thank you. I am Counsel Brahma Kone, legal
20 representative of victims A-170, and A-436. Thank you.

21 MR. ADAKA: Good morning, Madam President, Presiding Judges. My names
22 are Frank Adaka, and I represent victims number 0552 to 0556 and victims number
23 0563 to 0578. Thank you.

24 MR. AKINBOTE: Good morning, Madam President, your Honours. My names are
25 Akin Akinbote, and I represent victims 535, 537 to 551 and 557 to 562.

1 PRESIDING JUDGE STEINER: Thank you very much.

2 MR. KHAN: Madam President, I don't know if it assists. There was a problem
3 with the transcripts, and I think if one shuts down the Transcend and restarts,
4 it does the trick.

5 PRESIDING JUDGE STEINER: Exactly what happens with mine. Thank you,
6 Mr. Khan.

7 So the Chamber takes note of the observation that Maître Cisse would like
8 to make to the Chamber. You have the floor, Maître.

9 MS. CISSE: (Interpretation) Thank you, your Honour. We would like to
10 express the concerns that we have as legal representatives of victims where it concerns
11 the conditions, balanced progress of proceedings of this hearing. Particularly,
12 we would like to stress the fact that the legal representatives of victims would
13 wish to have access to the witness statements which are produced by the Prosecution
14 and the Defence. And we would just like to stress a procedural point; namely, where
15 it concerns 432 and 436, have a dual status. These victims and witnesses, we would
16 just like to -- we just have a participation form, an application for participation,
17 which in no case, in our view, come under Rule 76 or Regulation 76 of the Rules
18 of Procedure and Evidence and, as a result of this, we don't have the statement.
19 And as a result, when the Prosecution says that we already have the evidence, we
20 don't.

21 We would also like to say that we can't -- we can't ask the Court for
22 authorisation to cross-examine the witnesses as the Prosecution suggests to us because
23 we have to justify the extent to which our clients' interests are injured. In order
24 to assess their interests, we have to be able to have access to these statements
25 with regards to the facts. And that's what we wanted to say.

1 We would also like to say that with regard to the Defence witness, the
2 rules of protection, these are -- in the Rules of Procedure and Evidence in the
3 Statute, and there are measures which could be taken, but they won't -- they shouldn't
4 stop the legal representatives of -- they shouldn't make the legal representative
5 of victims as a spectator because we don't have any access to any documents relating
6 to the charges in particular, and as a result we would like to stress and we would
7 like to insist on the fact that the interests of victims who we represent should
8 be stressed so that we can have a balanced ability to be able to do this.

9 PRESIDING JUDGE STEINER: You are speaking too fast. The interpreters
10 were not able to follow you. Could you please repeat the last part of your motion.

11 MS. CISSE: (Interpretation) I am very sorry. I sometimes have
12 difficulty. I just wanted to say that as a legal representative of victims, we
13 cannot accept that the rules of protection which are there for the Defence result
14 in that we have a purely passive role and a role in which we can do nothing which
15 prevents us from being able to assess the interests of our clients when it comes
16 to examining confidential documents with regards to the facts as well as statements
17 in particular relating to Prosecution and Defence witnesses. And the rules of the
18 protection are there and the Court can understand what needs to be taken in order
19 to protect the witnesses. Thank you.

20 PRESIDING JUDGE STEINER: Although the Chamber has already examined the
21 requests, the written requests made by legal representatives to have access to some
22 confidential evidence in the case file, I would like just before going ahead to
23 ask the Prosecution whether statements of witnesses, especially 432 and 436, that
24 in the table that the Prosecution provided to the Chamber are mentioned as public
25 documents have been -- are really public, because if they are public, legal

1 representatives have access to them. So, maybe there is a misunderstanding in
2 relation at least to these two statements.

3 A different case is the one related to Witness 446. But in relation to
4 these two witnesses mentioned by Maître Cisse, I would like to confirm whether the
5 table provided by the Prosecution with the level of confidentiality of documents
6 is correct in relation to these statements.

7 MR. FAAL: Your Honour, kindly allow me to confirm the numbers of the
8 witnesses your Honour has just mentioned. It's 446, your Honour said, and 432?
9 And your Honours, I can see three different numbers on the screen: 432, 436 and
10 446.

11 PRESIDING JUDGE STEINER: Yes. I am talking especially in relation to
12 432 and 436 that are the ones -- am I mistaken?

13 MS. CISSE: (Interpretation) Yes, your Honour. It's 434 and 435 for which
14 we only have the participation documents. And my colleague has -- would also like
15 to express the fact that 436 in the same situation, this dual situation, 436.

16 PRESIDING JUDGE STEINER: So I think there is a lot of misunderstanding
17 here because, as far as I know, Prosecution has only three witnesses, not four.
18 Could you please, Mr. Faal, define the numbers of the three witnesses that are coming
19 to give testimony viva voce testimony, please.

20 MR. FAAL: Your Honours, we have three witnesses. The first witness is
21 416 and the second witness is 446 and the third witness, your Honour - just give
22 me a second - 445.

23 PRESIDING JUDGE STEINER: Mr. Khan?

24 MR. KHAN: Well, your Honour, just one point. I don't know if my learned
25 friend is correct about the order of the witnesses. I had thought that 446 was

1 the Prosecution's first witness; 446. 416 was the second and 445 was the third.
 2 I understand that is the position and, if I am in error, I do apologise.

3 PRESIDING JUDGE STEINER: Yes. I think in this case the position is not
 4 at stake, is the numbering that -- it's completely different than the numbers mentioned
 5 by Ms. Cisse. But, in any case, Mr. Faal, the statements of witnesses 416, the
 6 second, and 445 would be the third, are public documents?

7 MR. FAAL: Your Honour, we have classified them as public insofar as
 8 victims' representatives can have access to them, but that is the -- that is the
 9 sole reason. So, we are astonished that they were not able to have access to them.
 10 But we would not oppose them having access to those statements. Thank you.

11 MS. CISSE: (Interpretation) Your Honour, I would like to stress the fact
 12 that in the decision of 25 September 2009 concerning the applications for participation
 13 and 6 October decision considering the modalities of application - considering the
 14 modalities of application - it was stated that the victims 435 and 436 -- 434 had
 15 a dual status because the Prosecution wanted to use them as witnesses, and that
 16 appeared in both decisions, and these numbers correspond to the numbers that the
 17 victims service communicated to us.

18 So these are the numbers which are in the decision of 25 September and
 19 these are the numbers which were communicated by the Victims Participation and
 20 Reparations Service, VPRS.

21 PRESIDING JUDGE STEINER: (Microphone not activated) ... We are going
 22 to check the two decisions. The fact is that there are some Prosecution witnesses
 23 that have the dual status of witnesses and victims participating. As far as I remember,
 24 there are five victims/witnesses in this position, but only three will come to give
 25 viva voce testimony. So maybe this is the confusion. Not all of them will come

1 during the pre-trial stage of the case to give testimony.

2 In any case, all statements, all but number 446, are public documents
 3 of the case file and, therefore, victims have access to the statements of all witnesses,
 4 but 446, that, the Chamber is going to issue a decision on this specific witness
 5 right now. But if you, for any reason, or any of the legal representatives, are
 6 having difficulties in having access to the statements, I would recommend that
 7 consultation with Office of Public Counsel for the Victims since you are entitled
 8 to have access to all public documents of the case file, including witnesses'
 9 statements of those that are coming to testify and of those that are not coming
 10 to testify viva voce. I hope that clarifies the position of legal representatives
 11 of victims, and I thank you very much for bringing the issue into this session.

12 Mr. Faal, you have the floor.

13 MR. FAAL: Madam President --

14 MR. *ADAKA: Sorry, sorry. Madam, Madam Presiding Judge.

15 PRESIDING JUDGE STEINER: I can have only one speaker per time. If there
 16 is something related to the issue we just have discussed, so you have the preference,
 17 you can please take the floor. Mr. Faal, you can wait a little bit.

18 MR. *ADAKA: Thank you, Madam Presiding Judge, your Honours. We have a
 19 similar observation with the one -- the last speaker just raised. It's regarding
 20 the procedure to be followed in respect of persons and joint dual status of victims
 21 and witnesses. The particular individual in this regard is victim number 0569 who,
 22 incidentally, is also witness number 0446 for the Prosecution. Our understanding
 23 is that as legal representatives of this particular victim, we can only provide
 24 him with legal assistance as required if we have access to him. We are well aware
 25 and we have been told there's been a decision on this matter, on a similar matter,

1 by this Chamber in the Lubanga case that we can have access to such a witness, provided
2 that we do not discuss topics to be dealt with during the evidence, or exhibits
3 to be presented.

4 We want to request, your Honours, that we be allowed access, physical
5 access, to this particular victim who also has the status of a witness, and we make
6 a commitment here that we shall not discuss matters to do with evidence in court
7 here. All we want to do is to provide him with assistance as he may require in
8 regard to his status as a victim. Thank you very much.

9 PRESIDING JUDGE STEINER: This is a very peculiar request since there
10 is no precedent of this Chamber, as far as I remember, that legal representatives
11 having access to witnesses. So, the fact that you also represent such witness as
12 a legal representative in terms of participation doesn't change the fact that this
13 is a Prosecution witness and, in principle, only the Prosecution is allowed to make
14 a courtesy visit to its witnesses.

15 In any case, instead of starting a debate during this session, I would
16 ask the Prosecution and also Mr. Khan to come with considerations on this request
17 for tomorrow morning, and then the Chamber will be in a position to decide.

18 But in principle, just in order to clarify the issues, legal representatives
19 have never had access to witnesses before their testimony. In this Court, witnesses
20 are subject to a process called familiarisation that is given by VWU (Victims and
21 Witnesses Unit), familiarisation with the equipments of the Court and to make victims
22 comfortable to examine at what point victims need assistance of psychologists or
23 psychiatrists, but not visits by legal representatives. But, in any case, I will
24 wait for the considerations to be given by Prosecution and Defence.

25 MR. KHAN: Madam President, I hope I can assist. The witness in question,

1 of course, is due to give evidence tomorrow. I can say immediately that there is
2 no objection from the Defence if my learned friend wishes simply to introduce himself
3 to the relevant witness and have a meet and greet, as it were, in the presence of
4 course of the Victims and Witnesses Unit's ICC representative. There is no objection
5 from the Defence for that.

6 It may be more expeditious - of course, it is a matter for your Honours - for
7 a decision to be taken now, rather than running the risk of delaying things for
8 tomorrow.

9 PRESIDING JUDGE STEINER: Thank you very much. I haven't noticed
10 that -- because the Chamber was not informed about the order of the witnesses, this
11 information has been given by you during this session and now I know that this will
12 be the first witness, and so I think it would be helpful to the Chamber if Mr. Faal
13 could give his observations right now.

14 MR. FAAL: Your Honours, the Prosecution has no objection to a legal
15 representative meeting with the victim he is representing, be it that that victim
16 is indeed a witness before the Court. But, your Honours, the fact that he is a
17 victim, he is also a witness, brings a new dimension in this proposed meeting.
18 Therefore it is quite important that such a meeting be one that is supervised, similar
19 to the meeting that the Prosecution had with the same witness.

20 So while we do not object to this meeting, it has to be under the supervision
21 of VWU and they would speak in a language that VWU staff would understand. We would
22 put that as a condition because the whole essence of the supervision would be defeated
23 if the person sitting there just sits there and hear them speak in a language the
24 supervisor does not understand. It defeats the entire purpose. So we therefore
25 ask that the Chamber gives stringent guidelines for such a meeting to be supervised

1 by VWU.

2 With regards to the order of witnesses, I think I owe the Court the duty
3 to clarify a particular issue. Indeed my learned friend, counsel for the Defence,
4 did get it right in terms of the initial order of witnesses that the Prosecution
5 provided but, your Honours, STIC had made certain arrangements for translation and,
6 as far as last night when we inquired, we were told that as for their arrangements
7 Witness 416 should come first.

8 So we are trying to resolve that issue with STIC. I do understand that
9 this has contractual implications and, because of that, the Prosecution is prepared
10 to be flexible and call whichever witness - whichever witness - such that it would
11 not impact negatively on the contractual arrangements that are already made by STIC.
12 So we are flexible. If 416 should come first, we are ready to take him. If 446
13 could come first without impacting negatively on the contractual arrangements, then
14 we would take him. So I also implore counsel on the other side to demonstrate such
15 flexibility.

16 Thank you, your Honour.

17 (Pre-Trial Chamber confers)

18 PRESIDING JUDGE STEINER: So the Chamber will decide on the request made
19 by the legal representative in due time.

20 Before starting with the Prosecution's presentation of its evidence, the
21 Chamber has some decisions on pending issues to be issued from the Bench. Of course,
22 the Prosecution will be compensated on the time that has been stolen by the Bench.

23 The first one is the decision on the Defence's motion for reconsideration.
24 During the private session held yesterday, the Defence requested the Chamber to
25 reconsider partially its decision on witness to be called by the Defence at the

1 confirmation hearing (decision document 186 of the case file issued on 19 October
2 2009). In particular, the Defence requests the modification of the determination
3 that the testimony be given in closed session.

4 In this respect the Chamber would like to remind the parties and participants
5 that, contrary to Mr. Khan's assertion, in a number of decisions, not only this
6 Chamber but also Pre-Trial Chamber II, held that in principle the statutory framework
7 set out by the Statute and the Rules does not provide for a motion for reconsideration
8 as a procedural remedy against any decision taken by the Chamber, or the Single
9 Judge. Reference can be made to the decisions in DRC case file 457 in the Lubanga
10 case, decisions 123 and 166 in the Katanga and Ngudjolo case, decision 477, as well
11 as to the Kony case to the situation in Uganda, decision 60.

12 Moreover, the Chamber recalls that this Chamber, in accordance with
13 precedents set by the Appeals Chamber, has always granted protective measures to
14 OTP staff members that work in the field in charge of investigations, in order to
15 avoid risks for the safety of OTP personnel and also to protect ongoing investigations.

16 Finally, the decision has pointed out for the reasons justifying the need
17 for the testimony to be given in closed session on the basis, not only related to
18 the witness protection but also in relation to the content of the information sought
19 by the Defence, which relates to OTP practices of investigation.

20 At the same time, as pointed out by the Prosecution in its oral response
21 to the Defence request, no prejudice to the rights of the suspect will be caused
22 by the questioning of the witness in closed session.

23 For these reasons, the Chamber rejects the Defence request for
24 reconsideration.

25 We have also a decision on the Prosecution's urgent application for

1 reclassification. With respect to the urgent Prosecution's application for
2 reclassification as confidential ex parte, of certain annexes referred to in the
3 decision reclassifying certain documents and ordering the filing of public redacted
4 versions of 9 October 2009, is decision 185 of the case file.

5 Filed on an urgent basis on 18 October 2009, the Chamber deems it necessary,
6 due to the nature and the content of the documents identified in the Prosecution's
7 application, to reclassify them pursuant to Regulation 23 bis of the regulations
8 of the Court as requested by the Prosecution.

9 The Prosecution informs the Chamber that the Defence is aware of the
10 erroneous classification given previously to the mentioned documents and appears,
11 in accordance with the letter sent to the OTP, not to oppose the request.

12 Therefore, the Chamber grants the Prosecution's application and orders
13 the Registry to reclassify as confidential ex parte Prosecution only the seven
14 documents listed therein; namely, Annexes 5.13, 5.34, 5.35, 5.36, 5.37, 5.38 to
15 filing 21 of the record of the case and Annex A to the filing 24 of the record of
16 the case.

17 We have also a decision with the lifting anonymity of victims. Regarding
18 the "requête aux fin de levée de l'anonymat des victims", filing number 189, whereby
19 Mr. Kone requested the lifting of anonymity of victims A-0170 to A-0192 and A-0436,
20 the Chamber hereby grants the request and, therefore, orders the Registry to provide
21 the Defence with the names of the aforementioned victims.

22 We have a decision on the requests of legal representatives of victims
23 to have access to confidential documents. With respect to the requests of Mr. Akinbote,
24 legal representative of victims 0535, 0537 to 0542, 0544 to 0551 and 0557 to 0562
25 on filing 176, Ms. Cisse, legal representatives of victims 0434 and 0435, filing

1 177, and Mr. Kone, legal representative of victims 0170 to 0192 and 0436, to have
2 access to confidential documents in the record of the case, the Chamber, noting
3 the responses submitted by the parties, Defence response document number 192 and
4 Prosecution response document 193, noting that the legal representatives of victims
5 request access to confidential documents in the case file in order to enable them
6 to exercise their right to question witnesses in accordance with Rule 91(3) of the
7 Rules if the Chamber authorises so; considering that according to the Prosecution's
8 chart outlining the confidentiality level of the evidence, document 152 of the case
9 file, the legal representatives of victims have already access to all the case file
10 of the Prosecution, with the exception of the statement of Witness 446 and the related
11 photographs; considering that such access would enable the legal representatives
12 of victims to exercise their rights pursuant to the decision on victims' modalities
13 of participation, decision 136; considering that with respect to the Defence witness
14 no prior statements have been filed in the record of the case; and considering that
15 only Defence's evidence is at most part filed as confidential and that for the Defence
16 victims should have -- and that for the Defence victims should have no access to
17 confidential document, decides to grant victims access to statement of Witness 446
18 and the related photographs and rejects the victims' remaining request to have access
19 to other confidential documents of the case file.

20 Finally, the Chamber has a decision on the request for reclassification
21 of victims' application of witnesses. Regarding the Prosecution's application
22 seeking reclassification of victims' applications of witnesses under Regulation
23 23 bis, filed by the Prosecution on 15 October 2009, which is file 174, as already
24 stated by this Chamber, notably in the decision confirming the charges in the Katanga
25 and Ngudjolo case, decision 717, paragraphs 229 to 232, victims' applications are

1 not part of the evidence in the case. The same applies also when victims are also
2 witnesses.

3 The Chamber acknowledges the decision issued by Trial Chamber I, decision
4 1637 of the case file. However, the Trial Chamber's decision appears to refer to
5 some, and I quote "exculpatory information in the possession of the Prosecution
6 and of the VPRS" that apparently does not apply to the current case.

7 Finally, it must be recalled that the Defence received the redacted versions
8 of the applications and that such redactions are, in the most part, of the same
9 information that is redacted from witnesses' statements, mostly names and whereabouts
10 of family members and information and documents related to victims' rights to
11 inheritance, to the injury suffered, et cetera. For these reasons, the Chamber
12 rejects the Prosecution's application.

13 These were the pending decisions arising from the case so far.

14 Now, I think we are ready to start with the Prosecution presentation of
15 its evidence. According to our schedule, the Prosecution has three sessions of
16 one-and-a-half-hours to present its evidence. Of course, the Prosecution will be
17 compensated for the 45 minutes that has been taken from its -- the time allocated
18 to him. So, if you please you can start, Mr. Faal.

19 MR. FAAL: Madam President, before we start the presentation, I would
20 just wish to make a very short introduction. Mr. Pubudu Sachithanandan would give
21 you a presentation on the following topic: AMIS was a peacekeeping force in accordance
22 with the Charter of the United Nations and that its personnel, materials, units
23 and vehicles were entitled to the protection that is accorded to civilians under
24 International Humanitarian Law. Your Honours, the reason for such presentation
25 is that among the agreed facts this important element was not agreed with the Defence.

1 Your Honours, the presentation would have a lot of references and, since
2 we would not be able within the time allocated to put all the evidence on the screen,
3 we have provided advanced courtesy copies of each of our presentations. We have
4 also provided copies to the Defence such that they can follow the proceedings and
5 be able to respond to any of the evidence that is cited therein.

6 So in the interest of time, my colleague Pubudu would present as much
7 of the paper as possible. He may not be in a position to go through all the sources
8 that are cited therein, but we implore the Chamber to use the material that is provided
9 to them as containing all the Prosecution's submission in this particular subject,
10 whether or not the oral presentation was able to refer to each and every source
11 that we intend to rely on. Thank you, your Honour.

12 PRESIDING JUDGE STEINER: Just one question, Mr. Faal. According to the
13 practice of the Chamber, and for the sake of the record, usually in the beginning
14 of the presentation, the Prosecution states that it is tendering into evidence all
15 evidence contained in the document containing the charges and list of evidence.
16 Could the Chamber presume that this is the case?

17 MR. FAAL: Yes, your Honour. Indeed, this is the case. The Prosecution
18 intends to have in evidence and hereby makes a formal request to tender all the
19 material that the Prosecution has listed in its list of evidence. Thank you, your
20 Honour.

21 MR. KHAN: Madam, President, your Honours. Can I just say that I understand
22 my learned friend is seeking to deal with matters and to present his case in the
23 most -- in the fullest manner possible and in that endeavour he seeks to put the
24 whole document in before your Honours, even if my learned friend, Mr. Pubudu, does
25 not manage to get to those parts. Your Honours, there is no objection for that

1 course to be adopted.

2 PRESIDING JUDGE STEINER: Thank you very much, Mr. Khan. This has been
3 the practice of the Chamber; otherwise, the confirmation hearing would be a kind
4 of mini-trial in which all evidence that is mentioned in the list of evidence should
5 be presented in hearing. So I very much appreciate that we follow the precedence
6 of Pre-Trial Chambers.

7 OTP has the floor.

8 MR. SACHITHANANDAN: Thank you, your Honour. As Mr. Faal mentioned, my
9 name is Pubudu Sachithanandan, and I am grateful to Mr. Khan for his acceptance
10 of the decision to proceed with the document.

11 I will be relying quite heavily on a visual presentation in terms of
12 expediency, for the purposes of expediency, so I would be grateful if we could all
13 switch to -- I believe it is PC-1, is it? Can your Honours see it on your screens?

14 Very well, I will proceed then. I'm assuming that everyone can see the
15 presentation on their screens.

16 Your Honours, as Mr. Faal explained, I will be dealing with aspects related
17 to AMIS that are relevant to all three counts that are being charged by the Prosecution.
18 I will give you a brief road map of the areas that I will be covering. As you can
19 see, I will be dealing with the fact that AMIS was a peacekeeping mission within
20 the meaning of Article 8 of the Statute and that it was in accordance with the Charter
21 of the United Nations.

22 I will also be dealing with the fact that it will be -- it was, at the
23 time of the attack on 29 September, that it is entitled to the protection given
24 to civilians or civilian objects. I will also deal with the fact that Mr. Abu Garda
25 was well aware of the factual circumstances that led to this protected status.

1 In addition, your Honour, I will be dealing with the fact that MGS Haskanita
2 was indeed the intended target of attack and that it was no mistake that Haskanita
3 was attacked. And I will also be dealing with the fact -- with information related
4 to the gravity of the attack.

5 Before we proceed to the actual evidence, your Honour, I will briefly
6 give you an idea of how AMIS came into being and how it was set up. I will be very
7 brief on this. As you can see, on the basis of the N'Djamena Humanitarian Ceasefire
8 Agreement, the Ceasefire Commission was set up in Darfur. And as part of the Ceasefire
9 Commission, AMIS became its operational arm, which was to monitor the ceasefire
10 and to monitor violations of the ceasefire. AMIS went through several phases of
11 development.

12 In June 2004 was the beginning of the deployment of AMIS. And indeed,
13 by 20 October 2004, well before the incidents that we will be discussing, AMIS became
14 a full-fledged peacekeeping mission. I refer to DAR-OTP-0021-0158, EVD-OTP-0219.
15 Much this, your Honour, is agreed fact and therefore I will move quickly.

16 In terms of the structure and components of AMIS in Darfur, there were
17 eight sectors in which AMIS was deployed. The sector that is important for us is
18 Sector 8, which is the sector within which MGS Haskanita was deployed. Each military
19 group site, which is what I refer to when I say MGS, was composed of military observers,
20 civilian police, protection force, interpreters, and representatives of the parties
21 to the conflict. I will stress representatives of the parties to the conflict because
22 it will become important later during this presentation. As I mentioned, your Honours,
23 Haskanita, on 29 September, was one of the four military observer group sites within
24 Sector 8 of AMIS deployed in Sudan.

25 Haskanita, at the time of the attack, had several types of personnel.

1 There were military observers, again, unarmed, Malians, Togolese,
2 Nigerians, Zambian, Senegalese. Here were civilian police also as well, as I will
3 explain, unarmed, Senegalese, Ghanaian, Nigerian, South African, Gambian, and the
4 Protection Force, which was the force mandated to take care of these unarmed MILOBs
5 and unarmed CivPol representatives.

6 Your Honour, I cite witness statement DAR-OTP-0165-0521 at 0524. The
7 EVD number is 0335.

8 I will now get to the meat, as it were, of the presentation, and I will
9 deal first with the peacekeeping nature of AMIS and, by extension, the peacekeeping
10 nature of MGS Haskanita on 29 September 2007. It is the Prosecution's contention
11 that MGS Haskanita was a peacekeeping mission within the meaning of Article 8 of
12 the Statute due to -- I'm sorry, previous slide -- due to three factors. Firstly,
13 it was impartial or neutral. It had Host State consent to its presence in Darfur
14 and also the mandate and Rules of Engagement of AMIS at that period of time ensured
15 that there was no use of force, no use of deadly force, except for self-defence
16 and protection of AMIS property.

17 Next slide, please.

18 I refer you first to the mandate of AMIS which will make clear this
19 peacekeeping nature of the body. That is, if your Honours take a look at the slide,
20 the four primary aspects of the mandate of AMIS to monitor and observe compliance
21 with the Humanitarian Ceasefire Agreement, to assist in the process of confidence
22 building, to contribute to a secure environment for the delivery of humanitarian
23 relief and the return of IDPs and to contribute to the improvement of the security
24 situation throughout Darfur.

25 Your Honours, I stress that all four of these primary mandate points within

1 the mandate of AMIS do not require any partisan action, do not require any allegiance
2 to one party above the other, and certainly do not involve any participation and
3 hostilities against a particular party.

4 I refer you, your Honours, for the purposes of the record, to
5 DAR-OTP-0154-0500 at 0501, EVD-OTP-0083.

6 Your Honours, before I move on to a description of how AMIS was neutral
7 at that point of time, how AMIS personnel knew that they were neutral at that point
8 of time, and how this was represented in their activities, I would like to give
9 the opportunity for an AMIS member of staff to give that opinion on his own behalf.
10 And, to that end, I would like to ask the court management to play a brief video.
11 It is EVD number 0569.

12 While that is being set up, your Honours, I will explain the background.
13 This is a brief excerpt of a video taken a few hours, indeed, after the attack on
14 Haskanita and taking place in Haskanita within the MGS, within the ruins of the
15 MGS, as it were. And this is a Nigerian MILOB.

16 (Videotape played)

17 MR. SACHITHANANDAN: Please stop. Can we just play that once more. I
18 just want to make sure everyone heard.

19 (Videotape played)

20 MR. SACHITHANANDAN: That's fine. Thank you. If we could switch back
21 to the presentation now.

22 Your Honours, I will now refer briefly to the understanding on the part
23 of AMIS personnel of their own mandate. I refer to Witness 416 who states: "In
24 my view, AMIS never took sides with any of the parties during the conflict." Witness
25 420: "We had a mission of observation and not of intervention. The MGS at Haskanita

1 was not supporting either the GoS or the rebels. We were not participating or
2 intervening in the fighting between the parties. We were neutral because we did
3 not have a mandate to intervene in the fighting."

4 Your Honour, there are many, many citations, many, many examples of AMIS
5 personnel having this understanding. I will not cite all of them, as Mr. Faal explained,
6 but it gives us a brief understanding of the fact that AMIS not only had an official
7 mandate of neutrality, this was understood by personnel within AMIS, and I will
8 stress that both these witnesses were persons who were present at Haskanita as part
9 of AMIS on the day of the attack.

10 Not only did AMIS understand their mandate as one of being neutral, it
11 was also recognised by the international community, namely, the United Nations.
12 One year prior to the attack at Haskanita, UNMIS, the United Nations Mission in
13 Sudan, issued this statement after an attack on an AMIS body: "UNMIS calls on all
14 parties to the Darfur conflict to respect the neutral and impartial status of AMIS
15 and recalls that any attack against the AU personnel deployed in Darfur is a serious
16 violation of international law."

17 Your Honour, we will certainly get to the point of serious violation of
18 international law, but for our current purposes it is important to note that the
19 UN itself has recognised the neutral and impartial status of AMIS one year prior
20 to the attack at Haskanita.

21 The next factor which establishes the fact that AMIS was a peacekeeping
22 mission within the meaning of Article 8, the consent of the Host State. Your Honours,
23 I refer you to the Status of Mission Agreement signed when the Ceasefire Commission
24 was being set up in Sudan. This took place in June 2004 and it took place between
25 the Ceasefire Commission, that is, between the African Union and the Government

1 of Sudan. And you will see once you consult this document, your Honours, that it
2 refers to permission to stay in Sudan, permission to use particular flags, particular
3 premises, et cetera, and gives full permission for the CFC to function within Sudan.
4 It's important to remember at this point that the operational arm of the CFC, the
5 monitoring body of the CFC, was AMIS. So if there is a status of force -- Status
6 of Mission Agreement with the CFC, there is also consent to the presence of AMIS
7 in Sudan.

8 I will refer briefly to the -- to several other documents that also establish
9 this: the protocol between the Government of Sudan, the SLA, the JEM on the enhancement
10 of the security situation in Darfur in accordance with the N'Djamena agreement.
11 This, your Honours, is an example of all parties to the conflict signing a document
12 which expressly recognises the presence of AMIS in Sudan and expressly supports
13 the presence of AMIS in Sudan. I refer as well, your Honours, to the agreement
14 with the Sudanese parties on the modalities for the establishment of the Ceasefire
15 Commission; again, a document which evokes the same sentiments and presence of AMIS
16 in Sudan. Clearly, your Honours, consent on the part of the Host State as well
17 as consent on the part of the parties to the conflict.

18 The third factor which establishes that AMIS was a peacekeeping mission,
19 its Self-Defensive Mandate and Rules of Engagement. If I can refer to a brief excerpt
20 from the Rules of Engagement of AMIS: "Use of deadly force is authorised only for
21 AU personnel for self-defence, including to resist abduction of oneself or detention
22 of other AU personnel." Clearly a recognition that deadly force could only be used
23 to protect oneself and not for any kind of offensive operation. As your Honours
24 will see, the evidence in the next half an hour or so, AMIS personnel understood
25 this limited mandate and these limited Rules of Engagement and acted accordingly.

1 Your Honours, the next factor that I want to discuss is the fact that
2 AMIS was not only a peacekeeping mission but was also a peacekeeping mission in
3 accordance with the Charter of the United Nations.

4 Your Honour, the Prosecution fully agrees that the basis for the offence
5 under Article 8(2)(e)(iii), attacking peacekeeping personnel, is drawn from the
6 1994 convention on the protection of peacekeepers. And we fully agree that the
7 1994 convention was limited to UN and associated personnel. However, even the
8 briefest of readings of Article 8(2)(e)(iii) makes it clear that this article is
9 not limited to UN personnel. The only words that are used are "in accordance with
10 the Charter of the United Nations," and this was clearly recognised by the Chamber
11 when issuing the summons for Mr. Abu Garda.

12 Very briefly, your Honours, because I do not think this is a controversial
13 point, the African Union is clearly an example of the type of regional arrangement
14 that the United Nations Charter talks about in Chapter 8 of the Charter. Indeed,
15 the constitutive documents of the African Union recognise the fact that it is a
16 kind of regional arrangement that is envisioned in the UN Charter.

17 Not only is the African Union compatible with the UN Charter, the mandate
18 of AMIS that we discussed already is also compatible with the UN Charter.

19 I will remind your Honours of the types of work that AMIS is supposed
20 to carry out. Monitoring a peace agreement; ensuring protection for IDP's; ensuring
21 protection for refugees; and ensuring that the security situation in Darfur improves.
22 All these points, your Honours, are clearly squarely in the middle of what we can
23 imagine is the purposes of the United Nations and the Charter of the United Nations.
24 Next slide.

25 Your Honours, very briefly, I will also mention the fact that AMIS received

1 the endorsement of the UN. As I had referred to previously, United Nations had
2 accepted the neutrality of AMIS but had also endorsed AMIS. Again, further proof
3 that AMIS was in accordance with the United Nations Charter.

4 I refer to UN Security Council Resolution 1556 which endorsed the deployment
5 of international monitors, including the Protection Force envisioned by the AU to
6 Darfur, and also expressed its full support for the African Union-led Ceasefire
7 Commission and Monitoring Mission in Darfur.

8 Similarly, the President of the Security Council on 13 October 2005, years
9 prior to the events that we are dealing with today, also provided unequivocal support
10 for the AU mission and demanded that the parties to the conflict cooperate fully
11 with the African Union.

12 Your Honour, I come to the next big issue in terms of AMIS and its protected
13 status, the fact that AMIS personnel and objects were entitled to protection on
14 that day, on 29 September when bullets started falling upon the AU compound. I
15 will deal with several issues. Firstly, I will show that personnel and objects
16 in a peacekeeping mission are entitled to protection in the same way that civilians
17 are; that they gain protection in the same way that civilians gain protection and
18 that they lose protection in the same circumstances that civilians lose protection,
19 and this applies to the property of AMIS as analogous to the property of civilians
20 in the same situation.

21 I will also show that the AMIS mandate did not allow for participation
22 in hostilities. I will show that AMIS personnel at MGS Haskanita knew this mandate
23 and understood this mandate very strictly and conservatively. And I will also show
24 that not only did they understand this mandate, the activities they carried out
25 in the field, in Haskanita and in the areas nearby were also fully within this limited

1 mandate which is not related to the use of force.

2 Peacekeepers as civilians. Your Honours, I refer to you -- to a report
3 of the Secretary-General when the Special Court for Sierre Leone was being set up
4 in 2000. Importantly, the Secretary-General stated this: He distinguished between
5 peacekeepers as civilians and peacekeepers turned combatants, and he identified
6 peacekeepers as a targeted group within the generally-protected group of civilians
7 which, because of its humanitarian or peacekeeping mission, deserves special
8 protection.

9 This supports the fact, your Honours, that when peacekeepers are not
10 enforcement troops, when peacekeepers are carrying out strictly peacekeeping
11 activities, that they have to be treated as civilians. Not only factually, but
12 also legally.

13 I will briefly examine how civilians lose protection during times of armed
14 conflict and then apply the same thing to peacekeepers.

15 Your Honours, Article 51(3) of Additional Protocol I to the Geneva
16 Conventions: Civilians shall enjoy the protection afforded by this section unless
17 and for such time as they take a direct part in hostilities. My apologies, your
18 Honour.

19 Article 13(3) of Additional Protocol II, again: Civilians shall enjoy
20 the protection afforded by this part unless and for such time as they take a direct
21 part in hostilities.

22 What will become obvious from the case law that I am citing is that this
23 very test that is used for civilians is exactly the same test that is used for
24 peacekeepers in the limited practice that we have had so far.

25 Your Honours, I -- if you could take a look at the screen, the RUF case,

1 the Prosecutor v Issa Hassan Sesay. The judgment of 2 March 2009 used Common Article
2 3 of the Geneva Conventions when establishing liability for an attack on peacekeepers.
3 The importance of this is that Common Article 3 uses a test of taking part in hostilities;
4 that is, if one is not taking part in hostilities, then one is a protected person.
5 The same test that is used to protect civilians under Additional Protocol I and
6 under Additional Protocol II.

7 A plethora of case law -- my apologies again.

8 PRESIDING JUDGE STEINER: Yes. We are having problems with interpretation,
9 the translation into French and into Arabic.

10 MR. SACHITHANANDAN: Very well.

11 PRESIDING JUDGE STEINER: So I would very much appreciate if you could
12 slow down your --

13 MR. SACHITHANANDAN: Very well, your Honour.

14 PRESIDING JUDGE STEINER: -- your pace. Thank you.

15 MR. SACHITHANANDAN: So your Honour, very slowly, I will also refer to
16 the case of Ntuyahaga Bernard decided on 7 September 2006, as well as the obviously
17 famous case of Karadžić and Mladic, the decision on review of the indictment pursuant
18 to Rule 61 - more than ten years ago, indeed almost 15 years ago - as well as the
19 case of Prosecutor v Bagosora, the judgment and sentence.

20 What is important about all these cases, your Honour, is that they use
21 exactly the same provision. They use Common Article 3 of the Geneva Conventions
22 which uses the exact same test as that used to protect civilians to decide when
23 a party is protected and when an individual is not protected.

24 The gist of all this, of all this very rapid speaking, your Honour, is
25 to say that the test we should apply to AMIS on 29 September 2007 is the same test

1 that we should apply to a civilian. And I will make this very clear when we discuss
2 the evidence itself.

3 Your Honours, very briefly, the -- in the same way that the property -- the
4 personnel of AMIS were protected in a manner analogous to civilian property, it
5 is our contention that AMIS property was protected in the same way that civilian
6 property is protected.

7 I refer you, very briefly, to Additional Protocol I, Article 52(2) which
8 states that an object is a military objective only while it provides an effective
9 contribution to military action. Similar wording has been used in the other
10 provisions that I have cited in the presentation.

11 Your Honours, due to the interpretation used by members of AMIS in MGS
12 Haskanita throughout their stay in Haskanita, and definitely during the relevant
13 period in 2007, it is our argument that this law relating to civilians should be
14 applied to the AMIS personnel and AMIS objects that were based in Haskanita.

15 I quote witness 420: "We were not participating or intervening in the
16 fighting between the parties. We were neutral because we did not have a mandate
17 to intervene in the fighting. Our mission was to observe and report on ceasefire
18 violations."

19 Witness 419: "To establish the peace, no use of force is required. To
20 impose peace, the use of force is required. Our mission was to establish peace.
21 The AU had to bring the two belligerent parties together through dialogue for them
22 to enter into agreements. Our role was to encourage dialogue between the parties."
23 And importantly, your Honour, AMIS was not mandated to intervene militarily.

24 Witness 416: "AMIS never took sides with any of the parties during the
25 conflict."

1 Your Honours, every single one of these witnesses were AMIS personnel who were present
2 at Haskanita on 29 September when they were attacked.

3 The routine activities of AMIS also make it clear that they did not
4 participate in hostilities; they did not support any particular member of that conflict.
5 If you observe the report of the chairman of the commission, what were the activities?
6 Identifying and patrolling humanitarian supply routes; carrying out
7 confidence-building patrols; protecting civilians under imminent threat; patrolling
8 IDP camps; recording, reporting and investigating ceasefire violations. And another
9 vital function that they carried out was escorting convoys of humanitarian agencies
10 and NGOs, including UNHCR, Oxfam, WFP, UNICEF and several others. Clearly, your
11 Honours, not even bordering on any function that would take them to participate
12 in hostilities.

13 Your Honours, I will be very brief with this slide, but essentially it
14 also refers to other activities carried out by AMIS. Security patrols, investigation
15 patrols and liaison patrols.

16 What is even more important for the purposes of this case was the nature
17 of AMIS activity at MGS Haskanita immediately prior to the attack on Haskanita.
18 That is during the months of June, July, August and September 2007 in the Haskanita
19 area. At this point, witnesses say when SLA-Minawi allowed us to go on patrol without
20 hindrance, SLA-Unit - which is SLA-Unity, your Honours - as soon as they took over,
21 stopped us from going on patrol.

22 Witness 419: "We needed the authorisation of the rebels before going
23 out on patrol. We needed their authorisation because they were completely in control
24 of the area."

25 And very importantly, your Honours, again Witness 419, "Between June and

1 September 2007 we did not leave the camp. Rebel forces forbade us to go on patrol.
2 And there were no helicopters permitted to land in the camp to bring supplies."

3 Witness 417: "Indeed, the rebels used to come to the landing strip to
4 monitor what was being off-loaded from the helicopters of AMIS, that there was an
5 oral agreement to this effect."

6 Your Honours, I could go on and on, but the emerging picture is of an
7 AMIS base in Haskanita which was trying as hard as it could to carry out its mandate
8 within very, very limited scopes of action. Indeed, you could not be further or
9 more remote from the possibility of taking part in hostilities. And this is, mind
10 you, not an abstract statement based on the mandate of AMIS; this is a statement
11 based on the experience of witnesses, of AMIS personnel who were present in Haskanita
12 in the months leading up to 29 September.

13 Your Honour, just to be brief with this, the United Nations also recognised
14 the fact that the -- that AMIS was not participating in hostilities and explicitly
15 recognised the protected status of AMIS. I will not read out all this, your Honours,
16 but again these are explicit recognitions of the fact that AMIS was a protected
17 body.

18 Your Honours, we come to a rather important issue, which is the presence
19 of the GoS representative, Captain Bashir, within MGS Haskanita some time prior
20 to the attack on Haskanita.

21 Some rebels came to MGS Haskanita on 10 September, complained about the
22 presence of Captain Bashir within MGS Haskanita and asked for his removal. As soon
23 as his removal was requested, he was removed by AMIS.

24 But we must take several steps back on this, your Honour. To begin with,
25 the decision -- the peacekeeping agreements entered into by the parties of the conflict

1 explicitly mandated that representatives of the parties were to be present in AMIS
2 bases. There would be representatives of the Sudanese Liberation Army, there would
3 be representatives of the Justice and Equality Movement and there would be legally
4 accepted representatives of the Government of Sudan.

5 Therefore, the mere presence of Captain Bashir in MGS Haskanita in the
6 period prior to the attack on Haskanita is not -- does not automatically or in any
7 way remove the protection available to MGS Haskanita, and this is evidenced by the
8 understanding of AMIS personnel at that point. There was a GoS representative in
9 the camp. The task of the representative was to facilitate the contact between
10 the MGS and GoS forces.

11 Witness 419: "The presence of both government and rebel representatives
12 in the MGS was not problematic. By the terms of the DPA, both sides were required
13 to have representation in AMIS."

14 It is also important to note that the activities of Captain Bashir,
15 regardless of what they were, also could not have taken away the protection that
16 was available to MGS Haskanita.

17 Witness 447: "After the rebels' threat, we saw no alternative but removing
18 GoS representative Bashir from the camp."

19 Witness 417: "After the visiting rebels left, we communicated with our
20 superiors and they sent a helicopter the next day."

21 Your Honours, again, the emerging picture is that several weeks before
22 the Haskanita attack, this -- the fact that the rebels had a problem with the GoS
23 representative in Haskanita was brought up - thank you. AMIS took immediate action
24 to remove the rebel representative and therefore removed any possibility that the
25 presence of Captain Bashir could have taken away in some manner the protected status

1 of AMIS. Your Honours, again, a description of the evacuation of Captain Bashir
2 very quickly and in the presence of the representatives of the rebels.

3 They sent a report to the headquarters. Headquarters sent a helicopter.
4 And as soon as the helicopter landed rebels came and surrounded it. And indeed,
5 it was only after a certain while that members of SLA-Unity, one of the members
6 of the common plan that attacked MGS Haskanita, allowed the helicopter to leave.
7 So it is with the full knowledge of the rebels who were in control of Haskanita
8 that Captain Bashir's evacuation took place.

9 Your Honours, this is an image of Captain Bashir and of his removal. The
10 image on the lower left is an image of Captain Bashir and the other three images
11 were taken on the day that Captain Bashir was removed, very soon after a complaint
12 was made about his presence.

13 Your Honours, my colleague Mr. Faal just pointed out the fact that if
14 you look at the jeep, you can see the words "SLA" written on it. This is important,
15 because you can see the presence of the rebel forces who were in control of Haskanita
16 participating and watching the evacuation of Captain Bashir weeks before the attack
17 on Haskanita took place.

18 Your Honours, I will read the ERNs of the photographs just so that there
19 is no confusion; that is, DAR-OTP-0169-0864, EVD-OTP-0470. DAR-OTP-0169-0865,
20 EVD-OTP-0471. DAR-OTP-0169-0866, EVD-OTP-0472.

21 And now, your Honours, as we come to the other vital part of the presentation
22 relating to AMIS, the fact that Mr. Garda was well aware of the factual circumstances
23 establishing the protection of AMIS personnel and AMIS property.

24 As is clear to your Honours --

25 (Brief pause)

1 PRESIDING JUDGE STEINER: Sorry to interrupt you. It's just a logistical
2 issue, because we are one minute from 11:00. That was the time in which we presumably
3 should have the half-an-hour break. So I need to consult the interpreters whether
4 they could indulge the Chamber in giving us maybe 10 more minutes, or 15 maximum
5 more minutes in order for us to proceed and to compensate the Prosecution with the
6 time that has been stolen from them. But we will respect the rules of the interpreters.
7 So I am waiting for their response to our request for indulgence.

8 (Brief pause)

9 PRESIDING JUDGE STEINER: Thank you very much. As always, very kind from
10 the part of the interpreters.

11 So the Prosecution will have then maybe 10 - not more than 10, 15 more
12 minutes, and then we will have to suspend for at least half-an-hour.

13 MR. SACHITHANANDAN: Very well, your Honour. I am most grateful to the
14 interpreters.

15 Your Honours, briefly, there was widespread public knowledge of the nature
16 and mandate of AMIS. They had been operating in the area for years and years before
17 this event.

18 Mr. Garda, by his own admission, was a senior official in JEM-Khalil and
19 then was the head of his own group. There is no possible way that he could not
20 have known about the status of AMIS. He participated in the conclusion of many
21 agreements in which AMIS took part. And indeed, AMIS had ongoing relationships
22 with the heads and senior leadership of all rebel groups in Darfur. There is no
23 way that he could not have known about the status of AMIS.

24 There was widespread knowledge of the status of AMIS within the fighters
25 who took part in that attack on the 29th. Witness 314 from the SLA faction. Witness

1 312, again from the SLA faction. Witness 304 from the JEM faction. Fighters from
2 all factions participating on the attack - in the attack at Haskanita knew about
3 the protected status of AMIS.

4 If the foot soldiers and mid-level commanders knew of the status of AMIS,
5 there is no way that Mr. Garda himself, who was at the apex, could not have known
6 about the status of AMIS.

7 Again, there are many examples in the months leading up to Haskanita,
8 June, July, August, September, that there were meetings between rebels participating
9 or -- between rebels who were in control of Haskanita and members of the Haskanita
10 base.

11 Witness 417; Witness 419. Sorry. Go back.

12 Your Honours, this is one example of the kinds of meetings that took place.
13 This was 10 September meeting where captain -- the complaint was made about Captain
14 Bashir, and promptly Captain Bashir was removed. At this point of time, the mandate
15 of AMIS was also explained to the rebels participating in this meeting, members
16 from SLA-Unity, members from JEM, weeks before the attack on Haskanita.

17 A similar meeting on 27 August, again between rebels who were in control
18 of Haskanita and members of MGS Haskanita, and again where the mandate of monitoring
19 of neutrality was explained to the rebels by members of AMIS. And several examples
20 of earlier visits, your Honour, the ERNs are provided in the written presentation.

21 As I had mentioned earlier, your Honours, all rebel groups had
22 representatives within AMIS during the time that Dr. Khalil was abroad; Mr. Garda
23 was responsible for his movement or at least was very senior in his movement. There
24 is no possible way that he would not have interacted with the representatives in
25 AMIS bases. Indeed, even yesterday Mr. Garda evidenced the fact that he considered

1 AMIS to be something to be protected. That is part of Mr. Garda's unsworn statement,
2 page 50, lines 2 to 7 of ICC-02/05-02/09-T-12.

3 Mr. Garda appears to have had - or by his own admission - personal interaction
4 with AMIS also making clear about the fact that he had interactions with AMIS and
5 clearly would not have failed to understand the mandate of AMIS through these
6 interactions in light of his actions.

7 Your Honours, much of this -- much of the information described on this
8 slide I will not be handling - these will be handled by Mr. Baiesu and Ms. Lurf
9 in the coming presentations; the expressed intent on the part of the members of
10 the common plan; the prior knowledge; the interactions between Mr. Garda and members
11 of the common plan and the threats made to MGS Haskanita prior to the attack.

12 What I will deal with is the fact that MGS Haskanita could not have been
13 confused or -- with a GoS base, a Government of Sudan base or any other base in
14 Sudan, as will become obvious. There was no GoS military base in Haskanita and
15 MGS Haskanita was easily distinguishable from the GoS camps; there was a flag; the
16 dormitories and vehicles were white; the MGS was fenced with barbed wire, a practice
17 that no other force in Darfur uses. And very importantly, the base had floodlights,
18 which made the base visible from far away and understandable as an AMIS base.

19 For example, Witness 420 describes these same characteristics. Witness
20 420 was a member of MGS Haskanita. On the other hand, Witness 312, a member of
21 the attacking forces, says the same thing, that they recognised the camp. There
22 was a strong lighting system. Everybody in Darfur knows about the AU camps. Everyone
23 in Darfur knows how to recognise an AU camp.

24 This, your Honours, is MGS Haskanita. It is after the attack; and therefore,
25 it may be a little harder to see, but all of MGS Haskanita was white, iridescent

1 white that can be seen in the morning and that can be seen in the evening. And
2 it was floodlit at the time of attack. There is no way that this could be confused
3 with the camouflaged nature of a military base organised by a rebel group or set
4 up by the Sudanese government.

5 Barbed wire again, your Honours.

6 If you look at this picture, your Honours, you can very clearly see the
7 floodlights that were described by the attackers themselves at the top of the picture.
8 In the evenings, these floodlights were on and could be seen for miles away.

9 All AMIS vehicles had markings. It is difficult to see the markings on
10 this vehicle because it is destroyed by the rebels, but if you look at the rear
11 door, you will see the black lettering which says "AMIS." Before this was destroyed,
12 it was a white vehicle where the lettering could be seen much more clearly.

13 Your Honour, very briefly your Honours, the manner of attack -- the way
14 in which the attack took place also makes it clear that again this could not be
15 any mistake. Vehicles were looted which had "AMIS" written on them. The attackers
16 were not deterred by signs, markings, by military uniforms which say "AMIS." None
17 of this stopped the attack, and all of this made it obvious that it was an AMIS
18 base.

19 Your Honour, I come to the end of my presentation. And perhaps the most
20 important part, the very gravity of the attack on AMIS. Not only was this an attack
21 on an AMIS outpost in a remote part of Darfur, this was also an attack on the entirety
22 of the civilians who were being protected by this base.

23 You can see, your Honours, the impact of the attack by what happened after.
24 Patrols could not -- confidence-building activities could not take place. AMIS
25 reduced all its activities. And by late 2007, most AMIS staff were confined to

1 their bases and often expressed frustration about their predicament.

2 Not only did this take place, your Honours, but States that were contributing
3 to AMIS suddenly became hesitant about providing troops to AMIS. States that may
4 have decided to contribute to AMIS may not have contributed any more in light of
5 what took place. And there is evidence of this from, for example, countries such
6 as Senegal.

7 Your Honours, I will conclude by saying that this is a very clear indication
8 that the attack on MGS Haskanita not only involved ten execution-style killings,
9 not only involved killings and damage and destruction of property, it was also an
10 attack on the IDPs who now do not have protection in Haskanita. And it was also
11 an attack on the people of Haskanita who no longer have a body to provide protection.

12 Thank you, your Honours. That will be all.

13 PRESIDING JUDGE STEINER: Thank you very much. Mr. Faal?

14 MR. FAAL: Your Honours, considering that we did not exhaust the time
15 that was allocated for this particular presentation, we would crave your Honours'
16 indulgence to use that time for the rest of the presentations, just so in case we
17 need it. I hope this will not present a problem, since we will not be exceeding
18 the time allocated for the three presentations.

19 So I crave your Honours' indulgence to just allow us to use some of the
20 time that has not been used for this presentation in other presentations, as just
21 a fallback.

22 PRESIDING JUDGE STEINER: Mr. Faal, we have three minutes. Do you think
23 it would be better if we restart in the second session? We give the interpreters
24 the 30 minutes they need, and then maybe we can extend from - five more minutes
25 to the second session? I think it would be better, Mr. Faal.

1 MR. KHAN: Your Honour, perhaps if I can assist, I think my learned friend
2 is saying that in the extent that the overall time taken by the Prosecution so far
3 is less than the time that they have been allocated, that time can go over to parts
4 2 and 3. If I have understood matters properly, there is no objection to that proposal
5 from the Defence.

6 PRESIDING JUDGE STEINER: That is an objection of the Bench, because the
7 interpreters, they need to have a break. That's the point.

8 MR. FAAL: Your Honours, of course I do understand the concerns raised
9 about the interpreters. They definitely need their breaks. My suggestion would
10 factor that into the equation as well.

11 All I want, your Honours, is that our unused time in one presentation
12 be made available to us for the other presentation. We can still allow the interpreters
13 the break that they need. That's all I ask from your Honours. Thank you.
14 (Pre-Trial Chamber confers)

15 MR. KHAN: I do apologise. Microphone, your Honour.

16 PRESIDING JUDGE STEINER: Sorry. Now I understood. So no objection at
17 all.

18 MR. FAAL: (Microphone not activated)

19 PRESIDING JUDGE STEINER: I'm really sorry, paying attention to two screens
20 at the same time and the two persons speaking at the same time. So we are going
21 to suspend. You will have, of course, your time back when we start the second part
22 of this session. So we have a half-an-hour break now, and we will return at quarter
23 to 12:00. The hearing is suspended.

24 THE COURT USHER: All rise.

25 (Recess taken at 11:14 a.m.)

1 (Upon resuming at 11:49 a.m.)

2 THE COURT USHER: All rise.

3 PRESIDING JUDGE STEINER: Please be seated. So we are resuming the second
4 part of this session. The Prosecution has the floor.

5 MR. FAAL: Your Honours, I call on Mr. Victor Baiesu. I call on Mr. Victor
6 Baiesu to make the next presentation on behalf of the Prosecution. Thank you.

7 MR. BAIESU: Madam President, your Honours, good morning. My name is
8 Victor Baiesu, and this morning I will present selections of Prosecution's core
9 evidence in relation to the events leading up to the attack on MGS Haskanita on
10 29 September 2007. As the previous presentation, my presentation will be also
11 accompanied by PowerPoint presentation that you can follow on your screens, your
12 Honours and the parties.

13 Your Honours, I will first present to you the core evidence that shows
14 the power struggle in JEM leading to the split in the organisation and the formation
15 of a breakaway faction under the leadership of Mr. Abu Garda. Second, I will show
16 the Prosecution's core evidence in relation to the movements of JEM, SLA-Unity and
17 SLA Abdul Shafie forces prior to the attack. I will refer to these three groups
18 collectively as the combined rebel forces.

19 Third, I will present the Prosecution's core evidence that shows that
20 the attack was carried out in accordance with a common plan. In this context, I
21 will also present the Prosecution's core evidence that shows the coordinated essential
22 contributions of Mr. Abu Garda and his co-perpetrators which resulted in the
23 implementation of the common plan to attack the African Union compound at Haskanita.

24 Finally, I will address the Prosecution's core evidence that shows
25 Mr. Abu Garda's control over the organisation that committed the crimes and the

1 organised and hierarchical apparatus of power within the organisation, and that
2 the execution of the crimes was secured by compliance with Mr. Abu Garda's orders.

3 Your Honours, let me start with the first -- let me start with the first
4 issue, the forming of a splinter group of the JEM. JEM was established by Dr. Khalil
5 Ibrahim, who served as its chairman from its inception. Since its inception
6 Dr. Khalil Ibrahim was abroad and the power for running the movement accumulated
7 in the hands of Mr. Abu Garda, who was the vice-president and the secretary-general
8 of the movement, together with the commander-in-chief of the movement, Abdullah
9 Banda.

10 Dr. Khalil Ibrahim returned to the field in Darfur in June 2007, and in
11 order to reassert his authority over the organisation, Dr. Khalil Ibrahim issued
12 decision number 27 of 1 July 2007 terminating the appointment of the commander-in-chief,
13 Abdullah Banda. The other commanders of JEM did not agree with the decision and
14 on 3 July 2007 these commanders issued a statement giving Dr. Khalil Ibrahim 48
15 hours to review the decision. The JEM military committee invoked that the decision
16 was unconstitutional because Dr. Khalil Ibrahim was not the competent authority
17 to dismiss the Chief of Staff.

18 Following the dispute, the Interim Military Council headed by Abdullah
19 Banda attempted to remove Dr. Khalil Ibrahim from his position as chairman of the
20 JEM. On 29 July 2007 the Interim Military Council issued a statement which denounced
21 the dictatorial leadership of Dr. Khalil Ibrahim and contested the removal of
22 Abdullah Banda as commander general. In the same document, the spokesperson of
23 the group announced the sacking of Dr. Khalil Ibrahim from his position as president
24 of the JEM.

25 During this period, Mr. Abu Garda and the commander-in-chief purported

1 that their group was the main JEM. However, many witnesses indicate quite clearly
2 that Mr. Abu Garda has split from JEM. Witness 304 stated, and I quote, "When the
3 chairman came, Abdullah Banda and Bahr Idriss Abu Garda decided to split from JEM.
4 I cannot remember the exact date of their split, but I know it was in August 2007.
5 Before the attack there has been a split from JEM. This is what I know. At the
6 time the JEM base -- the JEM had a base in Kariyari in the old base. The splitters
7 fled from the southern part of the Sudan, and while the splitters were moving to
8 the southern part of Sudan, they came towards Haskanita."

9 Witness 305 pointed out, "At the beginning of the rainy season the
10 commander-in-chief of the -- the commander-in-chief split from JEM. He did not
11 split alone. He was with his secretary-general of the movement, Abu Garda." Witness
12 433 also noted, and I quote -- I will resume from the quote of Witness 433, who
13 noted, "I first heard about the split, we were on our way to Dalil Babiker. When
14 we arrived there I heard that some SLA-Unity commanders talking about the split
15 between Khalil and Abu Garda, that Khalil had moved to Northern Darfur and left
16 Abu Garda behind."

17 Witness 304 observed that it was only in Al Fashir that Mr. Abu Garda
18 and the commander of the JEM forces informed that they had separated from the main
19 JEM group under Dr. Khalil Ibrahim. From Al Fashir Mr. Abu Garda and Banda moved
20 together with their troops towards Haskanita. During this period Mr. Abu Garda
21 and the commander-in-chief of the JEM forces purported to be the main JEM. In September
22 2007 the JEM breakaway forces set up a base in a place called Um Durab near Haskanita.
23 Witness 305, who was at the relevant time a JEM soldier under the command of Banda
24 at the camp in UM Durab, noted that sometime in September -- in mid-September 2007
25 Dr. Khalil Ibrahim came to the camp at Um Durab and withdrew some JEM soldiers loyal

1 to him and took them to the north.

2 Witnesses 305 and 306, who were JEM foot soldiers at the relevant time,
3 explained that some JEM soldiers decided not to go with Dr. Khalil Ibrahim and instead
4 to stay near Haskanita. I ask the court officer to put on the screen document
5 DAR-OTP-0154-0205, EVD-OTP-60.

6 Your Honours, what you see on the screen is decree number 28 dated
7 26 September 2007 by which Dr. Khalil Ibrahim dismissed Mr. Abu Garda from his
8 position as secretary of JEM western sector and adviser to the president of the
9 JEM. Despite his dismissal, Mr. Abu Garda continued to exercise his role by
10 purporting to have sacked Dr. Khalil Ibrahim from JEM. Court officer, kindly put
11 on the screen the document DAR-OTP-0156-0096, EVD-OTP-0058 T, E and G.

12 THE COURT OFFICER: Can you also mention the page number, which page you
13 would like to display?

14 MR. BAIESU: Page 0097.

15 Your Honours, you see on the screen a document dated 4 October 2007 by
16 which, only five days after the attack on MGS Haskanita, Mr. Abu Garda formally
17 announced the establishment of a collective leadership for JEM, with himself as
18 the leader. Your Honours, this document reflects Mr. Abu Garda's position since
19 August 2007, that Dr. Khalil Ibrahim was no longer the leader of JEM and that he
20 and others were collective leaders of JEM.

21 I will now deal with the movements of JEM forces prior to the attack.
22 Witness 305, who was a member of JEM and also participated in the attack, notes
23 that before the split occurred that JEM troops were based in Haskanita for a month
24 or two and that they did not have a camp. They were in movement. Indeed, it was
25 from Haskanita that the troops went on a mission to Adila, where they attacked and

1 defeated the GoS troops. Later on, at the beginning of Ramadan in 2007, they returned
2 to the Haskanita area, where they based in an area called Um Durab. It is at this
3 location that Mr. Abu Garda and Banda joined with this JEM group, including Witness
4 306.

5 Witness 304, a JEM foot soldier, recalls that around a month before the
6 attack, sometime in August 2007, Mr. Abu Garda and Banda took about 500 troops and
7 25 vehicles from Wadi Hawar and took them towards Haskanita. The troops arrived
8 in Al Fashir, where Mr. Abu Garda and Banda announced about the split and then
9 continued their move towards the south and based in a location called Kattal, where
10 they spent a few weeks. Mr. Abu Garda and Banda were with these forces during this
11 period of time.

12 It should be noted that Mr. Abu Garda personally led the JEM troops during
13 the movement from Wadi Hawar through the outskirts of Al Fashir to Kattal, and
14 eventually to Haskanita. Most of these troops will be later taken to the north
15 by Dr. Khalil Ibrahim.

16 The other two rebel groups, SLA Abdul Shafie and SLA-Unity, in the meantime
17 agreed to join operations. As a result of repeated attacks from both the GoS Abdul
18 Wahid faction, the Abdul Shafie group lost some of its troops and ran out of logistics.
19 The rebel group then decided to seek the assistance of other rebel factions. Abdul
20 Shafie faction made contact with SLA-Unity and was informed that the SLA-Unity troops,
21 under the command of Jerbo, were based in Haskanita and that they will be requested
22 to make contact with Abdul Shafie faction to provide assistance. In the meantime,
23 the troops belonging to Abdul Shafie faction moved to Tukumare, where Salih Jerbo
24 arrived with other SLA-Unity commanders and troops, including Ahmad Dignu.

25 PRESIDING JUDGE STEINER: Sorry to interrupt you. Just one second.

1 MR. KHAN: Madam President, I didn't want to delay proceedings or interrupt
2 my learned friend at all. I do have the benefit of the original presentation that
3 the Prosecution have kindly given to me. I simply notified the court officer that
4 again gremlins appear to have crept into my computer at the break and the Transcend
5 is no longer working. So there is no need for a delay but perhaps your Honours
6 could authorise the computer -- the relevant computer person to come into court
7 and, whilst my learned friend is on his feet, without delaying or interrupting matters,
8 the problem no doubt can be solved.

9 PRESIDING JUDGE STEINER: Thank you very much for your understanding,
10 Mr. Khan. Someone is already coming to see what happened. In the meantime, if
11 you agree in following by the paper given by the Prosecution, we could proceed.
12 Thank you very much.

13 OTP has the floor.

14 MR. BAIESU: Thank you, Madam President.

15 In Tukumare, Jerbo offered the Abdul Shafie group to join their troops
16 and to conduct military operations jointly. On or about 24 September 2007, there
17 was a preliminary agreement reached and signed by representatives of both groups
18 which envisaged the unification of troops, including coordinated military
19 operations.

20 After concluding the agreement for joint operations, a group formerly
21 belonging to Abdul Shafie group, including witnesses 307, 312, 314 and 433, together
22 with the SLA-Unity commander Jerbo, headed for the SLA-Unity base near Haskanita.
23 Witnesses 307, 312 and 314 recall that, on or about 25 September 2007, the combined
24 SLA-Unity and SLA Abdul Shafie forces, including themselves and their commander
25 Jerbo and Ahmad Dignu Sonki, moved to the nearby town of Dar es Salaam, where they

1 met Mr. Abu Garda, Banda and the other commanders.

2 After this, the SLA-Unity and SLA Abdul Shafie forces carried on to Haskanita
3 where some of the JEM and SLA-Unity forces were based. Witnesses 304, 307, 312
4 and 433 recalled that on the morning of 28 September 2007, while Mr. Abu Garda and
5 Banda remained in Haskanita, some soldiers from the JEM, SLA-Unity and SLA Abdul
6 Shafie groups went to Dalil Babiker, where other JEM and SLA-Unity troops were based.

7 GoS attack against the combined rebel forces on 29 September 2007. On
8 the next day, on 29 September 2007, around midday, the Sudanese Armed Forces attacked
9 the joint JEM, SLA-Unity and SLA Abdul Shafie forces near their camp in Dalil Babiker
10 as they were about to leave the area. Witnesses 307, 312, 314, 433 and 442 were
11 with these joint forces when they were attacked. For instance, Witness 307 and
12 312 explained that the JEM and the combined forces sustained heavy losses, including
13 to their soldiers and equipment. According to these witnesses, the combined forces
14 therefore decided to withdraw from the camp in Dalil Babiker and move to another
15 location nearby.

16 I will now move to this third part of my presentation, which is the common
17 plan. Your Honours, the attack on MGS Haskanita was carried out pursuant to a common
18 plan between Mr. Abu Garda and the other commanders. The GoS attack on 29 September
19 2007 in Dalil Babiker proved to be the immediate short-term trigger in the formation
20 of the plan -- of the common plan.

21 What was the motivation of the Haskanita attack? The African Union
22 investigation report suggests that the attack by the GoS on the stronghold of JEM
23 and SLA-Unity at Dalil Babiker may have been the immediate cause of the rebel attack
24 on MGS Haskanita. Indeed, the GoS attack caused considerable loss of resources
25 to the combined rebel force. The combined rebel force had to replenish their depleted

1 logistical items and enhance their logistic capacity.

2 As Witness 355 attests, African Union Board of Inquiry had come to the
3 same conclusion, and I quote, "The motivation of the top rebel commanders was looting
4 because they had lost most of their resources from the battle with the GoS on the
5 same day."

6 Another investigation of the board, Witness 315, suggests that the
7 attackers had different motivations for the attack. Mr. Abu Garda's JEM splinter
8 group had political interest, while SLA-Unity motivation was, rather, military.
9 For the JEM splinter group, the motivation was to be invited to the upcoming Sirte
10 peace talks in Libya and to have more influence in the political talks on Darfur.

11 For SLA-Unity, it needed more vehicles, equipment and other supplies.
12 As the rebels lost a lot during the fighting, MGS Haskanita was seen as a warehouse
13 where they could get supplies. Witness 315 pointed out, and I quote, "The attack
14 on MGS Haskanita proved to be helpful in attaining both objectives."

15 I will now deal with the elements of co-perpetration. Your Honours, in
16 order to establish Mr. -- that Mr. Abu Garda, together with other senior commanders,
17 committed the crimes charged in the document containing the charges as co-perpetrators,
18 the Prosecution must present sufficient evidence to establish the elements of
19 co-perpetration.

20 I will present both the objective and the subjective elements. Your Honours,
21 I will start with the first objective element to be established, which is the existence
22 of an agreement or common plan. The Prosecution submits that there existed a common
23 plan between Mr. Abu Garda and other senior commanders in their respective groups
24 pursuant to which the crimes charged in the document containing the charges were
25 committed in the course of the attack on MGS Haskanita. The attack on MGS Haskanita

1 was thus executed in furtherance of the plan and orders given by Mr. Abu Garda,
2 through other commanders of the common plan, including Komoki and Sonki. The
3 Prosecution's core evidence shows that a number of planning meetings were held and
4 that others were given -- and that orders were given to the troops.

5 Allow me to take you to the events of 29 September 2007. On this date,
6 shortly after the GoS forces attacked the rebel groups in Dalil Babiker, witnesses
7 307 and 312 saw Mr. Abu Garda and the other SLA-Unity and JEM commanders arriving
8 at a location near Dalil Babiker at which the JEM and combined SLA-Unity and SLA
9 Abdul Shafie forces had retreated. At this location witnesses 304, 305 and 307
10 saw from a distance how Mr. Abu Garda met with between 20 and 33 JEM and SLA-Unity
11 commanders, including Hassan Komoki of JEM and Ahmad Dignu Sonki of SLA-Unity and
12 other commanders.

13 Your Honours, this was the first planning meeting.

14 Witness 305 noted, and I quote, "After the meeting they came and ordered
15 us to go, and we went. Abu Garda, together with Banda and other commanders, met
16 with SLA-Unity commanders, including Jerbo. SLA-Unity had more than 20 commanders.
17 My vehicle commander was also in this meeting. The commanders of all the 33 vehicles,
18 including Hassan Abakar Komoki, were in this meeting. After this meeting they gave
19 us instructions for the mission."

20 Witness 307 observed, and I quote, "When the shelling ended, Abdallah
21 Banda and Salih Jerbo called the commanders for a meeting. Garda joined them for
22 the meeting under a tree. There were about 20 commanders at the meeting. There
23 was a meeting of commanders while we were hiding from the government aeroplane.
24 Bahr Idriss Abu Garda was among those at the meeting. There were about 20 of them
25 sitting under a tree. There was Mohammed Shatta, I saw for myself; Salih Jerbo;

1 Abdallah Banda and Hassan Komoki."

2 According to Witness 312, and I quote, "Between 5 p.m. and 6 p.m. Salih
3 Jerbo, Bahr Abu Garda, other JEM and SLA-Unity commanders and Abdallah Banda came
4 in their vehicles and found us there. As soon as they arrived, they ordered us
5 to go on a mission. I was told that I had to go on a mission to get vehicles from
6 the government. Salih Jerbo came and talked to one of us. One of us was told that
7 we had to go on a mission to get vehicles from the government. When asked where
8 was the government, Jerbo said the government was in Haskanita."

9 Witness 304 also stated, "The higher-ranking officials who held the meeting
10 included Bahr Idriss Abu Garda, Abdallah Banda and Ahmad Dignu Sonki. He is from
11 SLA. They also had other officers. I could not remember their names. But they
12 were leaders and I was not present during the meeting. After they ended their meeting,
13 they said that there was a mission, that there were government soldiers in Haskanita
14 and we must move towards them so that we can attack them. As regards whether I
15 saw the meeting, yes, I have seen them. They were sitting in the meeting. I saw
16 the group including Abu Garda, Abdallah Banda and Sonki and other officers sitting
17 together."

18 General orders issued following the meeting.

19 It was at this meeting that the commanders agreed among themselves to
20 attack the MGS Haskanita. Witnesses 304, 305, 306 and 307 were located near the
21 place of the meeting and all confirmed that Mr. Abu Garda, Hassan Komoki, Ahmad
22 Dignu Sonki and other commanders held the meeting. Immediately after the meeting
23 these commanders ordered their troops to board their vehicles and to move with them
24 to go on a mission.

25 Witnesses 304, 305, 306, 307 and 433 who were involved in these events

1 confirmed that following the meeting near Dalil Babiker, and after Mr. Abu Garda
2 and other commanders issued their orders to go on a mission, the troops immediately
3 boarded their vehicles and followed their commanders straight in the direction of
4 MGS Haskanita compound.

5 Witness 312 stated that after the meeting the commanders came and blew
6 their whistles. All the soldiers stood up and received order for the mission. In
7 each vehicle there was a commander who blew a whistle. This was Mr. Abu Garda's
8 vehicle and other vehicles.

9 In addition to Mr. Abu Garda, witnesses 304, 305 and 306 confirmed that
10 other commanders from JEM and SLA-Unity, including Hassan Komoki, Ahmad Dignu Sonki,
11 Abdallah Haqqar, Mohammed/Hamad Shatta and Mohammed Salih Tawila went together with
12 the troops heading for the MGS Haskanita. Orders issued by SLA commanders.

13 After the meeting while boarding his vehicle, Witness 312 was told by
14 his commander that the combined JEM and SLA-Unity forces were going to attack African
15 Union MGS in Haskanita. Witness 314 explained that an SLA commander who said to
16 him, and I quote, "Openly and straightforward that they were going to attack the
17 Africans in Haskanita together with the JEM group," end of quote.

18 In addition, Witness 315 was told by an SLA commander that, "Whenever,"
19 I quote, "those people -- " implying the AMIS peacekeeper " -- went to Nyala and
20 Al-Dean, where the AMIS headquarters was," they would return with," I quote,
21 "government people," and that they were, I quote, "spies of the GoS."

22 The witness understood the commander to mean that they were going to attack
23 MGS Haskanita. The same witness explained that besides the expressed intention
24 of this SLA commander prior to the attack, the same commander also told him three
25 days after the attack that the intended target of the attack was MGS Haskanita.

1 Another witness, 433, was asked how he knew about what was discussed in
2 the meeting attended by Mr. Abu Garda and other commanders. He explained that after
3 the GoS attack in Dalil Babiker the troops gathered all their vehicles together.
4 The witness was able to see how immediately after the meeting an SLA commander came
5 and called one of the commanders and informed him that the troops were going to
6 attack the African Union compound in Haskanita.

7 Also, Witness 442 recalled that after the GoS attack in Dalil Babiker,
8 the rebel group he belonged to, including himself, and I quote, "stayed there in
9 Dalil Babiker and waited for the military commanders to put a plan together on how
10 to attack the enemy. During the evening before the sunset, I noticed that all the
11 vehicles had left and I didn't know where they were going. I saw Hamad Shatta driving
12 nearby and I called him. He stopped. And I asked him, 'Did the people decide how
13 we can attack the enemy?' He said, 'These people are going to attack the African
14 Union'."

15 Orders issued by mid-level commanders. The mid-level commanders, such
16 as Sonki and Komoki, also conveyed the same order down the chain of command to their
17 respective troops who took direct part in the attack. Witness 433 stated, "Our
18 leadership came back to the group where we were seated with, and told us that the
19 plan was to attack the African Union in Haskanita. All the commanders were there."

20 Witness 305 related, "My commander-in-chief informed other commanders,
21 including my vehicle commander, who then instructed us. Hassan Komoki, Deputy War
22 Operation Commander, instructed the troops. After the meeting they - the
23 commanders - came and ordered us to go and we went. We went from there and we attacked
24 African Union compound."

25 I will now talk about the second planning meeting.

1 Witness 307 recalled that on the way to MGS Haskanita during the sunset
2 prayers, the combined forces stopped in a forest near MGS Haskanita where
3 Mr. Abu Garda and other commanders held another meeting. The witness also
4 saw how the commanders directed their troops to move behind them and distributed
5 their troops into various vehicles.

6 As the combined rebel forces moved towards MGS Haskanita, Witness 312
7 was instructed by one of the SLA commanders to position himself along a road close
8 to MGS Haskanita blocking the area and preventing any vehicle or person entering
9 or leaving the area.

10 After this second meeting, witnesses 304, 305, 306 and 307 described how
11 the convoy of about 30 vehicles headed to the MGS Haskanita.

12 Witness 307 described the situation as follows, and I quote, "When we
13 arrived they ordered us to move. They shouted. And when they shouted like this,
14 they attacked the African Union compound." It is important to mention in this context
15 that at the time when these events occurred, there was no GoS base in the vicinity.

16 Attackers' weapons. As regards the weapons that the combined rebel forces
17 had with them during the attack, witnesses 312 and 433 stated that the rebel forces
18 were armed with various types of weapons, including .106 calibre weapons, dushkas,
19 AK-47s, anti-aircraft weapons and rocket-propelled grenades.

20 Characteristics of the attack.

21 In addition, several other characteristics of the attack demonstrate that
22 Mr. Abu Garda and other commanders and their respective forces were acting according
23 to a common plan agreed upon by the commanders. First, the attack was executed
24 in an organised and coordinated fashion. In their statements, witnesses 419 and
25 420 - who were AMIS peacekeepers inside the MGS Haskanita - described the attack

1 as planned, organised and premeditated.

2 Second, the attackers timed their attack such that the AMIS personnel
3 in the camp were taken by surprise and were unable to effectively defend themselves.
4 In their statements, two AMIS peacekeepers, witnesses 416 and 417, observed that
5 at the time the attack started the AMIS personnel were getting ready to pray and
6 break their Ramadan fast. Some of the AMIS personnel were performing ablution.
7 Some were cooking, some were bathing, and some were walking towards the mosque for
8 prayers.

9 Third, the strategic distraction of the initial targets, such as the combat
10 post and the communication centre, shows the planning that went into the attack.
11 According to witness 416, most of the Protection Force members were at the mosque,
12 leaving only five guards at the guard posts.

13 Witness 420 recalled that after the killing of the Protection Force soldiers
14 in the guard post there was almost nobody left to stop the attackers and that the
15 attackers could gain entry into the camp.

16 In his statement, Witness 355 stated that the attackers then fired against
17 the mosque where they thought most of the Protection Force would be as it was the
18 season of Ramadan.

19 The same witness concludes that the rebels knew where to attack first,
20 such as the communication centre and the mosque, to give maximum damage on the defence
21 force and the communication capability.

22 Fourth, referring to the offence prior to the attack, the AMIS peacekeepers
23 had been repeatedly threatened by the rebels. For example, on 10 September 2007
24 JEM and SLA-Unity members in Haskanita visited MGS Haskanita. During the meeting,
25 the rebels' representatives threatened AMIS personnel that, I quote, "If they -- "

1 the combined rebel forces " -- were attacked again by the GoS forces they would
2 also attack AMIS."

3 Fifth, in regards of the events immediately following the attack, the
4 combined forces all gathered in a single location and shared -- and shared the goods
5 looted from the camp amongst themselves. By way of an example, Witness 307 recalled
6 that about two days after the attack Mr. Abu Garda and other commanders ordered
7 the troops under their command - including the witness himself - to hand the vehicles
8 looted from MGS Haskanita to the SLA Abdul Shafie forces.

9 Mr. Abu Garda and other commanders also ordered the forces to gather all
10 the goods looted from MGS Haskanita in one place in order to divide them amongst
11 themselves.

12 Furthermore, the active collaboration of some of the local staff working
13 at MGS Haskanita during the attack further demonstrates the preplanned nature of
14 the attack. By way of an example, Witness 419 stated that one of his colleagues
15 at MGS had seen how during the attack a non-military local staff was loading looted
16 goods into the vehicles subsequently looted by the attackers.

17 While the Prosecution does not have verbatim evidence of what was actually
18 discussed at the two planning meetings, the overwhelming circumstantial evidence
19 presented above shows clearly that the commanders agreed to a common plan to attack
20 MGS Haskanita. The two meetings held before the attack were on each occasion followed
21 by orders of the commanders to their respective troops to board their vehicles and
22 move forward. The events immediately resulting from these orders - the actual attack
23 on MGS Haskanita - further demonstrates the preplanned nature of the attack.

24 I will now address the core evidence of the second objective element on
25 the joint control over the implementation of the crime and the coordinated essential

1 contributions of the co-perpetrators which resulted in the implementation of the
2 common plan.

3 Mr. Abu Garda and other commanders exercised joint control over the
4 commission of the crimes by virtue of the essential nature of tasks that were assigned
5 to them in the implementation of the plan. As such, Mr. Abu Garda and these other
6 commanders had the ability to frustrate the commission of the crimes by not performing
7 those tasks assigned to them.

8 Mr. Abu Garda made coordinated essential contributions to the realisation
9 of the crimes charged in the document containing the charges through the following
10 means: First, the planning meetings. Mr. Abu Garda, together with other members
11 of the common plan, organised and participated in the meetings with other commanders
12 at which the plan to attack MGS Haskanita was agreed upon. Witnesses 304, 305 and
13 306 all confirm that Mr. Abu Garda and other commanders - such as Sonki and
14 Komoki - participated in the meeting near Dalil Babiker.

15 The second meeting in the forest near MGS Haskanita was confirmed by Witness
16 307, who said that from his position he saw Mr. Abu Garda and other commanders standing
17 and talking. After that, the commanders asked the troops to move behind them towards
18 MGS Haskanita. The same witness noted that after those two meetings Mr. Abu Garda
19 and these other commanders communicated this plan to the unit commanders and the
20 troops.

21 Second, the issuing of orders.

22 Witnesses 304, 305, 306, 307 and 312 point out in their statements that
23 Mr. Abu Garda - together with other members of the common plan - issued orders directly
24 to the combined forces and through other unit commanders to attack the MGS Haskanita.

25 Third, the leading and participation in the attack.

1 Witnesses say that Mr. Abu Garda - together with other members of the common plan - such
2 as Sonki and Komoki - personally led and directly participated in the attack.

3 Witness 305 saw Mr. Abu Garda and other SLA-Unity and JEM commanders driving
4 in the front vehicles approaching the MGS Haskanita. Witnesses 304, 306 and 307,
5 who participated in the attack, confirmed that other commanders also led the troops
6 during the attack.

7 Mr. Abu Garda's coordinating role and direct responsibilities.

8 Mr. Abu Garda played an overall coordinating role and had direct
9 responsibilities in the implementation of the common plan. For instance, Mr. Abu
10 Garda had direct and regular contacts with other participants in the attack, including
11 by participating in at least two planning meetings I described earlier at which
12 the plan to attack MGS Haskanita was agreed upon.

13 Mr. Abu Garda was the undisputed historical leader of the JEM breakaway
14 forces. He ordered his JEM troops, the main group of attackers on that day, through
15 his subordinate commanders - including Komoki - to attack MGS Haskanita. This is
16 confirmed by witnesses 304, 305, 306 and 307.

17 Mr. Abu Garda also contributed to the common plan by providing troops,
18 equipment and materials to carry out the attack. For example, witnesses 304, 305
19 and 306 confirm that Mr. Abu Garda made sure that there were sufficient troops,
20 equipment and materials to carry out the attack.

21 Besides, Mr. Abu Garda was personally involved in the distribution and
22 disposal of some of the items looted from MGS Haskanita. This is confirmed, for
23 instance, by Witness 307.

24 Mr. Abu Garda failed to punish any of the perpetrators from the JEM involved
25 in the attack. Witness 315, who was at the relevant time a member of the African

1 Union Board of Inquiry, stated that the Board has not received any information
2 suggesting that any perpetrators of the attack had been punished, or that the attack
3 had been investigated by one of the rebel groups.

4 Your Honours, I will now move to the subjective elements.

5 Your Honours, the attack on MGS Haskanita was neither a mistake, nor
6 accidental. Abu Garda intended the personnel, installations, materials and units
7 or vehicles involved in the peacekeeping mission to be the object of the attack.

8 I will now present the core evidence showing that the attack on MGS Haskanita
9 was indeed a deliberate -- was indeed deliberate and intentional.

10 Motives and prior threats.

11 As described earlier, the rebel groups had specific motives to attack
12 the MGS. AMIS received repeated threats from rebel groups present in the Haskanita
13 area. For instance, on 10 September 2007, JEM and SLA-Unity members in Haskanita
14 visited MGS Haskanita and during a meeting threatened AMIS personnel that if the
15 combined rebel forces were attacked again by the GoS forces they will attack AMIS.

16 As I mentioned earlier in my presentation, the attack on MGS Haskanita
17 was launched soon after the GoS attack on the combined rebel forces on 29 September.

18 Distinguishing signs.

19 The MGS was easily distinguishable from the GoS camps. In particular,
20 first there was an African Union flag at the MGS Haskanita which was visible from
21 afar, as confirmed by witnesses 416, 417 and 447.

22 Second, all the AMIS vehicles and dormitories in Haskanita were white;
23 AMIS being the only force that used white dormitories, as confirmed by witnesses.

24 Third, the MGS was fenced with a barbed wire through which the activities
25 going on inside were visible from outside, as confirmed by witnesses 416, 417 and

1 420.

2 Fourth, as soon as the attack started, as Witness 307 recalled, the AMIS
3 peacekeepers fired flares in the air to warn off the attackers. The combined rebel
4 forces were undeterred by these warnings and persisted with the attack. The attackers
5 were aware of their targets.

6 Representatives of both JEM and SLA-Unity were present in the area, visited
7 the camp on several occasions and personally met with AMIS peacekeepers. I refer
8 here to the visit of rebel forces' representatives to the camp on 10 September 2007
9 mentioned earlier.

10 Therefore, Mr. Abu Garda's troops and other members of the common plan,
11 including Komoki, were well aware of the location of the camp. For example, after
12 the meeting in Dalil Babiker, Witness 305 received the order to board his vehicle
13 and to follow his commander on a mission. This witness knew the area, as he spent
14 some time there, and also knew that there were no government troops in the area
15 at that time. That is how he immediately realised that the troops were heading
16 for the MGS Haskanita.

17 The choice of targets.

18 In the first wave of attack, as noted by witnesses 416 and 420, the combined
19 rebel forces specifically targeted and destroyed the AMIS communication platform,
20 rendering it difficult for the AMIS forces to communicate with each other or outside
21 during the attack. The fact that the attackers were able to identify where the
22 communication platform was located shows their prior knowledge of the layout and
23 arrangement of the camp and demonstrates the intention of the group to attack the
24 camp.

25 As you will hear from the witnesses who will testify, the manner in which

1 the attack on the MGS Haskanita was executed also suggests that the attackers
2 deliberately targeted the personnel, installations, materials, units and vehicles
3 of AMIS.

4 The attackers' conduct.

5 Finally, the conduct of the attackers during the operation itself also
6 manifests their intention to target AMIS personnel and installations as the object
7 of the attack. As mentioned earlier in the presentation, the camp had signs at
8 prominent locations indicating that the base belonged to the AMIS. Having entered
9 the camp, the combined forces were not deterred by these signs and markings. In
10 addition, the fact that all the vehicles had prominent markings showing that they
11 belonged to the AMIS forces did not prevent the combined forces from driving them
12 away. The looted military uniforms similarly showed that they belonged to the
13 personnel of the AMIS peacekeeping force.

14 Your Honours, the issue of Mr. Abu Garda's knowledge of the protected
15 status of the AMIS personnel and object was already addressed by Mr. Sachithanandan
16 in his presentation earlier today.

17 In the next presentation, Ms. Lurf will lead you through the Prosecution's
18 core evidence showing that Mr. Abu Garda intended to deprive the owner of the property
19 and appropriate it for private or personal use.

20 Your Honours, I will now move to the second subjective element.

21 Mr. Abu Garda and other commanders were all mutually aware and mutually
22 accepted that implementing their common plan may result in the realisation of the
23 objective elements of the crime charged in the document containing the charges.

24 Awareness of substantial risk.

25 Mr. Abu Garda and other commanders were aware of the substantial risk

1 or likelihood that the implementation of their common plan would result in the
 2 realisation of the objective elements of the crime. When they planned, ordered
 3 and led the attack on MGS Haskanita on 29 September 2007, Mr. Abu Garda and other
 4 commanders knew that what would occur in the ordinary course of events as a consequence
 5 of their common plan would be:

6 (1) The attack on the personnel and objects involved in the peacekeeping
 7 mission;

8 (2) Killing of those not taking active part in hostilities; and.

9 (3) Pillaging of the property at the MGS Haskanita.

10 Awareness of objective.

11 The main objective of the plan by Mr. Abu Garda and other JEM and SLA-Unity
 12 commanders was to carry out:

13 (1) An attack against the personnel and objects involved in the peacekeeping
 14 mission;

15 (2) Violence to life to the persons not taking active part in hostilities;
 16 and

17 (3) Pillaging of the properties in MGS Haskanita.

18 Acceptance of the risk.

19 By making a decision to implement the common plan, Mr. Abu Garda and other
 20 commanders individually accepted that in the ordinary course of events implementation
 21 of their common plan would lead to the commission of the crimes charged and reconciled
 22 themselves with them not only by condoning their commission, but by ordering and
 23 leading their respective troops to participate in the attack and ensuring that these
 24 outcomes in fact occurred.

25 Your Honours, I will now address the third subjective element.

1 Mr. Abu Garda and other commanders were aware of the factual circumstances enabling
2 them to jointly control the crime. At all material times, Mr. Abu Garda and other
3 commanders were aware of the factual circumstances which enabled them as
4 co-perpetrators to jointly control the crimes committed by the JEM and SLA-Unity
5 troops under their command during the attack on MGS Haskanita.

6 After their planning meetings in Dalil Babiker and in the forest near
7 MGS Haskanita, Mr. Abu Garda and other commanders briefed their respective troops.
8 In addition, as they approached MGS Haskanita, they issued the order for the troops
9 to attack.

10 Allow me to refer your Honours to the core evidence presented in the earlier
11 part of my presentation in relation to the common plan. This demonstrates that
12 Mr. Abu Garda and other commanders were further aware of the respective roles as
13 commanders who controlled the troops that participated in the attack. As such,
14 they were aware that by virtue of their positions of command they had joint control
15 over the commission of the crimes charged in the document containing the charges.

16 Your Honours, the Prosecution presented sufficient evidence for the
17 Pre-Trial Chamber to find that there are substantial grounds to believe that Mr. Abu
18 Garda and other commanders acted with the requisite mens rea when they jointly planned
19 and led JEM and SLA-Unity forces to attack the MGS Haskanita and commit the crimes
20 charged in the document containing the charges.

21 I will now move to the last part of my presentation, which is Mr. -- which
22 relates to Mr. Abu Garda's control over the organisation. Your Honours, the war
23 crimes charged before this Chamber were committed by the combined rebel forces
24 consisting of JEM, SLA-Unity and SLA Abdul Shafie groups coming under the de facto
25 operational command of the SLA-Unity.

1 Mr. Abu Garda and other commanders and leaders, who commanded the respective rebel
2 groups, had joint command and control over the combined force that committed the
3 attack.

4 Mr. Abu Garda commanded the JEM component of the combined rebel forces.
5 Mr. Abu Garda was the leader of the JEM composed -- of the JEM component of the
6 combined rebel forces. He was in total control of the JEM forces through a direct
7 military command exercised through Banda and Komoki, among other commanders.

8 I refer to the public document entitled "Organisational Structure and
9 Legal and Executive Leaders of the Justice and Equality Movement", which clearly
10 speaks of Mr. Abu Garda as, and I quote from the document, "Deputy Leader and Secretary
11 for Darfur Sector." JEM witnesses referred to Mr. Abu Garda as, and I quote, "The
12 Secretary-General of JEM."

13 Witness 312 confirms that Mr. Abu Garda was the second highest-ranking
14 official in the organisation. I quote from his statement, "I know that he was second
15 in command in JEM before splitting and afterwards he became chairman of JEM-Cell."

16 JEM Witness 304 characterises Mr. Abu Garda's position in the same way,
17 and I quote, "Dr. Khalil is the chairman and Abu Garda is a deputy."

18 The Founding Declaration which established the JEM-Collective Leadership
19 also refers to Mr. Abu Garda as, and I quote from the document, "Deputy Leader of
20 the Movement and Secretary of the Darfur Region Sector."

21 Mr. Abu Garda retained his authority he had in the main JEM.

22 It should be noted that, due to the absence of the president in the field,
23 the power for running the movement -- the affairs in the movement in Darfur accumulated
24 in the hands of Mr. Abu Garda, along with the commander-in-chief, Abdallah Banda.
25 I quote from the witness -- from the statement of Witness 304: "The general commander

1 was Abdallah Banda and Bahr Idriss Abu Garda. These are the highest-ranking persons
2 in JEM. Abdallah Banda and Bahr Idriss Abu Garda are both the commanders of the
3 JEM. The first people in the JEM movement and the first people who had authority.
4 Before the chairman came from Britain, they ran the movement."

5 Therefore, at the time of the de facto split from JEM, Mr. Abu Garda
6 effectively retained authority over JEM troops by virtue of his leadership position
7 in the movement. Mr. Abu Garda continued to exert his authority over troops which
8 remained with him. As mentioned earlier in my presentation, our insider witness
9 from JEM, Witness 304, describes how Mr. Abu Garda and Banda took about 500 soldiers
10 and 25 vehicles as he split and moved with them towards Haskanita and the troops
11 followed him. Soldiers believed in their leader, Mr. Abu Garda.

12 The troops were only told about the split on the fourth day of their move,
13 when they reached Al Fashir. This indeed means that the troops followed Mr. Abu
14 Garda and Banda due to an established sense of leadership and allegiance to their
15 commanders. That is how the same witness explains their motivation to follow their
16 commanders. I will quote from the statement of Witness 304: "Regarding why I went
17 with this group, these are first commanders in JEM movement and before Dr. Khalil
18 came from Britain these commanders used to distribute orders to all soldiers in
19 JEM. If you had someone who you spend long time with and he used to be a commander
20 and we were just soldiers, we believed them."

21 Soldiers also demonstrated loyalty to their commanders.

22 After the visit of President Dr. Khalil Ibrahim to Um Durab, when he came
23 to withdraw the troops and take them to the north, only some of the soldiers opted
24 to follow the president, while the rest decided to stay with Mr. Abu Garda and Banda.
25 So, even after knowing the existing differences within the movement, these troops

1 accepted Mr. Abu Garda's authority and command over them.

2 Mr. Abu Garda was the true leader.

3 Mr. Abu Garda was the chairman; it was his movement. Some even called
4 the movement JEM Abu Garda's group. His authority clearly derived from his position
5 and leadership role played by him in the main JEM. The group led by Mr. Abu Garda
6 and Banda claimed to represent the real leadership of the JEM. While breaking away
7 from the movement, Mr. Abu Garda purported to act as the main JEM and to be perceived
8 as such by others.

9 SLA soldiers also perceived Mr. Abu Garda as leader.

10 The SLA troops involved in the attack had perceived Mr. Abu Garda as de
11 facto chairman and the overall leader of the newly created group. Witnesses 433,
12 442 and 312 all corroborate on this issue.

13 Mr. Abu Garda's position was formalised in October 2007.

14 Mr. Abu Garda's position of control over the troops that committed the
15 crimes was formalised in October 2007. The Founding Declaration issued on 4 October
16 2007, which your Honours saw on the screen earlier today, nominated Abu Garda as
17 the head of the combined leadership consisting of 15 members. Mr. Abu Garda
18 represented his group in talks and negotiations.

19 As confirmed by Witness 433, Mr. Abu Garda represented his group in the
20 negotiations among various factions held in Juba, South Sudan, soon after the attack
21 on MGS Haskanita. He also represented the group in the peace talks in Sirte, Libya,
22 on 27 October 2007.

23 Mr. Abu Garda had also powers to issue orders.

24 Mr. Abu Garda had the power to issue orders to the troops directly and
25 to direct them on military operations. Evidence of these orders I have already

1 addressed.

2 Witnesses who participated in the attack, such as Witness 312, identify
3 Mr. Garda among other commanders from whom they received the order to board their
4 vehicles and move behind them following the meeting in Dalil Babiker.

5 The same follows from the account of Witness 306, who says that, and I
6 quote, "It was Banda and Garda and the SLA-Unity group that came to us and told
7 us we had to attack."

8 Mr. Abu Garda had the authority over the Commander-in-Chief, Abdallah
9 Banda. While Mr. Abu Garda was the overall leader of the group in person, Abdallah
10 Banda held direct military command and control over the forces that carried out
11 the attack. In his capacity as commander-in-chief, Abdallah Banda had led troops
12 including witnesses 304, 305 and 306 during various missions from Sayra, Karyari
13 and Wadi Hawar camps.

14 Although Mr. Abu Garda had overall control over the troops, he exercised
15 military command through Abdallah Banda who had more direct military type of command
16 over the troops. Mr. Abu Garda had control over Banda, and it was through him that
17 he exerted control over the troops.

18 The fact that Mr. Abu Garda had a higher position than Banda is
19 well-established on the evidence. The fact that in the Founding Declaration of
20 4 October 2007 Mr. Abu Garda had the authority to reinstate Abdallah Banda in his
21 position as commander-in-chief of JEM demonstrates Mr. Abu Garda's authority and
22 control over him.

23 Witnesses also attest to the fact that Mr. Abu Garda was a higher-ranking
24 official and had authority over Abdallah Banda. Witness 304 explicitly confirms
25 that, and I quote from his statement, "Before Dr. Khalil came back from the UK,

1 Bahr Idriss Abu Garda was higher ranking than Abdallah Banda. Abu Garda was chairman
2 and Abdallah Banda was the General Commander of all the soldiers," end of quote.

3 Witness 433 provides further evidence of Mr. Abu Garda's superiority over
4 Banda, and I quote from his statement, "Garda was the chairman and Banda was the
5 commander of the force."

6 Now, your Honours, let me briefly address the nature of the combined rebel
7 group through which Mr. Abu Garda committed the war crimes charged.

8 Mr. Abu Garda's group retained the apparatus of power of the main JEM.
9 As mentioned earlier in my presentation, in spite of the de facto separation and
10 dismissal from the movement, Mr. Abu Garda claimed to have sacked Dr. Khalil Ibrahim
11 and to represent the main JEM.

12 Therefore, the splinter group retained the organisational features of
13 the mainstream JEM. This was referred later in the Founding Declaration which,
14 in fact -- which, in fact, announced the creation of a new leadership as opposed
15 to a new movement. The document refers to the creation of the -- and I quote from
16 the document, "Combined leadership consisting of 15 members and entrusted, with
17 among others, with the responsibility to administer military, political and
18 negotiating matters for the movement." The movement here referring to the JEM
19 movement.

20 Although the Founding Declarations mark the process of
21 institutionalisation of JEM-Collective Leadership as a separate entity, the JEM
22 breakaway group effectively existed as an organised and hierarchical apparatus of
23 power as of the time of the split and during the time relevant to the crimes charged
24 before this Court.

25 The circumstances surrounding the attack clearly show that the troops

1 over which Mr. Abu Garda had command and control formed part of the
2 hierarchically-organised group; namely, that:

3 (1) Relations between superiors and subordinates were hierarchically
4 organised;

5 (2) The hierarchical structure of power ensured that orders given by
6 recognised leadership would generally be complied with by the subordinates; and.

7 (3) The organised structure of power was composed of sufficient
8 subordinates to guarantee that superiors' orders would be carried out if not by
9 one subordinate, then by another.

10 Witnesses also describe their troops in terms of hierarchy. For instance,
11 Witness 304 identify commanders Abu Garda -- Mr. Abu Garda, Banda and Sonki in terms
12 of their ranking and superiority in the group. The witness refers to them as, I
13 quote, "The higher-ranking officials, the higher-ranking persons, leaders, the
14 higher-ranking and most important," end of quote, commanders.

15 Other witnesses who were involved in the attack refer to their commanders,
16 including Mr. Abu Garda, and identify them as the leadership commanding the combined
17 rebel forces prior to and during the attack on MGS Haskanita.

18 The evidence provided by the insider witnesses illustrate the authority
19 that the leaders of the combined rebel group had and the weight that their orders
20 carried for the subordinate troops.

21 Witness 307 admits, and I quote, "After the meeting, they -- "the commanders,
22 " -- ordered us to get on our vehicles and move. The practice was that when a mission
23 or an attack is about to start, they just go and start their vehicles. And if you
24 are with that vehicle, you jump in," end of quote.

25 The witness accounts of the events surrounding the attack clearly

1 demonstrate the orders received by their troops prior to the attack were immediately
2 following -- were immediately followed by the troops. This is corroborated by
3 witnesses 304, 307 and 433. Indeed, the witness accounts of the events preceding
4 the attack vividly demonstrate that the group through which the crimes were committed
5 was composed of sufficient subordinates so that the successful execution of the
6 plan would not be compromised by any particular subordinate's failure to comply
7 with Mr. Abu Garda's orders.

8 Punishment for disobedience.

9 The threat of punishment in case of non-compliance with the orders of
10 their superiors compelled some of the troops to follow Mr. Abu Garda and the
11 Commander-in-Chief Abdallah Banda, and take part in the attack.

12 Several JEM witnesses give strikingly similar accounts in that regard.
13 Witness 304 notes, and I quote, "The commander would come and say, 'We have a mission
14 to a certain place.' When a commander says like that, you cannot reply or talk
15 back to him. As a soldier, you cannot disobey orders; but if you disobey orders,
16 they will arrest or kill you, or they will consider you to be a spy," end of quote.

17 Witness 306 observes, and I quote from his statement, "If someone did
18 not obey an order, they would tie you up and punish you, beat you or splash you
19 with water. This punishment is the same whether you refuse to obey orders from
20 a junior or a higher commander," end of quote.

21 The same disciplined practices had been adopted in SLA-Unity splinter
22 group as confirmed by witnesses 433 and 307. Orders were issued without further
23 explanations. Circumstances surrounding the immediate execution of the attack
24 reaffirmed that, indeed, the soldiers were following their commanders' orders without
25 being given any explanation of the upcoming attack.

1 Witnesses 304, 305 and 306 are consistent when they say that their commanders
2 ordered them to go and attack the government troops. They complied. They went.
3 Only then they realised that they were attacking the African Union camp.

4 Soldiers followed commanders' orders automatically. The soldiers only
5 knew their leaders whom they had to follow and whose orders they had to enforce.
6 As witness 306 explains, he received the order from a JEM commander and he did not
7 doubt him.

8 Your Honours, this evidence clearly points to the existence of an
9 organisation marked with interchangeability of low-level soldiers with the
10 mechanisation in the process of execution of superior orders, the type of power
11 structure that warrants almost automatic compliance with this decision coming from
12 a recognised leadership.

13 It is -- it was this power structure that Mr. Abu Garda used for committing
14 the war crimes charged before this Court. Mr. Abu Garda mobilised his authority
15 and control over this apparatus in order to secure execution of the crimes he had
16 planned along with other commanders, all members of the common plan.

17 Madam President, your Honours, the Prosecution's core evidence to which
18 I led you in this presentation shows that the attack on MGS Haskanita was carried
19 out in accordance with a common plan. This common plan was agreed amongst Mr. Abu
20 Garda and other commanders, all members of the common plan. The presented evidence
21 also shows Mr. Abu Garda's control over the organisation that committed the crimes
22 and the organised and hierarchical apparatus of power within the organisation as
23 well as the execution of the crimes was secured by compliance with Mr. Abu Garda's
24 orders.

25 Your Honours, through the course of this presentation, the Prosecutor

1 presented sufficient evidence for the Pre-Trial Chamber to find that there are
2 substantial grounds supporting Mr. Abu Garda's criminal responsibility in accordance
3 with Article 25(3)(a) of the Statute as co-perpetrator for the crimes charged in
4 the document containing the charges.

5 Thank you, your Honours. This concludes the submission of the Prosecution.

6 PRESIDING JUDGE STEINER: Thank you very much, Mr. Baiesu. I would like
7 to ask the Defence whether the problem has been solved? Not yet.

8 MR. KHAN: No.

9 (Brief pause)

10 PRESIDING JUDGE STEINER: I am informed that for this lunchtime break,
11 it is not possible for our interpreters to indulge us with 15 more minutes, so we
12 will find another way to compensate the Prosecution team, either in the last part
13 of the session or with a different adjustment in the schedule.

14 In any case, the Prosecution will not suffer any prejudice on the time
15 allocated to him. Since we have only four minutes before the time planned for the
16 lunch break, I am going to suspend now the hearing for one-and-a-half hours and
17 we will resume at 2:30 as planned. No. Sorry. 2:45. Please, Mr Faal.

18 MR. FAAL: Your Honours, perhaps before we suspend, I just thought I should
19 update the Chamber with regards to the information we received on the order of
20 witnesses.

21 We have been informed that the arrangements that are in place are that
22 Witness 0416 would start his testimony tomorrow. I had duly informed counsel for
23 the Defence, and they did not indicate any opposition to such a change. I thought
24 we should share that information. Thank you, your Honour.

25 PRESIDING JUDGE STEINER: Thank you very much for updating the Chamber

1 on this matter, which means that the Chamber will come with a decision on the request
2 made by legal representative of victims exactly in the beginning of next session
3 at 2:45. So this hearing is suspended to 2:45.

4 THE COURT USHER: All rise.

5 (Luncheon recess taken at 1:15 p.m.)

6 (Upon resuming at 2:47 p.m.)

7 THE COURT USHER: All rise.

8 PRESIDING JUDGE STEINER: Mr. Faal, since we are already with kind of
9 delay that cannot be compensated at least this afternoon, I will immediately give
10 you the floor.

11 MR. FAAL: Thank you, Madam President. Your Honours, Desiree Lurf,
12 associate trial lawyer, will make the next presentation on behalf of the Prosecution.
13 Thank you, your Honours.

14 MS. LURF: Thank you, your Honours. Your Honours, I will now address the
15 legal elements of the crimes Mr. Abu Garda is charged with, and I will show the
16 Prosecution's core evidence that proves those various elements.

17 Your Honours have, in the course of this hearing, heard submissions which
18 would be relevant to my presentation. I will refer your Honours to the relevant
19 parts, mindful of not being repetitious.

20 Your Honours, Mr. Abu Garda is charged for three counts of war crimes,
21 all in relation to acts perpetrated by the rebel troops of the JEM under the leadership
22 of Abu Garda, SLA-Unity and the SLA Abdul Shafie during the attack on MGS Haskanita
23 on 27 September -- excuse me, 29 September 2007.

24 Since the counts were already read out in this Chamber at the commencement
25 of the hearing, I will not spell out each count in detail, but jump into the first

1 count straightaway.

2 Your Honours, I will begin by first dealing with the second count of the
3 Prosecution's DCC, which is the war crime of intentionally, intentionally directing
4 attacks against personnel, installations, materials, units and vehicles involved
5 in a peacekeeping mission stipulated in Article 8(2)(e)(iii) of the Rome Statute.
6 Again, this is Count 2 of the document containing the charges.

7 Your Honours, this crime has seven distinct elements. For the audience's
8 benefit, I will read them out first and then address certain elements in particular.

9 The elements are:

10 (1) That the perpetrator directed an attack.

11 (2) The object of the attack was personnel, installations, materials,
12 units or vehicles involved in a humanitarian assistance or peacekeeping missions
13 in accordance with the Charter of the United Nations.

14 (3) That the perpetrator intended such personnel, installations,
15 material, units or vehicles so involved to be the object of the attack.

16 (4) That such personnel, installations, material, units or vehicles were
17 entitled to that protection given to civilians or to civilian objects under the
18 International Law of Armed Conflict.

19 (5) The perpetrator was aware of those factual circumstances that
20 established that protection.

21 (6) The conduct took place in the context of and was associated with
22 an armed conflict not of an international character.

23 (7) The perpetrator was aware of factual circumstances that established
24 the existence of an armed conflict.

25 Your Honours, the last two elements are common to all war crimes. These

1 so-called contextual elements deal with the fact that the conduct took place in
2 the context of an armed conflict of a non-international character and that the suspect
3 was aware of the armed conflict.

4 The facts required to establish these points - elements 6 and 7 - form
5 part of an agreement on facts between the Prosecution and the Defence under Rule
6 69, and therefore, I will not deal with these elements in the current presentation.

7 Your Honours, furthermore, my colleagues have made presentations today
8 that dealt with other elements. Mr. Baiesu has dealt with element 3, which is the
9 perpetrator's intent, and I will not repeat the content of his presentation except
10 to say that the Prosecution incorporates it in this presentation and we won't be
11 referring to it again.

12 Your Honours, you have also heard the extensive submissions by my learned
13 colleague, Mr. Sachithanandan, on the second, fourth and fifth elements of this
14 crime regarding the protected status of AMIS. These are also elements that I will
15 not repeat.

16 Therefore, your Honours, with respect to this count, Count 2, I will address
17 you on the Prosecution's factual allegations and core evidence proving only the
18 first element of the crime, that the perpetrator -- that the perpetrator directed
19 the attack and submit that the other elements have been sufficiently proven.

20 Your Honours, the fact that the attack took place is no longer in doubt.
21 That this attack was widely reported and condemned by the UN and the media, you
22 have heard from Deputy Prosecutor Ms. Bensouda during her opening statement yesterday.
23 It has also been acknowledged by rebels and victim peacekeepers or Prosecution
24 witnesses. It has also been acknowledged by Defence witnesses.

25 In addition, your Honours, Mr. Garda himself yesterday confirmed quite

1 unequivocally that the attack on the AMIS peacekeepers took place in Haskanita.
2 Your Honours, Mr. Abu Garda in his unsworn statements confirmed that he heard the
3 firing going on and that he came to know it was the attack against MGS Haskanita.

4 I make reference to the edited transcript of yesterday, 19 October 2009.
5 It's numbers T-12 at page 49, lines 19 to 24, and I quote, "With only my two cars,
6 I went about 40 kilometres outside Haskanita. I spent the night there. From there,
7 at the nights, we heard shelling and there was weapon firing. I tried to get the
8 information. I tried many Thuraya phones. I failed, except I found somebody called
9 Bushara Fodal Abdallah (phon). I believe he is now in jail in Khartoum. He told
10 me that there is an attack on AMIS, attack on AMIS base. I told him, 'Who is doing
11 that?' He told me that it is rebels and many people."

12 Your Honours, Defence witnesses DCW 2 and DCW 3 confirm this fact in exactly
13 the same manner when they say, and I quote, "We heard of the attack on Haskanita
14 on the way to Adoula."

15 Your Honours, witnesses 416 and 446 will come before your Honours and
16 will detail how the attack was launched and executed. Prosecution witness 355 sets
17 out the findings of the Board of Inquiry of the African Union which was based on
18 accounts of peacekeepers and rebels involved in this attack. The witness describes
19 the chronology of the attack in this way. I quote -- I quote from paragraph 43
20 of the statement of Witness 355: "On 29 September 2007, around 1300 hours, there
21 was a fight between the combined rebel groups and the government forces which caused
22 considerable loss of resources on the rebel's side. On the same day, around sunset,
23 an estimated force of more than 1,000 fighters armed with anti-aircraft guns, some
24 artillery guns and multiple RPG launchers attacked the Haskanita MGS. They
25 overpowered the African Union Protection Forces. The attackers were combined forces

1 of JEM, Eastern Front and SLA-United."

2 Your Honours, that Mr. Abu Garda himself directed this attack on the MGS
3 Haskanita is confirmed by the following chronology of facts, and I will take you
4 through five points. Excuse me, four points. First, Mr. Abu Garda's presence and
5 involvement in the meeting that took place in Dalil Babikir hours before the attack.
6 During this meeting, Mr. Garda and other commanders from JEM and SLA-Unity devised
7 the plan to target and direct their attack on the African Union camp in Haskanita.

8 Your Honours have heard extensive evidence on the meetings in which the
9 attack on the MGS was planned. You heard this just moments ago from my colleague,
10 Mr. Baiesu. He has provided your Honours with overwhelming evidence of Mr. Garda's
11 presence and involvement in the meeting of commanders. I will not repeat this.
12 However, I would like to refer Your Honours to the statements of Prosecution witnesses
13 304, 305, 307 and 312.

14 Second in the chronology of facts, I will draw Your Honours' attentions
15 to yet another meeting at the forest close to the MGS Haskanita. Witness 307 describes
16 this to have occurred just before the attack. The witness stated that, and I quote
17 from paragraph 38, "We carried on until we got to a forest. Our trucks stopped,
18 but they carried on and entered the forest. From our position, we could see the
19 commanders and Garda standing in the forest and talking. After that, they asked
20 us to move behind them. On the way, the truck got stuck. We did not know which
21 way they went. From there, we went through a small road to a village. We found
22 them waiting at the main road. This was near Haskanita. I saw them distributing
23 the vehicles. This was during the sunset prayers, and the vehicles were standing
24 in different places. When we arrived, they ordered us to move. They shouted, and
25 when they shouted like this, they attacked the African Union compound."

1 Your Honours, the third point in the chain of events is -- is a statement
2 by -- or is explained by Prosecution witness 305. He states that Mr. Garda and
3 other commanders from the JEM and SLA-Unity led the attack on the MGS Haskanita.
4 The witness states, I quote, "There were three vehicles in the frontline of our
5 convoy. Behind these three vehicles there were four others in each subsequent role.
6 The three front vehicles were those of the commanders. The lead vehicles had the
7 following weapons: sol-sol, which is a multiple rocket launcher, an anti-aircraft
8 machine gun, .106 calibre weapons and dushkas. Bahr Idriss Abu Garda had a dushka.
9 The rest of the SLA vehicles had dushkas and other weapons mounted on them. By
10 the time the vehicle I was riding in arrived at the AU compound, we found that the
11 attack had already begun. When we approached the compound, Abu Garda and the other
12 commanders who were all in the lead vehicles opened fire and started shooting into
13 the compound."

14 Your Honours, fourth in the chain of events, Witness 304 told the Prosecution
15 that after the attack ended, the JEM and SLA-Unity combined forces left the MGS
16 and converged at a location near the MGS Haskanita. While there, Abu Garda came
17 and checked on those members of his JEM group who were injured. After that, they
18 all headed to Jebel Adola.

19 The witness states this, your Honours, and I quote, "They counted soldiers,
20 how many they lost and how many were injured. And soldiers moved from there to
21 the north. We then went to the northern side of Dar es Salaam. We broke the fast
22 in Haskanita. And after that, we moved about 40 kilometres away from this area
23 and we spent the night there. The two groups, the SLA-Unity and the JEM, all stayed
24 together. I saw all the commanders where we stayed, including Dignu Sonki and Bahr
25 Idriss Abu Garda, and the others who were there. They counted the injured and the

1 dead and we all moved out of Haskanita."

2 Your Honours, I have earlier quoted a very similar statement given by
3 Mr. Abu Garda yesterday in which he says exactly this, that he left and went 40
4 kilometres away and stayed there overnight.

5 Your Honours, there is substantial evidence clearly showing that
6 Mr. Abu Garda planned and directed the attack on the MGS camp on 29 September 2007.
7 As has been submitted, there is no doubt that an attack occurred. With your Honours'
8 leave, I will play two short video excerpts which will show the devastating impact
9 of the attack Mr. Garda is charged with. These video excerpts capture the extensive
10 destruction the attack caused to the AMIS camp at Haskanita.

11 If I may ask the court officer to bring up the excerpts. The excerpt
12 is number 70 -- 17, I'm sorry. It starts at time code 13:44 to 14:09. And the
13 evidence number is EVD-OTP-0566. I may add that this excerpt is a video which my
14 colleague Mr. Sachithanandan has shown earlier or he has also shown an excerpt thereof.
15 It's a video that Witness 326 provided the Prosecution with. And I would like to
16 quote the full ERN number for the record. The full -- excuse me. I will quote
17 the EVD number. I will first quote the evidence registration number and the EVD
18 number. The video is DAR-OTP-0166. I'm sorry, I'm quoting the wrong number, I
19 notice. No, that was correct, 0166-0081-R01. The evidence registration number
20 is EVD-OTP-0446. If I may ask for excerpt 17 to be shown.

21 PRESIDING JUDGE STEINER: Sorry, Madam Lurf. Just for the correction of
22 the transcripts, the ERN number DAR-OTP-0166-0118, instead of 81. Is that correct?

23 MS. LURF: That is correct, yes. The correct ERN number is
24 DAR-OTP-0166-0018-R01, because it is a redacted version. Thank you.

25 The excerpt I would like to be showing, can -- if we can bring them on

1 the screen, will show --

2 THE COURT OFFICER: Can everyone just press "PC1" on their ...

3 (Videotape played)

4 MS. LURF: I think we can stop here. Thank you. And if we could show
5 another excerpt, that would be excerpt number three, and it starts at time code
6 0557. Oh, excuse me the EVD number is EVD-OTP-0552.

7 (Videotape excerpt played)

8 MS. LURF: Your Honours, as you can see (inaudible) devastating -- thank
9 you.

10 (Videotape excerpt played)

11 MS. LURF: Thank you. Thank you very much, your Honour. Just to say,
12 it suffices to say that these pictures speak for themselves. They show the destruction
13 and the impact the attack had on the MGS Haskanita camp on 29 September 2007.

14 Your Honours, I will not be showing the video clips of the loss of life.
15 We also have images and video footage of the dead and those killed and injured in
16 Haskanita. But for the moment, I will turn to analysing the crime, which will be
17 our Count 1 of the DCC, the violence to life. Video images such as this, but especially
18 concerning the wounded and the dead, will be shown later on during the confirmation
19 hearing.

20 Your Honours, I turn now to the loss of life and to the crime of violence
21 to life and, in particular, the crimes of murder and attempted murder. Your Honours,
22 there are five elements of the war crime of violence to life. I will only address
23 the first three, as the last two are the common elements dealing with the armed
24 conflict which form the basis of an agreement of facts with the Defence.

25 Your Honours, the first three elements are the following: The perpetrators

1 killed one or more persons. Such person or persons, were either hors de combat,
2 or were civilians, medical personnel, or religious personnel taking no active part
3 in the hostilities. The third element, your Honours, is that the perpetrator was
4 aware of the factual circumstances that established this status.

5 Your Honours, Mr. Sachithanandan has addressed your Honours on elements
6 2 and 3 of this crime. I will therefore not repeat them and deal only with the
7 first element, that of -- that the perpetrators killed one or more persons.

8 Your Honours, you will hear from witnesses 416 and 446 how their fellow
9 peacekeepers were killed or injured during the attack. These witnesses will speak
10 about the acts perpetrated against them and the injuries they sustained. They will
11 also speak about the impact of these experiences on themselves, on their fellow
12 peacekeepers, and on their families.

13 Your Honours, my colleague, Mr. Baiesu, has clearly established that the
14 attack on the MGS was carried out by combined forces pursuant to a common plan and
15 that common plan was between Mr. Abu Garda and the other commanders. This common
16 plan was hatched during meetings preceding the attack in Dalil Babikir, between
17 high-ranking commanders such as Mr. Abu Garda and others. Following the meeting,
18 Mr. Abu Garda, together with others, issued orders for their soldiers to attack
19 the MGS Haskanita.

20 The consequences of the attacks, your Honours, as you just witnessed,
21 were devastating. It resulted in the killing of 12 peacekeepers and the wounding
22 of several more, and in large-scale destruction and pillaging. Your Honours, as
23 has been established by my colleague, these consequences of the attack were foreseeable
24 to Mr. Abu Garda when he led his soldiers to the Haskanita base.

25 Your Honours, during the attack against Haskanita ten AMIS peacekeepers

1 were killed. Two other peacekeepers later died from injuries they sustained during
2 the attack.

3 If I may ask the court officer to bring up the next document, which is
4 a public report from UNAMIS which was done in the aftermath of the attack and it
5 is called "UNAMID Honours AMIS Fallen Peacekeepers", dated May 2008. The EVD number
6 is EVD-OTP-0048. The ERN number -- do you need that as well? The ERN number is
7 DAR-OTP-0152-0230.

8 If I may ask the court officer to please bring up page 0231. Your Honours,
9 this bulletin --

10 THE COURT OFFICER: Is this a public document?

11 MS. LURF: This is a public document, yes.

12 THE COURT OFFICER: Thank you.

13 MS. LURF: Your Honours, until we see the document on the screen I can
14 maybe already start explaining it a bit. Oh, I'm sorry, my apologies. This document
15 or this report -- is it still visible? This report lists the names of those that
16 were killed during the attack on 29 September 2007. Your Honours, we would like
17 to list the names for the record and we will be addressing the individual fates,
18 or some of them, in detail afterwards.

19 Your Honours, the ten peacekeepers killed on the day of the attack were
20 Major -- I'm sorry, you can see the names on the bottom right, if we could focus
21 there. If the court officer could scroll down to the bottom right. Yes, perfect.
22 Thank you very much. The last ten names on the right corner, you can see in the
23 very right column the date 29 September 2007.

24 I will start listing with the tenth name from the bottom, which was Major
25 Gaolatine Tiro from Botswana, and my apologies if I do mispronounce a name; Major

1 Ibrahim Diagne from Mali; Sergeant Mayoro Kebe from Senegal; Lance Corporal Danjuma
2 Madaki from Nigeria; Lance Corporal Usman Saleh from Nigeria; Private Tayo Alao
3 from Nigeria; Private John Dogora from Nigeria; Private Samuel Orokpo from Nigeria;
4 Private Duniya Audu from Nigeria; and the last name on the bottom is Private Bala
5 Muhammed from Nigeria.

6 Your Honours, there are also two peacekeepers that died in the aftermath
7 of the attack as a result of the wounds they sustained. They are also listed in
8 this document. It is Corporal Martin Matthias from Nigeria - his name can be found
9 in the middle right corner, number 41 - and the other name is Haruna Peter -- excuse
10 me, Corporal Haruna Peter, also from Nigeria. His name appeared -- if the court
11 officer could scroll down again to the bottom right, it was just above the ten that
12 were killed in the attack. Yes, you can see him. It bears number 51 and the date
13 of his death is indicated as 24 September 2007.

14 Your Honours, the fact that these two peacekeepers died in the aftermath
15 of the attack is also corroborated by media articles from the Sudan Tribune and
16 also by the evidence of Prosecution Witness 446. Your Honours, furthermore, as
17 a result of this attack more than 12 peacekeepers were injured. Witness 446 describes
18 the injuries sustained by about ten personnel. According to Witness 446, these
19 ten peacekeepers required evacuation.

20 Your Honours, during yesterday's opening statement of the legal
21 representatives of victims, we have also heard of the fate of one peacekeeper that
22 went missing. Your Honours, this fact is mentioned in the document containing the
23 charges and has been confirmed by Prosecution witnesses -- excuse me, as has been
24 confirmed by Prosecution witnesses 355 and 446, as well as by public sources.

25 These accounts of the dead and wounded have been confirmed by Prosecution

1 witnesses, most of which were present during the attack against MGS Haskanita on
2 29 September 2007, and they witnessed their comrades being wounded and killed.

3 Your Honours, for instance, Witness 420, who was serving at Haskanita
4 at the time of the events, explains them as follows, and I quote, "The dead bodies
5 had bullet holes everywhere. Some dead bodies were in trenches, tents and in the
6 armoured personnel carrier, APC. One body was lying next to the northern guard
7 post. Others were killed in the trenches on the western side of the camp. One
8 person was killed in the communications room."

9 The Prosecution will take your Honours to these events one by one. To
10 show how the attack was launched, I would like to bring a picture on to the screen.
11 It is a confidential document, though, so I would ask that it not be shown to the
12 public and be restricted to the view in the courtroom. In accordance with your
13 Honours' instructions, it bears the signature of a witness and therefore we will
14 refrain from showing it to the public and only depict it within the courtroom, if
15 that is okay.

16 PRESIDING JUDGE STEINER: In principle, legal representatives should not
17 have access to confidential documents but, since there is no way for refraining
18 the screens that are allocated to legal representatives of victims to have access
19 to the images displayed, victims will have access to these documents if the Prosecution
20 does not oppose to that.

21 MS. LURF: Your Honours, we had actually indicated that this document
22 can be shown to the public and in the list of -- in the chart your Honours had asked
23 us to present to your Honours and Court Management giving the confidentiality level
24 of documents, we had labelled this document as public. However, given your Honours'
25 instructions not to mention names of witnesses, we would prefer to now restrict

1 it to the courtroom and so the legal representatives have access to this material
2 via Ringtail. Thank you.

3 The EVD number is EVD-OTP-0339. It is a photograph that is contained
4 in Annex 1 to Witness 355's statement and bears the evidence registration
5 number -- excuse me, not the evidence, but the -- yes, the evidence registration
6 number of the Prosecution of DAR-OTP-0165-0374-R01. I can see it is already on
7 the screen. Thank you.

8 Your Honours, this is a picture provided by Witness 355. It was taken
9 the day after the attack on the MGS Haskanita and it is an aerial view of the camp.
10 I would like to use this to illustrate how the attackers entered the camp and the
11 sequence of the killings that occurred then.

12 Your Honours, on the left side of this picture you can see that the witness
13 made a note saying -- well, it's hard to decipher, but he's indicating that the
14 communication centre, the CommCen, is situated in the far left corner. The building
15 was fully destructed, as the Prosecution will show later, so there's not much to
16 see other than the indication of the arrow. I would also like to draw your Honours'
17 attention to the left side where the northern guard posts were situated, that is
18 the far left corner, just to have an idea.

19 Your Honours, according to witnesses 315, 355, 416 and 417, the rebels
20 first attacked and destroyed strategic points such as the communications centre.
21 At the northern entrance gate, the combined rebel forces shot and killed two AMIS
22 guards and the attackers then targeted and hit the armoured personnel carrier, the
23 APC, which had been moving towards the gates. As we can see from the picture, it
24 didn't arrive at the northern gate because it got stuck in the middle. And there
25 on the bottom of the picture you can see three white houses and there's also an

1 arrow and writing by the witness indicating that this is where the APC gunner was
2 killed.

3 Your Honours, the attackers also targeted the mosque and the mess, as
4 you heard from my colleagues, because that is where they expected people to be eating
5 and praying at that time of the evening in Ramadan. Having entered the camp, the
6 attackers then pursued AMIS personnel in trenches and in their tents and shot them
7 at close range.

8 I will start with the sequences as described by these witnesses and discuss
9 the fate of the operator killed in the communication centre. Your Honours, the
10 peacekeeper killed in the communications centre was Private Samuel Orokpo from Nigeria.
11 This was explained by Witness 446. Witness 355 confirms that the first grenades
12 hit the brick-built communication centre, killing one and injuring another. This
13 information is also corroborated by Witness 420.

14 Your Honours, I would like to now show photos of the communication centre.
15 This picture bears the evidence registration number DAR-OTP-0164-0711. The evidence
16 registration number is EVD-OTP-0146. Your Honours, these pictures have been
17 commented upon by Witness 416, and I refer to paragraph 63 of the statement.

18 I'm just waiting for the photograph to be brought up.

19 THE COURT OFFICER: The level of confidentiality, please?

20 MS. LURF: Oh, I'm sorry. It's a public document.

21 THE COURT OFFICER: Thank you.

22 MS. LURF: What we see here is the remains of the communication centre.
23 It has been -- it was shot at and completely destroyed. The antennas you can see
24 on the left and right side of the photograph are characteristic for the communications
25 centre but, as you can see, it was blasted to pieces.

1 I would like to show the next photograph, which shows the communication
2 centre from a different angle. That bears the registration number
3 DAR-OTP-0164-0722 - this is a public document - and the evidence registration number
4 is EVD-OTP-0153. I am just waiting for it to be shown. Yes, it is coming, I can
5 see.

6 Your Honours, in the far right corner of this photograph you can see the
7 communication centre from a different side. In the front, Witness 416 explains
8 that we can see the TV room and one of the armoured personnel carriers that was
9 completely burned.

10 I will move from the killings in the communication centre to those killed
11 in the northern gate, as described by witnesses. Our Witness 420 explains how the
12 northern gate was attacked. In the first place, he states the attackers hit the
13 communication centre and the northern guard post. In both places a Protection Force
14 member was killed. He then says, and I quote, "After killing the PF in the northern
15 guard post, there was almost nobody left to stop the attackers." This has been
16 corroborated by Witness 419.

17 The next killing in the sequence was that of the driver within the armoured
18 personnel carrier, Lance Corporal Danjuma Madaki from Nigeria. Witness 315 explains,
19 and I quote, "Inside the camp, there were three APCs. On that day only one of the
20 APCs was working properly. One soldier started driving this APC to the front gates,
21 but got stuck along the way. The rebels asked him to come out of the APC but, when
22 he refused, he was shot and killed inside the vehicle."

23 Another witness that describes how Lance Corporal Madaki was killed is
24 Witness 419. He describes as follows, and I quote, "The attackers used a vehicle
25 equipped with a 12.7 millimetre weapon. It was this vehicle that shot at one of

1 the armoured personnel carriers. The APC remained intact, except for the hole left
2 by the penetration of the missile from the front. This was how the driver inside
3 the APC was killed."

4 Your Honour, I would like to show another public document, an AMIS news
5 bulletin of October 2007 which is entitled "Special Edition on Haskanita Outrage".
6 It bears the registration number DAR-OTP-0153-0186 and the EVD - the evidence
7 registration number - is EVD-OTP-0050. I would refer to -- it's a public document.

8 THE COURT OFFICER: Can I please ask you to repeat the ERN number, please.

9 MS. LURF: Yes, the ERN number is DAR-OTP-0153-1860 and if you could please
10 take us to page 1862.

11 Your Honours, unfortunately this is a bit small on the screen, but -- thank
12 you very much for enlarging that. The photographs I would like to show you -- actually,
13 by starting on the left, the left photograph shows the armoured personnel carrier
14 that was destroyed and the person in the photograph is pointing towards the -- actually,
15 the exact part where the missile hit the -- or the rocket-propelled grenade hit
16 the armoured personnel carrier, the APC.

17 If we could just slowly scroll down to have a look at the other pictures
18 that show the destruction of the camp - yes, thank you - and the evacuation of the
19 wounded.

20 Your Honours, after the APC driver was killed and the guards at the northern
21 post were removed, as we heard from our witnesses, nothing could stop the attackers
22 any more. They advanced into the camp and killed people in the trenches and in
23 their tents.

24 Your Honours, as Witness 419 tells us, the attackers advanced, they killed
25 Protection Force members and peacekeepers hiding in the trenches. Witness 446 heard

1 how the attackers were firing at the trench in which he had taken cover, together
2 with others. The witness states that Lance Corporal Usman Saleh, Private Duniya
3 Audu, Private Bala Muhammed, Private Tayo Alao and Private John Dogara - all from
4 Nigeria - were the five Protection Forces officers killed in the trenches during
5 the attack.

6 Your Honours, Witness 416 witnessed the killing of one of the Protection
7 Force officers who was hiding in the same trench together with him. He was killed
8 at close range when he refused to hand over his gun. Witness 447 also describes
9 the shooting of Protection Force members in the trenches. He states that the soldiers
10 refused to surrender their rifles. They lay on their rifles, covering them, and
11 did not move. The rebels searched the soldiers one by one and discovered rifles
12 under them. They shot them at close range. Your Honours, the fact that all these
13 Protection Force members were shot at, at close range, as stated by this witness
14 and many others, shows the deliberate nature of their killing.

15 Your Honours, the Prosecution will move next to show three cases of
16 deliberate killings. These are three specific cases of peacekeepers that were
17 pursued and killed, two of them in their tents.

18 The first case the Prosecution would like to present is the killing of
19 Sergeant Mayora Kebe, a civilian police officer - CivPol - from Senegal. Witness
20 419 illustrates the killing of Sergeant Mayoro Kebe, who was initially hiding in
21 the trench with a fellow CivPol officer. Sergeant Kebe left his hiding, however,
22 and went to his tent to recover his money. Upon arriving at the tent, he heard
23 attackers approaching him and he hid under his bed. The attackers shot and killed
24 him under his bed. This account is corroborated by Witness 420, who saw the corpse
25 of Sergeant Mayoro Kebe when his corpse was taken away after the attack. According

1 to the witness, Sergeant Kebe was a regular policeman and was not armed.

2 The Prosecution would like to draw your Honours' attention also to the
3 statement of Witness 421, who describes the killing of Sergeant Kebe -- excuse me,
4 Witness 421 provided a death certificate of Sergeant Kebe to the Prosecution and
5 also a court decision confirming his death.

6 If I may, I would like to read the evidence registration numbers into
7 the record. The death certificate of Sergeant Kebe bears the registration number
8 DAR-OTP-0165-0533 and the evidence registration number is EVD-OTP-0204. The Court
9 decision confirming his death is DAR-OTP-0165-0551-R01 and bears the evidence
10 registration number EVD-OTP-0340.

11 Your Honours --

12 PRESIDING JUDGE STEINER: Ms. Lurf, sorry to interrupt you. Just to repeat
13 the registration number of the first document, DAR-OTP-0156-0553 instead of 533.
14 Is that correct?

15 MS. LURF: Yes, that's correct, your Honours. Yes, thank you.

16 Your Honours, the Prosecution would next like to present the two cases
17 of the killings of military observers. The first is that of Major Gaolatine Tiro,
18 a military observer from Botswana. Witness 417 was told that Major Tiro was first
19 shot in the back when he was coming out of the office for military observers. He
20 managed to get to the clinic in the compound where his wound was dressed by medics.
21 He then left the clinic and headed towards another building when he was shot again
22 and killed.

23 Witnesses 446, 419 and 315 all speak of the killing of a MILOB from Botswana
24 called Major Tiro. As Witness 315 notes, and I quote, "Based on our findings, these
25 officers were not killed in action, but murdered." Your Honours, this is a finding

1 of the Commission of Inquiry on the events on the attack on MGS Haskanita.

2 The next case is the killing of Major Ibrahim Diagne, a military observer
3 from Mali. Witness 417 describes the circumstances of the killing of this military
4 observer. Major -- excuse me, as the witness explains, and I will quote, "I also
5 heard about the killing of Major Ebrim Jagne, a military observer from Mali. He
6 had just been promoted to Lieutenant Colonel when he was on the mission. I was
7 told by some of the Nigerian Protection Force members that he was shot all over
8 the body in his tent where he was hiding. I heard that one of the local employees
9 who was collaborating with the attackers had led some of the attackers to his tent.
10 I recall being told that they had asked him for his money, and that he had explained
11 to them that he did not have any money because he had just returned from holiday.
12 He was killed in his tent."

13 Witness 419 relates that Major Ibrahim Jagne's body was found in a pool
14 of blood with gunshot wounds all over his body, including ankle, arm, chest and
15 the back of the head. He also confirms that Witness 420 first saw Ibrahim's body.
16 In addition, the Gambian military personnel who washed his body told the witness
17 that he had been hit by at least three bullets at close range.

18 Your Honours, listening to this account it is not difficult to understand
19 how the African Union Investigative Board could have concluded that these AMIS
20 peacekeepers were actually murdered.

21 Your Honours, this leads me to the next part of the presentation on murder,
22 the attempted killings. Your Honours, over a dozen peacekeepers were wounded and
23 only survived due to medical assistance and treatment that they received subsequently.
24 The Prosecution submits that this constitutes an attempt to kill as foreseen by
25 Article 25(3)(f) of the Rome Statute. Article 25(3)(f) of the Rome Statute defines

1 "attempt" as follows, "... taking action that commences its execution by means of
2 a substantial step, but the crime does not occur because of circumstances independent
3 of the person's intention."

4 Your Honours, Witness 416 describes in his statements, and I will quote
5 from paragraph 40 to 41, "Immediately after the Protection Force member next to
6 me was shot, the attackers repeated 'gun, gun.' I did not answer them, but continued
7 to lie on my stomach in the trench without moving. Then they said 'Allah Akbar'
8 and shot me in the back. The person shot me from a close range. Just as when the
9 Nigerian Protection Force member was shot, the attacker was standing over me on
10 the top of the trench when the shot went off. I later discovered that the bullet
11 that was fired into my body was from an AK-47. After shooting me, the attackers
12 continued towards the back gate. They continued demanding for guns as they moved
13 away from my position. However, I did not hear them shooting anyone else after
14 this. From the back gate area, they returned to my position and lifted me up to
15 see if I was dead. When they lifted me up, they must have seen the blood on my
16 side and so they pushed me back on my stomach. I did not move all through this
17 time. After they dropped me, they walked away."

18 Your Honours, the attackers intended Witness 416 to die. He survived
19 only because of the medical attention he received after being shot.

20 Witness 446 in his statement elaborates on the number of injured individuals
21 and provides specific examples of their injuries. Regarding the number of injured
22 persons, he says - excuse me, your Honours, I quote - "Regarding the number of injured
23 persons, I think they are about 30 of the Protection Force, about ten of which required
24 evacuation. I was among the ten."

25 Your Honours, the Prosecution submits that there is sufficient evidence

1 to establish substantial grounds to believe that the crimes in Count 1 have been
2 made out against Mr. Abu Garda.

3 With your leave, I will now turn to the crime of pillage. There are five
4 elements that constitute the crime of pillage, which is Count 3 of the Prosecution's
5 document containing the charges. Again, the last two elements concern the nature
6 of the armed conflict and the Prosecution will not repeat those here. The first
7 three elements are that the -- excuse me, the perpetrator appropriated certain property;
8 second, that the perpetrator intended to deprive the owner of the property and so
9 appropriated for personal -- excuse me, for private or personal use; and, third,
10 that the appropriation occurred without the consent of the owner.

11 As alleged in the DCC, Mr. Abu Garda and other commanders from JEM and
12 SLA-Unity and troops under their command and control engaged in large scale looting
13 of the MGS Haskanita. They thereby appropriated property belonging to AMIS, as
14 well as private property of AMIS personnel.

15 Witness 446 in his statement gives examples of what has been looted. For
16 AMIS property, he lists items such as computers, about 17 white vehicles, Land Cruisers
17 bearing the AMIS logo and a flag hoisted on each of them. Further, he notes petrol,
18 oil, lubricants, ammunition, food stock and supplies.

19 As examples of personal property of the AMIS staff that was stolen, he
20 lists money, personal clothing, phones, military boots, fragmental jackets, supplies,
21 personal cameras and money. This is corroborated by Witness 416 as well as by rebel
22 witnesses 307 and 312.

23 Witness 315 aptly describes the looting. He says, and I quote from
24 paragraph 53 of his statement, "They took about 17 vehicles and loaded the vehicles
25 with whatever they could carry. As MGS Haskanita was in the middle of nowhere,

1 it appeared to the rebels as if it was a big warehouse full of supplies."

2 Your Honours, as regards the manner in which the looting was executed,
3 Witness 419 explains how the rebels entered the compound. He says, or he explains,
4 how some of them entered through the gates and how others came in through the barbed
5 wire. Once inside the camp, they dispersed. One group of attackers headed for
6 the logistics area of the camp, where the food stores, the fuel tanks and the vehicles
7 were located, and the second group of attackers went towards the living quarters.

8 As regards the personal items of staff members that were pillaged,
9 Witness 419 also relates that the attackers were demanding "Money! Money! Money,"
10 and he says they were searching pockets for money. They also took watches and bracelets
11 and really anything of value.

12 Witness 417 recalls that, while he was hiding in the trenches, he could
13 see the attackers searching the tents with torches. Witness 420 similarly recounts
14 seeing attackers entering his tent with torches. When they entered, he was ordered
15 to come out from under the bed and he was asked for money. He didn't have any,
16 so the attackers took all of his personal belongings instead.

17 As explained by Witness 417, the military observer from Mali, Major Diagne,
18 who was killed during the attack, was not as lucky. He was shot in his tent after
19 telling the invaders that he did not have any money to give them.

20 Your Honours, as regards the second element that the perpetrator intended
21 to deprive the owner of the property and to appropriate it for private or personal
22 use, I submit as follows. There is actually no doubt that the items were taken
23 from the camp to be used by the owners -- excuse me, that the appropriators intended
24 to deprive the owners of their property. The Prosecution evidence will show that
25 the goods were used by the rebel group. They were either sold to finance the group

1 or they were used within the rebel group. Furthermore, the Prosecution evidence
2 shows that these items were used by the commanders and by their troops for their
3 personal and private use.

4 Your Honours, the Prosecution will show that Mr. Abu Garda intended to
5 deprive the owner of the property and to appropriate it. We will do so by establishing
6 four points: First, that the combined rebel forces indeed needed further equipment;
7 second, that the loot was shared between the groups; third, that it was subsequently
8 sold or exchanged; and four, that the looted property was used by Mr. Abu Garda
9 and members of the combined rebel forces for private and personal use.

10 Your Honours, the JEM and SLA-Unity rebel groups needed further equipment.
11 As you have heard, the GoS attack -- excuse me, the attack by the government forces
12 that occurred earlier the same day of the attack against MGS Haskanita had destroyed
13 much of the rebels' resources and forced them to seek and appropriate goods.

14 In order for them to replenish their stocks and to retrieve vehicles,
15 fuel and ammunition, the rebels attacked the AMIS base. According to Witness 355,
16 the African Union Board of Inquiry found that, and I quote, "The motivation of the
17 top rebel commanders was looting, because they had lost most of their resources
18 from the battle with the government forces on the same day." I refer to paragraph
19 67 to 68 of Witness 355's statement.

20 Witness 419 concludes the same. He says, "What the attackers looted
21 strengthened their military capacity and stocks to prepare for their future attacks.
22 I could, therefore, conclude that this was one of the motives of the attackers."

23 As regards the second point, your Honours, I will deal with the evidence
24 showing that the loot was shared between the groups. According to Witness 307,
25 the rebels gathered in the forests near Jebel Abdola. The commanders, including

1 Mr. Abu Garda, decided that all the bounty, the ammunition, the computers, the laptops
2 should be put together in one place and then be distributed.

3 At first they could not agree how to distribute the vehicles, but later
4 the witness was told that the Abu Garda group took ten vehicles, while SLA-Unity
5 got eight vehicles. Witnesses 305 and 306 speak about 27 or 28 vehicles that had
6 been looted from the Haskanita base. According to these witnesses, Mr. Abu Garda
7 took eight vehicles, while the remaining 19 went to the SLA-Unity.

8 Your Honours, in his unsworn statement yesterday Mr. Abu Garda confirms
9 having seen SLA troop -- troops with AMIS vehicles. I will quote from the transcript
10 at page 50, line 15, and I quote, "So, because of that I went to the area of Adola.
11 Many people came there and in the way I am going to Adola actually I saw many of
12 JEM scattered troops and SLA troops and even some of the AMIS vehicles, but I never
13 asked."

14 This brings me to the third point, that the looted property was used by
15 Abu Garda or a member of the combined forces. The same witnesses confirm having
16 witnessed how some of the items looted from the camp, including vehicles, were being
17 used by Mr. Abu Garda and his commanders. Witness 307 states how, in the aftermath
18 of the attack, he saw Mr. Abu Garda with a white Toyota vehicle. According to the
19 witness, white Toyota vehicles belonged to the African Union.

20 Witness 433 also confirms having seen Mr. Abu Garda in the aftermath of
21 the attack. The witness says that he saw Mr. Abu Garda in Jebel Adola with about
22 12 vehicles, four of which had "AMIS" written on them. He says that although the
23 stickers had been removed, the marks were still visible.

24 As for the other commanders, Witness 312 explains that he had left Haskanita
25 to Jebel Adola, riding together with a SLA-Unity commander in a vehicle that was

1 looted from the African Union.

2 Witnesses 314 and 433 from the Abdul Shafie group state to have seen a
3 SLA-Unity commander giving his old vehicle to another commander to use, because
4 indeed he had acquired a new vehicle, an open Land Cruiser looted from the African
5 Union.

6 Finally, Witness 433 describes -- he describes the personal use of the
7 looted goods by the soldiers of the combined rebel forces. He saw soldiers coming
8 with computers, suitcases, military uniforms, canned food, vehicles and many other
9 small items. Some were carrying dollars, he says.

10 According to the witness they used the money to buy wine, which he saw
11 them drinking. The witness saw them eating canned food. He also saw one of their
12 soldiers wearing a uniform on which "Senegal" was written. Others were wearing
13 bullet-proof jackets. The witness explained, and I quote, "As they had told us
14 they wanted to attack Haskanita and we heard the following morning that Haskanita
15 was attacked, and we saw the looted items, we knew they were looted from Haskanita."

16 Witness 416 states that the day after the attack two rebels approached
17 the camp wearing Nigerian African Union uniforms, which he believed were looted
18 during the attack.

19 Your Honours, this brings me to the next point, that the goods were later
20 sold or traded. Some of the looted vehicles were subsequently sold and some were
21 exchanged with other vehicles. Further, JEM and SLA-Unity attackers set up a
22 committee to sell some of the vehicles that were pillaged from MGS Haskanita. Several
23 vehicles were sold in Chad and in the Sudan.

24 According to Witness 314, the covered Land Cruisers and the double-cabined
25 Toyota Land Cruisers could not be used in the field for battle. They were, therefore,

1 sent to Chad to be exchanged with other vehicles.

2 As Witness 312 explains, 17 vehicles, including five trucks of the SLA
3 and small vehicles from the African Union, were taken north to be sold in Chad.
4 Some of the small vehicles from the African Union were exchanged with other vehicles
5 in Darfur. The witness further identifies in his statement the names of the members
6 of the committee charged with selling the looted vehicles.

7 According to Witness 433, other items such as cell phones and computers
8 were sold by the rebel forces to other members of the Zaghawa tribe in Jebel Adola.

9 Your Honours, all this shows that Mr. Abu Garda and his fellow commanders
10 of the combined rebel forces clearly intended to deprive the owners of their goods
11 and to appropriate the goods to use them for their personal use.

12 This brings me to the next element, the third element, that the appropriation
13 occurred without the consent of the owner. The Prosecution submits that the events
14 surrounding the attack show that the items were taken without the consent of the
15 owner because they were appropriated by force. Those who refused to surrender their
16 weapons or property would simply be shot and killed.

17 As Witness 355 recounts, after the rebels had entered the camp, the armed
18 members of the AMIS Protection Force handed over their weapons. Those who refused
19 to hand over their weapons were shot and killed. Your Honours have also heard how
20 Major Diagne from Mali was shot in his tent because he refused to hand over his
21 money.

22 Witness 416 told the Prosecution about the shooting of a Protection Force
23 member who refused to hand over his gun. He himself, meaning 416, was also shot
24 at for not handing over a gun; although, indeed he was unarmed.

25 Finally, your Honours, the Prosecution submits that the pillaging of the

1 camp was accompanied by violence causing death and injury to peacekeepers, as well
2 as the destruction of the living quarters, the mosque, the communication post and
3 the equipment. Your Honours, I will quote from Witness 417, who confirms this.
4 He says, and I quote, "Most of the tents were destroyed or burned. The signal centre,
5 mosque and one of the APCs were also burned." Witness 20 -- excuse me, Witness
6 420 confirms this and adds that he would estimate that some 70 per cent of the camp
7 was destroyed.

8 The destruction has been explained in length by Witness 419, and I will
9 quote him. At paragraph 93, he states, "As regards the extent of the destruction
10 of the MGS, there were only the metal frames of the tents that were left after the
11 attack. The thatched mosque was burned. Inside the mosque, copies of the Koran
12 and the carpets were also burned. All the offices and tents were made of PVC and
13 they were burned."

14 "After having taken away all the weapons and ammunition from a container
15 which had been used as armoury, the container was set ablaze with all the armaments
16 that the attackers could not carry. I saw all these buildings burning from the
17 western protection trenches in which I was.

18 As regards the nature of the destruction of the MGS, my opinion is that
19 the destruction was deliberate and premeditated. I believe it so because the
20 attackers fired sol-sol rockets at buildings and installations. The attackers
21 carried out the attack to loot the logistics, vehicles, fuel, food supplies and
22 to destroy whatever they could not take away with them."

23 Your Honours, I had intended to show another excerpt of the video, but
24 you had seen in the beginning of my presentation the photos and the video images
25 of the camp as it was destroyed and how, as this witness describes, there were only

1 the frames of the tent left and nothing more, how the mosque was burned down to
2 the ground and you could see only rubble, how the communication centre was destroyed
3 and all the other buildings.

4 Madam President, your Honours, this concludes the Prosecution's
5 presentation on the crimes for which Mr. Abu Garda is charged. We submit that,
6 at the conclusion of the Prosecution's case during this confirmation hearing, your
7 Honours would have before you sufficient evidence to establish substantial grounds
8 to believe that Mr. Abu Garda committed the crimes charged in Counts 1, 2 and 3
9 of the document containing the charges.

10 This concludes my presentation. I thank you, your Honours.

11 PRESIDING JUDGE STEINER: Thank you very much, Ms. Lurf. I suppose this
12 concludes the whole presentation of evidence by the Prosecution. Am I correct?

13 MR. FAAL: Yes, your Honour, insofar as the witnesses to come tomorrow
14 are not counted, this concludes the oral presentations. Thank you.

15 PRESIDING JUDGE STEINER: Thank you very much. That means that we can
16 proceed as scheduled, since the half-an-hour that was stolen by the Bench doesn't
17 need to be replaced, at least so far.

18 Before suspending the hearing, in relation to the request made by
19 Mr. Frank Adaka in order to be allowed a courtesy visit to his client that has also
20 the status of Prosecution witness, the Chamber recalls decision ICC-01/04-01/06
21 in Lubanga case, decision number 109 of 5 June 2008.

22 According to such precedent, contact between a witness with dual status
23 and his or her legal representative, the Chamber endorses the agreement of the parties
24 that as a general rule the legal representative may contact his or her client if
25 they are a victim with dual status.

1 Taking into account such precedent, the Chamber grants the request made
2 by Mr. Frank Adaka to pay a courtesy visit to his client, Witness 446, a visit that
3 should be scheduled and accompanied by VWU - a member of VWU - during all its duration.
4 During such visit, the conversation between you and your client will not bear on
5 issues related to his testimony.

6 His presence here at the seat of the Court is in his capacity as a witness,
7 not as a victim authorised to participate in the proceedings. Therefore, the OTP,
8 the Defence and you as legal representative of a group of victims are not allowed
9 to refresh the witness' recollections about the facts they are going to testify.

10 So, following the recommendation given by the Prosecution, the visit will
11 take place in the presence of a VWU representative, and the Bench orders yourself
12 to take this conversation in English so that the representative of VWU can therefore
13 follow the conversation. This is the decision of the Bench.

14 Since no other issues --

15 MS. CISSE: (Interpretation) Madam President, there has been another
16 element that I would like to submit to you. I discovered that Witness 416, who
17 is to present his statement tomorrow, he has requested to be heard by the
18 representatives of the victims A659, A09. We can do this, and this will take place
19 after the time limit that I have foreseen for this visit. I wrote the request for
20 participation, and I hope that the Bench will order that the request of 0655 will
21 be submitted to you in the short while you are presenting, and that this will be
22 examined for -- in the interests of the person concerned. Thank you, Madam Chair.

23 PRESIDING JUDGE STEINER: We had no interpretation in this case.

24 THE INTERPRETER: Sorry.

25 PRESIDING JUDGE STEINER: I could understand your request, but the parties

1 and participants to this hearing could not --

2 THE INTERPRETER: You could not get the English interpretation?

3 PRESIDING JUDGE STEINER: Just one minute, Maître Cisse --

4 THE INTERPRETER: If it could be repeated, I would -- can you hear me
5 now on this channel?

6 (Brief pause)

7 PRESIDING JUDGE STEINER: So, we had a problem with the interpretation.
8 Maître Cisse, if you could please summarise your request just for the other parties
9 and participants to understand.

10 MS. CISSE: (Interpretation) I wanted to say that I have discovered --

11 PRESIDING JUDGE STEINER: Madam Cisse, you said you were going to express
12 yourself in English, or was it a misunderstanding? We don't have interpretation.

13 MS. CISSE: Okay. No problem.

14 THE INTERPRETER: There is interpretation in English, but --

15 MS. CISSE: Should I talk in French or in English?

16 THE INTERPRETER: There is interpretation in English.

17 PRESIDING JUDGE STEINER: (Overlapping speakers) ... whether we have
18 transcripts in English?

19 THE INTERPRETER: Yes, there is interpretation in English. Yes.

20 PRESIDING JUDGE STEINER: So you can repeat your -- your request in French,
21 Madam -- Maître Cisse.

22 MS. CISSE: (Interpretation) Thank you, Madam. I will try to be short.
23 I discovered after this morning's meeting that the witness 416, who must present
24 his statement tomorrow, is one of the people who should be also a part of the victims'
25 group.

1 This request for participation is under 0655/09, and he is a Gambian.
2 0655/09. And I would ask that the Court, the Chamber, accept that this request
3 be transmitted to the Court for the representatives of victims in a short period
4 of time. And that this request has not been presented because it is only at the
5 end of September 2008 - after the time limit has passed - that I was informed.

6 And I went to Gambia personally, and in order to fill in the forms for
7 the request of participation, and that it be registered under this number 0655/09.
8 Therefore, I ask that this dossier of his participation be submitted to the Court.
9 Thank you, Madam Chair -- Madam President.

10 PRESIDING JUDGE STEINER: Thank you very much, Maître Cisse.

11 Mr. Faal wants to take the floor.

12 MR. FAAL: Madam President, your Honours, the policy of the Office of
13 the Prosecution is to always encourage participation in proceedings by victims.
14 However, your Honours, there are ground rules for participation that every victim
15 must follow.

16 I have just looked at the record and realised that 416 has not been listed
17 as a victim. He is, indeed, perhaps caught by those applications that were submitted
18 late and were therefore -- I do believe that his application may have been one of
19 those applications that were submitted late and therefore were not granted status
20 to participate.

21 We -- if that is the case, we do regret the fact that the ground rules
22 have not been followed on time to enable him to participate. If there is any
23 possibility for such an aberration to be remedied, we leave that entirely in your
24 hands, but I just thought that this shortfall is a matter that needs to be brought
25 to your attentions. I thank you.

1 PRESIDING JUDGE STEINER: Mr. Khan, any observation on this point?

2 MR. KHAN: Madam President, I'm grateful. There will be -- well, let me
3 start again.

4 The Defence will adopt its previous stance of not objecting to the
5 participation of victims that fulfil their further requirements of the rules. And
6 notwithstanding the late application, there is no objection by my client for this
7 witness 416 to be admitted late in the day.

8 There is, of course, a second issue. Until such time as that witness
9 is granted appropriate status, the request of my learned friend Ms. Cisse must be
10 denied, if it is to be granted. And there is no objection if it is granted. It
11 must, of course, only be after your Honours make a determination as to the dual
12 status of witness 416. I hope that's an understandable position from the Defence.

13 PRESIDING JUDGE STEINER: Thank you, Mr. Khan. The Chamber will deliberate
14 on the issue and we will issue a short decision tomorrow, at the beginning of the
15 hearing. Just advancing that not only application 0655, but other applications
16 were not referred to by the VPRS to the Chamber because they came out of the time
17 limit imposed by the decision. But in any case, the Chamber will examine the situation
18 and come to a decision tomorrow.

19 We don't have other issues to be dealt with during this session, so it's
20 for the Presiding Judge, and of my colleagues, to thank very much for the Prosecution
21 team, Defence team, legal representatives of victims and, of course, for the
22 interpreters that continue to assist us with all due diligence.

23 And the hearing today is suspended, and we will resume tomorrow at 9:30
24 with the examination by the Prosecution of its first witness. The hearing is
25 suspended.

1 THE COURT USHER: All rise.

2 (The hearing ends at 4:21 p.m.)

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1 1 CORRECTIONS REPORT

2 2 Some modifications have been made in the transcript:

3 3 * p 7 line 14 "MR. AKINBOTE:" is replaced by "MR. ADAKA:"

4 4 * p 7 line 18 "MR. AKINBOTE:" is replaced by "MR ADAKA:"

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