



## ***THE CASE OF THE PROSECUTOR V. BAHR IDRIS ABU GARDA AT THE INTERNATIONAL CRIMINAL COURT***

On May 18, 2009, Bahr Idriss Abu Garda, a national of Sudan, voluntarily appeared before Pre-Trial Chamber I of the International Criminal Court. Abu Garda was responding to a summons to appear issued by the Court. This is the first voluntary appearance by a suspect before the ICC. Abu Garda told the *Sudan Tribune* that he surrendered himself to the Court, “out of clear conviction that justice be achieved in Darfur.”<sup>1</sup> In response, the government of Sudan has called the appearance of Abu Garda at The Hague “a ridiculous play” in an effort “to weaken the government and preventing the president of the republic Field Marshal Omer Al-Bashir from running in next presidential elections.”<sup>2</sup>

### Background on the Conflict in Darfur, Sudan

The situation in the Darfur region of Sudan was referred to the ICC by the UN Security Council pursuant to resolution 1593 on March 31, 2005. Since 2003, the Darfur region of Sudan has been plagued with civil war that has left approximately 300,000 dead and displaced 2.7 million.<sup>3</sup> Since the UN Security Council referral, the Court has issued warrants of arrest for Ahmad Muhammad Harun, the former Minister of State for the Interior and former Minister for Humanitarian Affairs of the Government of Sudan; Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb), alleged commander of the Janjaweed militia; and Omar Hassan Al-Bashir, president of Sudan. The major groups involved in the Darfur conflict are the Sudanese government, the Janjaweed militia and the Justice and Equality Movement (JEM), a Darfur rebel group.<sup>4</sup>

### Who is Abu Garda?

The ICC has opened a third case in Darfur against Abu Garda and two other rebels whose identities have not yet been disclosed. Abu Garda is a member of the Zaghawa tribe of Sudan and was born in the northern Darfur. Court filings indicate that from January 2005 until September 2007, Abu Garda was the Vice President of the Justice and Equality Movement (JEM) until he and others split and formed a collective faction called the JEM Collective Leadership (JEM-CL). Presently, Abu Garda is the leader of the United Resistance Front (URF), a rebel group.<sup>5</sup>

### Charges

The charges against Abu Garda for war crimes stem from an attack on September 29, 2007 on the Africa Union Mission in Sudan (AMIS) stationed at the Military Group Site (MGS) Haskanita in Umm Kadada locality in

<sup>1</sup> Darfur war crime suspect confident of innocence before ICC, *Sudan Tribune*, May 19, 2009, available at [http://www.sudantribune.com/spip.php?page=imprimable&id\\_article=31207](http://www.sudantribune.com/spip.php?page=imprimable&id_article=31207).

<sup>2</sup> *See id.*

<sup>3</sup> Stéphanie Plasse, A Sudanese rebel leader manipulates the ICC: Bahar Idriss Abou Garda appears before the International court, May 20, 2009, available at <http://www.en.afrik.com/article15707.html>.

<sup>4</sup> International Criminal Court: Situations and Cases, available at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/>.

<sup>5</sup> International Criminal Court: Questions and Answers, available at <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/>.





North Darfur, Sudan. Abu Garda was allegedly in command of the JEM-CL faction responsible for carrying out these attacks. The 1,000 person-strong JEM-CL was armed with anti-aircraft guns, artillery guns, and rocket propelled grenade launchers. The attack on the AMIS peacekeepers resulted in twelve dead and eight wounded. Attacks on peacekeepers have far reaching international effects and pose a serious threat to those the peacekeepers are mandated to protect. Therefore, the Rome Statute makes clear that such acts will not be tolerated and will be prosecuted.<sup>6</sup>

On November 20, 2008 the Prosecution submitted an application to Pre-Trial Chamber I for either an arrest warrant or a summons to appear for Abu Garda and the other unnamed rebels. On February 23, 2009, the Prosecution amended its earlier application and requested the Court issue a summons to appear for Abu Garda.

## Summons to Appear

Article 58 of the Rome Statute permits the issuance of either an arrest warrant or a summons to appear. Pursuant to Article 58, a summons to appear is appropriate where it is reasonable to believe the person will appear willingly. The summons must contain the name of the person and all relevant identifying information, the specific date to appear, the specific reference the crimes within the Court's jurisdiction that the person is alleged to have committed and the facts that allegedly constitute the crime.

## Pre-Trial Chamber I Decision

On May 7, 2009 Pre-Trial Chamber I issued a sealed decision granting the Prosecutor's application for a summons to appear and his request for the voluntary appearance of Abu Garda. Pre-Trial Chamber I found that there are reasonable grounds to believe that Abu Garda is criminally responsible as a co-perpetrator or as an indirect co-perpetrator for three war crimes: murder; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission; and pillaging. In addition, the Pre-Trial Chamber I found reasonable grounds to believe that there was a common plan to attack MGS Haskanita between Abu Garda and the other groups who participated in the attack.<sup>7</sup>

## Initial Hearing on May 18, 2009

Abu Garda arrived at the ICC on May 17, 2009. On May 18, he made an initial appearance in a hearing before Judge Cuno Tarfusser, acting as Single Judge of Pre-Trial Chamber I. The purpose of the initial hearing is for the Court to satisfy itself of the suspect's identity, that the person before the Court knows the crimes he or she is alleged to have committed and his or her rights under the Statute. The Court imposed conditions on Abu Garda, including refraining from discussing issues related to either the charges or evidence, refraining from making political statements, and agreeing not to leave the premises of the Court without permission. The suspect will not remain in the Netherlands and has expressed his intent to waive his right to be present at the

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<sup>6</sup> International Criminal Court: Bahr Idriss Abu Garda, Counts, available at <http://www.icc-cpi.int/Menu/Go?id=caa61ed6-4f2a-4931-b052-a7991fbacfb&lan=en-GB>.

<sup>7</sup> International Criminal Court: Decision on the Prosecutor's Application under Article 58, available at <http://www.icc-cpi.int/Menu/Go?id=79284334-f73d-45ae-a47d-80a566f852d8&lan=en-GB>.





status conferences leading up to the confirmation of charges hearing. The suspect has not indicated whether he will attend the confirmation of charges hearing on October 12, 2009.<sup>8</sup>

## Motivation to Voluntarily Appear

I hope this step is a clear message to everyone and an affirmation of the cooperation with justice and refraining from insisting on non-cooperation with the court on the grounds that it is a foreign conspiracy. People must face internal issues and stop making these claims.

- Bahar Idriss Abu Garda, May 18, 2009, The Hague<sup>9</sup>

The Prosecutor alleges that Abu Garda and others are individually criminally responsible as co-perpetrators or as indirect co-perpetrators under article 25(3)(a) of the Rome Statute. That provision specifies that a crime may be committed “as an individual, jointly with another or through another person...” “Through another person” means that Abu Garda may be found criminally responsible even if he was not physically present during the September 29, 2007 attacks if he was the ultimate authority planning and giving orders for them. Therefore, Abu Garda’s claim that he was not physically present during the attacks may not offer him the ultimate defense he hopes. It is unclear if Abu Garda fully understands that his criminal liability is not limited to physical presence. It is possible that his willingness to comply with the Court will diminish once he is advised of this fact. To date, there is no information regarding his whereabouts during the attacks.

Roland Marchal, a political specialist on Africa and researcher at the Center for International Studies and Research (CERI), believes that Abu Garda’s behavior can be summed up in two reasons. First, Abu Garda probably has evidence that he believes will exonerate him of the charges against him. Second, Abu Garda wants to undermine his opponents, especially Khalil Ibrahim, current leader of the JEM by accusing him of being responsible for the attacks.<sup>10</sup>

According to Suleiman Jamous, a JEM member, Abu Garda rose through the ranks of the JEM but had a falling out with the group because he did not take criticism well. He formed the JEM-CL but many fighters remained loyal to the JEM because of its size. Jamous and Suleiman Sandal, the field commander for JEM, both believe that Abu Garda has no men on the ground in Darfur and has very little sway in the conflict. According to both men, Abu Garda had no other option but to surrender.<sup>11</sup>

*Researched and drafted by Lucia DiCicco  
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<sup>8</sup> Press release, Confirmation of charges hearing in the case of The Prosecutor v. Bahr Idriss Abu Garda scheduled to start on Monday, 12 October 2009, International Criminal Court, May 19, 2009, available at <http://www.icc-cpi.int/Menu/Go?id=0ce0861e-c35c-40e0-93d7-25f48ac77e72&lan=en-GB>.

<sup>9</sup> Darfur war crime suspect confident of innocence before ICC, Sudan Tribune, May 19, 2009, available at [http://www.sudantribune.com/spip.php?page=imprimable&id\\_article=31207](http://www.sudantribune.com/spip.php?page=imprimable&id_article=31207).

<sup>10</sup> See Stéphanie Plasse, A Sudanese rebel leader manipulates the ICC: Bahar Idriss Abou Garda appears before the International court, May 20, 2009, available at <http://www.en.afrik.com/article15707.html>.

<sup>11</sup> Sarah El Deeb, Darfur rebel leader at war crimes tribunal, Associated Press, May 19, 2009, available at [http://www.boston.com/news/world/middleeast/articles/2009/05/18/darfur\\_rebel\\_leader\\_at\\_war\\_crimes\\_tribunal/](http://www.boston.com/news/world/middleeast/articles/2009/05/18/darfur_rebel_leader_at_war_crimes_tribunal/).

