

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-02/09

Date: 7 May 2009

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

IN THE CASE OF THE PROSECUTOR V. BAHR IDRIS ABU GARD

Under Seal

SUMMONS TO APPEAR FOR BAHR IDRIS ABU GARD

Document to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

The Office of the Prosecutor

Mr Luis Moreno-Ocampo, Prosecutor

Mr Essa Faal, Senior Trial Lawyer

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

Amicus Curiae

REGISTRY

Registrar

Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (the "Chamber" and the "Court", respectively);

1. HAVING EXAMINED the "Prosecutor's Application under Article 58",¹ filed by the Prosecutor on 20 November 2008 in the record of the Situation in Darfur, Sudan, whereby it requested the Chamber to issue a warrant of arrest or, alternatively, a summons to appear for Bahr Idriss Abu Garda ("Abu Garda");

2. HAVING EXAMINED the "Submission of information on the Prosecution's Application Pursuant to Article 58 and request for summonses to appear",² filed by the Prosecutor on 23 February 2009, whereby, *inter alia*, it requested the Chamber to issue a summons to appear for Abu Garda;

3. HAVING EXAMINED all other supporting material and information submitted by the Prosecutor;³

4. NOTING the submissions of the Prosecutor and the Registrar in the *ex parte* hearing before the Single Judge responsible for carrying out the functions of the Chamber in relation to the proceedings relating to the Situation in Darfur,

¹ ICC-02/05-163-Conf-Exp; ICC-02/05-163-Conf-Exp-Anxs1-5.38.

² ICC-02/05-194-Conf-Exp; ICC-02/05-194-Conf-Exp-Anx1.

³ ICC-02/05-165-Conf-Exp and ICC-02/05-165-Conf-Exp-Anxs1-8; ICC-02/05-172 and ICC-02/05-172-Conf-Exp-AnxsA-B24; ICC-02/05-173 and ICC-02/05-173-Conf-Exp-AnxsB25-B26; ICC-02/05-203 and ICC-02/05-203-Conf-Exp-Anx1; ICC-02/05-211-Conf-Exp and ICC-02/05-211-Conf-Exp-Anxs1-2; ICC-02/05-212-Conf-Exp; ICC-02/05-214-Conf-Exp and ICC-02/05-214-Conf-Exp-Anx1; ICC-02/05-216-Conf-Exp.

Sudan, and any related cases emanating therefrom, held in closed session on 21 April 2009;⁴

5. **NOTING** the "Prosecution's Report pursuant to the request of the Single Judge made at the Ex Parte Hearing of 21 April 2009",⁵ filed by the Prosecutor on 23 April 2009 as well as the "Report of the Registry further the hearing of 21 April 2009",⁶ filed by the Registrar on 23 April 2009;

6. **NOTING** the "Decision on the Prosecutor's Application under Article 58",⁷ in which the Chamber explains the reasons why it is satisfied that there are reasonable grounds to believe that Abu Garda is criminally responsible under article 25(3)(a) of the Statute of the Court (the "Statute") for war crimes and that the issuance of a summons to appear is sufficient to ensure his appearance before the Court under article 58(7) of the Statute of the Court;

7. **CONSIDERING** that, on the basis of the material provided by the Prosecutor in support of his Application and without prejudice to any subsequent determination that may be made under article 19 of the Statute, the case against Abu Garda falls within the jurisdiction of the Court;

8. **CONSIDERING** that, on the basis of the material provided by the Prosecutor, there is no ostensible cause or self-evident factor impelling the Chamber to exercise its discretion under article 19(1) of the Statute to determine the admissibility of the case against Abu Garda at this stage;

⁴ ICC-02/05-T-5-CONF-EXP-ENG.

⁵ ICC-02/05-217-Conf-Exp.

⁶ ICC-02/05-219-Conf-Exp; ICC-02/05-219-Conf-Exp-Anx1.

⁷ ICC-02/05-02/09-1.

9. CONSIDERING that there are reasonable grounds to believe that at the time relevant to the charges alleged in the Prosecutor's Application, a protracted armed conflict not of an international character within the meaning of article 8(2)(f) of the Statute existed in Darfur between the Government of Sudan and several organised armed groups, including the Justice and Equality Movement ("JEM"); and that Abu Garda was aware of the factual circumstances establishing the existence of the said armed conflict;

10. CONSIDERING that there are reasonable grounds to believe that, in the context of, and in association with, the said armed conflict, on 29 September 2007 an attack was carried out against the African Union Mission in Sudan ("AMIS") personnel, installations, material, units and vehicles that were stationed at the Military Group Site (MGS) Haskanita (Sector 8) ("MGS Haskanita"), Umm Kadada Locality, North Darfur, Sudan;

11. CONSIDERING that there are reasonable grounds to believe that the attack on the MGS Haskanita was carried out by splinter forces of JEM, under the command of Abu Garda, jointly with the troops belonging to another armed group;

12. CONSIDERING that, on the basis of the material provided by the Prosecutor, there are reasonable grounds to believe that during and after the above-mentioned attack, the attackers: (i) killed twelve AMIS soldiers; (ii) severely wounded eight AMIS soldiers; (iii) destroyed communication installations, dormitories, vehicles and other materials belonging to AMIS; and (iv) appropriated property belonging to AMIS;

13. CONSIDERING that there are reasonable grounds to believe that (i) the victims of the attack were entitled to the protection afforded to civilians not taking active part in the hostilities, (ii) Abu Garda and the other commanders of the troops that participated in the attack were aware of this circumstance and, therefore, (iii) the war crime of violence to life in the form of murder, within the meaning of article 8(2)(c)(i) of the Statute was committed or attempted during the attack;

14. CONSIDERING that there are reasonable grounds to believe that: (i) the object of the attack can be considered personnel, installations, material, unit or vehicles involved in a peacekeeping mission "in accordance with the Charter of the United Nations" within the meaning of article 8(2)(e)(iii) of the Statute; (ii) as not actively participating in the hostilities, the AMIS troops – as well as the installations, material, units and vehicles involved in the AMIS mission – were entitled to the protection given to civilians or civilian objects under the international law of armed conflict within the meaning of article 8(2)(e)(iii) of the Statute; (iii) Abu Garda and the other commanders of the troops that participated in the attack were aware of the protection to which AMIS personnel, installations, material, unit and vehicles were entitled; (iv) therefore, the war crime of intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission within the meaning of article 8(2)(e)(iii) of the Statute was committed;

15. CONSIDERING that there are reasonable grounds to believe that after the attack the attackers appropriated numerous items belonging to AMIS, with the specific intent to deprive the owner of such items and to appropriate them for private or personal use, and, therefore, that the war crime of pillaging within the meaning of article 8(2)(e)(v) of the Statute was committed;

16. CONSIDERING that there are reasonable grounds to believe that (i) there was a common plan to attack the MSG Haskanita between Abu Garda and the other commanders of the troops that participated in such attack; and (ii) the common plan included the commission of the above-mentioned war crimes;

17. CONSIDERING that there are reasonable grounds to believe that the contribution of Abu Garda – who from January 2005 until 26 September 2007 was JEM Vice President and who, on 4 October 2007, together with others, declared the formation of a new armed faction called JEM Collective Leadership (“JEM-CL”) – was essential insofar as there are reasonable grounds to believe that he participated in the design of the common plan and was in command of the splinter forces of JEM during the attack to MSG Haskanita;

18. CONSIDERING that, on the basis of the material provided by the Prosecutor in support of his Application, there are reasonable grounds to believe that Abu Garda is criminally responsible as a co-perpetrator or as an indirect co-perpetrator under article 25(3)(a) of the Statute;

19. BEING SATISFIED that, for the above reasons, there are reasonable grounds to believe that Abu Garda is criminally responsible under article 25(3)(a) of the Statute, for

- i. the war crime of violence to life, in the form of murder, whether committed or attempted, within the meaning of article 8(2)(c)(i) of the Statute;

- ii. the war crime of intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission, within the meaning of article 8(2)(e)(iii) of the Statute;
- iii. the war crime of pillaging, within the meaning of article 8(2)(e)(v) of the Statute.

20. CONSIDERING that, according to the Prosecutor, Abu Garda has expressed his willingness to appear before the Court and, accordingly, that (i) the issuance of a warrant of arrest does not appear necessary for the purposes of article 58(1)(b) of the Statute; and (ii) there are reasonable grounds to believe that a summons to appear for Abu Garda is sufficient to ensure his appearance before the Court within the meaning of article 58(7) of the Statute, without prejudice to the Chamber's power to review its determination under articles 58(1) and 58(7) of the Statute, respectively;

FOR THESE REASONS,

ORDERS

BAHR IDRIS ABU GARDA, a male, member of the Zaghawa tribe of Sudan, believed to be in his early forties, born in Nana, North Darfur, current Chairman and General Coordinator of Military Operations of the United Resistance Front, **TO APPEAR BEFORE THE COURT** on Thursday, 14 May 2009 at 9.30 hours;

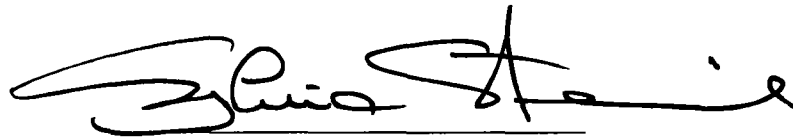
ORDERS

BAHR IDRIS ABU GARDA, without prejudice to further decisions of the Chamber in this respect:

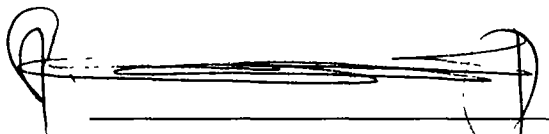
- (i) to refrain from discussing issues related to either the charges which form the basis of the present summons or the evidence and information presented by the Prosecutor and considered by the Chamber;
- (ii) to refrain from making any political statements while within the premises of the Court, including the location assigned to him;
- (iii) not to leave, without specific permission of the Chamber and for the whole period of his stay in the Netherlands, the premises of the Court, including the location assigned to him;

- (iv) to comply, in any case, with all the instructions of the Registrar for the purposes of his appearance before the Court.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner
Presiding Judge



Judge Sanji Mmasenono Monageng



Judge Cuno Tarfusser

Dated this Thursday, 7 May 2009

At The Hague, the Netherlands