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Criminal
Court

ICC-PIDS-PIS-SUD-04-001/09_Eng

Questions and Answers

Situation: Darfur, Sudan

Case: *The Prosecutor v. Bahr Idriss Abu Garda*

No. ICC-02/05-02/09

Questions and answers on the Confirmation of charges hearing in the case *The Prosecutor*



What is the "confirmation of charges" hearing?

The confirmation of charges hearing is a public hearing during which the ICC's Pre-Trial Chamber will decide whether or not to confirm all or any of the charges brought against Bahr Idriss Abu Garda by the Prosecutor and, if confirmed, to commit him for trial before a Trial Chamber. The hearing is scheduled for 19 until 29 October, 2009.

The Prosecution is required to support each of the charges with sufficient evidence to establish substantial grounds to believe that Abu Garda committed the crimes with which he is charged. In general terms, the Prosecution can do this by means of documentary or summary evidence and/or by calling witnesses and experts. At this stage of the proceedings three witnesses will be called by the Prosecutor.

Abu Garda's counsel may object to the charges and will respond to the Prosecutor's presentation of evidence. They may present exculpatory evidence and will also call one witness to testify. Besides the Prosecution and the Defence, the legal representatives of the victims will attend the hearing.

Who is Bahr Idriss Abu Garda?

Bahr Idriss Abu Garda ("Abu Garda") is a member of the Zaghawa tribe of Sudan, and is believed to be in his early forties. He was born in Nana, North Darfur, and is the current Chairman and General Co-ordinator of Military Operations for the United Resistance Front.

From January 2005 until 26 September, 2007, Abu Garda was the Vice-President of the Sudanese armed group known as the Justice and Equality Movement ("JEM"). On 4 October, 2007, he declared, together with others, the formation of a new armed faction called the JEM Collective Leadership ("JEM-CL").

He was allegedly in command of the hierarchically-organised splinter forces of the JEM during an attack carried out on 29 September, 2007 on the African Union Mission in Sudan ("AMIS") stationed at the Haskanita Military Group Site ("Haskanita MGS") in the locality of Umm Kadada



in North Darfur, Sudan.

What crimes is Abu Garda alleged to have committed?

Pre-Trial Chamber I, composed of Presiding Judge Sylvia Steiner (Brazil), Judge Sanji Mmasenono Monageng (Botswana) and Judge Cuno Tarfusser (Italy), reviewed the Prosecution's application and evidence submitted on 20 November, 2008, as well as its other supporting material and information. Based on that review, the Chamber considered that there are reasonable grounds to believe that Abu Garda is criminally responsible as a co-perpetrator or as an indirect co-perpetrator **on three counts of war crimes:**

- violence to life, in the form of murder, whether committed or attempted;
- intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission;
- pillaging.

These crimes were allegedly committed in the context of a protracted armed conflict not of an international character that took place in Darfur between the Government of Sudan and several organised armed groups, including the JEM. In this context, an attack was carried out on 29 September, 2007, on AMIS personnel, installations, material, units and vehicles stationed at Haskanita MGS. The attack was allegedly carried out by splinter forces of the JEM, under the command of Abu Garda, jointly with troops belonging to another armed group. It is alleged that the attackers, numbering approximately 1,000, were armed with anti-aircraft guns, artillery guns and rocket-propelled grenade launchers, and that they killed twelve AMIS soldiers and severely wounded eight others.

During and after the attack, they allegedly destroyed AMIS communications installations, dormitories, vehicles and other materials and appropriated AMIS property, including refrigerators, computers, cellular phones, military boots and uniforms, 17 vehicles, fuel, ammunition and money.

The judges considered that there are reasonable grounds to believe that there was a common plan to attack Haskanita MGS between Abu Garda and the other commanders of the troops who participated in the attack. The Chamber also considered that there are reasonable grounds to believe that the AMIS personnel, installations, material, units and vehicles stationed at Haskanita MGS were the intended object of the attack.

What decisions can the Pre-Trial Chamber issue?

After the confirmation hearing, the Pre-Trial Chamber may:

- confirm those charges in relation to which it has determined that there is sufficient evidence. In that event, the case will go to trial before a Trial -Chamber;
- decline to confirm those charges in relation to which it has determined that there is insufficient evidence and adjourn the proceedings against Abu Garda;
- adjourn the hearing and request the Prosecutor to provide further evidence or conduct further investigations;
- adjourn the hearing and request the Prosecutor to amend any charge for which the evidence submitted appears to establish that a crime other than the crime charged was committed.

Both parties can apply before the Pre-Trial Chamber for leave to appeal the decision on the confirmation of charges.

When will the Pre-Trial Chamber render its decision?

In accordance with Regulation 53 of the *Regulations of the Court*, the Pre-Trial Chamber shall deliver its written decision within 60 days from the date the confirmation hearing ends.


Defence representation

Who is defending Abu Garda?

The Defence team is constituted of Karim Asad Ahmad Khan and of Andrew J. Burrow.

Who bears the cost of Abu Garda's Counsels?

On 30 June, 2009, the Registrar of the ICC decided that Abu Garda is entitled to legal aid on a provisional basis pending an investigation into his financial situation. This decision, concerning the



preliminary stage of proceedings, will be re-examined after the financial investigation is completed.

Where will Abu Garda stay during the confirmation hearing?

Abu Garda will arrive voluntarily in The Netherlands before the opening of the hearing, to meet with his counsel. He will be staying in a safe location, considered an extension of the Court's premises.

Why did the Chamber issue a summons to appear for Abu Garda? Will he then be placed in detention?

On 23 February, 2009, partially amending his original application, the Prosecutor submitted a request stating that the issuance of a summons to appear would be sufficient to ensure Abu Garda's appearance because he had expressed his willingness to appear before the Court. The Prosecutor has continued to provide additional information to the Chamber with regard to this issue.

The Chamber is satisfied that a summons to appear is sufficient to ensure the suspect's appearance, that he will not obstruct or endanger the investigation or proceedings, or commission further possible crimes within the jurisdiction of the Court. The Chamber ordered him to appear before the Court on 18 May, 2009.

After the initial appearance of Abu Garda, the Chamber set the date for the confirmation hearing. As stated in article 61 of the Rome statute, the suspect has the right to attend the hearing, but can also waive his right to be present.

His detention is not necessary at this stage. Nevertheless, Bahr Idriss Abu Garda will be attending the confirmation hearing, and will then leave The Netherlands of his own accord, unless the Pre-trial Chamber decides to place him in detention, or impose conditions restricting his liberty.

If the charges are confirmed, the Chamber can issue an arrest warrant if Abu Garda does not respect conditions imposed on him or if the Chamber considers that it is necessary to ensure that the accused will be present during the trial, as imposed by article 63 of the Rome statute.

Victims' participation

Will victims be in the courtroom, exercising their rights to participate in the proceedings?

Seventy-eight victims have been granted the right to participate in these proceedings. They will not be present in the courtroom, but will be represented by their legal representatives: Mr Brahima Koné, Ms Héléne Cissé, Mr Akin Akinbote and Colonel Frank Adaka.

What is the role of the legal representatives of the victims?

The legal representatives of victims will attend the hearings on the victim's behalf. They will make opening and closing statements explaining why the victims wish to participate in the proceedings and how their personal interests are affected by the proceedings. The legal representatives will also be able to intervene on matters of fact and law which might affect the interest of their clients.

This voluntary participation of the victims allows them to present an opinion independent from the parties and gives them the opportunity to speak about their own concerns and interests.

Investigations in Darfur

Does the ICC have jurisdiction over the situation in Darfur even though Sudan has not ratified the Rome Statute?

The situation in Darfur was referred to the International Criminal Court by United Nations Security Council resolution 1593 on 31 March, 2005. This referral is lawful under article 13(b) of the Rome Statute. The resolution also applies to United Nations Member States, including Sudan, as it was adopted under Chapter VII of the Charter of the United Nations.

Is the ICC independent of the United Nations and the Security Council?

The ICC is an independent body whose mission is to try individuals for crimes within its jurisdiction, without the need for a special mandate from the United Nations. On 4 October, 2004, the ICC and the United Nations signed an agreement governing their institutional relationship.

Are there other cases related to alleged crimes in Darfur?

In the situation in Darfur, warrants of arrest have already been issued for Omar Al Bashir (President of Sudan), Ahmad Harun (former Minister of State for the Interior and former Minister for Humanitarian Affairs of the Government of Sudan) and Ali Kushayb (alleged commander of the *Janjaweed* militia), all suspected of having committed war crimes and crimes against humanity.

Pre-Trial Chamber I is also reviewing the Prosecutor's application of 20 November 2008 for the issuance of warrants of arrest or, alternatively, summonses to appear for two other individuals who allegedly participated in the attack on Haskanita MGS.

There are allegations that the ICC is only targeting African countries. Is that true?

No. The International Criminal Court is a permanent, universal and independent court judicial institution that it is not subject to political control. As an independent court its decisions are based on legal criteria and rendered by impartial judges in accordance with the provisions of its founding treaty, the Rome Statute and other legal texts governing the work of the Court.

The ICC is concerned with countries that have accepted the Court's jurisdiction and these are in all continents, including Africa. Three of the four situations currently under investigation were referred by African states themselves. Between 2003 and 2005 the Democratic Republic of the Congo, Uganda, and the Central African Republic referred situations on their own territory to the ICC. Lastly, the United Nations Security Council referred the fourth situation, Darfur, by resolution under Chapter VII of the UN Charter, as provided for by article 13 of the Rome Statute.

African countries made great contributions to the establishment of the Court and influenced the decision to have an independent Office of the Prosecutor. In 1997 the Southern African Development Community (SADC) was very active in supporting the proposed Court and its declaration on the matter was endorsed in February, 1998, by the participants of the African Conference meeting in Dakar, Senegal, in the 'Declaration on the Establishment of the International Criminal Court'. At the Rome Conference itself the most meaningful declarations about the Court were made by Africans. Without African support the Rome Statute might never have been adopted. In fact 43 African countries are currently signatories of the Rome Statute, of which 30 are parties to the Statute, making Africa the most heavily represented region in the Court's membership. The trust and support comes not only from the governments, but also from civil society organisations.

The Court has also benefited from the professional experience of Africans. Five of the 18 Court's current judges are African: Ms Fatoumata Dembele Diarra (Mali), Ms Akua Kuenyehia (Ghana), Mr Daniel David Ntanda Nsereko (Uganda), Ms Joyce Aluoch (Kenya), and Ms Sanji Mmasenono Monogeng (Botswana). One former judge, Ms Navanethem Pillay (South Africa), is now the UN High Commissioner for Human Rights.

A number of Africans occupy high positions at the Court, including the Deputy Prosecutor Fatou Bensouda (The Gambia) and the Deputy Registrar Didier Preira (Senegal).

Lastly, situations on four continents are under analysis by the Office of the Prosecutor: Colombia, Georgia, Kenya, Cote d'Ivoire, Afghanistan, Palestine and Guinea.