

1 International Criminal Court  
2 Pre-Trial Chamber I  
3 Situation in Darfur, The Sudan - ICC-02/05-02/09  
4 Case against Bahr Idriss Abu Garda  
5 First Appearance Hearing - Open Session  
6 Monday, 18 May 2009  
7 The hearing starts at 3.01 p.m.

8 COURT USHER: All rise. The International Criminal Court is now  
9 in session.

10 SINGLE JUDGE TARFUSSER: Good afternoon to everybody. The  
11 hearing is opened. I would ask the security officers to let in Mr. Bahr  
12 Idriss Abu Garda. Thank you.

13 (Mr. Abu Garda entered court)

14 SINGLE JUDGE TARFUSSER: Good afternoon, Mr. Abu Garda. Please  
15 take your seat next to your counsel.

16 So as we are complete now, I would -- I would ask the Court  
17 Officer to call the case, please.

18 COURT OFFICER: Thank you, Mr. President. Situation in Darfur,  
19 Sudan, ICC-02/05-02/09, case against Bahr Idriss Abu Garda.

20 SINGLE JUDGE TARFUSSER: Thank you, courtroom officer.

21 Now, before we begin the hearing, I think the photographers may  
22 come in in order to take some pictures, if they want to, and I would ask  
23 you to call the photographers in. Just for a few minutes.

24 Thank you very much. In accordance with the established practice  
25 of the court and in favour of the record but also of the public, I would

1 ask now the parties and the participants to introduce themselves,  
2 beginning from -- with the Office of the Prosecutor.

3 MR. FAAL: Good afternoon, your Honour. The Prosecution is  
4 represented today by Luis Moreno-Ocampo, the Prosecutor; Beatrice Le  
5 Fraper Du Hellen, director of the JCCD; Adebowale Omofade, trial lawyer;  
6 Jennifer Schense, International Cooperation adviser; Shyamala Alagendra,  
7 trial lawyer; Victor Baiesu, associate trial lawyer; Biljana Popova, case  
8 manager; and myself, Essa Faal, senior trial lawyer.

9 SINGLE JUDGE TARFUSSER: Thank you, Mr. Faal.

10 I would now turn to the Defence. Would you please identify  
11 yourself as I see you are alone.

12 MR. KHAN: May it please your Honour. Good afternoon. My name  
13 is Karim Khan and I represent Mr. Bahr Idriss Abu Garda, and he sits next  
14 to me.

15 SINGLE JUDGE TARFUSSER: Thank you very much.

16 Now let me introduce myself and the Chamber's legal support team.  
17 I'm Judge Cuno Tarfusser and I'm Single Judge of Pre-Trial Chamber I  
18 responsible for the situation in Darfur, Sudan, and any related cases.  
19 My team is composed by Federica Gioia, Silvestro Stazzone, Hector  
20 Olasolo, Christine Keller, and Ana Bispo.

21 So finally after these preliminary issues, I would now turn to  
22 you, Mr. Bahr Idriss Abu Garda, and ask you first of all if you fully  
23 understand what I say through the interpretation from English to Arabic.  
24 Do you confirm that you fully understand and speak Arabic?

25 MR. ABU GARDA: Yes, I understand.

1           SINGLE JUDGE TARFUSSER: Because you turned to me in English, I  
2 would like to ask you also which language do you want to use while  
3 speaking to the Court?

4           MR. ABU GARDA (interpretation): I would like to use Arabic  
5 because I understand Arabic better than I do English.

6           SINGLE JUDGE TARFUSSER: Okay. Thank you, Mr. Abu Garda.

7           Now I want to say also that the court appreciates very much your  
8 volunteer appearance before me today following the summons issued by the  
9 Chamber, and doing so, I think you have sent out a very good message. I  
10 understand also that your travel to the seat of the court, here to  
11 The Hague, was long and tiring, I think. Do you confirm that you are  
12 fine now and therefore able to answer the questions I'm going to ask you?

13          MR. KHAN: Your Honour, if I may for a moment. My client has  
14 asked permission that he does reply while he's seated.

15          SINGLE JUDGE TARFUSSER: Of course.

16          MR. KHAN: I hope that's allowed. He just wanted to double-check  
17 that.

18          SINGLE JUDGE TARFUSSER: No problem, Mr. Khan.

19          MR. ABU GARDA: (No interpretation)

20          SINGLE JUDGE TARFUSSER: For the sake of clarity, I also want to  
21 remind you and all the parties and participants of the purpose of this  
22 hearing which is the one established in Article 60 of the Rome Statute.  
23 In particular at this stage I shall satisfy myself that you, Mr. Abu  
24 Garda, have been informed of the crimes which you are alleged to have  
25 committed and of your rights under the Statute. If this is the purpose

1 of the hearing, of this hearing, I would ask all the parties and  
2 participants not to go beyond this purpose and object until the hearing  
3 is finished.

4 Now I would ask you, Mr. Abu Garda, a number of questions in  
5 order for me to assure your identity.

6 MR. KHAN: Your Honour, I do apologise. Before you do that,  
7 line -- at page 3, line 16 of the transcript, there's no answer recorded  
8 to your Honour's question, and on behalf of my client I can confirm that  
9 he is in a fit state to conduct proceedings today.

10 SINGLE JUDGE TARFUSSER: Thank you. But he answered in any case.  
11 Okay.

12 I would like you to tell me your name, your date of birth, and  
13 your profession, please, Mr. Abu Garda.

14 MR. ABU GARDA (interpretation): My name is Bahr Idriss Abu  
15 Garda. I am the commander of a resistance movement.

16 SINGLE JUDGE TARFUSSER: Can you tell us when you -- when and  
17 where you were born, which is your profession.

18 MR. ABU GARDA (interpretation): I was born on the 1st of  
19 January, 1963, and I am a political commander by profession.

20 SINGLE JUDGE TARFUSSER: Thank you. According to Article 60 of  
21 the Statute, you have the right to be informed of the crimes you are  
22 alleged to have committed. I would like to remind you that Article 58(7)  
23 of the Statute provides for the issuance of a summons to appear if the  
24 Chamber is satisfied that there are reasonable grounds to believe that  
25 the person committed the crimes alleged and that a summons is sufficient

1 to ensure the person's appearance. As regard the matter of the crimes  
2 which you are charged, the assessment made by the Chamber led us to  
3 believe that there are reasonable grounds to believe that you committed  
4 crimes within the jurisdiction of the court.

5 I now ask the room -- the courtroom officer to read the counts  
6 contained in the summons to appear for you, Mr. Bahr Idriss Abu Garda.

7 Please, courtroom officer.

8 COURT OFFICER: Thank you, Your Honour.

9 Counts: War crime of violence to life in the form of murder  
10 whether committed or attempted within the meaning of Article 8(2)(e)(i)  
11 and Article 25(3)(a) of the Statute; war crime of intentionally directing  
12 attacks against personal installations, materials, units, and vehicles  
13 involved in a peacekeeping mission within the meaning of  
14 Article 8(2)(e)(iii) of the Statute, and Article 25(3)(a) of the Statute;  
15 war crime of pillaging within the meaning of Article 8(2)(e)(v) of the  
16 Statute, and Article 25(3)(a) of the Statute.

17 SINGLE JUDGE TARFUSSER: Thank you, courtroom officer.

18 As you know, in the summons to appear the Chamber imposed on you  
19 a number of conditions.

20 Courtroom officer, would you please read such conditions.

21 COURT OFFICER: Conditions: Pre-trial Chamber I ordered  
22 Bahr Idriss Abu Garda without prejudice to further decisions of the  
23 Chamber, 1, to refrain from discussing issues related to the charges  
24 which form the basis of the present summons or to the evidence and  
25 information presented by the Prosecutor and considered by the Chamber;

1           2, to refrain from making any political statements while within  
2           the premises of the court, including the location assigned to him;

3           3, not to leave without specific permission of the Chamber and  
4           for the whole period of his stay in the Netherlands, the premises of the  
5           court, including the location assigned to him;

6           4, to comply in any case with all the instructions of the  
7           Registrar for the purposes of his appearance before the court.

8           SINGLE JUDGE TARFUSSER: Thank you, courtroom officer.

9           I'd like to add that during a hearing in closed session held on  
10          the 13th of May, 2009, it was clarified that any statement made by you,  
11          Mr. Abu Garda, shall be mindful of the judicial nature of the first  
12          appearance and of the institutional location, and in particular that they  
13          shall be delivered in a manner which is respectful of the Court and the  
14          host country. I hope this is clear.

15          MR. KHAN: Your Honour, it has been explained to the client and  
16          he's fully aware of the Court orders and intends to comply fully with  
17          what your Honour has so ordered.

18          SINGLE JUDGE TARFUSSER: Thank you very much.

19          Article 60 of the Statute also requires me to be satisfied that  
20          you have been informed of all your rights as set out under Article 67 of  
21          the Statute. In any event, I would like to recapitulate those rights for  
22          you. Pursuant to Article 67(1) of the Statute of the Court, you have the  
23          right, (a), to be informed promptly and in detail of the nature, cause,  
24          and content of the charge in a language which you fully understand and  
25          speak; (b), to have adequate time and facilities for the preparation of

1 the defence and to communicate freely with your counsel; (c), to be tried  
2 without undue delay; (d), to be present at trial to conduct the defence  
3 in person or through legal assistance of your choosing; (e), to examine  
4 or have examined the witnesses against you and to obtain the attendance  
5 of and examination of witnesses on your behalf; (f), to have free of any  
6 cost the assistance of a competent interpreter and such translation as  
7 are necessary to meet the requirement of fairness; (g), not to be  
8 compelled to testify or to confess guilt and to remain silent; (h), to  
9 make an unsworn oral or written statement in your defence; (i), not to  
10 have imposed on you any reversal of the burden of proof or any onus of  
11 rebuttal.

12 Now I would like to continue going through the statutory  
13 instruments of the court. Mr. Abu Garda, you have understood your  
14 rights? Have you understood your rights, Mr. Abu Garda?

15 MR. ABU GARDA (interpretation): Yes, I have.

16 SINGLE JUDGE TARFUSSER: Now I would like to continue going  
17 through the statutory instruments of the court. According to Rule 121 of  
18 the Rules of Procedure and Evidence, at first appearance I shall set a  
19 date for the Confirmation of Charges Hearing. This date is Monday, the  
20 12th October 2009. I think that this date gives us all an amount of time  
21 for all the participants to prepare for this hearing, also for the  
22 disclosure of evidence, documents, and materials to take place, and for  
23 all measures which may become necessary for the protection of victims or  
24 witnesses to put in place. I would have liked to set it also earlier,  
25 but I think there is also July and August in the middle and I think

1 somebody wants to go also on holiday. So that's why I didn't put it  
2 earlier.

3 I would like to add that Rule 121(2)(b) of the Rules of Procedure  
4 and Evidence establishes that status conferences to ensure that  
5 disclosure takes place and to satisfy conditions shall be held before the  
6 Single Judge.

7 I would now turn again to the Defence. According to Article 61  
8 of the Statute, the suspect has the right to participate in the  
9 Confirmation of Charges Hearing, of course, but as I understand, Mr. Bahr  
10 Idriss Abu Garda is going to leave the Netherlands I think tomorrow or in  
11 any case in the following hours, and I would be grateful if the Defence  
12 could elaborate on this position -- on the position of Mr. Abu Garda in  
13 respect of this right, and in particular if he intends to be present or  
14 if he intends to waive the right to be present both in the hearing of --  
15 in the confirmation hearing, the hearing of confirmation charges and in  
16 the hearings that may be scheduled in between.

17 Mr. Khan, you have the floor to this issue.

18 MR. KHAN: Your Honour, I'm much obliged for the invitation to  
19 shed some light on the Defence position in this regard. As far as the  
20 interlocutory or pre-trial hearings, status conferences and the like that  
21 may be held prior to the confirmation, the instructions of my client are  
22 that he waives his right to attend in person and is content to be  
23 represented by counsel. So, your Honours, that should clarify matters  
24 and make matters run that much more smoothly.

25 As far as the Defence position on confirmation is concerned,



1 these are early days and I'm not in a position at the moment nor is it my  
2 advice to waive my client's attendance at the confirmation. A lot will  
3 depend on the disclosure that we look forward to receiving from my  
4 learned friends opposite, and once we review that evidence we will be in  
5 a much better position to decide whether or not we wish to challenge the  
6 evidence, and if so, in what form, and whether or not indeed my client  
7 wishes to speak at that hearing. So, your Honour, I'm not willing to  
8 waive his attendance at the confirmation hearing but we are willing to  
9 waive it on status conferences preceding the October date set by your  
10 Honour a moment ago.

11 SINGLE JUDGE TARFUSSER: Okay. Thank you very much. So we come  
12 back to this issue a little bit further on in the disclosure procedure.

13 I would now turn to the Prosecutor to ask if he would like to  
14 make any observation at this time.

15 MR. FAAL: Your Honour, the Prosecution has no observations to  
16 make at this time.

17 SINGLE JUDGE TARFUSSER: The Defence?

18 MR. KHAN: Your Honour, no, except that we do hope that my  
19 learned friends on the other side will not be tardy in providing the  
20 document containing charges and the evidence upon which we can prepare  
21 simply because your Honour has been rather indulgent because of the  
22 summer recess and allowed people to take a little bit of a holiday. Your  
23 Honour, there will be no holiday on behalf of Mr. Garda, notwithstanding  
24 the fact that he is, of course, at liberty. So we would urge my learned  
25 friends opposite to provide the disclosure at the very earliest

1 opportunity so that the Defence can start making meaningful preparations  
2 so that we are ready for October and more importantly we are ready for a  
3 very early trial date thereafter, if necessary.

4 SINGLE JUDGE TARFUSSER: Don't worry, I will be very hard on  
5 this, so I think we will -- we will find -- we will find the way how to  
6 deal with it very -- in a very equivalent way.

7 Mr. Abu Garda, have you anything to say at this moment to the  
8 Court?

9 MR. ABU GARDA (interpretation): I would like to thank the Court  
10 and especially the Registry. I would like to thank you for all the  
11 arrangements that have been made since we came here and to be here in the  
12 courtroom.

13 SINGLE JUDGE TARFUSSER: Okay. Thank you to all -- oh, sorry,  
14 the Prosecutor asks the floor. Please, Prosecutor.

15 MR. MORENO-OCAMPO: Thank you, your Honour. Just to be  
16 absolutely clear because the waiver has been provided by the defendant  
17 himself and of course all the matters of disclosure have to be properly  
18 discussed, but I would like to be clear if the defendant waives his right  
19 to be present during the hearing, the confirmation hearings, because that  
20 is when the Defence -- the counsel mentioned the pre-interlocutory -- it  
21 is not clear to me if the defendant is waiving his right to be present  
22 during the confirmation hearing. And that would be a very important  
23 decision today.

24 SINGLE JUDGE TARFUSSER: As far as I'm concerned, he didn't waive  
25 at this moment his right to be present at the confirmation hearing. He

1 will find out going along the disclosure procedure if to waive it or not,  
2 as I had understood. Is that correct?

3 MR. KHAN: Your Honour, I'm grateful for my learned friend's  
4 interjection and I apologise if I was not clear. Our position is that we  
5 waive -- my client waives his right to attend any status conference  
6 before the October date.

7 SINGLE JUDGE TARFUSSER: Yes.

8 MR. KHAN: Whether or not he wishes to attend in October is  
9 dependent upon the view that the Defence take as to whether and in what  
10 manner we seek to challenge the confirmation itself and the document  
11 containing charges. My client may wish to attend, but it's too early at  
12 this moment to say whether or not he wishes to attend then or whether he  
13 does not. If he doesn't wish to attend, of course I will inform the  
14 Court and waive his attendance at the appropriate time. But, your  
15 Honour, I don't think it's necessary at this moment to say more than  
16 that.

17 SINGLE JUDGE TARFUSSER: That's what I've understood.

18 Are you -- okay. Thank you very much.

19 So I think we have now nothing other to clear in this moment, and  
20 I will -- I want to thank all the participants and -- for attending, and  
21 of course the interpreters and the recorders. And I declare this hearing  
22 closed. Thank you very much.

23 The hearing ends at 3.29 p.m.

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