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ICC-PTDS-PIS-SUD-03-001/09\_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 summons to**



## **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 JEM Collective Leadership ("JEM-CL").

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

## **What crimes is Abu Garda alleged to have committed?**

Pre-Trial Chamber I considered that there are reasonable grounds to believe that a protracted armed conflict not of an international character existed in Darfur between the Government of Sudan and several organised armed groups, including JEM. In this context, an attack was carried out on 29 September 2007 on AMIS personnel, installations, material, units and vehicles stationed at MGS Haskanita.

The attack was allegedly carried out by splinter forces of 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 MGS Haskanita between Abu Garda and the other commanders of the troops which 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 MGS Haskanita were the intended object of the attack.

Pre-Trial Chamber I, composed of Presiding Judge Sylvia Steiner (Brazil), Judge Sanji Mmasenono Monageng (Botswana) and Judge Cuno Tarfusser (Italy), reviewed the Prosecution 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 under article 25(3)(a) of the Rome Statute:

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

#### **Why did the Court issue a summons to appear for Abu Garda?**

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 in that regard. The Chamber was satisfied that a summons to appear is sufficient to ensure the suspect's appearance, and ordered him to appear before the Court on 18 May 2009.

#### **What is a summons to appear?**

A summons to appear is an order issued by a Pre-Trial Chamber for a person to appear before the Chamber on a specified date. After reviewing the application and evidence or other information submitted by the Prosecution, the Chamber issues a summons to appear if it is satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court and that a summons is sufficient to ensure the person's appearance.

As provided by article 58 of the Rome Statute, the summons has to contain:


- (a) the name of the person and any other relevant identifying information;
- (b) the specified date on which the person is to appear;
- (c) a specific reference to the crimes within the jurisdiction of the Court which the person is alleged to have committed; and
- (d) a concise statement of the facts which are alleged to constitute the crime.

A summons to appear is served on the suspect and does not prejudice the final decision on his or her guilt.

#### **What is the difference between an arrest warrant and a summons to appear?**

Article 58 of the Rome Statute allows a Pre-Trial Chamber to issue either an arrest warrant or a summons to appear for persons who have allegedly committed crimes within the jurisdiction of the Court. To issue a summons to appear, the Pre-Trial Chamber must be satisfied that the suspect will appear voluntarily before the Court.

A warrant of arrest is issued when there are grounds to believe that a suspect will not appear



voluntarily before the Court or that he or she will obstruct or endanger the investigation or proceedings. It is also issued to prevent the further commission of the crime for which the suspect is charged or other crimes within the jurisdiction of the Court.

#### **Did the Chamber impose any conditions on Abu Garda?**

According to the Rome Statute, the Pre-Trial Chamber may impose conditions restricting liberty (other than detention). Bearing in mind the need to preserve public order and to ensure the orderly conduct of the proceedings, the Chamber attached a number of conditions to the summons to appear. In particular, it ordered Abu Garda to refrain from discussing issues related to the charges or evidence considered by the Chamber and from making any political statements. At a hearing in closed session held on 13 May 2009, it specified that Abu Garda should have no contact with the press before his first appearance and that any statement made by him should be delivered in a manner which is respectful of the Court and the Host State. It was also specified that the Court will have no role in facilitating or organising such contacts, except for the need to ensure that Abu Garda remains at all times under the control of the Court and that any violation by him of the conditions of the summons be promptly reported to the Chamber. To this effect, the Registrar was instructed to make a suitable location available for such contacts.

#### **What will happen if Abu Garda does not appear before the Court on 18 May 2009?**

If Abu Garda does not appear before the Court or fails to comply with the Pre-Trial Chamber's orders, the Chamber may review its determination and decide to issue an arrest warrant.

### **Arrival at the seat of the Court and first appearance**

#### **If Abu Garda appears before the Court, will he be placed in detention?**

No. The Chamber was satisfied that Abu Garda can and will appear voluntarily before the Court, without the need to arrest him.

Upon his arrival in The Hague, Abu Garda will stay at the location assigned to him by the Court. This location will remain confidential. He is ordered not to leave the premises of the Court, including that location, for the whole period of his stay in the Netherlands, without specific permission of the Chamber.

#### **If Abu Garda appears as requested by the Chamber, what will happen next?**

At Abu Garda's first appearance, Judge Cuno Tarfusser, acting as Single Judge, will inform him of the crimes which he is alleged to have committed and of his rights under the Rome Statute. A confirmation hearing will be held within a reasonable time to determine whether or not there are substantial grounds to believe that he committed the crimes charged.

#### **If the summons to appear was issued by the Pre-Trial Chamber composed of three judges, why will the first appearance take place before a single judge?**

As provided for by article 57(2)(b) of the Rome Statute, a single judge of the Pre-Trial Chamber may exercise the functions provided for in the Statute, except for specific orders or rulings mentioned in the article (the confirmation of charges, for example).

#### **Where will Abu Garda stay until the confirmation hearing?**

In its summons to appear, the Chamber did not impose any travel restrictions on Abu Garda. The Chamber reserves the right to review this determination either *proprio motu* or at the request of the Prosecutor.



## 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 MGS Haskanita.

### **Why did the Chamber issue warrants of arrest rather than summonses to appear for Omar Al Bashir, Ahmad Harun and Ali Kushayb?**

The issuance of a summons to appear, rather than an arrest warrant, is restricted to cases in which the Prosecution application and its supporting material provide sufficient guarantees that the person can and will appear voluntarily before the Court without the need to arrest and surrender him or her.

Pre-Trial Chamber I considered that a summons to appear is meant to be used only for persons who are not already in detention, which is not the case for Ali Kushayb, who, according to the Prosecution's supporting material, is "in the custody of the Sudanese police". His detention prevents him from willingly and voluntarily appearing before the Court, therefore his arrest was considered necessary to ensure his appearance at trial.

As for Ahmad Harun, the Chamber was not satisfied that he will appear voluntarily before the Court, especially because he has a previous record of concealing evidence in the case. The Chamber considered that his arrest appears necessary to ensure that he will not obstruct or endanger the investigation.

With respect to Omar Al Bashir, the Chamber noted that the Government of Sudan has systematically refused to cooperate with the Court since the issuance of the arrest warrants for Ahmad Harun and Ali Kushayb on 2 May 2007. Furthermore, it noted that, since the filing of the public summary of the Prosecution application for a warrant of arrest for Omar Al Bashir on 14 July 2008, it appears that Omar Al Bashir himself has been particularly defiant towards the jurisdiction of the Court in several of his public statements. The Chamber found that the arrest of Omar Al Bashir appears necessary at this stage to ensure (i) that he will appear before the Court; (ii) that he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Statute; and (iii) that he will not continue with the commission of the crimes against humanity and war crimes alleged against him.



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