

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: 23 ~~OCTOBER~~, 2009 *1/11/09*
NOVEMBER

PRE-TRIAL CHAMBER I

Before:

Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng, Judge
Judge Cuno Tarfusser, Duty Judge

SITUATION IN DAFUR, SUDAN

IN THE CASE OF THE PROSECUTOR v. ABU IDRIS GARDA

Public Document

**FINAL WRITTEN OBSERVATION OF VICTIMS REPRESENTED BY
AKIN AKINBOTE**

Source: VICTIMS REPRESENTED BY AKIN AKINBOTE

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

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FINAL OBSERVATION OF VICTIMS REPRESENTED BY AKIN AKINBOTE

1. Mr. Idriss Abu Garda is charged with three counts of war crimes in relation to acts perpetrated by the combined rebel forces during the attack on the MGS Haskanita on 29 September 2007, namely:
 - (i) Intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission pursuant Art.8(2)(e)(iii)
 - (ii) Violence to life, in particular the crimes of murder and attempted murder pursuant to Art.8(2)(c)(i) and
 - (iii) Pillaging pursuant to Art.8(2)(e)(v)
2. The evidence led relating to the charges brought against Abu Garda before this chamber have been well set out in the Prosecutor's final address. Emphasis will however be placed on some of the facts and evidence as presented by the Prosecution in its Final Address and which remain uncontradicted. The said evidence is adopted for use by the victims here represented.
3. Some highlights of the evidence led by the Prosecution are as follows:-before
 - i. Mr. Abu Garda was the Garda was the Chairman and leader of JEM-CL, (a splinter group from mainstream JEM), which was already in existence and operationally active at the time of the attack on GMS Haskanita Base on 29th September, 2007.
 - ii. Prior to the attack on 29th September, 2007, Mr. Abu Garda entered Darfur and met with met up with Abdallah Banda, a former Commander-inChief of Jem under Khalil Ibrahim.
 - iii. Mr. Abu Garda was at the time of the attack on GMS Haskanita was the Chairman of JEM-CL and the effective political head while Banda was the topmost Military Commander of JEM-CL. Under the political and military hierarchy, Abu Garda was the de facto and de jure head and Banda was next in

rank.

iv. The leadership of Abu Garda of JEM-CL was formally announced on 4th October, 2007.

4. The Prosecution also led evidence that apart from JEM rebel group under Abu Garda, other rebel groups (SLA Unity and SLA under Abdul Shafie) also actively participated in the attack on Mr. Abu Garda. This evidence remained unchallenged by the Defence.
5. JEM and SLA Unity forces were present in the vicinity of Haskanita at the time of the attack and prior to the attack, the leadership of JEM, SLA Unity and SLA Abdul Shafie Forces had met, planned and evolved strategies for the attack on MGS Haskanita. There were at least two meetings.
6. On the eve of the attack on MGS Haskanita some members of JEM, SLA-Unity and SLA Abdul Shafie Faction came over to Dalis Babiker to join other members who were stationed there.
7. About mid-day on 29th September, 2007, the GoS forces attacked the joint forces of JEM, SLA-Unity at Dalis Babiker which forced them to withdraw from Dalis Babiker. Abu Garda and Banda were in Haskanita while the GoS forces reeked havoc on the troops at Dalis Babiker.
8. Prior to the attack on 29th September, 2007, the AMIS troops had received threats of reprisal attacks from the rebels (some of whom were identified during the attack) for the failure of the AMIS to prevent or protect them from attacks from GoS forces.
9. That subsequent to the attack on the joint forces by GoS troops in the afternoon of 29th September, 2007, the leadership of JEM and SLA-Unity forces issued orders to launch the attack on MGS Haskanita with about 1000 troops. The surprise attack was carried out about 7 p.m. on 29th September, 2007.

10. The attack resulted in the immediate loss of life of Ten (10) AMIS peacekeepers and subsequent loss of two others and one remain missing till date.

LEGAL ISSUES

11. The legal issues on which this chamber is being invited to confirm the charges against Abu Garda are as follows:

- i. Common Plan
- ii. Indirect co-pertration perpetration
- ii. Co-perpetration
- iii. Criminal Responsibility
- iv. Proof of the Three-Count Charge against Abu Garda

12. Common Plan

In the Confirmation of Charge Hearing in Katanga and Ngudjole's case, the pre-trial chamber found as follows:

"Germain Katanga (FRPI ex-commander-in-chief) and Mathieu Ngujolo Chui (FNI ex-commander-in-chief who had worked closely in the past, both agreed to launch a joint attack on 24 February 2003 against the village of Bogoro, which at the time had an undeniable military value derived from its strategic location at the crossroads between the Buni-Benis and the Kaseny- Mongwalu"

This decision is very apposite to the Abu Garda' case. There was a common plan to re-kit the troops of JEM/SLA and replenish their military hardware stock having suffered serious injuries and loss of equipment as a result of the earlier spilt from the JEM forces led by Khalil Ibrahim and subsequent attack by the GoS forces in the afternoon of 29th September, 2007, at Dalis Babiker.

The evidence led by the Prosecution show conclusively that not only were twelve peacekeepers killed but their weapons, military uniforms, personal belongings including money were pillaged. Evidence also show that these booties were shared

between the JEM/SLA attackers. Even operational vehicles of AMIS have been shown to be in the possession of the JEM/SLA troops.

13. Indirect Perpetration/Co-perpetration.

Abu Garda proffered evidence that he was not at the scene of the attack, but contrary to this, evidence abound of joint meetings of the leadership JEM/SLA forces to plan and execute the attack on MGS Haskanita. The meetings are proof of his Indirect Perpetration and also serve as proof of his co-perpetration which ever test is applied. Co-pepetration based on joint contol which in this case is the joint control of the combined forces of JEM/SLA have an agreement or common plan among the two forces which was directed at the crime of unlawful attack on MGS Haskanita which is a protected base under the Geneva Convention.

Contrary to the assertion of the Defence, there is no shred of evidence before this chambers that MGS Haskanita had lost its protected status.

14. Criminal Responsibility

Article 25 of the Statute clearly defines the elements of criminal responsibility.

The evidence led by the Prosecution leads to one irresistible conclusion and that is the elements of Criminal responsibility of Abu Garda has been sufficiently establish to warrant a confirmation of the charges brought against him. He has not denied being the political head of JEM-CLE and that he had control over the troops. It is not also in doubt that orders to the troops emanate from the political leadership and he was in control of the political leadership.

15 Proof of Three-Count Charge Against Abu Garda.

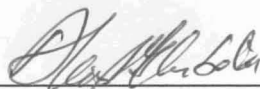
- (ii) Intentionally directing attacks against personnel, installations, materials, units and vehicles involved in a peacekeeping mission pursuant Art.8(2)(e)(iii). The evidence before this chamber is that there was an attack on the MGS Haskanita on 29th September, 2007 carried out by the joint troops of JEM/SLA including

the faction led by Abu Garda. The attack was against AMIS personnel, installations, materials, units and vehicles. This is an uncontradicted evidence

- (ii) Violence to life, in particular the crimes of murder and attempted murder pursuant to Art.8(2)(c)(i). Abundant evidence has been presented to this chamber on the killing and maiming of AMIS personnel as a result of the attack on 29th September, 2009. The defence has not denied the existence of the attack nor being the leader of a faction of JEM that was involved in the attack and some of whose troops were positively identified by the Prosecution witness as being part of the attacking troops.
- (iii) Pillaging pursuant to Art.8(2)(e)(v). The evidence proffered by the Prosecution established the fact of Pillaging. The AMIS vehicles which were found to be in the possession of JEM forces after the attack are conclusive proof of the crime of Pillaging.

16. CONCLUSION.

We are in view of the above submissions, respectfully, inviting this chambers to hold that the Prosecution has establish a case to warrant the confirmation of the charges brought against Abu Garda and we urge Your Honours to confirm the charges in the interest of justice.



Akin Akinbote
on behalf of

Victims a/0535/09, a/0537/09, a/0538/09, a/0539/09, a/0540/09, a/0541/09, a/0542/09, a/0544/09, a/0545/09, a/0546/09, a/0548/09, a/0549/09, a/0550/09, a/0551/09, a/0557/09, a/0559/09, a/0560/09, a/0561/09, and a/0562/09

Dated this 23rd November, 2009

At Lagos, Nigeria

At [place, country]

NOVEMBER
23 OCTOBER, 2009