

## **New Blow for ICC**

**Author:** [Lisa Clifford](#)

International Criminal Court, ICC, judges last week threw out the case against Sudan's Bahr Idriss Abu Garda, describing prosecution evidence against the rebel leader as scant, weak and unreliable.

They said prosecutors had failed to prove that Abu Garda, the commander of a splinter group of the Justice and Equality Movement, JEM, was behind the September 29, 2007 attack on an African Union base in Haskanita, north Darfur. Twelve peacekeepers died and eight were wounded.

Their verdict followed an eight-day confirmation of charges hearing last October, a process unique to the ICC held to decide whether the case should proceed to trial.

The judges decided unanimously that it should not, citing inconsistent and contradictory witness statements. They said key prosecution witnesses failed to back up claims that Abu Garda directed the attack on Haskanita, and that some called to testify seemed to support the defence who said that he wasn't there during the attack.

"The chamber finds that the evidence tendered by the prosecution, far from establishing Mr Abu Garda's participation in the attack, seems to concur with the submissions made by the defence to the effect that Mr Abu Garda did not personally participate in the attack on Haskanita," reads one section of the judgement.

The collapse of the Abu Garda case is an ICC public relations disaster in Africa – coming at a time when prosecutor Luis Moreno-Ocampo's pursuit of Sudanese president Omar al-Bashir has divided opinion and caused support to waver on the continent.

A free and fair trial with a cooperative Sudanese defendant - Abu Garda appeared voluntarily before the ICC - would have given the court's reputation a much needed boost. Instead, the case against the rebel leader was thrown out less than a week after the ICC appeals chamber found that Bashir could face genocide charges.

The timing could hardly have been worse, and the government-controlled press in Sudan will relish the opportunity to bash the ICC for, what they will perceive as, siding with rebels. Clearly this isn't the case – the prosecutor takes great pains to point out that he only follows where the evidence leads – but convincing the Sudanese people will be the ICC's next challenge.

However, it faces an uphill struggle. It is banned from Sudan and is instead forced to confine its outreach efforts to the refugee camps of Chad and to members of the diaspora in The Hague. Outreach has long been an ICC weakness, even in more cooperative countries like Congo, and the court has been much criticised for failing to connect with ordinary people.

Outside Africa, the collapse of the Abu Garda case is also likely to have repercussions.

Pressure is mounting on the court to deliver results. Seven years after Moreno-Ocampo was appointed, the ICC has yet to complete a trial. It's first-ever case – against Congolese militia leader Thomas Lubanga who has been in ICC custody for nearly four years – is now at the defence stage after numerous delays, including a stay of proceedings when the prosecution withheld evidence from the defence.

The case against Congolese militia leaders Germain Katanga and Mathieu Ngudjolo began in January, and Congo's former vice-president Jean-Pierre Bemba is due to go on trial later this year. But the court's remaining nine suspects are all at large. Many have evaded capture for years and two from Uganda died while on the run.

Abu Garda was far more cooperative. He appeared voluntarily in The Hague on May 18, 2009 saying he welcomed the opportunity to clear his name. Other JEM leaders had also pledged their cooperation with the ICC.

With this level of cooperation, it's all the more regrettable that a case compiled by the prosecution did not contain sufficient evidence to persuade judges to bring it to trial.

That serious crimes took place at Haskanita is beyond doubt – the judges agreed with that – but the case failed to clear the first hurdle - the pre-trial judges.

Nonetheless, the ICC needs to take any small positives it can from this unfortunate turn of events. That means good outreach.

The court must point out that the Abu Garda decision – though bad news for prosecutors – proves beyond doubt the high calibre of ICC judges and their ability to be fair and balanced, free from any political pressure. Those like Bashir or Uganda’s Joseph Kony who insist an ICC trial would not be fair should take note.

One option for Moreno-Ocampo is to gather more evidence and ask the judges to look at the case again. However, his next step will undoubtedly be to ask the judges for leave to appeal their verdict. It will be interesting to see how the prosecutor explains this troubled case.

**Lisa Clifford is IWPR’s international justice project manager.**

*The views expressed in this article are not necessarily the views of IWPR.*

**Location:** Africa

**Topic:** International justice

**Focus:** ICC - International Criminal Court

---

**Source URL:** <https://iwpr.net/global-voices/new-blow-icc>