

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-02/05-01/09

Date: 4 March 2009

PRE-TRIAL CHAMBER I

Before: Judge Akua Kuenyehia, Presiding Judge
Judge Anita Ušacka
Judge Sylvia Steiner

SITUATION IN DAFUR, SUDAN

**IN THE CASE OF
THE PROSECUTOR *v.* OMAR HASSAN AHMAD AL BASHIR (“OMAR AL
BASHIR”)**

Public Document

Warrant of Arrest for Omar Hassan Ahmad Al Bashir

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

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Mr Essa Faal, Senior Trial Lawyer

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Ms Silvana Arbia

Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I of the International Criminal Court (“the Chamber” and “the Court” respectively);

HAVING EXAMINED the “Prosecution’s Application under Article 58” (“the Prosecution Application”), filed by the Prosecution on 14 July 2008 in the record of the situation in Darfur, Sudan (“the Darfur situation”) requesting the issuance of a warrant for the arrest of Omar Hassan Ahmad Al Bashir (hereinafter referred to as “Omar Al Bashir”) for genocide, crimes against humanity and war crimes;¹

HAVING EXAMINED the supporting material and other information submitted by the Prosecution;²

NOTING the “Decision on the Prosecution’s Request for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”³ in which the Chamber held that it was satisfied that there are reasonable grounds to believe that Omar Al Bashir is criminally responsible under article 25(3)(a) of the Statute as an indirect perpetrator, or as an indirect co-perpetrator,⁴ for war crimes and crimes against humanity and that his arrest appears to be necessary under article 58(1)(b) of the *Rome Statute* (“the Statute”);

NOTING articles 19 and 58 of the Statute;

CONSIDERING that, on the basis of the material provided by the Prosecution in support of the Prosecution Application and without prejudice to any subsequent determination that may be made under article 19 of the Statute, the case against Omar Al Bashir falls within the jurisdiction of the Court;

¹ ICC-02/05-151-US-Exp; ICC-02/05-151-US-Exp-Anxs1-89; Corrigendum ICC-02/05-151-US-Exp-Corr and Corrigendum ICC-02/05-151-US-Exp-Corr-Anxs1 & 2; and Public redacted version ICC-02/05-157 and ICC-02/05-157-AnxA.

² ICC-02/05-161 and ICC-02/05-161-Conf-AnxsA-J; ICC-02/05-179 and ICC-02/05-179-Conf-Exp-Anxs1-5; ICC-02/05-183-US-Exp and ICC-02/05-183-Conf-Exp-AnxsA-E.

³ ICC-02/05-01/09-1.

⁴ See Partly Dissenting Opinion of Judge Anita Ušacka to the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, Part IV.

CONSIDERING that, on the basis of the material provided by the Prosecution in support of the Prosecution Application, there is no ostensible cause or self-evident factor to impel the Chamber to exercise its discretion under article 19(1) of the Statute to determine at this stage the admissibility of the case against Omar Al Bashir;

CONSIDERING that there are reasonable grounds to believe that from March 2003 to at least 14 July 2008, a protracted armed conflict not of an international character within the meaning of article 8(2)(f) of the Statute existed in Darfur between the Government of Sudan (“the GoS”) and several organised armed groups, in particular the Sudanese Liberation Movement/Army (“the SLM/A”) and the Justice and Equality Movement (“the JEM”);

CONSIDERING that there are reasonable grounds to believe: (i) that soon after the attack on El Fasher airport in April 2003, the GoS issued a general call for the mobilisation of the Janjaweed Militia in response to the activities of the SLM/A, the JEM and other armed opposition groups in Darfur, and thereafter conducted, through GoS forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the National Intelligence and Security Service (“the NISS”) and the Humanitarian Aid Commission (“the HAC”), a counter-insurgency campaign throughout the Darfur region against the said armed opposition groups; and (ii) that the counter-insurgency campaign continued until the date of the filing of the Prosecution Application on 14 July 2008;

CONSIDERING that there are reasonable grounds to believe: (i) that a core component of the GoS counter-insurgency campaign was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups⁵ – perceived by the GoS as being close to the SLM/A, the JEM and the other armed groups opposing the GoS in the ongoing armed conflict in Darfur; and (ii) that, as part of this core component of the counter-insurgency campaign, GoS

⁵ See Partly Dissenting Opinion of Judge Anita Ušacka to the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, Part III. B.

forces systematically committed acts of pillaging after the seizure of the towns and villages that were subject to their attacks;⁶

CONSIDERING, therefore, that there are reasonable grounds to believe that from soon after the April 2003 attack in El Fasher airport until 14 July 2008, war crimes within the meaning of articles 8(2)(e)(i) and 8(2)(e)(v) of the Statute were committed by GoS forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the NISS and the HAC, as part of the above-mentioned GoS counter-insurgency campaign;

CONSIDERING, further, that there are reasonable grounds to believe that, insofar as it was a core component of the GoS counter-insurgency campaign, there was a GoS policy to unlawfully attack that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived by the GoS as being close to the SLM/A, the JEM and other armed groups opposing the GoS in the ongoing armed conflict in Darfur;

CONSIDERING that there are reasonable grounds to believe that the unlawful attack on the above-mentioned part of the civilian population of Darfur was (i) widespread, as it affected, at least, hundreds of thousands of individuals and took place across large swathes of the territory of the Darfur region; and (ii) systematic, as the acts of violence involved followed, to a considerable extent, a similar pattern;

CONSIDERING that there are reasonable grounds to believe that, as part of the GoS's unlawful attack on the above-mentioned part of the civilian population of Darfur and with knowledge of such attack, GoS forces subjected, throughout the

⁶ Including in *inter alia* (i) the first attack on Kodoom on or about 15 August 2003; (ii) the second attack on Kodoom on or about 31 August 2003; (iii) the attack on Bindisi on or about 15 August 2003; (iv) the aerial attack on Mukjar between August and September 2003; (v) the attack on Arawala on or about 10 December 2003; (vi) the attack on Shattaya town and its surrounding villages (including Kailek) in February 2004; (vii) the attack on Muhajeriya on or about 8 October 2007; (viii) the attacks on Saraf Jidad on 7, 12 and 24 January 2008; (ix) the attack on Silea on 8 February 2008; (x) the attack on Sirba on 8 February 2008; and (xi) the attack on Abu Suruj on 8 February 2008; (xii) the attack to Jebel Moon between 18 and 22 February 2008.

Darfur region, thousands of civilians, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of murder and extermination;⁷

CONSIDERING that there are also reasonable grounds to believe that, as part of the GoS's unlawful attack on the above-mentioned part of the civilian population of Darfur and with knowledge of such attack, GoS forces subjected, throughout the Darfur region, (i) hundreds of thousands of civilians, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of forcible transfer;⁸ (ii) thousands of civilian women, belonging primarily to these groups, to acts of rape;⁹ and (iii) civilians, belonging primarily to the same groups, to acts of torture;¹⁰

CONSIDERING therefore that there are reasonable grounds to believe that, from soon after the April 2003 attack on El Fasher airport until 14 July 2008, GoS forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the NISS and the HAC, committed crimes against humanity consisting of murder, extermination, forcible transfer, torture and rape, within the meaning of articles 7(1)(a), (b), (d), (f) and (g) respectively of the Statute, throughout the Darfur region;

CONSIDERING that there are reasonable grounds to believe that Omar Al Bashir has been the *de jure* and *de facto* President of the State of Sudan and Commander-in-

⁷ Including in *inter alia* (i) the towns of Kodoom, Bindisi, Mukjar and Arawala and surrounding villages in Wadi Salih, Mukjar and Garsila-Deleig localities in West Darfur between August and December 2003; (ii) the towns of Shattaya and Kailek in South Darfur in February and March 2004; (iii) between 89 and 92 mainly Zaghawa, Masalit and Misseriya Jebel towns and villages in Buram Locality in South Darfur between November 2005 and September 2006; (iv) the town of Muhajeriya in the Yasin locality in South Darfur on or about 8 October 2007; (v) the towns of Saraf Jidad, Abu Suruj, Sirba, Jebel Moon and Silea towns in Kulbus locality in West Darfur between January and February 2008; and (vi) Shegeg Karo and al-Ain areas in May 2008.

⁸ Including in *inter alia* (i) the towns of Kodoom, Bindisi, Mukjar and Arawala and surrounding villages in Wadi Salih, Mukjar and Garsila-Deleig localities in West Darfur between August and December 2003; (ii) the towns of Shattaya and Kailek in South Darfur in February and March 2004; (iii) between 89 and 92 mainly Zaghawa, Masalit and Misseriya Jebel towns and villages in Buram Locality in South Darfur between November 2005 and September 2006; (iv) the town of Muhajeriya in the Yasin locality in South Darfur on or about 8 October 2007; and (v) the towns of Saraf Jidad, Abu Suruj, Sirba, Jebel Moon and Silea towns in Kulbus locality in West Darfur between January and February 2008.

⁹ Including in *inter alia* (i) the towns of Bindisi and Arawala in West Darfur between August and December 2003; (ii) the town of Kailek in South Darfur in February and March 2004; and (iii) the towns of Sirba and Silea in Kulbus locality in West Darfur between January and February 2008.

¹⁰ Including in *inter alia*: (i) the town of Mukjar in West Darfur in August 2003; (ii) the town of Kailek in South Darfur in March 2004; and (iii) the town of Jebel Moon in Kulbus locality in West Darfur in February 2008.

Chief of the Sudanese Armed Forces from March 2003 to 14 July 2008, and that, in that position, he played an essential role in coordinating, with other high-ranking Sudanese political and military leaders, the design and implementation of the above-mentioned GoS counter-insurgency campaign;

CONSIDERING, further, that the Chamber finds, in the alternative, that there are reasonable grounds to believe: (i) that the role of Omar Al Bashir went beyond coordinating the design and implementation of the common plan; (ii) that he was in full control of all branches of the “apparatus” of the State of Sudan, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the NISS and the HAC; and (iii) that he used such control to secure the implementation of the common plan;

CONSIDERING that, for the above reasons, there are reasonable grounds to believe that Omar Al Bashir is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrator,¹¹ under article 25(3)(a) of the Statute, for:

- i. intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities as a war crime, within the meaning of article 8(2)(e)(i) of the Statute;
- ii. pillage as a war crime, within the meaning of article 8(2)(e)(v) of the Statute;
- iii. murder as a crime against humanity, within the meaning of article 7(1)(a) of the Statute;
- iv. extermination as a crime against humanity, within the meaning of article 7(1)(b) of the Statute;
- v. forcible transfer as a crime against humanity, within the meaning of article 7(1)(d) of the Statute;

¹¹ See Partly Dissenting Opinion of Judge Anita Ušacka to the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, Part IV.

- vi. torture as a crime against humanity, within the meaning of article 7(1)(f) of the Statute; and
- vii. rape as a crime against humanity, within the meaning of article 7(1)(g) of the Statute;


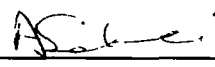
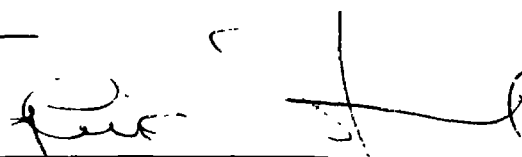
CONSIDERING that, under article 58(1) of the Statute, the arrest of Omar Al Bashir appears necessary at this stage to ensure (i) that he will appear before the Court; (ii) that he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Statute; and (iii) that he will not continue with the commission of the above-mentioned crimes;

FOR THESE REASONS,

HEREBY ISSUES:

A WARRANT OF ARREST for **OMAR AL BASHIR**, a male, who is a national of the State of Sudan, born on 1 January 1944 in Hoshe Bannaga, Shendi Governorate, in the Sudan, member of the Jaáli tribe of Northern Sudan, President of the Republic of the Sudan since his appointment by the RCC-NS on 16 October 1993 and elected as such successively since 1 April 1996 and whose name is also spelt Omar al-Bashir, Omer Hassan Ahmed El Bashire, Omar al-Bashir, Omar al-Beshir, Omar el-Bashir, Omer Albasheer, Omar Elbashir and Omar Hassan Ahmad el-Béshir.

Done in English, Arabic and French, the English version being authoritative.

 <hr style="width: 100%;"/> Judge Anita Ušacka	 <hr style="width: 100%;"/> Judge Akua Kuenyehia Presiding Judge	 <hr style="width: 100%;"/> Judge Sylvia Steiner
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Dated this Wednesday, 4 March 2009

At The Hague, The Netherlands