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ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan

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Situation: Darfur, Sudan

Today, Pre-Trial Chamber I of the International Criminal Court (ICC) issued a warrant for the arrest of Omar Hassan Ahmad Al Bashir, President of Sudan, for war crimes and crimes against humanity. He is suspected of being criminally responsible, as an indirect (co-)perpetrator, for intentionally directing attacks against an important part of the civilian population of Darfur, Sudan, murdering, exterminating, raping, torturing and forcibly transferring large numbers of civilians, and pillaging their property. This is the first warrant of arrest ever issued for a sitting Head of State by the ICC.

Omar Al Bashir's official capacity as a sitting Head of State does not exclude his criminal responsibility, nor does it grant him immunity against prosecution before the ICC, according to Pre-Trial Chamber I.

According to the Judges, the above-mentioned crimes were allegedly committed during a five year counter-insurgency campaign by the Government of Sudan against the Sudanese Liberation Movement/Army (SLM/A), the Justice and Equality Movement (JEM) and other armed groups opposing the Government of Sudan in Darfur. It is alleged that this campaign started soon after the April 2003 attack on El Fasher airport as a result of a common plan agreed upon at the highest level of the Government of Sudan by Omar Al Bashir and other high-ranking Sudanese political and military leaders. It lasted at least until 14 July 2008, the date of the filing of the Prosecution's Application for the warrant of arrest for Omar Al Bashir.

A core component of that campaign was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived to be close to the organised armed groups opposing the Government of Sudan in Darfur. The said civilian population was to be unlawfully attacked by Government of Sudan forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the National Intelligence and Security Service and the Humanitarian Aid Commission.

The Chamber found that Omar al Bashir, as the de jure and de facto President of Sudan and Commander-in-Chief of the Sudanese Armed Forces, is suspected of having coordinated the design and implementation of the counter-insurgency campaign. In the alternative, it also found that there are reasonable grounds to believe that he was in control of all branches of the "apparatus" of the State of Sudan and used such control to secure the implementation of the counter-insurgency campaign.

The counts

The warrant of arrest for Omar Al Bashir lists 7 counts on the basis of his individual criminal responsibility (article 25(3)(a)) including:

- five counts of crimes against humanity: murder – article 7(1)(a); extermination – article 7(1)(b); forcible transfer – article 7(1)(d); torture – article 7(1)(f); and rape – article 7(1)(g);
- two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking direct part in hostilities – article 8(2)(e)(i); and pillaging – article 8(2)(e)(v).

Findings concerning genocide

The majority of the Chamber, Judge Anita Ušacka dissenting, found that the material provided by the Prosecution in support of its application for a warrant of arrest failed to provide reasonable grounds to believe that the Government of Sudan acted with specific intent to destroy, in whole or in part, the Fur, Masalit and Zaghawa groups. Consequently, the crime of genocide is not included in the warrant issued for the arrest of Omar Al Bashir. Nevertheless, the Judges stressed that if additional evidence is gathered by the Prosecution, the decision would not prevent the Prosecution from requesting an amendment to the warrant of arrest in order to include the crime of genocide.

Cooperation of States

The Judges directed the Registrar to prepare and transmit, as soon as practicable, a request for cooperation for the arrest and surrender of Omar Al Bashir to Sudan, and to all States Parties to the Rome Statute and all United Nations Security Council (UNSC) members that are not party to the Statute, as well as to any other State as may be necessary.

The Judges found that, according to UNSC resolution 1593 and articles 25 and 103 of the UN Charter, the obligation of the Government of Sudan to fully cooperate with the Court prevails over any other international obligation that the Government of Sudan may have undertaken pursuant to any other international agreement.

Pre-Trial Chamber I also found that the Government of Sudan has systematically refused to cooperate with the Court since the issuance of warrants for the arrest of the Sudanese Minister for Humanitarian Affairs, Ahmad Harun, and a regional Janjaweed militia leader, Ali Kushayb, on 2 May 2007. As a result, the Judges emphasised that, according to article 87(7) of the Statute, if the Government of Sudan continues to fail to comply with its cooperation obligations to the Court, the competent Chamber “may make a finding to that effect” and decide to “refer the matter [...] to the Security Council.”

Furthermore, the Judges noted that the dispositive part of UNSC resolution 1593 expressly urges all States, whether party or not to the Rome Statute, as well as international and regional organisations to “cooperate fully” with the Court.

Information concerning "ICC issues a warrant of arrest for Omar Al Bashir, President of Sudan"

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