



## SITUATION IN DARFUR, THE SUDAN

### SUMMARY OF THE CASE

#### Prosecutor's Application for Warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR

##### I. The Application

Upon investigation of crimes allegedly committed in the territory of Darfur, the Sudan, on or after 1 July 2002, the Prosecution has concluded that there are reasonable grounds to believe that Omar Hassan Ahmad AL BASHIR (hereafter referred to as "AL BASHIR") bears criminal responsibility for the **crime of genocide** under Article 6 (a) of the Rome Statute, killing members of the Fur, Masalit and Zaghawa ethnic groups (also referred to as "target groups"), (b) causing serious bodily or mental harm to members of those groups, and (c) deliberately inflicting on those groups conditions of life calculated to bring about their physical destruction in part; for **crimes against humanity** under Article 7 (1) of the Statute, committed as part of a widespread and systematic attack directed against the civilian population of Darfur with knowledge of the attack, the acts of (a) murder, (b) extermination, (d) forcible transfer of the population, (f) torture, and (g) rapes; and for **war crimes** under Article 8 (2)(e)(i) of the Statute, for intentionally directing attacks against the civilian population as such, and (v) pillaging a town or place.

The Prosecution does not allege that AL BASHIR physically or directly carried out any of the crimes. He committed crimes through members of the state apparatus, the army and the Militia/Janjaweed in accordance with Article 25 (3)(a) of the Statute (indirect perpetration or perpetration by means).

At all times relevant to this Application, AL BASHIR has been President of the Republic of the Sudan, exercising both *de jure* and *de facto* sovereign authority, Head of the National Congress Party and Commander in Chief of the Armed Forces. He sits at the apex of, and personally directs, the state's hierarchical structure of authority and the integration of the Militia/Janjaweed within such structure. He is the mastermind behind the alleged crimes. He has absolute control.

The evidence establishes reasonable grounds to believe that AL BASHIR intends to destroy in substantial part the Fur, Masalit and Zaghawa ethnic groups as such. Forces and agents controlled by AL BASHIR attacked civilians in towns and villages inhabited by the target groups, committing killings, rapes, torture and destroying means of livelihood. AL BASHIR has thus forced the displacement of a substantial part of the target groups and attacked them in the camps for internally displaced persons ("IDPs"), causing serious and bodily harm – through rapes, tortures and forced displacement in traumatizing conditions – and deliberately inflicting on a

substantial part of those groups conditions of life calculated to bring about their physical destruction.

AL BASHIR's conduct simultaneously constitutes genocide against the Fur, Masalit and Zaghawa ethnic groups, crimes against humanity and war crimes against any civilian population in the area, including members of the target groups.

The case proposed in this Application is the second case in the Situation and covers crimes committed in Darfur from March 2003 to the date of filing this Application. This case is not being investigated or prosecuted by the Government of the Sudan ("GoS").

## **II. Background and Scope of the Investigation**

### *Jurisdiction*

The Darfur situation was referred to the Office of the Prosecutor by United Nations Security Council Resolution 1593 (2005) which affirmed that justice and accountability are critical to achieve lasting peace and security in Darfur.

### *Investigation*

Since the start of the investigation, the Prosecution has collected statements and evidence during 105 missions conducted in 18 countries. Throughout the investigation, the Prosecutor has examined incriminating and exonerating facts in an independent and impartial manner.

For the purpose of the Application, the Prosecution has relied primarily on: (1) witness statements taken from eyewitnesses and victims of attacks in Darfur; (2) recorded interviews of GoS officials; (3) statements taken from individuals who possess knowledge of the activities of officials and representatives of the GoS and of the Militia/Janjaweed in the conflict in Darfur; (4) documents and other information provided by the GoS upon request of the Prosecution; (5) the Report of the UN Commission of Inquiry ("UNCOI") and other materials provided by the UNCOI; (6) the Report of Sudanese National Commission of Inquiry ("NCOI") and other materials provided by the NCOI; and (7) documents and other materials obtained from open sources.

Throughout the investigation the Prosecution monitored the security of victims and witnesses and implemented protective measures. The Prosecution and the Victims and Witness Unit of the Registry continue to monitor and assess the risks to victims and witnesses.

### *Admissibility*

The case proposed in this Application is the second case in the Situation and covers crimes committed in Darfur from March 2003 to the date of filing. In accordance with the principle of "complementarity", at all times the Prosecution has assessed the existence of national proceedings in the Sudan in relation to those crimes. However, this case is not being investigated or prosecuted by the GoS. There are not national proceedings in the Sudan against the

perpetrators of crimes relevant to this Application. The prosecution is aware of the incarceration of officers who refused to comply with AL BASHIR's orders to commit genocide.

### **III. Summary of the Evidence and Information provided in the Prosecution's Application**

Consistent with the requirements of Article 58 (2)(d) of the Statute, the Prosecution furnished in the Application "a summary of the evidence" sufficient to establish "reasonable grounds to believe" that Omar Hassan Ahmad AL BASHIR committed crimes within the jurisdiction of the Court.

#### *a. The Context in which Crimes were Committed*

Since he assumed power in June 1989, AL BASHIR has engaged in political and military struggles with groups both in Khartoum and in the peripheries of the Sudan seen as threats to his power. In Darfur, he assessed that the Fur, Masalit and Zaghawa ethnic groups, as socially and politically dominant groups in the province, constituted such threats: they challenged the economic and political marginalization of their region, and members of the three groups engaged in armed rebellions.

AL BASHIR set out to quell those movements through armed force and, over the years, also employed a policy of exploiting real or perceived grievances between the different tribes struggling to prosper in the difficult Darfur environment. He promoted the idea of a polarization between tribes aligned with the Government, whom he labeled "Arabs", and the three groups he perceived as the main threats, whom he labeled "Zurgas" or "Africans". The image is only one of many devices used by AL BASHIR to disguise his crimes. Both victims and perpetrators are "Africans" and speak "Arabic".

In March 2003, after negotiations and armed action both failed to end in Darfur a rebellion whose members belonged mostly to the three target groups, AL BASHIR decided and set out to destroy in part the Fur, Masalit and Zaghawa groups, on account of their ethnicity. His motives were largely political. His pretext was a "counterinsurgency". His intent was genocide.

The Fur, Masalit and Zaghawa speak Arabic and share with the majority of the Darfur population the same religion (Islam). Co-existence and intermarriage have blurred differences. However historically they occupied specific territories (Dar Fur, Dar Masalit and Dar Zaghawa), and also spoke their own languages, different from one another and from Arabic. Members of the groups see themselves, and are seen by their attackers, as different ethnic groups.

#### *b. The crimes*

##### *Genocide by killing members of the target groups*

From March 2003 up to the date of filing, AL BASHIR's orders giving "carte blanche" to his subordinates to quell the rebellion and take no prisoners triggered a series of brutal attacks against the Fur, Masalit and Zaghawa groups. The Armed Forces, often acting together with

Militia/Janjaweed, singled out for attack those villages and small towns inhabited mainly by members of the target groups. The attackers went out of their way to spare from attack villages inhabited predominantly by other tribes considered aligned with the Government, even where they were located very near villages inhabited predominantly by members of the targeted groups. The Prosecution has charted all the known attacks that have taken place from 2003-2008 on an interactive map of Darfur, showing towns, villages and the tribal composition of the inhabitants (available on the ICC OTP website). The results show that the overwhelming majority of villages attacked were inhabited mainly by the target groups. They were clearly selected for attack.

The Armed Forces and Militia/Janjaweed carried out such attacks jointly and in a similar pattern throughout the entire period, up to the date of filing. Typically, the Armed Forces would arrive in trucks and land cruisers mounted with Dshkas, and the Militia/Janjaweed would arrive on camels and horseback. These joint forces would then surround the village and on occasion, the Air Force would be called upon to drop bombs on the village as a precursor to the attacks. The ground forces would then enter the village or town and attack civilian inhabitants. They kill men, children, elderly, women; they subject women and girls to massive rapes. They burn and loot the villages.

The targets are not rebel forces, but the Fur, Masalit and Zaghawa communities. Attacks are typically launched against civilian targets, and do not cease until the town or village, in its entirety, has been victimized and its population forcibly displaced, regardless of the lack of rebel presence or the lack of any valid military objective. Witnesses have also described instances in which rebels were known to be located outside of towns or villages, but attackers from the Armed Forces and Militia/Janjaweed bypassed those locations to attack the towns or villages instead.

An armed conflict has existed in Darfur since 2003. The Government has the right to use force to defend itself against insurgents. However the crimes covered in the Application are not the collateral damage of a military campaign. At all times relevant to the Application AL BASHIR specifically and purposefully targeted civilians who were not participants to any conflict with the intent to destroy them, as a group.

In Darfur 35,000 people have been killed outright in such attacks; an overwhelming majority of them are from the three target groups.

#### *The fate of the displaced persons*

Almost the entire population of the target groups has been forcibly displaced following the attacks. Data from refugee camps in Chad and camps for internally displaced persons ("IDP camps") within Darfur confirm that most of those displaced belong to the target groups.

As of December 2007, the total number of Sudanese people from Darfur in refugee camps in Chad was approximately 235,000. Of those, there were approximately 110,000 Zaghawa and approximately 103,000 Masalit. Only approximately 7,750 members of the Fur had reached Chad, due to their geographical location in the south of Darfur.

According to information, the Fur represent 50% up to the totality of some IDP camps in Darfur. In South Darfur, Kalma camp, near Nyala, which hosts around 92,000 IDPs, there are an estimated 46 to 50,000 Fur, 9,000 Zaghawa and 5,000 Masalit. In West Darfur, Nertiti (Jebel Marra) hosts mostly Fur (about 32,000); Hassa Hissa near Zalingei hosts about 85% Fur (42,500), 10% Zaghawa (5,000), 5 % Masalit (2,500) and smaller tribes. The Fur represent 99% (about 30,000) of the population of Hamadiya camp near Zalingei and 90% (about 16,000) in Deleig camp near Wali Sadih.

In the view of the UNCOI in January 2005, there would be no policy of genocide if “*the populations surviving attacks on villages ... live together in areas selected by the government...where they are assisted*”. Notwithstanding the evidence that genocide was committed by killing and the infliction of serious bodily and mental harm, the current evidence also shows that the target groups, far from being assisted, are also attacked in the camps. Such attacks, as described below, against such an overwhelming majority of members of the target groups, are a clear indication of **AL BASHIR**’s genocidal intent.

*Genocide by causing serious mental harm to members of the target group*

As a result of the attacks to the villages, at least 2,700,000 people, most of them members of the target groups, have been forcibly expelled from their homes. As survivors fled the attacks, they were pursued into deserts, killed or left to die. Those who managed to reach the outskirts of bigger cities and what would become IDP camps are submitted to physical and mental harm, and generally conditions calculated to slowly bring about their destruction.

(i) Thousands of women and girls belonging to the target groups were and continue to be raped in all three States of Darfur by members of the Militia/Janjaweed and Armed Forces since 2003. Girls as young as 5 years old have been raped. A third of the rapes are rapes of children. Underreporting of rape is widespread. Nonetheless, periodic reports and testimonies conclude that rape has been committed systematically and continuously for 5 years. Women and girls going to collect firewood, grass or water are repeatedly raped by Militia/Janjaweed, Armed Forces and other GoS security agents: “*when we see them, we run. Some of us succeed in getting away, and some are caught and taken to be raped -- gang-raped. Maybe around 20 men rape one woman.... [...] These things are normal for us here in Darfur. These things happen all the time. I have seen rapes too. It does not matter who sees them raping the women -- they don't care. They rape women in front of their mothers and fathers*”. Rape is an integral part of the pattern of destruction that the Government of the Sudan is inflicting upon the target groups in Darfur. As described by the ICTR in the *Akayesu* case, they use rape to kill the will, the spirit, and life itself.

Particularly in view of the social stigma associated with rape and other forms of sexual violence among the Fur, Masalit and Zaghawa, these acts cause significant and irreversible harm, to individual women, but also to their communities.

(ii) Massive forced displacement was, and continues to be, conducted in such a manner as to traumatize the victims and prevent the reconstitution of the group. AL BASHIR’s criminal plan has violently uprooted at least 2.7 million civilians – principally members of the target groups – from lands on which they and their ancestors had been living for centuries. Victims suffer the

trauma of being forced to witness their own homes and possessions destroyed and/or looted and family members raped and/or killed. The victims thereafter endure the anguish of learning that, in many cases, prior homelands have been occupied and resettled by members of other communities – and thus, there is no prospect of ever returning. Organized insecurity in and around the camps by Al BASHIR's forces and agents, including through spying and harassment by members of the Humanitarian Aid Commission ("HAC"), exacerbates the fear of IDPs. The cumulative effect of the crimes described above is that many of the surviving members of the target groups, in particular those in IDP camps, suffer serious mental and/or psychological harm.

*Genocide by deliberate infliction on members of the target groups conditions of life calculated to bring about the physical destruction of the group in whole or in part*

(i) The attacks on villages across Darfur from March 2003 to the present were designed not only to kill members of the target groups and force them from their lands, but also to destroy the very means of survival of the groups as such. They destroy food, wells and water pumping machines, shelter, crops and livestock, as well as any physical structures capable of sustaining life or commerce. They destroy farms and loot grain stores or set them on fire. The goal is to ensure that those inhabitants not killed outright would not be able to survive without assistance.

(ii) The survivors are not only forced out of their homes, they are also pursued into inhospitable terrain. A victim in the desert overheard one attacker say to another: *"Don't waste the bullet, they've got nothing to eat and they will die from hunger"*.

(iii) In addition to persecuting the victims, the attackers spoliage their land, now occupied by new settlers: *"This land is liberated and you have no land and no right to cultivate on liberated areas"*. Usurpation of the land is often the final blow to the capacity of the target groups to survive in Darfur. Land has always been identified as a key issue, by AL BASHIR himself. In his April 2003 address to the Armed Forces and PDF troops at El Fashir airport, AL BASHIR declared, *"I only want land"*. Having removed the target groups from their land, and destroyed their means of survival, AL BASHIR encourages and facilitates resettlement of the land by other tribes more supportive of the government, often affiliated with Militia/Janjaweed. The scale of displacements was done in the knowledge of the devastating impact it would have on the fabric of the groups, whose identity is linked with the land. When they were removed from the land, the tribal structure was weakened.

(iv) They also attack the target groups in the camps. AL BASHIR and his subordinates systematically refuse to provide any meaningful aid, and hinder other efforts to bring humanitarian aid to the 2,450,000 civilians displaced. Thus after forcibly expelling members of the target groups from their homes, they subject them to, at best, a subsistence diet and the reduction of essential medical services below minimum requirements.

In the IDP camps, where most of the target groups' members fled, AL BASHIR has organized the destitution, insecurity and harassment of the survivors. The Ministry for Humanitarian Affairs provides no meaningful Government aid to those displaced, and consistently obstructs or blocks humanitarian assistance from the international community. The Ministry for Humanitarian Affairs blocks the publication of nutrition surveys, delays the delivery of aid, expels relief staff

denouncing such acts, denies visas and travel permits, and imposes unnecessary bureaucratic requirements on aid workers. This has the effect of reducing nutrition and access to medical services for protracted periods of time.

Militia/Janjaweed, which AL BASHIR has recruited, armed and purposefully refused to disarm, are stationed in the vicinity of the camps and, with other GoS agents, they subject IDPs to abuses, including killings, rapes and other sexual violence. While the authorities argue that there are armed rebels in the camps, the evidence shows that those attacked are unarmed civilians.

The overall effect of physical attack, forced displacement, destruction of means of livelihood, and denial of humanitarian assistance was that mortality rates among civilians, including principally members of the target groups, remained at critical levels. Between April and June 2004, as deaths directly caused by violence decreased, mortality rates among displaced populations in Darfur remained elevated because of deficient humanitarian assistance. Overall, at least 100,000 civilians – mostly members of the targeted groups – have already endured “slow death” since March 2003.

#### *Crimes against humanity*

Charges of crimes against humanity are also required to represent the full extent of criminal activity in Darfur since 2003, namely the acts of murder, rape, forcible displacement and extermination committed against members of the target groups and other, smaller ethnic groups, such as the Tunjur, Erenga, Birgid, Misseriya, Jebel, Meidob, Dajo and Birgo. While the attacks against these groups were carried out on discriminatory grounds, there is insufficient evidence at this time to substantiate a charge of genocide in respect of these groups.

#### *War crimes*

At all times relevant to the charges, the Government of the Sudan has been engaged in a military campaign conducted in Darfur against rebel armed forces including the SLM/A and the JEM. Both rebel groups mainly recruit from the Fur, Masalit and Zaghawa tribes. As is well known, the GoS has relied on Militia/Janjaweed.

AL BASHIR also committed, through other persons, the war crime of pillaging towns and villages in Darfur, including but not limited to Kodoom, Bindisi, Mukjar, Arawala, Shataya, Kailek, Buram, Muhajeriya, Siraf Jidad, Silea, Sirba, Abu Suruj and villages in the area of Jebel Mun.

#### *c. The Personal Responsibility of Omar Hassan Ahmad AL BASHIR*

AL BASHIR controls and directs the perpetrators. The commission of those crimes on such a scale, and for such a long period of time, the targeting of civilians and in particular the Fur, Masalit and Zaghawa, the impunity enjoyed by the perpetrators, and the systematic cover-up of the crimes through public official statements, are evidence of a plan based on the mobilization of the state apparatus, including the armed forces, the intelligence services, the diplomatic and public information bureaucracies, and the justice system.

AL BASHIR designed a plan that includes: the dismissal of staff opposed to crimes and the appointment of key personnel to implement the crimes, most significantly Ahmed Harun; the integration of the Militia/Janjaweed, their leaders formally appointed into the Sudanese structure of authority; the unified implementation of attacks against the target groups in villages through the Security Committees at the locality level, reporting to State Security Committees, reporting, during 2003-2005 to Ahmed Harun as head of the "Darfur Security Desk" and member of the National Security Council; the sophisticated system of obstacles to the delivery of humanitarian aid; the misinformation campaign; and the deliberate failure to punish perpetrators.

AL BASHIR controls the implementation of such a plan through his formal role at the apex of all state structures and as Commander in Chief and by ensuring that the heads of relevant institutions involved report directly to him through formal or informal lines. His control is absolute.

Because the magnitude of the crimes attracted national and international scrutiny, AL BASHIR consistently denies, conceals and distances himself and his subordinates from the crimes committed. Throughout the time period relevant to this Application, AL BASHIR personally and through his subordinates denies that crimes are taking place. AL BASHIR uses the Sudanese Intelligence and Security Service ("NISS") to further manipulate local and international public opinion concerning Darfur through the NISS-controlled Sudan Media Centre ("SMC"), which was established in December 2002 and disseminates directives to all officials to contribute to the campaign by highlighting stories about voluntary returns of IDPs, and by conveying that Darfur is a safe place where people can lead a normal life.

Given the international attention to Darfur, genocide by imposing conditions calculated to bring about physical destruction, in combination with a studied misinformation strategy, is an efficient strategy to achieve complete destruction. By preventing the truth about the crimes from being revealed; by concealing his crimes under the guise of a "counterinsurgency strategy", or "inter tribal clashes", or the "actions of lawless autonomous militia"; by threatening Sudanese citizens – and trying to blackmail the international community – into silence, AL BASHIR makes possible the commission of further crimes.

AL BASHIR denies victims access to the criminal justice system, while using the system against those who did not comply with his genocidal orders. AL BASHIR protects, promotes and provides impunity to his subordinates, in order to secure their willingness to continue committing crimes. He could authorize investigations of members of the armed and security forces, but the only officers investigated are those who refused to participate in crimes. AL BASHIR promoted notorious perpetrators (Musa Hilal, Shukurtallah, Abdallah Masar and General Ismat), but his most telling acts concern ICC indictee Ahmed Harun.

Ahmad Harun as Minister of State for the Interior, responsible for the "Darfur Security desk", recruited and mobilized the Militia/Janjaweed, relying on experience he had gained in mobilizing tribal militias in South Sudan in the 1990s. On various occasions, Ahmad Harun publicly acknowledged his mission to destroy the target groups, stating that AL BASHIR had given him the power to kill whomever he wanted and that, *"for the sake of Darfur, they were ready to kill three quarters of the people in Darfur, so that one quarter could live"*. After the Court's decision of 27 April



2007, AL BASHIR traveled to Darfur with Harun and announced publicly that he would never hand over Harun to the ICC; to the contrary, Harun would continue working in Darfur to implement his orders. The decision to maintain Harun in such positions as Minister of State for Humanitarian Affairs, where he was able to affect the victims in the camps; as Chair of a committee on human rights violations in the south and north, in which he could provide perpetrators with a guarantee of impunity; as a member of the UNAMID national monitoring group, where he was able to affect the deployment of peacekeepers; these are all clear indications of AL BASHIR's complete protection of those who committed genocidal acts under his direct orders.

*d. AL BASHIR's mens rea*

AL BASHIR has genocidal intent. His forces and agents submitted a substantial part of each target group – living in IDP camps – to conditions calculated to destroy each group in part.

In attacks, AL BASHIR forces consistently made statements such as *"the Fur are slaves, we will kill them"*; *"You are Zaghawa tribes, you are slaves"*; *"You are Masalit. Why do you come here, why do you take our grass? You will not take anything today"*. The language used by perpetrators of rape made also clear the genocidal intent underlying their actions: *"After they abused us, they told us now we would have Arab babies and if they could find any Fur woman, they would rape them again to change the colour of their children"*. Perpetrators of other crimes have used language which is not just ethnically derogatory, but evidencing an intention to destroy: *"You are blacks, no blacks can stay here, and no black can stay in Sudan...The power of Al BASHIR belong to the Arabs and we will kill you until the end"*; *"we will kill all the black"*; *"we will drive you out of this land"*; *"we are here to eradicate blacks (nuba)"*; *"This is your end. The Government armed me"*.

The systematic targeting of victims based on their membership in a particular group; the actual destructions; the deliberate failure to differentiate between civilians and persons of military status; the perpetration of acts which violate the very foundation of the groups such as massive rapes or massive expulsion from the land with no possibility to return or reconstitute as a group; the utterances of perpetrators on the ethnicity of the victims during the attacks; the sophisticated strategy of concealing crimes; and the evidence of a plan are many indicators from which *mens rea* of genocide is the only possible inference.

Assessed against all those factors, the only reasonable inference available based on the evidence is that AL BASHIR intends to destroy substantial parts of the Fur, Masalit and Zaghawa groups, as such.

### **III. Ensuring the Appearance of AL BASHIR**

Under Article 58 of the Statute, if the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that a person has committed crimes within the jurisdiction of the Court, the Chamber may issue upon the application of the Prosecution either a warrant of arrest or a summons to appear. The Prosecution, by this application, submits that the evidence and

information summarised above give reasonable grounds to believe that the person, AL BASHIR, committed the crimes alleged. The Prosecution respectfully requests the issuance of an arrest warrant.

There are circumstances which could lead it to modify its assessment. The Prosecution submits that a summons to appear could be an alternative pursued by the Court should the Government of the Sudan, which would serve and follow up on the summons, and the individual concerned, express their willingness to pursue this route.