

Situation in Darfur, Sudan

ICC-PIDS-CIS-SUD-02-005/17\_Eng

Updated: 6 April 2017

## ***The Prosecutor v. Omar Hassan Ahmad Al Bashir***

ICC-02/05-01/09

### **Omar Hassan Ahmad Al Bashir**

**Suspected of five counts of crimes against humanity, two counts of war, and three counts of genocide allegedly committed in Darfur, Sudan. Not in ICC custody.**



**Date of birth:** 1 January 1944

**Place of birth:** Hoshe Bannaga, Shendi Governorate in Sudan

**Nationality:** Sudanese

**Tribe:** Ja'ali of northern Sudan

**Current status:** President of the Republic of Sudan since 16 October 1993

**First Warrant of arrest:** 4 March 2009

**Second Warrant of arrest:** 12 July 2010

**Status of proceedings:** The execution of the arrest warrant is pending

### **Charges**

The warrants of arrest for Omar Al Bashir list ten counts on the basis of his individual criminal responsibility under article 25(3)(a) of the Rome Statute as an indirect (co)perpetrator 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 part in hostilities (article 8(2)(e)(i)); and pillaging (article 8(2)(e)(v)); and
- Three counts of genocide: genocide by killing (article 6-a), genocide by causing serious bodily or mental harm (article 6-b) and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction (article 6-c).

### **Alleged crimes (non-exhaustive list)**

Pre-Trial Chamber I considered 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 existed in Darfur between the Government of Sudan (GoS) and several organised armed groups, in particular the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM).
- Soon after the April, 2003 attack on the El Fasher airport, Omar Al Bashir and other high-ranking Sudanese political and military leaders of the GoS agreed upon a common plan to carry out a counter-insurgency campaign against the SLM/A, the JEM and other armed groups opposing the Government of Sudan in Darfur.
- A core component of that campaign was the unlawful attack on part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – who were perceived to be close to the organised armed groups opposing the Government of Sudan in Darfur. The campaign was conducted through GoS forces, including the Sudanese Armed Forces and their allied *Janjaweed* militia, the Sudanese Police Forces, the National Intelligence and Security Service (NISS) and the Humanitarian Aid Commission (HAC). It lasted at least until the date of the filing of the Prosecution Application on 14 July 2008.
- During the campaign, GoS forces allegedly committed crimes against humanity, war crimes, and crimes of genocide, and in particular:
  - a. carried out numerous unlawful attacks, followed by systematic acts of pillage, on towns and villages, mainly inhabited by civilians belonging to the Fur, Masalit and Zaghawa groups;

- b. subjected thousands of civilians – belonging primarily to the Fur, Masalit and Zaghawa groups – to acts of murder, as well as to acts of extermination;
- c. subjected thousands of civilian women – belonging primarily to the said groups – to acts of rape;
- d. subjected hundreds of thousands of civilians – belonging primarily to the said groups – to acts of forcible transfer;
- e. subjected civilians – belonging primarily to the said groups – to acts of torture; and
- f. contaminated the wells and water pumps of the towns and villages primarily inhabited by members of the Fur, Masalit and Zaghawa groups that they attacked; and encouraged members of other tribes, which were allied with the GoS, to resettle in the villages and lands previously mainly inhabited by members of the Fur, Masalit and Zaghawa groups.

Pre-Trial Chamber I also found that there are reasonable grounds to believe that:

- Omar Al Bashir, as the *de jure* and *de facto* President of the State of Sudan and Commander-in-Chief of the Sudanese Armed Forces at all times relevant to the Prosecution Application, played an essential role in coordinating the design and implementation of the common plan;
- and, in the alternative, that Omar Al Bashir also:
  - a. played a role that went beyond coordinating the implementation of the said GoS counter-insurgency campaign;
  - b. 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 Forces, the NISS and the HAC; and
  - c. used such control to secure the implementation of the said GoS counter-insurgency campaign.

Pre-Trial Chamber I found that there are reasonable grounds to believe that Omar Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups.

## Key judicial developments

### REFERRAL AND OPENING OF THE INVESTIGATION

The International Commission of Inquiry on Darfur was established by former United Nations (UN) Secretary-General Kofi Annan pursuant to the Security Council resolution 1564. The Commission reported to the UN in January 2005 that there was reason to believe that crimes against humanity and war crimes had been committed in Darfur and recommended that the situation be referred to the ICC.

Using its authority under the Rome Statute, the UN Security Council referred the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court in resolution 1593 on 31 March 2005.

Following the referral from the UN Security Council, the Prosecutor received the conclusion of the International Commission of Inquiry on Darfur. In addition, the Office of the Prosecutor requested information from a variety of sources, leading to the collection of thousands of documents. The Prosecutor concluded that the statutory requirements for initiating an investigation were satisfied and decided to open the investigation on 6 June 2005.

### WARRANTS OF ARREST

On 14 July 2008, the Prosecutor submitted an application for the issuance of a warrant of arrest for the Sudanese president Omar Al Bashir.

On 15 October 2008, Pre-Trial Chamber I requested additional supporting material in relation with the Prosecution Application.

On 17 November 2008, the Prosecutor submitted further material in compliance with the above-mentioned decision of the Pre-Trial Chamber.

On 4 March 2009, Pre-Trial Chamber I issued a warrant of arrest for Omar Al Bashir for charges of war crimes and crimes against humanity.

On 6 July 2009, the Prosecutor appealed the decision to the extent that Pre-Trial Chamber I decided not to issue a warrant of arrest in respect of the charge of genocide.

On 3 February 2010, the Appeals Chamber directed the Pre-Trial Chamber to decide anew whether or not the arrest warrant should be extended to cover the charge of genocide.

Applying the standard of proof as identified by the Appeals Chamber, Pre-Trial Chamber I concluded, on 12 July 2010, that there are reasonable grounds to believe that Omar Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups. The Chamber delivered a second warrant of arrest against the President of Sudan, Omar Hassan Ahmad Al Bashir, considering that there are reasonable grounds to believe him responsible for three counts of genocide committed against the ethnic groups of Fur, Masalit and Zaghawa.

On 15 March 2012, the ICC Presidency assigned to Pre-Trial Chamber II to this case.

## NON-COOPERATION

The suspect remains at large in spite of the arrest warrants issued against him.

On 13 December 2011, Pre-Trial chamber I decided that the Republic of Malawi failed to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of Omar Hassan Ahmad Al Bashir during his visit on 14 October 2011. The decision was referred to the President for transmission to the United Nations Security Council (UNSC) and to the Assembly of the States Parties (ASP) to take the necessary measures they deem appropriate.

On 13 December 2011, Pre-Trial chamber I decided that the Republic of Chad failed to cooperate with the Court in the arrest and surrender of Omar Al Bashir during his visit on 7 and 8 August 2011. The decision was referred to the President for transmission to the UNSC and to the ASP.

On 26 March 2013, Pre-Trial chamber II issued a 2<sup>nd</sup> decision in relation to Chad as the Republic of Chad failed to cooperate with the Court in the arrest and surrender Omar Al Bashir during his visit 16-17 February 2013. The decision was referred to the President for transmission to the UNSC and to the ASP.

On 9 April 2014, Pre-Trial Chamber II found that the Democratic Republic of the Congo failed to cooperate with the Court by not arresting and surrendering Omar Al Bashir to the Court during his visit to the DRC on 26 and 27 February 2014. The Chamber referred the matter to both the UNSC and the ASP.

On 9 March 2015, Pre-Trial Chamber II decided that the Republic of Sudan failed to cooperate with the Court by not arresting and surrendering Omar Al Bashir to the Court over the last years. The Chamber informed the UNSC to take the necessary measures it deem appropriate.

On 11 July 2016, Pre-Trial Chamber II decided that the Republics of Uganda and Djibouti failed to comply with the request for arrest and surrender of Omar Al Bashir to the ICC and referred the matter to the ASP and the UNSC.

## PARTICIPATION OF VICTIMS

Pre-Trial Chamber I granted 12 persons the status of victim authorised to participate in the case of *The Prosecutor v. Omar Hassan Ahmad Al Bashir*.

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### Composition of Pre-Trial Chamber II

Judge Cuno Tarfusser, Presiding Judge  
Judge Marc Perrin de Brichambaut  
Judge Chang-ho Chung

### Representation of the Office of the Prosecutor

Fatou Bensouda, Prosecutor  
James Stewart, Deputy Prosecutor

### Defence Counsel for Omar Al Bashir

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### Legal Representatives of the Victims

Wanda M Akin  
Raymond M Brown