

[AMICC] ICC Issues Arrest Warrant for Omar Al Bashir

Dear AMICC members, alliances, observers and friends,

On March 4, 2009 Pre-Trial Chamber I issued an arrest warrant for Omar Al Bashir, President of Sudan, on seven charges of war crimes, crimes against humanity. The charges in the warrant do not include genocide, although the Prosecutor had requested it, because the prosecution's evidence failed to provide reasonable grounds to believe that the Government of Sudan acted with specific intent to destroy a group because of its identity. It is the first time that the ICC has issued a warrant for a sitting head of state. The Prosecutor alleged in his application of July 14, 2008 that President Al Bashir targeted and sought to destroy the Fur, Masalit and Zaghawa ethnic groups in Darfur by deliberately inflicting conditions of life calculated to bring about the groups' destruction. The resulting attacks and massacres justified charges of war crimes and crimes against humanity even though the Court decided that the other elements necessary for the crime of genocide had not been established.

The war crimes and crimes against humanity charges contained in the arrest warrant include murder, extermination and rape. Some have already expressed disappointment that the crime of genocide was not included. This was a decision of the judges based on the evidence presented to them, not a judgment as to whether genocide occurred in Darfur. Proving that an individual is responsible for genocide is especially difficult because of the "intent" requirement: the Prosecutor has to produce evidence showing that the person intended to destroy, in whole or in part, an ethnic or other group because of its identity as such. While intent can be inferred from facts and circumstances, it is not enough to establish intent to prove that killings occurred and that the suspect was responsible for certain actions. The failure to charge genocide may also reflect that the evidence did not show a sufficient direct connection between President Bashir and the alleged crimes. It should be noted that the crimes charged in the arrest warrant are just as serious as genocide and the issuance of an arrest warrant means that the judges are satisfied that the Prosecutor has sufficient evidence to go to trial on them.

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As you know, the case against President Bashir has already generated significant attention internationally and in the media. There will be much debate and discussion about this case in the near future, especially around dilemmas of peace and justice and whether the UN Security Council should suspend the case against President Bashir. The Obama Administration has already indicated and recently repeated that it supports the ICC case and would oppose a 12-month deferral by the Security Council. There may also be efforts to blame any violence hereafter against civilians or peacekeepers on the ICC action and to use the arrest warrant as a bargaining chip in future negotiations.

This case will challenge the ICC and the international community. It is important to bear in mind that the ICC is an independent judicial institution which relies on its States Parties and the Security Council to enforce its decisions. It is difficult to predict what will happen next or whether Mr. Bashir will ever come before the Court. It is possible that the arrest warrant could weaken him politically and eventually lead to his arrest within Sudan or his expulsion to be arrested elsewhere. The Court could not hold a trial against Mr. Bashir in his absence, though it could formally indict him in a confirmation of charges hearing in his absence which would bring the evidence against him to light and preserve it.

For more information, read our fact sheet on the Bashir arrest warrant which is available at http://www.amicc.org/docs/Bashir_Warrant.pdf. Additional information, including the Pre-Trial Chamber's 146-page decision, is available from the ICC's website.

The Bashir case will likely provide new opportunities to explain the ICC and engage your communities about the work of the Court. We encourage you to reach out to Darfur or organizations concerned with atrocities or with particular aspects of them, such as crimes against women, as well as the media to discuss the ICC case. Please let us know if we can provide materials or how we can otherwise help your advocacy. You will also find updated information about the Bashir case on the AMICC website.

Best regards,

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