



Charged with Genocide: Implications of the ICC's case against Sudanese President al-Bashir

In March 2005, the U.N. Security Council referred the situation in Darfur to the International Criminal Court (ICC) for investigation. The Security Council's referral, made through Security Council resolution 1593, obliges Sudan to cooperate with the ICC even though Sudan is not a state party to the ICC's Rome Statute.

In April 2007, the Court issued arrest warrants against Ahmad Harun, currently State Minister for Humanitarian Affairs, for 42 individual counts (20 crimes against humanity and 22 war crimes) and former Janjaweed leader Ali Kushayb for 50 individual counts (22 crimes against humanity and 28 war crimes).

The Sudanese government has repeatedly refused to cooperate with the Court and to arrest and surrender the two suspects.

Prosecutor's application for a new arrest warrant

On July 14, 2008, ICC Prosecutor Luis Moreno Ocampo submitted a case summary to the ICC's Pre Trial Chamber I. In accordance with article 58 of the Rome Statute, the Prosecutor requested that the Pre Trial Chamber issue arrest warrants against Sudanese President Omar al-Bashir for:

- "the **crime of genocide** under Article 6 (a) of the Rome Statute, killing members of the Fur, Masalit and Zaghawa ethnic 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;
- "**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
- "**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 Pre Trial Chamber – composed of three judges, one each from Brazil, Ghana and Latvia – will now examine the evidence to decide whether it will issue arrest warrants for the alleged crimes described above.

Summary of evidence

In his summary, the Prosecutor asserts that al-Bashir, as President of the Republic, Head of the National Congress Party and Commander of the Armed Forces, orchestrated and exercised “absolute control” over the institutions and individuals that have carried out the crimes under consideration. The summary concludes—among other things—that al-Bashir used state organs to engage in conduct that “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.”

According to the Prosecutor, al-Bashir bears personal responsibility for “genocide by killing,” “genocide by causing serious mental harm” and “genocide by deliberate infliction...of conditions of life calculated to bring about...physical destruction...in whole or in part,” as well as the lesser charges of crimes against humanity and war crimes.

The Prosecutor makes clear that evidence of systematic violence against women and girls plays a key role in the case, noting that “rape is an integral part of the pattern of destruction that the Government of the Sudan is inflicting upon the target groups in Darfur... they use rape to kill the will, the spirit, and life itself.”

In all, the Prosecutor charged al-Bashir with three counts of genocide, five counts of crimes against humanity and two counts of war crimes.

Potential consequences of the case against al-Bashir

Many observers – including opponents of the ICC and supporters of al-Bashir but also well-meaning observers concerned for Darfur’s civilian population – have argued that an arrest warrant for al-Bashir could trigger a backlash by Sudan that threatens the already stagnant Darfur peace process, the deployment of peacekeepers and delivery of humanitarian aid to the population of Darfur. Some worry about the destabilizing effect such a development could have on the already tenuous Comprehensive Peace Agreement (CPA), which ended a two-decade war between northern and southern Sudan.

But many Darfur advocates, proponents of the Court and other observers believe this development, by offering the promise of justice to millions of Darfuri victims, could provide a turning point for ending the war in Darfur. While conscious of the danger of a potential backlash by al-Bashir, they contend that consistent prosecution of mass atrocities creates a deterrent for future violators; that it promotes peace—in the long term—by making it clear to current and future perpetrators that their survival (political or otherwise) is in the balance; that it discourages the continuation of the most blatant violations by field commanders; and, perhaps most importantly, by altering the calculus of some of the actors involved, creates a political opening for peace.

The full consequences of the Prosecutor's latest request for an arrest warrant will become clearer over the next weeks and months. But fear of reprisals by the government of Sudan and its allied militias has presumably already compelled the UNAMID peacekeeping force to raise its security profile and begin relocating all programs and personnel "not directly concerned with emergency or humanitarian relief operations or security matters." If the security profile is not downgraded soon, it will undoubtedly have negative repercussions for the Darfuri civilians who have long been promised and awaited protection. The international community must be vigilant in calling-out and responding to any signs of a backlash that further threatens civilians or the beleaguered UNAMID force.

The way forward

In June, the Security Council appealed to "the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur."

Now the Security Council and its member states must match their words with actions. They should demand that the Sudanese government comply with all arrest warrants and should impose targeted sanctions on individuals responsible for harboring any wanted individuals. Member states must also begin to consider the ramifications of cooperation with an individual allegedly responsible for genocide.

Most importantly, the Security Council member states must pursue a comprehensive strategy to end the suffering in Darfur. The ICC's latest case highlights in the starkest terms their responsibility to ensure protection for Sudanese civilians threatened by Bashir's policies as well as their responsibility to create a peace process that Darfuris can accept and that can bring stability to all of Sudan.

The pursuit of justice and accountability, while imperative, will afford little benefit to Darfuris if not accompanied by immediate protection of civilians and genuine steps toward long term peace.