

**Court/Tribunal:** International Criminal Court

**Case:** *The Prosecutor v. Omar Hassan Ahmad Al Bashir*

On July 14, 2008, the Office of the Prosecutor filed an application for a warrant of arrest (“Application”) of Omar Hassan Ahmad Al Bashir (“Al Bashir”). The Application alleges that Al Bashir bears criminal responsibility under the Rome Statute (“Statute”) for three counts of genocide in violation of Article 6, five counts of crimes against humanity in violation of Article 7, and two counts of war crimes in violation of Article 8. The crimes were allegedly committed in the Darfur region of Sudan on or after July 1, 2002. The United Nations Security Council conferred jurisdiction upon the International Criminal Court (“ICC”) over these crimes by adopting Resolution 1593. In accordance with the principle of “complementarity,” the Prosecutor alleges admissibility of this case on the lack of investigation or prosecution by the Government of Sudan of the alleged crimes.

On June 30, 1989, Al Bashir led a military *coup d’état* which deposed Sadiq Al Mahdi. Al Bashir quickly suspended the constitution and replaced all existing political institutions with the Revolution Command Council of National Salvation (RCC-NS) as the Government of Sudan. Initially, Al Bashir served as the Chairman of the RCC-NS and Head of State. In 1993 he was appointed President of the Republic by the RCC-NS. He was elected President in 1996 and reelected again in 2001 and 2005.

From the time of Al Bashir’s *coup*, the Prosecutor alleges that he has held supreme control over the country and has suppressed any influential political group that potentially or actually threatened his power. Since March 2003, there has been an armed conflict between the Government of Sudan and rebel forces including the Sudan Liberation Movement/Army (“SLM/A”) and the Justice and Equality Movement (“JEM”), both of which recruit mainly from the Fur, Masalit and Zaghawa tribes, which he allegedly perceives as the main threats to his power. The rebel forces challenge his political and economic marginalization of the region. The Prosecutor alleges that Al Bashir has purposefully polarized the population in the Darfur region between tribes that are aligned with him, which he refers to as “Arabs,” and the target groups, which he refers to derogatorily as “Zurgas” or “Africans.”

It is in this context that Al Bashir allegedly used Sudan’s entire state apparatus, the Sudanese Armed Forces, and the Militia (“Janjaweed”), “to destroy in substantial part the Fur, Masalit, and Zaghawa ethnic groups as such.” (Summary of the Prosecutor’s Application under Article 58, Pages 4,5). After negotiations and military action failed to quiet a rebellion in Darfur, Al Bashir publicly instructed the military to quell the rebellion in two weeks without bringing back prisoners or wounded, allegedly triggering a violent campaign of attacks against towns and villages inhabited mainly by these target groups. These attacks consisted of killing, raping, and torturing civilians, destroying means of livelihood, and resulted in the forced displacement of 2,700,000 people. According to the Prosecutor, the attackers specifically targeted towns and villages inhabited mainly by the target groups and purposefully avoided attacking “Arab” villages, even when the villages were in close proximity to each other.

The attacks allegedly followed a common pattern. The Armed Forces, in concert with the Militia/Janjaweed, surrounded a village while helicopters or aircraft bombed the villages either before or during the attack. Ground forces killed men, women, and children; raped women and

girls; destroyed or looted farms and grain stores; burned houses and community buildings; poisoned water sources and destroyed water pumps. As the survivors fled they were pursued into the deserts, and many were killed or left to die. Almost 2,500,000 people reached camps for Internally Displaced Persons (“IDPs”) on the outskirts of larger cities or refugee camps in neighboring countries. In addition to the goal of killing the target groups, the attacks were allegedly intended to ensure that those not killed would not be able survive without assistance.

The attacks allegedly continue to target civilian populations. For the past five years, the Militia/Janjaweed, which have been stationed in the vicinity of camps for IDPs, have allegedly systematically and continuously raped women and girls as they left the camps to gather firewood, grass, and water. The Prosecutor alleges that these attacks have directly caused the death of at least 35,000 civilians and indirectly caused the “slow death” of between 80,000 and 265,000 civilians due to the conditions imposed on IDPs during the displacement and in the camps.

The Prosecutor makes three counts. First, he alleges that these attacks constitute crimes against humanity, namely murder, rape, and torture of civilians, extermination of a part of the civilian population, and forcible transfer of a part of the civilian population. Second, the Prosecutor charges that these attacks constitute war crimes, namely pillaging and attacks against the civilian population taking no direct part in hostilities. Finally, the Prosecutor alleges that by killing members of each target group, by causing serious bodily or mental harm to members of each target group, and by deliberately inflicting on each target group conditions of life calculated to bring about the group’s physical destruction, these attacks constitute genocide.

The Prosecutor alleges that Al Bashir is personally responsible for these crimes because he committed them through members of the state apparatus, the Armed Forces, and the Militia/Janjaweed, in accordance with Article 25(3)(a) of the Rome Statute. The Prosecutor alleges that, during the time period covered by its Application, Al Bashir was President of the Republic of Sudan, Head of the National Congress Party, and Commander-in-Chief of the Armed Forces and exercised “absolute control” over the state apparatus, the Armed Forces, and the Militia/Janjaweed, which he had integrated into the reserve forces.

The Prosecutor alleges that Al Bashir received regular reports of the crimes committed from the field and used the intelligence apparatus as well as the Ministries of Interior, Defense, Humanitarian Affairs, Information and Communication, Foreign Affairs, Finance, and Justice in furtherance of the crimes charged. In addition, Al Bashir allegedly used his control to eliminate dissent, deny access to the justice system for victims, and provide impunity for those who followed his orders. He also allegedly punished those who refused to follow his orders with reassignments or dismissals.

On March 4, 2009, the ICC issued a Warrant of Arrest for Al Bashir under Article 58(1) of the Statute. The ICC found that there are reasonable grounds to believe that, from April 2003 until at least July 14, 2008, war crimes, as defined by Article 8(2)(e)(i) and 8(2)(e)(v) of the Statute, and crimes of humanity, as defined by Articles 7(1)(a),(b),(d),(f) and (g) of the Statute, were committed in the Darfur region by Government of Sudan forces, including the Militia/Janjaweed. The ICC also found reasonable grounds to believe that Al Bashir, in his position as *de jure* and *de facto* President of the State of Sudan and Commander-in-Chief of the Sudanese Armed

Forces, played an essential role in coordinating and implementing the attacks in the Darfur region. Therefore, ICC found reasonable grounds to believe that Al Bashir's role made him criminally responsible as an indirect perpetrator, or indirect co-perpetrator, under Article 25(3)(a) of the Statute. The ICC did not mention genocide.

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For more information on the status of this case visit the ICC's Situation in Darfur website at: <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205/>