Cour Pénale Internationale

International Criminal Court

Original: **English**

No.: **ICC-02/05-01/09**
Date: **12 July 2010**

PRE-TRIAL CHAMBER I

Before: **Judge Sylvia Steiner, Presiding Judge**
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DAFUR, SUDAN

IN THE CASE OF
THE PROSECUTOR v. OMAR HASSAN AHMAD AL BASHIR ("OMAR AL BASHIR")

Public Document

Second Warrant of Arrest for Omar Hassan Ahmad Al Bashir

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Victims and Witnesses Unit

Detention Section

Victims Participation and Reparations Section
Ms Fiona McKay

Other

PRE-TRIAL CHAMBER I of the International Criminal Court ("Chamber" and "Court" respectively);

HAVING EXAMINED the "Prosecution's Application under Article 58" ("Prosecution's Application"), filed by the Prosecution on 14 July 2008 in the record of the situation in Darfur, Sudan ("Darfur situation") requesting the issuance of a warrant for the arrest of Omar Hassan Ahmad Al Bashir (hereinafter referred to as "Omar Al Bashir") for genocide, crimes against humanity and war crimes;[1]

HAVING EXAMINED the supporting material and other information submitted by the Prosecution;[2]

NOTING the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir" ("First Decision")[3] issued on 4 March 2009, in which the Chamber decided:

(i) to issue a warrant of arrest against Omar Al Bashir for his alleged responsibility under article 25(3)(a) of the Statute for the crimes against humanity and war crimes alleged by the Prosecution;[4] and

(ii) not to include the counts of genocide listed in the Prosecution's Application—genocide by killing (count 1); genocide by causing serious bodily or mental harm (count 2); and genocide by deliberately inflicting conditions of life calculated to bring about the group's physical destruction (count 3)—among the crimes with respect to which the warrant of arrest was issued;[5]

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[1] ICC-02/05-151-US-Exp; ICC-02/05-151-US-Exp-Anxs1-89; Corrigendum ICC-02/05-151-US-Exp-Corr and Corrigendum ICC-02/05-151-US-Exp-Corr-Anxs1 & 2; and Public redacted version ICC-02/05-157 and ICC-02/05-157-AnxA.

[2] ICC-02/05-161 and ICC-02/05-161-Conf-AnxsA-J; ICC-02/05-179 and ICC-02/05-179-Conf-Exp-Anxs1-5; ICC-02/05-183-US-Exp and ICC-02/05-183-Conf-Exp-AnxsA-E.

[3] ICC-02/05-01/09-3.

[4] ICC-02/05-01/09-3, page 92.

[5] Judge Anita Ušacka partly dissenting.

NOTING the "Judgment on the Appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir'" ("Appeals Decision") dated 3 February 2010,[6] in which the Appeals Chamber reversed the First Decision to the extent that the Chamber "decided not to issue a warrant of arrest in respect of the crime of genocide in view of an erroneous standard of proof(...)",[7] and decided not to consider the substance of the matter[8] remanding it to the Pre-Trial Chamber "for a new decision, using the correct standard of proof";[9]

NOTING the "Second Decision on the Prosecution's Application for a Warrant of Arrest",[10] ("Second Decision") in which the Chamber held that it was satisfied that there were reasonable grounds to believe that Omar Al Bashir was criminally responsible under article 25(3)(a) of the Statute as an indirect perpetrator, or as an indirect co-perpetrator, for the charges of genocide under article 6 (a), 6 (b) and 6 (c) of the Statute, which were found in that decision to have been committed by the GoS forces as part of the GoS counter-insurgency campaign, and that his arrest appeared to be necessary under article 58(1)(b) of the *Rome Statute* ("the Statute");

NOTING articles 19 and 58 of the Statute;

CONSIDERING that, on the basis of the material provided by the Prosecution in support of the Prosecution's Application and without prejudice to any subsequent determination that may be made under article 19 of the Statute, the case against Omar Al Bashir falls within the jurisdiction of the Court;[11]

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[6] ICC-02/05-01/09-73.
[7] ICC-02/05-01/09-73, page 3.
[8] ICC-02/05-01/09-73, para. 42.
[9] Ibid.
[10] ICC-02/05-01/09-94.
[11] As found by the Chamber in the First Decision, see ICC-02/05-01/09-3, paras. 35-45, and reiterated in the Second Decision, para. 41.

CONSIDERING that, on the basis of the material provided by the Prosecution in support of the Prosecution's Application, there is no ostensible cause or self-evident factor to impel the Chamber to exercise its discretion under article 19(1) of the Statute to determine at this stage the admissibility of the case against Omar Al Bashir;[12]

CONSIDERING that there are reasonable grounds to believe: (i) that soon after the attack on El Fasher airport in April 2003, the Government of Sudan ("GoS") issued a general call for the mobilisation of the Janjaweed Militia in response to the activities of the SLM/A, the JEM and other armed opposition groups in Darfur, and thereafter conducted, through GoS forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the National Intelligence and Security Service ("the NISS") and the Humanitarian Aid Commission ("the HAC"), a counter-insurgency campaign throughout the Darfur region against the said armed opposition groups; and (ii) that the counter-insurgency campaign continued until the date of the filing of the Prosecution Application on 14 July 2008;

CONSIDERING that there are reasonable grounds to believe: (i) that a core component of the GoS counter-insurgency campaign was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived by the GoS as being close to the SLM/A, the JEM and the other armed groups opposing the GoS in the ongoing armed conflict in Darfur; and (ii) that villages and towns targeted as part of the GoS's counter-insurgency campaign were selected on the basis of their ethnic composition and that towns and villages inhabited by other tribes, as well as rebel locations, were bypassed in order to attack towns and villages known to be inhabited by civilians belonging to the Fur, Masalit and Zaghawa ethnic groups;

CONSIDERING that there are reasonable grounds to believe that the attacks and acts of violence committed by GoS against a part of the Fur, Masalit and Zaghawa

[12] As found by the Chamber in the First Decision, see ICC-02/05-01/09-3, para. 51, and reiterated in the Second Decision, para. 41.

groups took place in the context of a manifest pattern of similar conduct directed against the targeted groups as they were large in scale, systematic and followed a similar pattern;

CONSIDERING that there are reasonable grounds to believe that, as part of the GoS's unlawful attack on the above-mentioned part of the civilian population of Darfur and with knowledge of such attack, GoS forces subjected, throughout the Darfur region, thousands of civilians, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of murder and extermination;[13]

CONSIDERING that there are reasonable grounds to believe, as well, that as part of the GoS's unlawful attack on the above-mentioned part of the civilian population of Darfur and with knowledge of such attack, GoS forces subjected, throughout the Darfur region, (i) thousands of civilian women, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of rape; [14] (ii) civilians belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of torture; [15] and (iii) hundreds of thousands of civilians, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of forcible transfer;[16]

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[13] Including in *inter alia* (i) the towns of Kodoom, Bindisi, Mukjar and Arawala and surrounding villages in Wadi Salih, Mukjar and Garsila-Deleig localities in West Darfur between August and December 2003; (ii) the towns of Shattaya and Kailek in South Darfur in February and March 2004; (iii) between 89 and 92 mainly Zaghawa, Masalit and Misseriya Jebel towns and villages in Buram Locality in South Darfur between November 2005 and September 2006; (iv) the town of Muhajeriya in the Yasin locality in South Darfur on or about 8 October 2007; (v) the towns of Saraf Jidad, Abu Suruj, Sirba, Jebel Moon and Silea towns in Kulbus locality in West Darfur between January and February 2008; and (vi) Shegeg Karo and al-Ain areas in May 2008.

[14] Including in *inter alia* (i) the towns of Bindisi and Arawala in West Darfur between August and December 2003; (ii) the town of Kailek in South Darfur in February and March 2004; and (iii) the towns of Sirba and Silea in Kulbus locality in West Darfur between January and February 2008.

[15] Including in *inter alia*: (i) the town of Mukjar in West Darfur in August 2003; (ii) the town of Kailek in South Darfur in March 2004; and (iii) the town of Jebel Moon in Kulbus locality in West Darfur in February 2008.

[16] Including in *inter alia* (i) the towns of Kodoom, Bindisi, Mukjar and Arawala and surrounding villages in Wadi Salih, Mukjar and Garsila-Deleig localities in West Darfur between August and December 2003; (ii) the towns of Shattaya and Kailek in South Darfur in February and March 2004; (iii) between 89 and 92 mainly Zaghawa, Masalit and Misseriya Jebel towns and villages in Buram Locality in South Darfur between November 2005 and September 2006; (iv) the town of Muhajeriya in the Yasin locality in South Darfur on or about 8 October 2007; and (v) the towns of Saraf Jidad, Abu Suruj,

CONSIDERING that that there are also reasonable grounds to believe that in furtherance of the genocidal policy, as part of the GoS's unlawful attack on the above-mentioned part of the civilian population of Darfur and with knowledge of such attack, GoS forces throughout the Darfur region (i) at times, contamined the wells and water pumps of the towns and villages primarily inhabited by members of the Fur, Masalit and Zaghawa groups that they attacked;[17] (ii) subjected hundreds of thousands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups to acts of forcible transfer;[18] and (iii) 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;[19]

CONSIDERING therefore that there are reasonable grounds to believe that, from soon after the April 2003 attack on El Fasher airport at least until the date of the Prosecution's Application, GoS forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the NISS and the HAC, committed the crimes of genocide by killing, genocide by causing serious bodily or mental harm and genocide by deliberately inflicting conditions of life calculated to bring about physical destruction, within the meaning of article 6 (a), (b) and (c) respectively of the Statute, against part of the Fur, Masalit and Zaghawa ethnic groups;

Sirba, Jebel Moon and Silea towns in Kulbus locality in West Darfur between January and February 2008.

[17] Physicians for Human Rights, Report, Darfur *Assault on Survival, A call for Security, Justice, and Restitution* (Anx J44) DAR-OTP-0119-0635 at 0679 which mentions three incidents of destruction of water sources.

[18] UN Security Council Press release, 22 April 2008 (Anx J38) DAR-OTP-0147-0859 at 0860; UN Security Council 5872 meeting, 22 April 2008 (Anx J52) DAR-OTP-0147-1057 at 1061; UNCOI Material, (Anx J72) DAR-OTP-0038-0060 at 0065; Commission of Inquiry into allegations surrounding human rights violations committed by armed groups in the States of Darfur, January 2005, Reviewed, Volume 2 (Anx 52) DAR-OTP-0116-0568 at 0604; United Nations Inter-agency Report, 25 April 2004 (Anx J63) DAR-OTP-0030-0066 at 0067; Third periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, April 2006 (Anx J75) DAR-OTP-0108-0562 at 0570-0572, paras. 27, 35, 39, 44; United Nation Human Rights Council, Report on Human Rights Situations that require the Council's attention (A/HRC/6/19) (Anx 78) at D AR-OTP-013 8-0116 at 0145-0146; HRW Report, *They Shot at Us as We Fled,* 18 May 2008, (Anx 80) DAR-OTP-0143-0273 at 0300, 0291-0296; Ninth periodic report of the United Nations High Commissioner for Human Rights. Sudan (Anx J76) DAR-OTP-0136-0369 at 0372-0374.

[19] Witness statement (AnxJ47) DAR-OTP-0125-0665 at 0716, para.255.

CONSIDERING that there are reasonable grounds to believe that Omar Al Bashir has been the *de jure* and *de facto* President of the Republic of the Sudan and Commander-in-Chief of the Sudanese Armed Forces from March 2003 until at least the date of the Prosecution's Application 14 July 2008, and that, in that position, he played an essential role in coordinating, with other high-ranking Sudanese political and military leaders, the design and implementation of the above-mentioned GoS counter-insurgency campaign;

CONSIDERING, further, that the Chamber finds, in the alternative, that there are reasonable grounds to believe: (i) that the role of Omar Al Bashir went beyond coordinating the design and implementation of the common plan; (ii) that he was in full control of all branches of the "apparatus" of the Republic of the Sudan, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the NISS and the HAC; and (iii) that he used such control to secure the implementation of the common plan;

CONSIDERING that, on the basis of the standard of proof as identified by the Appeals Chamber, there are reasonable grounds to believe that Omar Al Bashir acted with *dolus specialis*/specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups;

CONSIDERING that, for the above reasons, there are reasonable grounds to believe that Omar Al Bashir is criminally responsible as an indirect perpetrator, or as an indirect co-perpetrator, under article 25(3)(a) of the Statute, for:

i. Genocide by killing, within the meaning of article 6(a) of the Statute;
ii. Genocide by causing serious bodily or mental harm, within the meaning of article 6(b) of the Statute; and
iii. Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction, within the meaning of article 6(c) of the Statute;

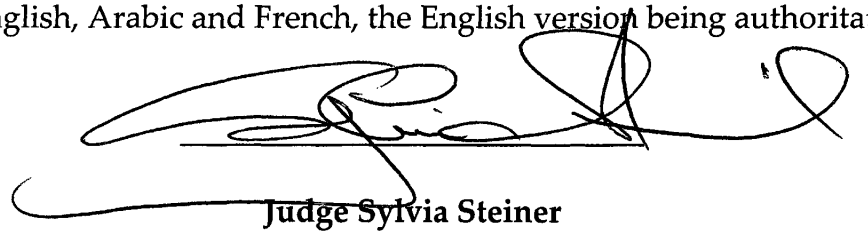
CONSIDERING that, under article 58(1) of the Statute, the arrest of Omar Al Bashir appears necessary at this stage to ensure (i) that he will appear before the Court; (ii) that he will not obstruct or endanger the ongoing investigation into the crimes for which he is allegedly responsible under the Statute; and (iii) that he will not continue with the commission of the above-mentioned crimes;

FOR THESE REASONS,

HEREBY ISSUES:

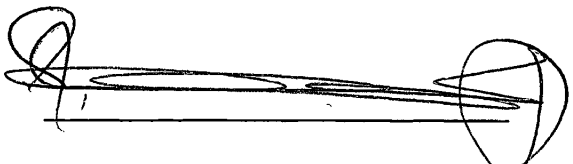
A WARRANT OF ARREST for **OMAR AL BASHIR**, a male, who is a national of the Republic of the Sudan, born on 1 January 1944 in Hoshe Bannaga, Shendi Governorate, in the Sudan, member of the Jaáli tribe of Northern Sudan, President of the Republic of the Sudan since his appointment by the RCC-NS on 16 October 1993 and elected as such successively since 1 April 1996 and whose name is also spelt Omar al-Bashir, Omer Hassan Ahmed El Bashire, Omar al-Bashir, Omar al-Beshir, Omar el-Bashir, Omer Albasheer, Omar Elbashir and Omar Hassan Ahmad el-Béshir.

Done in English, Arabic and French, the English version being authoritative.

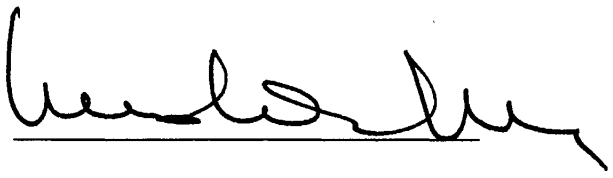


Judge Sylvia Steiner

Presiding Judge



Judge Sanji Mmasenono Monageng



Judge Cuno Tarfusser

Dated this Monday 12 July 2010

At The Hague, The Netherlands