



THE ALLEGED CRIMES IN DARFUR OF OMAR AL BASHIR, PRESIDENT OF SUDAN

The arrest warrants issued by the International Criminal Court (ICC) for Omar Al Bashir, President of Sudan, have elicited a number of responses opposing the ICC's investigation into atrocities committed in Darfur. The recent addition of genocide charges has revived several old arguments including accusations of the ICC being an anti-African court, questions of whether the ICC can legitimately take jurisdiction, and suggestions that the charges should be withdrawn because Bashir is no longer committing atrocity crimes. Each of these arguments relies on misinformation and, therefore, can be rebutted.

However, such arguments are a symptom of a larger problem. They distract from the nature of the alleged crimes that Bashir has been charged with committing in Darfur, Sudan. These atrocities include five counts of crimes against humanity, two counts of war crimes, and three counts of genocide. This paper explores the serious nature of the crimes for which President Bashir has been charged.

Background

The counter-insurgency campaign allegedly led by President Bashir has led to mass atrocities. The conflict began in 2003 when the Sudanese Liberation Army/Movement (SLA/M) and the Justice and Equality Movement (JEM) led a campaign protesting the historical, political, and socio-economic marginalization of the Darfur region.¹ Bashir allegedly used this opportunity to launch a disproportionately large offensive on Darfur that indiscriminately targeted civilians.²

According to the ICC Prosecutor, Bashir effectively controlled the various government-led militias that committed the atrocities. While the government forces and militias actually carried out the atrocities during the counter-insurgency campaign, it is clear they were acting on orders from the government. As President of Sudan and Commander-in-Chief of the Sudanese Armed Forces, Bashir "played an essential role in coordinating... the design and implementation of the Government of Sudan's counter-insurgency campaign in Darfur."³ Bashir controls the government forces, the Janjaweed Militia, and others, which means that he can be held criminally responsible for their crimes.⁴

Crimes Against Humanity

The ICC's definition of crimes against humanity requires not only that a crime against a civilian population be committed, but that it be committed systematically on a mass scale.⁵ Therefore, the ICC's charges against

¹ See Human Rights Watch, *Darfur in Flames: Atrocities in Western Sudan*, April 2004, p. 9, available at <http://www.hrw.org/reports/2004/sudan0404/>.

² See *id.* at p. 13.

³ See International Criminal Court, *Warrant of Arrest for Omar Hassan Ahmed Al Bashir*, pp. 6-7, available at <http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf//>

⁴ See *id.* at p. 6.

⁵ Article 7, Rome Statute of the International Criminal Court.





Bashir of crimes against humanity are, simply put, charges of systematically committing mass murder, extermination, torture, rape, and forcible transfer of populations.⁶

Many of these crimes have been committed in surprise attacks on rural villages populated with civilians. Such attacks, perpetrated by forces supported by the government, have killed an estimated 300,000 individuals and displaced approximately 2.5 million others.⁷ Those who survived the attacks were often victims of inhumane acts such as polluting water sources, burning crops, and stealing livestock, leading to mass starvation in the region.⁸ Many surviving women were raped by militia groups, often in front of their families, by up to fourteen men at a time. Some of them were also raped with objects such as knives, or were branded to permanently stigmatize them.⁹

War Crimes

The ICC has charged Bashir with two counts of war crimes: intentionally directing attacks against civilian populations, and pillaging.¹⁰ The vast majority of attacks in the Darfur region have targeted areas with “no rebel presence or other evident military objective,” suggesting that “the Sudanese armed forces carried out deliberate attacks on civilians and the civilian population.”¹¹

Although these indiscriminate attacks on civilian populations lack any military objective, the looting and destroying of civilian property appear to have been primary objectives. Pillaging was so central to the attacks that many civilians, including women and children, were killed because they tried to protect their possessions.¹² Those who did not protect their property from looting, particularly their livestock, then faced extreme starvation and death.¹³ The systematic pillaging of villages under attack is a grave breach of the Geneva Conventions of 1949, and is considered by the ICC to be a war crime.¹⁴

Genocide

Although the alleged government attacks have been indiscriminate between rebels and civilians, they have been discriminate in targeting certain ethnicities. The Fur, Masalit, and Zaghawa ethnic groups, who identify themselves as “African,” have been especially brutalized by government forces.¹⁵ The crime of genocide, as defined by the ICC, requires that acts be committed systematically on a mass scale, designed to destroy in

⁶ See Warrant of Arrest for Omar Hassan Ahmed Al Bashir at p. 7.

⁷ See Save Darfur, Darfur Update, June 6, 2008, p. 1, available at http://darfur.3cdn.net/46c257b8e3959746d5_ttm6bnau2.pdf.

⁸ See Human Rights Watch, supra note 1, at p. 16.

⁹ See id. at pp. 29-30.

¹⁰ See Warrant of Arrest for Omar Hassan Ahmed Al Bashir, at p. 7.

¹¹ See Human Rights Watch, “They Shot at Us as We Fled”:

Government Attacks on Civilians in West Darfur in February 2008, May 2008, p. 30 available at

<http://www.hrw.org/reports/2008/darfur0508/>.

¹² See Human Rights Watch, supra note 1, at pp. 31-32.

¹³ See id. at p. 31.

¹⁴ Article 8(2)(a), Rome Statute.

¹⁵ See Human Rights Watch, Targeting the Fur: Mass Killings in Darfur, January 21, 2005, p. 3, available at

<http://www.hrw.org/backgrounder/africa/darfur0105/>.





whole or part ethnic or other clearly defined groups.¹⁶ Therefore, the charges against Bashir can be simply stated as the mass killing, seriously injuring, and bringing about conditions designed to cause the death of the Fur, Masalit and Zaghawa ethnic groups.

These particular groups have been identified as rebels because the JEM and SLA/M are largely comprised of Fur, Masalit and Zaghawa individuals. Despite the fact that these ethnic groups are almost entirely civilian, they have been specifically targeted in attacks.¹⁷ Government forces have surrounded villages, singling out Fur, Masalit and Zaghawa individuals, whom they loaded onto trucks and then executed in secluded areas.¹⁸ Many members of these ethnicities were reportedly raped or tortured, or were ordered to rape, torture or kill each other.¹⁹ Those who survived were often stripped of their possessions, as well as access to food, water and shelter. Aid workers estimate that hundreds, and perhaps thousands, of Fur, Masalit and Zaghawa individuals have died as a result of the dire living conditions knowingly imposed on them by government forces.

Conclusion

The crimes President Bashir has been charged with have affected millions in the Darfur region of Sudan. Thousands have died, tens of thousands have been seriously harmed, and millions have been displaced. Crimes like these must be addressed, not forgotten or forgiven, as some proponents have argued. The ICC's case against Bashir is an attempt to address these heinous crimes, and seek justice for their victims. Over time this process of recognition may bring peace to the millions affected and, perhaps, the region of Darfur.

*Researched and drafted by Felicity Conrad
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¹⁶ Article 6, Rome Statute.

¹⁷ See Warrant of Arrest for Omar Hassan Ahmed Al Bashir at p. 5.

¹⁸ See Human Rights Watch, *supra* note 15, at p. 12.

¹⁹ See *id* at pp. 16-17.

