



QUESTIONS & ANSWERS ON THE ICC ARREST WARRANTS IN THE DARFUR INVESTIGATION

What is an arrest warrant?

An arrest warrant is an order issued by the Pre-Trial Chamber that authorizes taking a suspect into custody and surrendering that person to the Court. Upon application by the Prosecutor, the Pre-Trial Chamber can issue a warrant of arrest if it is satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court and that the arrest of the person is necessary to secure his appearance before the Court. An arrest warrant does not represent formal charges against an individual.

What is the purpose of an arrest warrant?

The purpose of an arrest warrant is:

- To ensure the person's appearance at trial;
- To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or
- Where applicable, to prevent the person from continuing with the commission of the alleged crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.

Is the ICC procedure for issuing arrest warrants similar to that of the US justice system?

Yes. The Pre-Trial Chamber of the Court issues the arrest warrants after careful examination of the application and evidence submitted by the Court's Prosecutor. ICC arrest warrants are issued only if there are reasonable grounds to believe that the named person has committed a crime within the jurisdiction of the Court. Similarly, in the US, warrants may be issued by courts only upon a showing of probable cause that a specific crime has been committed and the person named in the warrant committed the alleged crime.

Who are the individuals named in the ICC arrest warrants in the Darfur investigation?

On May 2, 2007, Pre-Trial Chamber I issued arrest warrants for Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of Sudan and current Minister of State of Humanitarian Affairs, and Ali Muhammad Ali Abd-Al-Rahman (also known as Ali Kushayb), a Janjaweed militia leader. Together, these individuals are charged with 51 counts of war crimes and crimes against humanity, including murder, rape, torture, and persecution.

How does the ICC execute its arrest warrants?

The Court does not have its own police force to execute arrests. Therefore, the Court relies on states' cooperation in securing custody of suspects for whom arrest warrants have been issued. After an arrest warrant is issued, the Court submits requests for cooperation for the arrest and surrender of the named suspect to a State Party or non-State Parties as requested by the Court. Generally, the Registrar of the ICC is responsible for transmission of these documents as well as for receiving all responses to the request. Upon receipt of a request for arrest and surrender, States Parties (those states that have ratified the Rome Statute) must cooperate with the Court and immediately take steps to arrest named suspects found in their territories. This duty to cooperate derives from the Rome Statute, which imposes an obligation on State Parties to cooperate with the Court's investigations and prosecutions. In particular, under the Rome Statute, State Parties agree to use their respective national authorities to arrest suspected perpetrators and transfer them to the Court. Additionally, when the Security Council refers cases to the Court, the Security Council has the power to require UN member states,





whether States Parties or non-States Parties to the ICC, to cooperate with the Court in specific situations. Beyond any obligations arising out of the Rome Statute or Security Council Resolutions, state cooperation is reinforced by the political will to address atrocities and egregious violations of international law as well as by individual states' interests in the success of the Court and its prosecutions. Moreover, the national interests of states will frequently induce them to cooperate with the Court in the arrest and transfer of suspects.

What does a request for the arrest and surrender of a suspect typically contain?

A request for arrest and surrender is sent to states accompanied with information describing the person sought, sufficient to identify the person, and information as to that person's probable location; a copy of the arrest warrant; and any documents, statements or information that may be necessary to satisfy the requirements for the particular surrender process in the requested state.

To whom were requests for cooperation sent for the arrest and surrender of Harun and Kushayb?

The Registrar submitted the requests to the competent Sudanese authorities as well as to all States Parties to the Rome Statute, all Security Council members that are not States Parties, and countries neighboring Sudan including Egypt, Eritrea, Ethiopia, and Libya.

Is Sudan a State Party to the ICC?

No. Sudan has not ratified the Rome Statute.

As a non-State Party, is Sudan obligated to cooperate with the Court?

Yes. UN Security Council Resolution 1593, which referred the situation in Darfur to the ICC, requires all parties to the Darfur conflict, including the Government of Sudan, to cooperate with Court. This resolution was adopted under Chapter VII of the UN Charter which authorizes the Council to make recommendations or decisions to maintain and restore international peace and security. Chapter VII resolutions, such as Resolution 1593, are binding on all UN members. Thus, although Sudan is not a State Party to the Court, it has obligation to cooperate with the Court with regard to the Darfur situation.

How has the Government of Sudan responded to the issuance of the ICC arrest warrants?

In response to the ICC's arrest warrants, the Sudanese government suspended its limited cooperation with the Prosecutor and stated that it would not surrender the suspects to the Court. The Government of Sudan has rejected the Court's jurisdiction over the Darfur situation since the Security Council adopted Resolution 1593.

In light of Sudan's refusal to cooperate, what steps can be taken to ensure that the Sudanese government complies with the Court's request for the arrest and surrender of Harun and Kushayb?

The international community could take steps to exert pressure on the government of Sudan to comply with the Court's request. The ICC could report Sudan's failure to cooperate to the UN Security Council, which could then potentially take measures such as sanctions against Sudan. Additionally, individual states could introduce sanctions targeted at the Sudanese government to encourage compliance. Neighboring African countries could also exert diplomatic pressure on Sudan in order to persuade the government to cooperate with the Court. As an alternative to state cooperation, the African Union and United Nations peacekeeping forces in Sudan could potentially be authorized to execute the arrest warrants if the Sudanese government fails to do so.





What generally happens following an arrest?

Once a person is arrested and the Court is informed of the arrest, the Court will ensure that the person receives a copy of the arrest warrant in a language that he fully understands and speaks. The person will be promptly brought before a national court in the state that has executed the arrest. This court must then determine, based on its national laws, that the right person has been arrested, the arrest warrant was properly executed, and the person's rights have been respected. Following this determination, the person will then be transferred to the ICC, where he will appear before the Pre-Trial Chamber and be informed of the charges against him. Within a reasonable time after the suspect's surrender to the Court, the Pre-Trial Chamber will hold a hearing to confirm the charges against the suspect. At least 30 days prior to the hearing, the Prosecutor will provide the suspect with a description of the charges to be brought and a list of the evidence to be presented, allowing the accused and his lawyer to prepare a defense for the hearing. Such a hearing is held in the presence of the Prosecutor and the suspect, as well as his counsel.

How long will the arrest warrants for Harun and Kushayb remain in effect?

The warrants of arrest will remain in effect until otherwise ordered by the Court. As the world's first permanent international criminal court, unlike other temporary international tribunals, the ICC's investigation is not time limited. Thus, its investigation will continue until either the alleged perpetrators are deceased, the Prosecutor's determines that national courts have effectively investigated and prosecuted the alleged perpetrators, or the perpetrators are surrendered to the Court for prosecution. The Security Council also may request that the Court temporarily defer an investigation or prosecution in cases where ICC proceedings may interfere with peacemaking efforts, such as potentially the completion of a peace accord between the rebels in Darfur and the Sudanese government.

Can the arrest warrants issued by the Court for Harun and Kushayb be modified?

The Prosecutor may request the Pre-Trial Chamber to amend the arrest warrant by modifying or adding to the crimes previously included in the warrant. The Pre-Trial Chamber may amend the warrant if it is satisfied that there are reasonable grounds to believe that the person committed crimes other than those in the original warrant.

Could the Court try Harun and Kushayb if they are not apprehended?

No. The Rome Statute prohibits trials in the absence of the accused. However, the Court may hold a confirmation of charges hearing, which is similar to the indictment process in the US, even if the accused is not present. Such a hearing would allow the Prosecutor to present the evidence he had collected against the suspects and potentially help to ensure the arrest and surrender of the suspects.

Under what circumstances could a confirmation of charges hearing be held in the absence of the accused?

Upon the request of the Prosecutor or on its own motion, the Pre-Trial Chamber may hold a hearing in the absence of the accused to confirm the charges against him in situations where he has waived his right to be present, fled or cannot be found, and all reasonable steps have been taken both to secure his appearance before the Court and notify him of the charges and that a hearing to confirm those charges will be held.





Will the Court issue more arrest warrants for other individuals in the Darfur case?

The Court only tries those individuals most responsible for the most serious crimes of concern to the international community. Therefore, due its mandate as well as limited resources, the Court will likely prosecute only a small number of persons who are considered to bear the greatest responsibility for atrocities committed in Darfur. Nevertheless, it is likely that the Prosecutor will eventually build upon the prosecutions of Harun and Kushayb and seek arrest warrants against other individuals for their ultimate responsibility for the atrocities.

What are possible effects of the ICC arrest warrants on the situation in Darfur?

The issuance of arrest warrants may deter the commission of crimes in Darfur by demonstrating that perpetrators of such crimes will be held legally accountable for their actions. Additionally, the work of the Court and the threat of future prosecutions may act to exert additional pressure on the parties of the conflict to negotiate and commit to a peaceful resolution of the conflict in Darfur. The issuance of an arrest warrant for Harun, a sitting government official, will also potentially have the effect of diminishing the perceived legitimacy of the Government of Sudan, especially if it continues its refusal to cooperate with the Court and shields the alleged perpetrators from prosecution. Foreign governments and companies, especially under increasing public pressure, will likely be more hesitant to work with an alleged criminal regime and thus possibly take steps to distance themselves from the Sudanese government, therefore potentially politically and economically isolating the current regime. Thus, the arrest warrants likely could put increased pressure on the Sudanese government to change its current policy towards Darfur. Generally, the identification of two specific suspects and the issuance of arrest warrants represent the first steps towards providing justice to the victims of atrocities in Darfur.

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