



## ***QUESTIONS & ANSWERS ON THE ICC DARFUR INVESTIGATION***

### ***Who are the suspects named in the ICC arrest warrants?***

The arrest warrants issued by the International Criminal Court (ICC) on May 2, 2007, name two individuals: Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb. Ahmad Harun is currently Minister of State for Humanitarian Affairs for the Government of Sudan and former Minister of State for the Interior. Ali Kushayb is a leader of the Janjaweed militia and is also thought to be a key mediator between regional Janjaweed leaders and the Government of Sudan.

### ***What do the ICC arrest warrants charge?***

Ahmad Harun is charged with 20 counts of crimes against humanity and 22 counts of war crimes, including murder, persecution, forcible transfer of population, rape, severe deprivation of liberty and torture. Ali Kushayb is charged with 22 counts of crimes against humanity and 28 counts of war crimes, including murder, persecution, forcible transfer of population, rape, severe deprivation of liberty, torture and inhumane acts of inflicting serious bodily injury and suffering.

### ***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 carefully examining 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, and that the arrest of the person is necessary to secure his or her appearance before 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.

### ***How many people will be prosecuted for atrocities in Darfur?***

Probably only a small number of persons will be prosecuted by the ICC. The Court can only try the very worst criminals for the most atrocious crimes. Limited resources also restrict the number of cases, in part because atrocity crimes require an enormous amount of evidence and lengthy trials.

### ***What evidence has been used in the Court's decision to issue arrest warrants?***

The Office of the Prosecutor has been collecting information and evidence in Darfur since 2003. It has also received more than 2,500 pieces of evidence from the UN international Commission of Inquiry (COI) in April 2005 as well as a list of 51 suspects. The list of suspects was opened and resealed to withhold the information from the public, and it will not restrict the Prosecutor's investigations. Since opening a formal investigation in June 2005, the Office of the Prosecutor has conducted 70 missions to 17 countries, collected 100 formal witness statements and reviewed 8,800 pieces of documentary evidence.

### ***Has the ICC collected evidence inside Darfur?***

No. The Office of the Prosecutor has not been able to conduct investigations in the Darfur region of Sudan, however the Government of Sudan permitted ICC officials to travel to Khartoum on five separate missions to assess the Sudanese legal system.





### ***Sudan is not a party to the ICC. Is it still 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. Shortly following the May 2, 2007 arrest warrants issued by the Court for two high-level suspects of Darfur atrocities, the White House urged the Government of Sudan to cooperate with the ICC.

### ***How does Sudan's refusal to cooperate affect the investigation and current proceedings?***

Sudan's lack of cooperation has not blocked the investigation. The Office of the Prosecutor has already gathered extensive information on crimes perpetrated in Darfur. The Prosecutor would benefit from Sudan's help, especially in collecting evidence in Darfur. However, lack of cooperation would not stop him from collecting further evidence. His team has also investigated in neighboring countries, for example by questioning refugees in Chad. However, the refusal of the Sudanese government to hand over suspects to the ICC will prevent the trial of these individuals. The Court may carry out confirmation of charges (indictment) proceedings in absentia.

### ***What can the Court do about lack of cooperation by the Government of Sudan?***

The ICC could report this failure to the UN Security Council. The Security Council could in turn take measures such as sanctions against Sudan.

### ***Has the ICC been able to collect enough evidence without US cooperation?***

Yes. The Court has managed to collect evidence and carry out proceedings in Darfur independently. However, US cooperation would facilitate the Court's work and help it achieve results expediently. US intelligence agencies have likely collected evidence of crimes committed in Darfur due to their advanced resources.

### ***Does US law prohibit cooperation with the ICC?***

No. The 2002 American Servicemembers' Protection Act (ASPA) restricts, but does not prohibit, cooperation with the Court. Section 2015 (known as the "Dodd amendment") states that "[n]othing [...] shall prohibit the US from rendering assistance to international efforts to bring to justice [...] foreign nationals accused of genocide, war crimes or crimes against humanity." This provision clearly applies to the Darfur situation.

### ***Will the US cooperate with the ICC?***

Though the United States did not support the UN Security Council's referral of the case of Darfur to the ICC, the US recognized the necessity of international consensus on Darfur and abstained on the resolution. In addition, international and domestic pressure for US cooperation with the ICC is growing. A public opinion poll in June of 2005 showed that 91% of Americans think that the US should cooperate with the ICC to bring to justice perpetrators of crimes committed in Darfur. The US Department of State has also established an official channel of communication with the ICC Prosecutor for the purpose of assisting in the Darfur investigation.





***What would happen if the Sudanese government claimed jurisdiction over the ICC cases?***

The ICC judges would have to allow Sudan to take the case if Sudan is willing and able to genuinely carry out proceedings. The judges would base their decision on evidence presented by both Sudan and the Prosecutor. If Sudan were to make such a formal claim, it would expose itself to a thorough analysis of its judicial system which some observers have characterized as inadequate and corrupt.

***What role will the Sudanese special court for Darfur play?***

If an established Sudanese special court were fair and honest, it could complement the ICC's efforts. It would not take over cases from the ICC, but could continue with its present plan of trying some of the many lower-level offenders who do not fall under the ICC's jurisdiction.

***What would happen if the Sudanese government refuses to hand over those responsible for the crimes?***

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 would happen if it became clear that ICC investigations might worsen the conflict or damage the peace process?***

The Prosecutor has the power to suspend investigations if he concludes that this would serve the interests of justice. Such a decision could be reviewed by the Pre-Trial Chamber either at its own initiative or at the request of the Security Council. The Prosecutor could later resume the investigation, once the peace process is more advanced, the security situation is more stable and the victims and witnesses are more prepared to provide information and testify in trials.

***Why does the Prosecutor appear before the Security Council?***

When it referred the Darfur situation to the ICC, the UN Security Council invited the Prosecutor to report on the progress of the investigation every six months. This was an invitation, not an order, because the Security Council can only give orders to UN member states, not to other international organizations or individuals.

***If the Security Council does not oversee the Prosecutor's actions, does any other organization or body do so?***

The Pre-Trial Chamber balances the Prosecutor's authority during investigations. While the Office of the Prosecutor is an independent entity within the ICC, and the Prosecutor can and should make independent and impartial decisions, the Prosecutor's powers are limited by the Rome Statute and his actions are overseen by the Pre-Trial Chamber. The Pre-Trial Chamber reviews the status of his investigations periodically as well as some of his decisions, and the Prosecutor must have its authorization for some steps during the investigation. Moreover, his actions can be reviewed by the Assembly of States Parties, which hired and can fire him.





***Will the Security Council refer future situations to the ICC?***

Darfur is the first case the Security Council has referred to the ICC. As such, it is an important precedent. If the ICC succeeds in its pursuit of justice in Darfur, the Security Council will feel confident to refer future cases of atrocity crimes.

*Researched and drafted by Gideon Copple  
Original Q&A by Mariana Pena  
Updated June 6, 2007*

