

**Forum:** International Criminal Court

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

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**Position:** President & Vice President

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## **Introduction:**

The defendant, Omar Al-Bashir, is currently under custody, awaiting trial at the International Criminal Court (ICC). His first warrant of arrest was issued on 4 March 2009, on the grounds of his individual criminal responsibility as an indirect co-perpetrator, which include five counts of crimes against humanity: murder, extermination, forcible transfer, torture, and rape; two counts of war crimes: intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities, and pillaging, as well as three counts of genocide: genocide by killing, genocide by causing serious bodily or mental harm, and genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction. Omar Al-Bashir was born 1st January 1966 in Hosh Bannaga, a village outside of Shendi in North Khartoum, Sudan. Shortly after finishing his secondary school, Bashir enrolled into a military academy in Egypt from 1966 and a second in Khartoum in 1972. After returning to Sudan, he quickly rose through the ranks, eventually becoming a colonel in the army there. Through his position as President of the Republic of Sudan, Bashir was an enabling factor of the crimes listed above, and his participation in coordinating the design and implementation of counter-insurgency campaigns against opposition groups to the government also implicate him in the above offenses.

## **Definition of Key Terms:**

- 1. Crimes Against Humanity:** Acts committed as part of a widespread or systematic attack directed against any civilian population, such as murder, deportation, torture and rape (as defined by the ICC).
- 2. War Crimes:** Violations of international humanitarian law (treaty or customary law) that incur individual criminal responsibility under international law (Note:

war crimes must always take place in the context of an armed conflict, either international or non-international).

3. **Indirect Co-Perpetrator:** An indirect co-perpetrator refers to an individual who, even though not directly participating in the actual criminal act, can be held criminally responsible for the act and its consequences. This responsibility arises from their knowledge of the attack, assistance provided to those involved, or even giving orders to carry out the crime.
4. **Rome Statute:** The Rome Statute is the treaty that established the International Criminal Court. It sets out the crimes under the jurisdiction of the ICC, the rules of procedure, and the mechanisms for States to cooperate with the ICC.
5. **Rebel Groups/Insurgent Groups:** Armed groups or movements that are opposing the current administration and working to achieve particular political goals. Usually causes a lot of collateral damage. In this instance, rebel groups have a significant impact on the political landscape in Sudan.
6. **Genocide:** The planned, systematic elimination of an entire ethnic, racial, or religious group with the intention of eradicating them from existence.
7. **Autocracy:** A system of governance in which a single leader has unrestricted, total power and frequently no democratic checks and balances.

## Background Information

### History of the defendant

Omar Al-Bashir was born in 1944 in Hosh Bannaga, a village on the outskirts of Shendi, North Khartoum, Sudan. Bashir joined the military shortly after completing his secondary education at a military academy in Egypt in 1960 as well as another military academy in Khartoum in 1966. He fought with the Egyptian army against Israel in the 1973 Yom Kippur War (Sudan and Egypt were formally united at that point, known as the Kingdom of Egypt and Sudan until independence in 1955). After returning to Sudan, he quickly rose through the ranks, becoming a colonel in the Sudanese army. This made Bashir well-positioned to lead a coup d'état against the government under Prime Minister Sadiq al-Mahdi on June 30, 1989.

### **Sudanese Civil War and Coup**

The Second Sudanese Civil War began in 1983, fought between the North and South of the country, lasting for 22 years, and becoming the longest civil war on record. It was triggered when the government in Khartoum (under Jaafar Nimeiry) imposed Islamic law on the entire country, including the non-Muslim south. Rebel groups, such as the Sudan People's Liberation Army (SPLA), emerged to fight against the government forces. Roughly 2 million people died as a result of war, famine, and disease caused by the conflict. 4 million people in southern Sudan were displaced at least once (and often repeatedly) during the war.

In 1989, tensions proved to be too much for the unstable government, and its Prime Minister, Sadiq al-Mahdi, was ousted in a coup led by Omar Al-Bashir. He was appointed chairman of the Revolutionary Command Centre for National Salvation (RCCNS), a "transitional" government that had legislative and executive powers. Subsequently, he allied with Hassan al-Turabi, the head of the National Islamic Front, and together they began a process of instituting Sharia (Islamic Law) and abolished political parties in 1990.

### **The situation in Sudan post-1993**

In 1993, Bashir abolished the RCCNS and appointed himself President of Sudan. Not too soon after, in 1999, he sent troops against Parliament and ousted Hassan Al-Turabi who had grown increasingly close to Hezbollah and al-Qaeda, and who Bashir had believed was plotting against him.

In August 2003, ethnically African rebel groups in Darfur launched an attack on Bashir's government, claiming unfair treatment - the attacks were rooted in the belief that the government was neglecting Darfur and in objection to the government's preference for hiring ethnic Arabs as top government officials. In order to combat the uprising in Darfur, Bashir allegedly enlisted the services of the Arab militia (nomads from the North) known as the Janjaweed as part of a plan to systematically target civilians of several ethnic groups. The Janjaweed's brutal methods included pillaging, rape, and murder. However, the Sudanese government maintains that the Janjaweed acted independently and without government support.

The United Nations Security Council referred the Darfur case to the ICC in 2005, giving them the mandate to investigate. In July 2008, Luis Moreno-Ocampo, the ICC

prosecutor, asked for an arrest warrant to be issued for Bashir, accusing him of genocide, crimes against humanity, and war crimes in Darfur.

## **Established Dates and Events**

### **1983:**

The Second Sudanese Civil War begins, and there are increased tensions in the country as the North and South are divided. The war continues on for several years, leading to a coup.

### **June 1989:**

Omar Al-Bashir leads a coup against the current government under Sadiq al-Mahdi. Bashir was appointed chairman of the RCCNS.

### **1993:**

Bashir dissolves the RCCNS and increases his power by assuming the position of President of Sudan.

### **December 2003:**

The conflict in Darfur begins when rebel groups launch an attack against Bashir's government. The Janjaweed militia become involved and committed acts of terror against civilians.

### **2005:**

The International Commission of Inquiry on Darfur reported to the UN in January of 2005. Using its authority under the Rome Statute, the UNSC referred the case to the ICC Prosecutor in resolution 1593 on 31 March 2005.

### **May 2007:**

In order to advance peace, safeguard civilians, and stabilize the situation in Darfur, the United Nations Security Council has authorized the formation and deployment of the United Nations-African Union Hybrid Operation in Darfur (UNAMID).

### **May 2008:**

The ICC Chief Prosecutor, Luis Moreno-Ocampo, visits Darfur to gather evidence and investigate the crimes committed in the region.

**July, 2008**

Omar Al-Bashir was the subject of a warrant of arrest request by the ICC Prosecutor.

**March 4, 2009:**

President Omar al-Bashir is on the receiving end of the first arrest warrant against a president issued by the International Criminal Court. He is charged with war crimes and crimes relating to humanitarian crises.

**July 12, 2010:**

An extra charge of genocide is included in the second arrest warrant issued by the ICC against President Omar al-Bashir.

**October 2010:**

The African Union (AU) adopts a resolution that is put in place by the ICC which encourages its members to not assist in aiding with the arrest of President al-Bashir's, contending that doing so would jeopardize Sudan's peace process.

**October 2017:**

The Trump administration's decision to partially waive economic sanctions against Sudan was justified by enhanced counterterrorism cooperation and more humanitarian access to the country.

**April 11, 2019:**

After numerous months of public protests, Sudan's military removes President Omar al-Bashir from the office. He is then taken into Sudanese custody and arrested.

**August 2020:**

The Sudanese government accepts the creation of a special dedicated court to hear cases that involve the atrocities committed in Darfur, these would include the terrors caused by al-Bashir.

## **Major Parties Involved and Their Views**

### **The International Criminal Court**

The UNSC referred the Darfur case to the ICC on the basis of an International Commission of Inquiry reporting that crimes against humanity and war crimes had been committed in Darfur. The ICC Prosecutor received the conclusions from the International Commission of Inquiry on Darfur and reviewed information from a variety of sources, which resulted in the collation of thousands of documents relating to the case - this was enough to satisfy the requirements for starting an investigation and the Prosecutor decided to open the investigation on 6 June 2005.

- Notable Actions:

Omar al-Bashir was the first sitting head of state to be charged with war crimes, crimes against humanity, and genocide when the ICC issued arrest warrants for him.

Despite difficulties in apprehending suspects and little assistance from the Sudanese government, the ICC is making an effort to bring people accountable for atrocities in Sudan and South Sudan.

### **Sudanese government**

Sudan has faced massive instability over the years, suffering through multiple coup d'etat attempts and civil war, to mention a few. The government's policies and actions were characterized by authoritarian rule, the implementation of Islamic law, and a response to various rebel groups. Sudan signed the Rome Statute in 2000 but has not yet ratified it. Thus, Sudan is not a State Party to the International Criminal Court. The government is legally obligated to turn Bashir over into custody, but Khartoum had initially not complied with the ICC. However, in 2021, the Sudanese government claimed that they would hand over Bashir to the ICC along with other officials wanted over the Darfur conflict.

- Notable Actions:

An authoritarian government with Islamist political views was established as a result of Al-Bashir's successful coup in 1989.

Implementing Islamic law has only increased tensions with non-Muslim groups and contributed to Sudan's North-South division.

military assaults by the government against rebel groups and counterinsurgency operations, particularly in areas like Darfur, South Sudan, and the Nuba Mountains.

### **Sudan People's Liberation Movement/Army (SPLM/A):**

Description:

In South Sudan, the Sudan People's Liberation Movement/Army (SPLM/A) was a notable rebel organization that fought for the rights and autonomy of underprivileged groups. The SPLM/A was established in 1983 under the direction of John Garang with the goal of putting an end to the South's political and economic marginalization as well as to address complaints about unfair representation and resource distribution.

- Notable Actions:

In 1983, due to armed conflict with the SPLM/A, the second Sudanese civil war broke out. The SPLM/A and the country's government were in war. Millions of people were displaced and hundreds of thousands died during the war. The civil war continued until 2005.

Comprehensive Peace Agreement (CPA): The SPLM/A and the Sudanese government held peace talks, which resulted in the signing of the CPA in 2005. The CPA made it possible for the civil war to cease, gave the South autonomy, and finally resulted in South Sudan's independence in 2011.

South Sudan's independence: After the 2011 referendum, in which a resounding majority of people chose to secede, the SPLM/A was instrumental in helping South Sudan become an independent country.

### **Sudan Liberation Movement/Army (SLM/A):**

Description:

A prominent rebel organization participating in the Darfur crisis was the Sudan Liberation Movement/Army (SLM/A). The SLM/A was established in the early 2000s with the goal of addressing the non-Arab groups of Darfur's socioeconomic and political marginalization.

- Notable Actions:

In 2003, the SLM/A began an armed uprising against the Sudanese government, accusing it of ignoring and undervaluing the people of Darfur. Large-scale displacement and humanitarian concerns brought forth by the conflict drew attention and concern from throughout the world.

Participation in Peace Negotiations: In an effort to end the Darfur war peacefully, the SLM/A took part in peace negotiations with the Sudanese government and other rebel organizations. However, the likelihood of a thorough peace agreement was hampered by differences between various factions and the government.

### **Justice and Equality Movement (JEM):**

Description:

One of the well-known rebel organizations associated with the 2003 Darfur conflict was the Justice and Equality Movement (JEM). JEM's main objective was to campaign for fair political representation and resource access while addressing the marginalization of Darfur's non-Arab inhabitants.

- Notable Actions:

JEM started a rebellion in Darfur during 2003, which led to an armed war with the Sudanese government. Human rights violations, such as massacres, forced displacement, and sexual assault, were pervasive during the conflict.

JEM took part in several rounds of peace negotiations with the Sudanese government and other rebel groups in an effort to deal with the underlying causes of the Darfur war. The Darfur Peace Agreement was initially refused to be signed by several significant rebel factions, notably JEM, indicating the difficulty in finding a comprehensive solution.

Over the years, JEM officials participated in national and international peacekeeping initiatives.



## UN Involvement, Relevant Resolutions, Treaties and Events

- UN Sanctions on Sudan - 1993 and 1997:

The United States classified Sudan as a country that sponsors terrorism in 1993. The US put in place many economic sanctions in 1997 which were placed to pressure Sudan to fix its internal issues. These sanctions impacted Sudan's economy on an astronomical level and worsened foreign relations between Sudan and the rest of the world.

- Addis Ababa Agreement - 1972:

The Addis Ababa Agreement gave South Sudan autonomy and played a key role in addressing the issues regarding marginalization. It was the marker of the end of the first Sudanese civil war. The second civil war began due to this agreement being revoked in 1983.

- Sudan Peace Act - 2002:

The Sudan Peace Act, passed by the US Congress, aims to propel peace efforts in Sudan and encourage an appropriate and effective solution to avoid civil wars. The measure supported peace efforts while imposing sanctions on Sudan. Although the action showed that the world community was committed to resolving Sudan's issues, it was belittled in terms of its actual impact on achieving peace.

- United Nations Mission in Sudan (UNMIS) - 2005:

The Comprehensive Peace Agreement (CPA), signed in 2005 by the Sudanese government and the Sudan People's Liberation Movement/Army (SPLM/A), was supported by UNMIS (created by the UN Security Council). The objective was to oversee and assist with implementing the peace accord, which ended the second Sudanese civil war and helped South Sudan to gain independence in 2011. While UNMIS was essential in keeping decorum during the interim period, it was unsuccessful in ensuring the limitation of new wars and new conflicts.

- UN Security Council Resolution 1593 - 2005:

Adopted by the UN Security Council, this resolution moved the conflict in Darfur into the hands of the ICC. It gave the ICC Prosecutor permission to look into the Darfur genocide, humanitarian crimes, and war crimes. The resolution played a significant role in bringing those accountable for crimes into the open, resulting in the issuing of arrest warrants for many officials, including President Omar al-Bashir. The lack of cooperation

between Sudan and other neighboring states proved to make it very hard for these warrants to be executed.

- Comprehensive Peace Agreement (CPA) - 2005:

The CPA, which put an end to the Second Sudanese civil war and established a framework for dividing authority and resources between the North and South, was a historic agreement between the Sudanese government and the SPLM/A. South Sudan gained its independence in 2011 as a result of the CPA's successful implementation. However, as new issues surfaced shortly, the agreement's usefulness in averting new conflicts and guaranteeing enduring peace was challenged.

- Darfur Peace Agreement (DPA) - 2006:

the DPA sought to end the Darfur crisis by addressing concerns of wealth-sharing, power-sharing, and the integration of rebel factions into the government. However, the DPA's ability to bring about peace in Darfur was hampered by the refusal of signage by a number of major rebel organizations. As a result, the violence continued.

- United Nations-African Union Hybrid Operation in Darfur (UNAMID) - 2007:

UNAMID was authorized to intervene with matters concerning the Darfur humanitarian situation. The objectives were to safeguard civilians, advance human rights, and aid in peace talks between the Darfur rebels and the Sudanese government. UNAMID, however, had major issues in entering battle zones completely and effectively safeguarding people. Bringing about a long-lasting conclusion to the Darfur crisis is still up for question, even after its end on December 31, 2020.

- Comprehensive Peace Agreement (CPA) of South Sudan - 2011:

South Sudan held a vote in 2011 after the CPA came into effect, and an overwhelming majority of people chose independence. On the ninth of July in 2011, the CPA of South Sudan officially declared South Sudan an independent country. The agreement's success was extremely effective as it provided South Sudan its first peaceful path to freedom. Nevertheless, as all treaties regarding this situation tend toward, problems with the government, internal strife, and regional quarrels tagged along.

## **Possible Arguments for the Prosecution**

**Genocide Charges:** The prosecution could state that Omar al-Bashir bears the responsibility for all the heinous acts of orchestrating and overseeing a campaign that led to genocide in the Darfur region. As he is the president it was under his watch that non-Arab ethnic groups were targeted and killed causing massive humanitarian displacement and the desolation of many tight-knit communities.

**War Crimes:** The prosecution could provide evidence of the several alleged war crimes committed by al-Bashir. These could include the recorded conduct of torture, the unnecessary killing of political party leaders, and civilian casualties during the conflict in Darfur. Other military operations that violated international treaties could be noted.

**Crimes Against Humanity:** It could be argued by the prosecution that al-Bashir's government was presently active in large-scale attacks on civilians. Many leading to murder, rape, and other inhumane forms of torture. During the civil wars in Sudan and the Darfur conflict, the presence of al-Bashir and his silence regarding these acts could justify the thought that he had been orchestrating and endorsing such inhumane violations of human rights.

**Command Responsibility:** As al-Bashir holds the highest authority in Sudan, being the President of Sudan comes with the accountability and responsibility of owning up to the nation's wrongdoings. He should be held accountable for the crimes committed by the military and the security forces of Sudan as they were under his watch.

**State Sponsorship of Janjaweed:** The endorsement and hiring of insurgent groups such as the Janjaweed could provide the prosecution with enough evidence to suggest that supporting such groups—providing weapons, supplies, and sustenance—and hence indirectly being to the sole cause of the violence that such groups displayed, would imply that al-Bashir should be prosecuted for these actions.

**Social Media Influence:** Social media can most definitely shape the minds of many people, especially young military personnel. The prosecution might argue that al-Bashir utilized social media as a form of propaganda to instigate violence and prejudice against specific non-Arab ethnicities. This contributed to the escalated conflict.

**Economic Crimes:** The prosecution could bring light to the fact that multiple stockpiles of cash were found in al-Bashir's office once indicted and removed from office. This would sign to corruption and funds being diverted away from essential humanitarian aid.

## **Possible Arguments for the Defense**

**Lack of Direct Involvement:** The defense could certainly argue that as Omar al-Bashir did not personally engage in any of his alleged war and humanitarian crimes, there is a strong need to directly connect him to specific actions, or else the arguments raised are based on un-backed claims.

**Sovereign Immunity:** The defense could bring light to the fact that as he was a current head of state at the time of these alleged crimes, al-Bashir is entitled to immunity from prosecution under international law. This would be a big part of the defendants' case as it would be very hard for the prosecution to overlook their own international law which provides legal protection to al-Bashir.

**Self-defense:** The defense could present an argument where they state that the actions committed by al-Bashir were a mere response to the activities conducted by insurgent rebel groups. They could state these were necessary precautions to be taken, hence justifying the use of force to maintain order within the country. The defendants could state that it is of utmost importance that a head of state looks after the security of their country by making sure rebel groups are disposed of.

**Insufficient Evidence:** Challenging the credibility and reliability of any of the evidence presented by the prosecution could be a winning strategy for the defendants. They could question the validity of the witness testimonies and the layer to which the documents of proof are valid to make a just verdict in the case.

**Political Context:** The defense could bring light to the fact that civil wars are complicated and no one party is to be blamed for the internal conflicts of a nation. These multifaceted wars would make it challenging to determine which party of people were in fact the root cause of these war crimes and humanitarian crimes, thus leading to a conclusion that al-Bashir can not simply be blamed for this complex issue.

**Humanitarian Aid Dilemma:** The defense could present evidence that the government's restrictions on humanitarian aid were a result of legitimate security concerns. As it was hard to ensure this aid would reach the correct locations without being compromised by any one of the many rebel and insurgent groups. Thus providing this aid would have caused more negative effects as money would be taken away from tactical military operations aimed to immobilize rebel groups.

## Useful Links

- [https://www.icc-cpi.int/case-records?f%5B0%5D=cr\\_case\\_code%3A1172](https://www.icc-cpi.int/case-records?f%5B0%5D=cr_case_code%3A1172) - Court records on the case of The Prosecutor v. Omar Hassan Ahmad Al Bashir, including arrest warrants and charges
- <https://www.coalitionfortheicc.org/cases/omar-albashir> - Summary of the history of the case
- <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/AlBashirEng.pdf> - Case information sheet
- <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> - The Rome Statute

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- <https://www.icc-cpi.int/sites/default/files/CaseInformationSheets/AlBashirEng.pdf>
- <https://www.coalitionfortheicc.org/cases/omar-albashir>
- <https://www.aljazeera.com/news/2009/3/18/profile-omar-al-bashir#:~:text=He%20rose%20through%20the%20ranks,of%20an%20armoured%20parachute%20brigade.>
- <https://www.britannica.com/biography/Omar-Hassan-Ahmad-al-Bashir>
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- <https://www.aljazeera.com/news/2021/8/12/sudan-omar-al-bashir-icc-war-crimes-darfur>
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