



**Coalition for the International Criminal Court**  
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MEDIA ADVISORY

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**ICC OVERTURNS DECISION TO EXCLUDE GENOCIDE CHARGES  
IN AL-BASHIR ARREST WARRANT**

*Despite Historical Appeals Ruling, Al-Bashir Remains Fugitive of Justice*

**WHAT:** On 3 February 2010, the Appeals Chamber of the International Criminal Court (ICC) accepted the prosecutor's appeal against the decision of Pre-Trial Chamber I not to include the crime of genocide in the arrest warrant against President Bashir of Sudan, pointing to an error in law. The Appeals Chamber unanimously reversed ICC Pre-Trial Chamber I's decision of March 2009, on the grounds that it applied an erroneous standard of proof. The Appeals Chamber directed the Pre-Trial Chamber to decide anew whether a warrant of arrest should be extended to cover the crime of genocide based on the correct standard of proof. Judges insisted that their decision was a decision of procedural law and not a ruling on Al-Bashir's responsibility for the crime of genocide.

**WHY:** On 14 July 2008, ICC Prosecutor asked the Court to authorize an arrest warrant for three charges: war crimes, crimes against humanity and genocide. On 4 March 2009, the Court agreed to issue an arrest warrant for war crimes and crimes against humanity but rejected genocide counts because the majority of the chamber found that the material submitted by the Prosecutor failed to provide reasonable grounds to establish that President Al-Bashir had genocidal intent. This decision was appealed by the Prosecutor on 6 July 2009. In this appeal the Prosecutor submitted that the Pre-Trial Chamber applied the wrong standard of proof when requiring that the ONLY reasonable conclusion to be drawn for the evidence is the existence of reasonable grounds to believe that the person has committed genocide. The Appeals Chamber allowed eight victims to present submissions. The Sudan Workers Trade Unions Federation and the Sudan International Defence Group were also granted authorized to file amicus curiae briefs.

**WHO:** Hassan Ahmad Al-Bashir has been the president of Sudan since 1993. He is suspected of crimes against humanity and war crimes allegedly committed in Darfur in the past five years. The warrant of arrest for Al-Bashir is the first ever issued for a sitting head of state by the ICC.

**COMMENTS:** "Today's ruling is hugely significant as it could lead to the inclusion of charges of genocide by ICC Judges for a sitting head of state and for the first time in the history of the Court," explained William R. Pace, Convenor of the Coalition for

the ICC – a civil society network in 150 countries advocating for a fair, effective and independent ICC and improved access to justice for victims of genocide, war crimes and crimes against humanity. “However as we speak, President Al-Bashir is still evading arrest, despite the charges against him and Sudan’s obligation to arrest and surrender him,” Pace added. “We urge the Sudanese government, ICC states parties, other governments and international organizations to do their utmost to ensure that Al-Bashir faces justice without delay.”

“The pursuit of justice is extremely crucial for the survival of our hope as Darfuri people, said Niemat Ahmadi, Darfuri Liaison Officer with the Save Darfur Coalition. “It strikes me that many leaders of the world community have repeatedly said ‘never again,’ but sadly have failed to fulfill this commitment, instead allowing the first genocide of the 21st century to continue for more than six years,” she added. “Today’s announcement makes me confident that the ICC will help uphold this promise. The ICC’s commitment to justice has set a great example for the rest of the international community to follow.”

**BACKGROUND:** The investigation into the situation in Darfur, Sudan was officially opened by the ICC prosecutor on 6 June 2005 after a referral to the Court by the United Nations Security Council through Resolution 1593 on 31 March 2005. Since the referral, three public arrest warrants have been issued in the Darfur investigation against Ahmad Muhammad Harun, Ali Kushayb and Omar Hassan Ahmad Al-Bashir. None of the three outstanding arrest warrants have been executed as the Sudanese government has openly defied and consistently refused to cooperate with the Court and the international community. A summons to appear was also issued for Bahr Idriss Abu Garda, who first appeared in Court on 18 May 2009. A decision is still pending on whether or not to send his case to trial.

The ICC is the first permanent international court capable of trying individuals accused of war crimes, crimes against humanity and genocide. To date, it has publicly issued twelve arrest warrants and one summons to appear for investigations in four situations: the Central African Republic; Darfur, Sudan; Uganda; and the Democratic Republic of Congo. Four suspects are currently in custody. The ICC Office of the Prosecutor has allegedly analyzed or is analyzing at least nine other situations on four continents.

**FOR ADDITIONAL INFORMATION:** Please visit the Coalition’s website at <http://www.coalitionfortheicc.org/?mod=darfur> and participate in our blog “*In Situ: See justice through the eyes of civil society*” at [www.coalitionfortheicc.org/blog](http://www.coalitionfortheicc.org/blog)

Experts from international and Sudanese human rights organizations are listed on the following pages for comment and background on this hearing.

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***Important notice:** The Coalition for the International Criminal Court (CICC) is a civil society network in 150 countries advocating for a fair, effective and independent ICC and improved access to justice for victims of genocide, war crimes and crimes against humanity. The Coalition as a whole, and its secretariat, does not endorse or promote specific investigations or prosecutions or take a position on situations before the ICC. However, individual CICC members may endorse referrals, provide legal and other support on investigations, or develop partnerships with local and other organizations in the course of their efforts.*

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