

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-02/05-01/09

Date: 12 July 2010

PRE-TRIAL CHAMBER I

Before: Judge Sylvia Steiner, Presiding Judge
Judge Sanji Mmasenono Monageng
Judge Cuno Tarfusser

SITUATION IN DARFUR, SUDAN

THE PROSECUTOR V. OMAR HASSAN AHMAD AL BASHIR

Public Document

**Second Decision on the Prosecution's Application for a Warrant of
Arrest**

Document to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:

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Other

PRE-TRIAL CHAMBER I of the International Criminal Court (“Chamber” and “Court” respectively);

NOTING the “Prosecutor’s Application under Article 58”¹ (“Prosecution’s Application”) regarding the request for a warrant of arrest against Omar Hassan Ahmad Al Bashir (“Omar Al Bashir” or “Al Bashir”) for his alleged criminal responsibility under the Rome Statute (“Statute”) for crimes of genocide under article 6(a), (b) and (c); for crimes against humanity under article 7(1)(a), (b), (d), (f) and (g); and for war crimes under article 8(2)(e)(i) and (v), filed by the Prosecution on 14 July 2008, and the supporting and additional information submitted thereafter;²

NOTING the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”³ (“First Decision”) issued on 4 March 2009, in which:

(i) the Chamber decided to issue a warrant of arrest against Omar Al Bashir for his alleged responsibility under article 25(3)(a) of the Statute for the crimes against humanity and war crimes alleged by the Prosecution;⁴ and

(ii) the Majority of the Chamber (“Majority”) decided not to include the counts of genocide listed in the Prosecution’s Application—genocide by killing (count 1); genocide by causing serious bodily or mental harm (count 2); and genocide by deliberately inflicting conditions of life

¹ ICC-02/05-157-AnxA.

² ICC-02/05-160 and ICC-02/05-160-Conf-Exp-AnxI; ICC-02/05-161 and ICC-02/05-161-Conf-AnxA-J.

³ ICC-02/05-01/09-3.

⁴ ICC-02/05-01/09-3, page 92.

calculated to bring about the group's physical destruction (count 3)—among the crimes with respect to which the warrant of arrest was issued;

NOTING the "Prosecution's Application for Leave to Appeal the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir'"⁵ filed by the Prosecution on 10 March 2009, pursuant to article 82(1)(d) of the Statute;

NOTING the "Decision on the Prosecutor's Application for Leave to Appeal the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir'" issued on 24 June 2009, in which the Chamber granted the Prosecution's Application for Leave to Appeal with respect to one of the issues raised;⁶

NOTING the "Judgment on the Appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir'" ("Appeals Decision") dated 3 February 2010;⁷

NOTING the "Prosecution's Request for an *ex parte* Hearing"⁸ filed on 24 February 2010, whereby the Prosecution requested that an *ex parte* hearing

⁵ ICC-02/05-01/09-12.

⁶ ICC-02/05-01/09-21, pages 6-8. The only issue for which the Chamber granted the leave to appeal reads as follows: "Whether the correct standard of proof in the context of Article 58 requires that the only reasonable conclusion to be drawn from the evidence is the existence of reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court".

⁷ ICC-02/05-01/09-73.

⁸ ICC-02/05-01/09-74.

be held in order for the Prosecution to obtain the Chamber's guidance in relation to the Prosecution's intention to file additional information;

NOTING the "Application of Legal Representatives of Victims a/0011/06, a/0012/06, a/0013/06 and a/0015/06 to Participate in and Submit Observations on the Proceedings on Remand In Connection with the Application for a Warrant for the Arrest of Omar Hassan Ahmad al-Bashir"⁹ filed on 10 March 2010, whereby those victims sought leave to submit their views and concerns or, in the alternative, observations in the proceedings, and the subsequent "Réponse de la Défense à la procédure intitulée : «Application of Legal Representatives of Victims a/0011/06, a/0012/06, a/0013/06 and a/0015/06 to Participate in and Submit Observations on the Proceedings on Remand In Connection with the Application for a Warrant for the Arrest of Omar Hassan Ahmad al-Bashir»"¹⁰ filed on 6 April 2010 by Ad-Hoc Counsel for the Defense,¹¹ wherein it was submitted that the participation of the victims in the current proceedings would cause prejudice to the rights of the suspect, as he has no right to present evidence at this stage;

NOTING the "Victims' Application for Participation in the Proceedings arising out of the Appeal Judgment of 3 February 2010 (ICC-02/05-01/09/73)"¹² filed on 24 March 2010, whereby Victims a/0443/09, a/0444/09, a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09 and a/0450/09 sought leave to present further written or oral submissions relevant to the

⁹ ICC-02/05-01/09-75.

¹⁰ ICC-02/05-01/09-80.

¹¹ Ad hoc counsel for the Defense appointed by the Chamber to represent and protect the interests of the Defence within the context and for the purposes of victims' applications for participation in the present case (see ICC-02/05-01/09-38 and ICC-02/05-01/09-50).

genocidal intent and the subsequent “Réponse de la Défense à la procédure intitulée: «Victims’ Application for Participation in the Proceedings arising out of the Appeal Judgment of 3 February 2010 (ICC-02/05-01/09-73) »”¹³ filed on 13 April 2010, whereby the Ad-Hoc Counsel for the Defense reiterated that victims’ participation in the current proceedings would cause prejudice to the rights of the suspect;

NOTING the “Application under Rule 103 to Participate in the Proceedings before the Pre-Trial Chamber concerning the Prosecutor’s Application to Add Genocide Charges”¹⁴ filed on 15 June 2010, whereby the Sudan Workers Trade Unions Federation and the Sudan International Defence Group sought leave under Rule 103 of the Rules to submit further observations as *amici curiae*;

NOTING the “Requête de la Conseil ad hoc de la Défense pour permission de répondre à la procédure intitulée : « Application under Rule 103 to Participate in the Proceedings before the Pre-Trial Chamber concerning the Prosecutor’s Application to Add Genocide Charges »”¹⁵ filed on 1 July 2010, whereby the Ad-Hoc Counsel for the Defence seeks leave to respond to the application under Rule 103, made by the Sudan Workers Trade Unions Federation and the Sudan International Defence Group;

¹² ICC-02/05-01/09-77.

¹³ ICC-02/05-01/09-80.

¹⁴ ICC-02/05-01/09-88.

¹⁵ ICC-02/05-01/09-92.

NOTING articles 6(a), 6 (b) and 6 (c) of the Statute and the Elements of Crimes, articles 25, 58, 86, 87, 89 and 91 of the Statute and rules 176(2) and 187 of the Rules of Procedure and Evidence (“Rules”);

HEREBY RENDERS THIS DECISION

1. It must be established at the outset that the key findings of the Appeals Decision are binding on the Chamber in this case and determine the scope of the present decision. The Appeals Chamber reversed the First Decision to the extent that the Chamber “decided not to issue a warrant of arrest in respect of the crime of genocide in view of an erroneous standard of proof(...)”.¹⁶ In particular, the Appeals Chamber held that the Chamber had acted erroneously in rejecting the application for a warrant of arrest in relation to the counts of genocide on the basis that the existence of genocidal intent of the suspect was “only one of several reasonable conclusions available on the materials provided by the Prosecution(...)”.¹⁷ In the view of the Appeals Chamber, “requiring that the existence of genocidal intent must be the *only* reasonable conclusion amounts to requiring the Prosecutor to disprove any other reasonable conclusions and to eliminate any reasonable doubt(...)”.¹⁸ Imposition of such a standard would be tantamount to the creation of an obligation on the part of the Prosecution to prove genocidal intent beyond reasonable doubt, a “higher and more demanding”¹⁹ standard than the one required under article 58(1)(a) of the Statute.

¹⁶ ICC-02/05-01/09-73, page 3.

¹⁷ ICC-02/05-01/09-73, para. 1.

¹⁸ ICC-02/05-01/09-73, para. 33.

¹⁹ ICC-02/05-01/09-73, para. 39.

2. The re-examination of the matter remanded to the Chamber is confined, therefore, to the application of the standard of proof—as identified by the Appeals Decision—namely, in relation to Al Bashir’s genocidal intent. As a result, the present decision only amends the First Decision to the extent necessary to implement the Appeals Decision and neither a re-assessment of the materials originally supporting the Prosecution’s Application, nor the analysis of materials other than those are warranted.

3. The Prosecution’s request for an *ex parte* hearing, the applications of Victims a/0011/06 to a/0013/06, a/0015/06, and of Victims a/0443/09 to a/0450/09 to participate in the current proceedings, the application of the Sudan Workers Trade Unions Federation and the Sudan International Defence Group to submit observations as *amici curiae*, as well as the request of the Ad-Hoc Counsel for the Defense to file a response, are thus to be rejected.

I. Whether, on the basis of the evidentiary standard identified by the Appeals Chamber, there are reasonable grounds to believe that Omar Al Bashir acted with *dolus specialis*/specific intent to destroy in whole or in part the Fur, Masalit and Zaghawa ethnic groups

4. The Chamber notes that in paragraph 205 of the First Decision it stated that the existence of reasonable grounds to believe that the suspect acted with a specific genocidal intent “is not the only reasonable conclusion that can be drawn” from the materials supporting the Prosecution’s Application.²⁰ It can be inferred from this finding that the Chamber considered such a conclusion to be a reasonable one, albeit not the only

²⁰ ICC-02/05-01/09-3, para. 205.

reasonable conclusion. Therefore, the First Decision already found, although not expressly and *a contrario*, that there were reasonable grounds to believe that the suspect acted with a specific genocidal intent as one of a number of reasonable conclusions. The Chamber re-affirms this finding.

5. The Chamber is therefore satisfied, on the basis of the standard of proof as identified by the Appeals Chamber, that there are reasonable grounds to believe that Al Bashir acted with *dolus specialis*/specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups.

II. Whether there are reasonable grounds to believe that the remaining elements of the counts of genocide included in the Prosecution's Application are fulfilled

6. Having found that the material provided in support of the Prosecution's Application was not sufficient to establish reasonable grounds to believe that Omar Al Bashir acted with *dolus specialis*/specific intent to destroy in part the Fur, Masalit and Zaghawa groups, the Majority in the First Decision did not proceed to examine whether there were reasonable grounds to believe that the material elements, common and specific, of each of the alleged counts of genocide were fulfilled. Following the application of the evidentiary standard with respect to the genocidal specific intent as identified by the Appeals Chamber, an examination of the remaining elements for each of the counts of genocide is now required.

7. The Chamber will first analyse whether there are reasonable grounds to believe that the material elements common to the three counts of genocide included in the Prosecution's Application are present; only if the answer is in the affirmative, will the Chamber examine the specific material elements for each counts of genocide.

A. Common Elements

8. In its First Decision the Chamber noted that the Elements of Crimes set out the following elements that are common to each of the five categories of genocidal acts listed in article 6 of the Statute:

- i. the victims must belong to the targeted group;
- ii. the killings, the serious bodily harm, the serious mental harm, the conditions of life, the measures to prevent births or the forcible transfer of children must take place “in the context of a manifest pattern of similar conduct directed against the group or was conduct that could itself effect such destruction”²¹

(i) Whether there are reasonable grounds to believe that the victims of the alleged acts belonged to the targeted group

9. The Majority in the First Decision found reasonable grounds to believe that the Fur, the Masalit and the Zaghawa constituted distinct ethnic groups as each of them has its own language, its own tribal customs and its own traditional links to their lands.²²

10. In relation to the issue of whether or not such ethnic groups were the specific target of the alleged acts, the Chamber also held in the First Decision that there were reasonable grounds to believe that: “[a] core component of the GoS counter-insurgency campaign, and consequently a GoS policy, was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived by the GoS as being close to the SLM/A, the JEM and the other

²¹ ICC-02/05-01/09-3, para. 113.

²² ICC-02/05-01/09-3, para. 137. Judge Anita Usacka’s dissenting opinion defined the “protected group – and the target of the counter-insurgency campaign – as a single ethnic group of the ‘African tribes’, which is in turn comprised of smaller groups, including the Fur, Masalit and Zaghawa.” See ICC-02/05-01/09-3, Separate and Partly Dissenting Opinion of Judge Anita Usacka, para. 26.

armed groups opposing the GoS in the ongoing armed conflict in Darfur.”²³

11. Based on the information and evidence submitted by the Prosecution, the Chamber is further satisfied that there are reasonable grounds to believe that the villages and towns targeted as part of the GoS’s counter-insurgency campaign were selected on the basis of their ethnic composition and that towns and villages inhabited by other tribes, as well as rebel locations, were bypassed in order to attack towns and villages known to be inhabited by civilians belonging to the Fur, Masalit and Zaghawa ethnic groups.²⁴

12. The Chamber is therefore satisfied that there are reasonable grounds to believe that the first material element common to the three counts of genocide presented by the Prosecution, i.e. that the victims of the alleged acts belonged to the targeted groups, is fulfilled.

(ii) Whether there are reasonable grounds to believe that the contextual element of the counts of genocide included in the Prosecution’s Application has been fulfilled

²³ ICC-02/05-01/09-3, para. 83. This finding of the Chamber in the First Decision was supported by the following evidence: Witness Statement (Anx 28) DAR-OTP-0097-0619 at 0624, para. 21; Witness Statement (Anx 33) DAR-OTP-0107-0313 at 0331, para. 73; Witness Statement (Anx 41) DAR-OTP-0024-0200 at 0067, para. 52; Witness Statement (Anex J45) DAR-OTP-088-0060 at 071-072, para. 45; Witness Statement (Anx 42) DAR-OTP-0112-0142 at 0151, para. 45; HRW Report, *They Shot at Us as We Fled*, 18 May 2008, (Anx 77) DAR-OTP-0143-0273 at 0017, para. 52; Report of the International Commission of Inquiry on Darfur, (Anx 17) DAR-OTP-0018-0010 at 084 and 086, para 304 and 315.

²⁴ ICC-02/05-157-Anx, paras. 13, 17, 93, 97, 101, and 102; Human Rights Watch April *Darfur in Flames: Atrocities in Western Sudan* 2004, Vol. 16, No. 5 (A) (Anx 10) DAR.00003.185 at DAR.00003.187; DAR.00003.203 and DAR.00003.208; *Report of the International Commission of Inquiry on Darfur* (Anx 17) DAR.00018.010 at DAR.00018.058-DAR 00018.059, Para 192-193 and DAR.00018.068, para 245; Human Rights Watch *Targeting the Fur: Mass Killings in Darfur: A Human Rights Watch Briefing Paper* January 21, 2005 (Anx 22) DAR-00090-173 at DAR-00090-177; Witness Statement (Anx 25)

13. The Chamber recalls the findings made by the Majority in the First Decision in relation to the lack of any irreconcilable contradiction between the definition of the crime of genocide of article 6 of the Statute and the contextual element provided for in the Elements of Crimes.²⁵ Accordingly, following the Elements of Crimes, the Chamber required as a contextual element of the crime of genocide that the conduct “must have taken place in the context of a manifest pattern of similar conduct directed against the target group or must have had such a nature so as to itself effect, the total or partial destruction of the targeted group.”²⁶

14. According to the Prosecution’s Application, the contextual element of the three charges of genocide is unequivocally demonstrated by the “[m]agnitude, consistency and planned nature of the crimes”.²⁷

15. The Chamber observes that in the First Decision it already found reasonable grounds to believe that:

(i) “[t]he above-mentioned attack on the said part of the civilian population of Darfur was large in scale, as it affected hundreds of thousands of individuals and took place across large swathes of the territory of the Darfur region”;²⁸ and

DAR.00095.049 at 076-077, para. 128; Witness Statement (Anx 28) DAR-OTP-0097-0619 at 0624, para 21.

²⁵ ICC-02/05-01/09-3, para. 132.

²⁶ ICC-02/05-01/09-3, para. 123.

²⁷ ICC-02/05-157-AnxA, para. 209

²⁸ ICC-02/05-01/09-3, para. 84. This finding of the Chamber in the First Decision was supported by the following evidence: Witness Statement (Anx J45) DAR-OTP-0088-0060 at 065-066, paras. 19-24; Witness Statement (Anx J70) DAR-OTP-0094-0119 at 135-136, paras. 69-75; Witness Statement (Anx 19) DAR-OTP-0088-0129 at 135-136, paras. 26-28; Amnesty International Report, *Darfur. Too Many People Killed for No Reason* (Anx J5) at DAR-OTP-0002-0207 at 0209-0211; Ninth periodic report of the UN High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369; International Crisis Group Report, *Darfur Deadline: A new International Action Plan*, 23 August 2004 (Anx 11) at DAR-OTP-0004-005 5ICC-02/05-151-US-Exp-Anx1; Office of the UN Resident and Humanitarian Coordinator for the Sudan report (Anx J69) at DAR-OTP-0149-0537, HRW Report, *Sudan Darfur in Flames: Atrocities in Western Sudan*, April 2004 (Anx 10) at DAR-

(ii) “[t]he above-mentioned attack was systematic as it lasted for well over five years and the acts of violence of which it was comprised followed, to a considerable extent, a similar pattern.”²⁹

16. The Chamber is therefore satisfied that, as the attacks and acts of violence committed by GoS against a part of the Fur, Masalit and Zaghawa groups were large in scale, systematic and followed a similar pattern—as found by the Chamber in the First Decision—there are reasonable grounds to believe that the acts took place in the context of a manifest pattern of similar conduct directed against the target group.

17. The Chamber thus concludes that there are reasonable grounds to believe that the contextual element common to the three charges of genocide presented by the Prosecution is fulfilled.

OTP-0003-0185; International Crisis Group Report, *Darfur Deadline. A new International Action Plan*, 23 August 2004 (Anx 11) at DAR-OTP-0004-0055.

²⁹ ICC-02/05-01/09-3, para. 85. The Chamber found in the First Decision that the attacks followed, to a considerable extent, a similar pattern. They were coordinated ground attacks on towns and villages inhabited mainly by members of the Fur, Masalit and Zaghawa groups, in which the attackers had previously encircled the targeted village or came to such village with tens or hundreds of vehicles and camels, forming a sort of wide line. Such grounds attacks were often preceded by aerial bombings by planes, and Janjaweed Militia arrived on horse or camel-back along with, or shortly followed by, members of Sudanese Armed Forces in motor vehicles. Such findings were supported in the First Decision by the following evidence: Report of the International Commission of Inquiry on Darfur (Anx 17) at DAR-OTP-0018-0010 at 0057, para. 186; Witness Statement (Anx J45) DAR-OTP-0088-0060 at 0065-0066, paras. 19-24; Witness Statement (Anx 66) DAR-OTP-0119-0711 at 0718, para. 34; Ninth periodic report of the UN High Commissioner for Human Rights, Sudan, (Anx J76) DAR-OTP-0136-0369 at 0373 and 0375; Witness Statement (Anx J70) DAR-OTP-0094-0119 at 0133-0134, paras. 60-64; Witness Statement (Anx J45) DAR-OTP-0088-0060 at 0065-0066, paras. 19-24; Witness Statement (Anx 19) DAR-OTP-0088-0129 at 0136, paras. 27-28; Witness Statement (Anx 66) DAR-OTP-0119-0711 at 0718, para. 34; Ninth periodic report of the United Nations High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369 at 0373; HRW Report, *They Shot at Us as We Fled*. 18 May 2008, (Anx 80) DAR-OTP-0143-0273 at 0291 and 0292-0294.

B. Specific Elements

18. Having found that the specific intent and common elements of the three counts of genocide presented by the Prosecution are met, the Chamber will now analyse whether the specific elements of each of the counts of genocide are met.

Count 1: Genocide by killing

19. As regards the first count, the Prosecution's Application alleges that:

"Count 1
Genocide by killing of members of each target group
Art.6 (a)

From March 2003 to the date of filing of this Application AL BASHIR committed, through other persons, genocide against the Fur, Masalit and Zaghawa ethnic groups in Darfur, the Sudan, by using the state apparatus, the Armed Forces and Militia/Janjaweed to commit acts of killing members of these groups with intent to destroy the groups as such, in part, in violation of Arts 6(a) and 25(3)(a) of the Rome Statute."³⁰

20. According to the Elements of Crimes, the specific material element of the crime of genocide by killing is that the perpetrator killed one or more persons. It is worth noting that this element is common to both the crime of genocide by killing under article 6(a) and the crime against humanity of murder under article 7(1)(a) of the Statute with the exception that the former provides that the acts of killings must be directed against members of a national, ethnical, racial or religious group, while the latter requires that the acts be directed against a civilian population. The legal characterisation of the act of killing may change from a crime against humanity to genocide depending on the following factors: (i) their specific contextual elements; (ii) the requirement that victims belonged to a

³⁰ ICC-02/05-157-AnxA, para. 62.

targeted group (in the case of genocide); and (iii) the different *mens rea* that each of them require. In both cases, however, the underlying act is identical – killing or causing the death of one or more persons.

21. The Chamber is thus of the view that, in its determination of whether there are reasonable grounds to believe that the crime of genocide by killing members of the targeted group has been committed, it may rely on the findings made with respect to the material element of the crime against humanity of murder, as long as there are reasonable grounds to believe that these acts were committed against members of the targeted ethnic group.³¹

22. With regard to the material element of the charges of the crimes against humanity of murder and extermination the Chamber found in the First Decision that there were reasonable grounds to believe that:

(i) “[t]housands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups were subject, throughout the Darfur region, to acts of murder by GoS forces, between the start of the GoS counter-insurgency campaign soon after the April 2003 attack on El Fasher airport and 14 July 2008”³²; and

³¹ A similar approach to identical elements of different crimes has been taken by the International Criminal Tribunal for the former Yugoslavia. See ICTY *The Prosecutor v. Brdanin*, Case No. IT-99-36-T, Trial Judgment 1 September 2004, paras. 738-739; ICTY *The Prosecutor v. Stakic*, Case No. IT-97-24-T, Trial Judgment 31 July 2003, para. 631; ICTY *The Prosecutor v. Kordic*, Case No. IT-95-14/2-T, Trial Judgment 26 February 2001, para. 236

³² ICC-02/05-01/09-3, para. 94. This finding of the Chamber in the First Decision was supported by the following evidence: In relation to the first attack on Kodoom on or about 15 August 2003, see HRW Report, *Targeting the Fur: Mass Killings in Darfur* 21 January 2005 (Anx 22) DAR-OTP-00090-173 at 182; Witness Statement (Anx J70) DAR-OTP-00094-119 at 133-134, para. 66. In relation to the second attack on Kodoom on or about 31 August 2003, see and HRW Report, *Targeting the Fur Mass Killings in Darfur*, 21 January 2005 (Anx 22) DAR-OTP-00090-173 at 182; In relation to the attack on Bindisi on or about 15 August 2003, see Witness Statement (Anx 20) DAR-OTP-00088-187 at 192-194, paras. 23-27 and 32; Witness Statement (Anx 21) DAR-OTP-00088-219 at 227-228, paras. 47-49 and 32; Witness Statement (Anx J45) DAR-OTP-00088-060 at 065-066, paras. 20-23; Witness Statement (Anx 65) DAR-OTP-0119-0503 at 0521, 0522, paras. 81 and 85; and

(ii) “[a]cts of extermination, such as the alleged killing of over a thousand civilians in connection with the attack on the town of Kailek on or around 9 March 2004, were committed by GoS forces against civilians primarily from the Fur, Masalit and Zaghawa groups, in the Darfur region, during the relevant period.”³³

Witness Statement (Anx J70) at DAR-OTP-00094-119 at 135, para. 72. In relation to the aerial attack on Mukjar between August and September 2003, see Witness Statement (Anx 21) DAR-OTP-00088-219 at 233-234, paras. 85-86. In relation to the attack on Arawala on or around 10 December 2003, see Witness Statement (Anx 19) DAR-OTP-0088-0129 at 0136, paras. 27-28; Commission of Inquiry into allegations surrounding human rights violations committed by armed groups in the States of Darfur, January 2005, Reviewed. Volume 2 (Anx 52) DAR-OTP- 0116-0568, at 0605. In relation to the attack on Shattaya town and its surrounding villages (including Kailek) in February/March 2004, see Report of the International Commission of Inquiry on Darfur (Anx 17) DAR-00018- 010 at 078, paras. 273-274; Witness Statement (Anx 66) DAR-OTP-0119-0711 at 0718, paras. 34-37. In relation to attacks in Buram locality between November 2005 and September 2006, see Third periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, April 2006 (Anx J75) DAR-OTP-0108-0562 at 0570-0572, paras. 27, 32 and 35-37. In relation to the attack on Muhajeriya on or about 8 October 2007, see United Nation Human Rights Council, *Report on Human Rights Situations that require the Council’s attention* (A/HRC/6/19) (Anx 78) DAR-OTP-0138-0116 at 0145-0146, para (xvii). In relation to the attacks on Saraf Jidad on 7, 12 and 24 January 2008, see Ninth periodic report of the UN High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369 at 0372-0373. In relation to attack on Silea on 8 February 2008, see HRW Report, *They shot at us as we fled*, 18 May 2008 (Anx 80) DAR-OTP-0143-0273 at 0294-0295; and Ninth periodic report of the UN High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369 at 0374-0375. In relation to the attack on Sirba on 8 February 2008, see HRW Report, *They shot at us as we fled*, 18 May 2008 (Anx 80) DAR-OTP-0143-0273 at 0292-0293; and Ninth periodic report of the UN High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369 at 0374. In relation to the attack on Abu Suruj on 8 February 2008, see HRW Report, *They shot at us as we fled*, 18 May 2008 (Anx 80) DAR-OTP-0143-0273 at 0290-0291; Ninth periodic report of the UN High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369 at 0373. In relation to the attack to Jebel Moon between 18 and 22 February 2008, see HRW Report, *They shot at us as we fled*, 18 May 2008 (Anx 80) DAR-OTP-0143-0273 at 0297-0299; Ninth periodic report of the UN High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369 at 0375. In relation to the attack on Shegeg Karo and al-Ain in May 2008, see Press Article, *The Nation*, *Death in Darfur*, 6 May 2008 (Anx 4, line 168) DAR-OTP-0149-0383 and Press Article, *Sudan Tribune*, *School Bombed in North Darfur, six children killed*, 9 May 2008 (Anx 4, line 168) DAR-OTP-0149-0387. See also UN News Service, *At five-year mark, Darfur crisis in only worsening - UN aid Chief*, 22 April 2008 (Anx J27) DAR-OTP-0147-1068.

³³ ICC-02/05-01/09-3, para. 97. This finding of the Chamber in the First Decision was supported by the following evidence: Witness Statement, (Anx 66) DAR-OTP-0119-0711 at 0718-0719, paras. 34-37 (describing how the witness was given a list of 1700 persons

23. The Chamber is therefore satisfied that there are reasonable grounds to believe that killings were committed against members of the targeted ethnic groups. Accordingly, the Chamber finds that there are reasonable grounds to believe that the material element of the crime of genocide by killing members of a targeted group, as provided for in article 6(a) of the Statute, is fulfilled.

24. The Chamber is satisfied that it can be inferred from the factual circumstances referred above that there are reasonable grounds to believe that the subjective elements of the crime of genocide by killing of article 6(a) are fulfilled.

Count 2: Genocide by causing serious bodily or mental harm

25. As regards the second count, the Prosecution's Application alleges that:

"Count 2

Genocide by causing serious bodily or mental harm to members of each target group

Art.6 (b)

From March 2003 to the date of filing of this Application, AL BASHIR committed, through other persons, genocide against the Fur, Masalit and Zaghawa ethnic groups in Darfur, the Sudan, by using the state apparatus, the Armed Forces and Militia/Janjaweed to cause serious bodily or mental harm to members of these groups through acts of rape, other forms of sexual violence, torture and forcible displacement of

killed, or presumed dead, in an attack on Kailek); Witness Statement (Aux J8) DAR-OTP-0150-0255 at 0263 (saying the dead, missing or captured during the Kailek attacks numbered 1350); *Report of the International Commission of Inquiry on Darfur* (Anx 17) DAR-OTP-0018-0010 at 0078, paras. 273 and 274 (the commission stated it confirmed 'mass killings of civilians' in Kailek). In addition to the attack in Kailek described and the attacks referred in footnote supra, in which hundreds of civilians were reportedly killed, the Prosecution have also provided evidence of attacks on Surra village in January 2004, with more than 250 persons reported killed, see *Report of the International Commission of Inquiry on Darfur* (Anx 17) DAR-OTP-0018-0010 at 0077 para. 272; and attack on Terbeba village on or about 15 February 2004, with 26 civilians reported killed, see HRW Report, *Darfur Destroyed: Ethnic Cleansing by Government and Militia Forces in Western Sudan* (Anx J9) DAR-OTP-0003-0099 at 0121-0122.

members of these groups, with intent to destroy the groups as such, in part, in violation of Arts. 6(b) and 25(3)(a) of the Rome Statute.”³⁴

26. According to the Elements of Crimes the specific material element of this count of genocide is that the perpetrator caused serious bodily or mental harm to one or more persons, which may include acts of torture, rape, sexual violence or inhuman or degrading treatment. The Prosecution listed the following acts within the present count of genocide: (i) acts of rape and other forms of sexual violence; (ii) torture; and (iii) forcible displacement of members of the targeted groups.

27. The underlying acts of genocide by inflicting bodily or mental harm, as it was the case of the previous count, are identical to the underlying acts of the crimes against humanity included in the Prosecution’s Application as Counts 6, 7, and 8 (forcible transfer of population, torture civilians, and rape of civilians). The legal characterisation of such acts as crimes against humanity or genocide depends on the following factors: (i) their specific contextual elements; (ii) the requirement that the victims belonged to a targeted group (in the case of genocide); and (iii) the different *mens rea* that each of them require.

28. The Chamber is therefore of the view that, as in the previous count, in its determination of whether there are reasonable grounds to believe that the present underlying acts of genocide were committed, the Chamber may rely on its findings made with respect to the material elements of the crimes against humanity of forcible transfer of population, torture and rape of civilian persons, as long as there are reasonable grounds to believe that such acts were committed against members of the targeted group.

³⁴ ICC-02/05-157-AnxA, para. 62

29. On the basis of the evidence submitted by the Prosecution, the Chamber already held in the First Decision that there were reasonable grounds to believe that, between the start of the GoS counter-insurgency campaign soon after the April 2003 attack on El Fasher airport and at least until the date of the Prosecution's Application, the following acts were committed:

- (i) "[t]housands of civilian women, belonging primarily to the Fur, Masalit and Zaghawa groups were subject, throughout the Darfur region, to acts of rape by GoS forces."³⁵;
- (ii) "[c]ivilians belonging primarily to the Fur, Masalit and Zaghawa groups were subject to acts of torture by GoS forces"³⁶; and
- (iii) "[h]undreds of thousands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups were subject, throughout the Darfur region, to acts of forcible transfer by GoS forces."³⁷

³⁵ ICC-02/05-01/09-3, para. 108. This finding of the Chamber in the First Decision was supported by the following evidence: UN General Assembly, Human Rights Council, *Human Rights Situations that Require the Council's Attention (A/HRC/7/22)*, 3 March 2008 (Anx J28) at DAR-OTP-0148-0259 at 0270, para. 47; Witness Statement, (Anx 20) DAR-OTP-0088-0187 at 0196, para. 41; Witness Statement, (Anx 21) DAR-OTP-0088-0219 at 0230, para. 67; Witness Statement (Anx J15), DAR-OTP-0088-0306 at 0325, para. 146; Witness Statement, (Anx 66) DAR-OTP-0119-0711 at 0718, para. 36; see Ninth periodic report of the UN High Commissioner for Human Rights, Sudan (Anx J76) DAR-OTP-0136-0369 at 0374-0375; HRW Report, *They Shot at Us as We Fled*, 18 May 2008, (Anx 80) DAR-OTP-0143-0273 at 0296; Third periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, April 2006 (Anx J75) DAR-OTP-0108-0562 at 0570-0572 para. 44.

³⁶ ICC-02/05-01/09-3, para. 104. This finding of the Chamber in the First Decision was supported by the following evidence: HRW Report, *They Shot at Us as We Fled*, 18 May 2008 (Anx 80) DAR-OTP-0143-0273 at 0290-0300; Witness Statement (Anx 24) DAR-OTP-0094-0423 at 0434, para. 46; Witness Statement (Anx J62) DAR-OTP-0012-0105 at 0105, para. 10; Second Periodic Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Sudan, 27 January 2006 (Anx J35) DAR-OTP-0136-0263 at 0282 and 0283; Witness Statement (Anx 66) DAR-OTP-0119-0711 at 0718, para. 36; UN General Assembly, Human Rights Council, *Human Rights Situations that Require the Council's Attention (A/HRC/7/22)*, 3 March 2008 (Anx J28) DAR-OTP-0148-0259 at 0269-0270, paras. 45 and 46.

30. The Chamber is therefore satisfied that there are reasonable grounds to believe that acts of rape, torture and forcible displacement were committed against members of the targeted ethnic groups. Accordingly, the Chamber finds that there are reasonable grounds to believe that the material element of the crime of genocide by causing serious bodily or mental harm, as provided for in article 6(b) of the Statute, is fulfilled.

31. The Chamber is satisfied that it can be inferred from the factual circumstances referred above that there are reasonable grounds to believe that the subjective elements of the crime of genocide by causing serious bodily and mental harm of article 6(b) are fulfilled.

Count 3: Genocide by deliberately inflicting conditions of life calculated to bring about physical destruction

32. As regards the third count, the Prosecution's Application alleges that:

"Count 3

Genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction

Art. 6(c)

From March 2003 to the date of filing of this Application, AL BASHIR committed, through other persons, genocide against the Fur, Masalit and

³⁷ ICC-02/05-01/09-3, para. 100. This finding of the Chamber in the First Decision was supported by the following evidence: UN Security Council Press release, 22 April 2008 (Anx J38) DAR-OTP-0147-0859 at 0860; UN Security Council 5872 meeting, 22 April 2008 (Anx J52) DAR-OTP-0147-1057 at 1061; UNCOI Material, (Anx J72) DAR-OTP-0038-0060 at 0065; Commission of Inquiry into allegations surrounding human rights violations committed by armed groups in the States of Darfur, January 2005, Reviewed, Volume 2 (Anx 52) DAR-OTP-0116-0568 at 0604; United Nations Inter-agency Report, 25 April 2004 (Anx J63) DAR-OTP-0030-0066 at 0067; Third periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, April 2006 (Anx J75) DAR-OTP-0108-0562 at 0570-0572, paras. 27, 35, 39, 44; United Nation Human Rights Council, Report on Human Rights Situations that require the Council's attention (A/HRC/6/19) (Anx 78) at D AR-OTP-013 8-0116 at 0145-0146; HRW Report, *They Shot at Us as We Fled*, 18 May 2008, (Anx 80) DAR-OTP-0143-0273 at 0300, 0291-0296; Ninth periodic report of the United Nations High Commissioner for Human Rights. Sudan (Anx J76) DAR-OTP-0136-0369 at 0372-0374.

Zaghawa ethnic groups in Darfur, the Sudan, by using the state apparatus, the Armed Forces and Militia/Janjaweed to deliberately inflict on these groups conditions of life calculated to bring about the physical destruction of the groups as such, in part, in violation of Arts. 6(c) and 25(3)(a) of the Rome Statute.”³⁸

33. Unlike for the previous counts of genocide—and similar to what is required for some of the acts underlying the crime against humanity of extermination—the Elements of Crimes include an additional element for this particular offense and require that the infliction of certain conditions of life upon one or more persons should be “calculated to bring about the physical destruction of that group, in whole or in part.” Therefore, for the Chamber to find reasonable grounds to believe that the underlying acts included in this count amount to the crime of genocide, it will need to be demonstrated, on the one hand, that the relevant acts were committed and, on the other, that they were calculated to bring about the physical destruction of the targeted group, in whole or in part.

34. The Prosecution alleges that methods of destruction other than direct killings and the causing of serious bodily and mental harm were an integral and prominent part of Al Bashir’s genocidal plan. These methods of destruction included: (i) subjecting the group to destruction of their means of survival in their homeland; (ii) systematic displacement from their homes into inhospitable terrain where some died as a result of thirst, starvation and disease; (iii) usurpation of the land; and (iv) denial and hindrance of medical and other humanitarian assistance needed to sustain life in IDP camps.³⁹

35. The Chamber notes that acts similar to those referred to in the paragraph above are listed in the Prosecution’s Application under Count 5

³⁸ ICC-02/05-157-AnxA, para. 62.

³⁹ ICC-02/05-157-AnxA, para. 172.

(crime against humanity of extermination). In particular, the Prosecution alleges that the crime of extermination was committed by, *inter alia*, “destruction of the means of livelihood, forcible transfer into harsh desert conditions and/or IDP camps, obstruction of humanitarian aid, and the affirmative fostering of insecurity among those forcibly displaced”.⁴⁰ The Prosecution alleges that the crime of extermination was also committed by other means, including “mass killing”.⁴¹ As indicated in the First Decision, the Chamber examined whether “the specific elements of at least one crime against humanity” were met,⁴² and concluded, on the basis of its satisfactory review of the evidence of killings, that there were reasonable grounds to believe that the crime against humanity of extermination was committed.⁴³

36. The Chamber also found in the First Decision that:

- (i) there are reasonable grounds to believe that GoS forces, at times, contaminated the wells and water pumps of the towns and villages primarily inhabited by members of the Fur, Masalit and Zaghawa groups that they attacked, albeit not as a core feature of the GoS forces’ attack;⁴⁴
- (ii) “there are reasonable grounds to believe that hundreds of thousands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups were subject, throughout the Darfur region to acts of forcible transfer by GoS forces between the start of the GoS counter-

⁴⁰ ICC-02/05-157-AnxA, para. 235.

⁴¹ ICC-02/05-157-AnxA, para. 62.

⁴² ICC-02/05-/01/09-3, heading (b) on page 32.

⁴³ ICC-02/05-01/09-3, para. 97.

⁴⁴ ICC-02/05-01/09-3, para. 93. This finding of the Chamber in the First Decision was supported by the following evidence: Physicians for Human Rights, Report, *Darfur Assault on Survival, A call for Security, Justice, and Restitution* (Anx J44) DAR-OTP-0119-0635 at 0679 which mentions three incidents of destruction of water sources.

insurgency campaign soon after the April 2003 attack on El Fasher airport and 14 July 2008”;⁴⁵ and

(iii) “there are reasonable grounds to believe that, at times, GoS forces encouraged members of other tribes, which were allied with the GoS, to resettle in the villages and lands previously mainly inhabited by members of the Fur, Masalit and Zaghawa groups.”⁴⁶

37. The Chamber is of the view that the acts of contamination of the wells and water pumps and the forcible transfer of hundreds of thousands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups coupled with the resettlement in those villages and lands they had left by members of other tribes allied with the GoS shall be analysed against the backdrop of the Chamber’s previous findings that (i) thousands of civilians belonging primarily to the Fur, Masalit and Zaghawa groups were subjected, throughout Darfur region, to acts of murder by GoS forces, and over a thousand civilians belonging primarily to the Fur, Masalit and Zaghawa groups were killed in connection with the attack on the town of Kailek on or around 9 March 2004 by GoS forces,⁴⁷ and (ii)

⁴⁵ ICC-02/05-01/09-3, para. 100. This finding of the Chamber in the First Decision was supported by the following evidence: UN Security Council Press release, 22 April 2008 (Anx J38) DAR-OTP-0147-0859 at 0860; UN Security Council 5872 meeting, 22 April 2008 (Anx J52) DAR-OTP-0147-1057 at 1061; UNCOI Material, (Anx J72) DAR-OTP-0038-0060 at 0065; Commission of Inquiry into allegations surrounding human rights violations committed by armed groups in the States of Darfur, January 2005, Reviewed, Volume 2 (Anx 52) DAR-OTP-0116-0568 at 0604; United Nations Inter-agency Report, 25 April 2004 (Anx J63) DAR-OTP-0030-0066 at 0067; Third periodic report of the United Nations High Commissioner for Human Rights on the human rights situation in the Sudan, April 2006 (Anx J75) DAR-OTP-0108-0562 at 0570-0572, paras. 27, 35, 39, 44; United Nation Human Rights Council, Report on Human Rights Situations that require the Council’s attention (A/HRC/6/19) (Anx 78) at D AR-OTP-013 8-0116 at 0145-0146; HRW Report, *They Shot at Us as We Fled*, 18 May 2008, (Anx 80) DAR-OTP-0143-0273 at 0300, 0291-0296; Ninth periodic report of the United Nations High Commissioner for Human Rights. Sudan (Anx J76) DAR-OTP-0136-0369 at 0372-0374.

⁴⁶ ICC-02/05-01/09-3, para. 101. This finding of the Chamber in the First Decision was supported by a witness statement (AnxJ47) DAR-OTP-0125-0665 at 0716, para.255.

⁴⁷ See supra, Count 1.

civilians belonging to the aforementioned groups were subjected to acts of torture by the GoS forces.⁴⁸

38. For these reasons, even though the assessment of the Majority in the First Decision in relation to the conditions within the IDP Camps in Darfur differs in part from what was described by the Prosecution and alleged under count 3,⁴⁹ the Chamber considers that one of the reasonable conclusions that can be drawn is that the acts of contamination of water pumps and forcible transfer coupled by resettlement by member of other tribes, were committed in furtherance of the genocidal policy, and that the conditions of life inflicted on the Fur, Masalit and Zaghawa groups were calculated to bring about the physical destruction of a part of those ethnic groups.

39. In view of the foregoing, the Chamber finds that there are reasonable grounds to believe that the the elements of the crime of genocide by deliberately inflicting on members of the target group conditions of life calculated to bring about the group's physical destruction, as provided for in article 6(c) of the Statute, are fulfilled.

40. The Chamber is satisfied that it can be inferred from the factual circumstances referred above that there are reasonable grounds to believe that the subjective elements of the crime of genocide by deliberately inflicting on members of the target group conditions of life calculated to bring about the group's physical destruction of article 6(c) are fulfilled.

⁴⁸ See *supra*, Count 2.

⁴⁹ ICC-02/05-01/09-3, paras 179, 180 and 189.

III. Whether there are reasonable grounds to believe that Omar Al Bashir is criminally responsible for the crimes mentioned above

41. The Prosecution alleges that Omar Al Bashir is criminally responsible under article 25(3)(a) of the Statute for committing acts of genocide against part of the Fur, Masalit and Zaghawa ethnic groups through the “apparatus” of the State of Sudan, including the Sudanese Armed Forces and their allied Janjaweed Militia, from March 2003 to 14 July 2008.⁵⁰

42. On the basis of the information and evidence provided by the Prosecution, the Chamber held in the First Decision that there were reasonable grounds to believe that:

(i) “[s]oon after the April 2003 attack on the El Fasher airport, a common plan to carry out a counterinsurgency campaign against the SLM/A, the JEM and other armed groups opposing the GoS in Darfur, was agreed upon at the highest level of the GoS, by Omar Al Bashir and other high-ranking Sudanese political and military leaders (...);”⁵¹

(ii) “[a] core component of such common plan was the unlawful attack on that part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – perceived by the GoS as being close to the SLM/A and the JEM and other armed groups opposing the GoS in the ongoing armed conflict in Darfur (...) according to the common plan, the said civilian population was to be subject to unlawful attacks, forcible transfers and acts of murder, extermination, rape, torture, and pillage by GoS forces (...);”⁵²

⁵⁰ ICC-02/05-157-AnxA, paras. 42, 62 and 244.

⁵¹ ICC-02/05-01/09-3, para. 214.

⁵² ICC-02/05-01/09-3, para. 215.

(iii) “[O]mar Al Bashir and other high-ranking Sudanese political and military leaders directed the branches of the “apparatus” of the State of Sudan that they led, in a coordinated manner, in order to jointly implement the common plan;”⁵³

(iv) “[O]mar Al Bashir, as *de jure* and *de facto* President of the State of Sudan and Commander-in-Chief of the Sudanese Armed Forces at all times relevant to the Prosecution Application, played an essential role in coordinating and design and implementation of the common plan;”⁵⁴ and

(v) “[O]mar Al Bashir (i) played a role that went beyond coordinating the implementation of the common plan; (ii) was in full control of all branches of the “apparatus” of the State of Sudan, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Forces, the NISS and the HAC, and (iii) used such control to secure the implementation of the common plan.”⁵⁵

43. The Chamber re-affirms these findings. As a result, the Chamber finds that there is sufficient evidence to establish reasonable grounds to believe that Omar Al Bashir is criminally responsible under article 25(3)(a) of the Statute as an indirect perpetrator, or as an indirect co-perpetrator, for those charges of genocide under article 6(a), 6(b) and 6(c) of the Statute, which were found in this decision, according to the reasonable grounds standard applicable under article 58 of the Statute, to have been committed by the GoS forces as part of the GoS counter-insurgency campaign.

⁵³ ICC-02/05-01/09-3, para. 216.

⁵⁴ ICC-02/05-01/09-3, para. 221.

⁵⁵ ICC-02/05-01/09-3, para. 222.

IV. Other relevant issues

44. The Chamber recalls other findings made in the First Decision, which are not affected by the decision of the Appeals Chamber and are relevant to the issuance of a warrant of arrest. In particular, the Chamber held that the case against Omar Al Bashir fell within the jurisdiction of the Court and that there was no ostensible cause or self-evident factor impelling the Chamber to exercise its discretion to determine the admissibility of the case against Omar Al Bashir.⁵⁶ The Chamber further held that it was satisfied that the arrest of Omar Al Bashir appeared to be necessary to: (i) ensure his appearance at trial in accordance with article 58(1)(b)(i) of the Statute; (ii) ensure that he would not obstruct or endanger the proceedings; and (iii) prevent Omar Al Bashir from continuing to commit the above-mentioned crimes.⁵⁷ The Chamber re-affirms these findings.

⁵⁶ ICC-02/05-01/09-3, paras. 37-45.

⁵⁷ ICC-02/05-01/09-3, paras. 227-239.

FOR THESE REASONS

DECIDES to issue a warrant of arrest against Omar Hassan Ahmad Al Bashir for his alleged criminal responsibility under article 25(3)(a) of the Statute for:

- i. genocide by killing, within the meaning of article 6(a) of the Statute;
- ii. genocide by causing serious bodily or mental harm, within the meaning of article 6(b) of the Statute;
- iii. genocide by deliberately inflicting on each target group conditions of life calculated to bring about the group's physical destruction, within the meaning of article 6(c) of the Statute.

DECIDES that the warrant of arrest for Omar Al Bashir shall be included in a separate self-executing document containing the information required by article 58(3) of the Statute, which will not replace or revoke in any respect the previous warrant of arrest issued on 4 March 2009, which shall thus remain in effect;

DECIDES that, as soon as practicable, the Registry shall (i) prepare a supplementary request for cooperation seeking the arrest and surrender of Omar Al Bashir for the counts contained in both the first and the second warrant of arrest, and containing the information and documents required by articles 89(1) and 91 of the Statute, and by rule 187 of the Rules; and (ii) transmit such request to competent Sudanese authorities in accordance with rule 176(2) of the Rules, to all States Parties to the Statute and all the United Nations Security Council members that are not States Parties to the Statute;

DECIDES that, as soon as practicable, the Registry shall prepare a request for cooperation seeking the arrest and surrender of Omar Al Bashir for the counts contained in both the first and the second warrant of arrest, and containing the information and documents required by articles 89(1) and 91 of the Statute, and by rule 187 of the Rules and transmit it, in accordance with rule 176(2) of the Rules, to all the States Parties to the Statute that have ratified it after 4 of March 2009 and to all United Nations Security Council members that are not States Parties to the Statute and that were not members of the Security Council on 4 March 2009;

DIRECTS the Registrar, as appropriate, to prepare and transmit to any other State any additional request for arrest and surrender which may be necessary for the arrest and surrender of Omar Al Bashir to the Court pursuant to articles 89 and 91 of the Statute, and if the circumstances so require, to prepare and transmit a request for provisional arrest in accordance with article 92 of the Statute;

FURTHER DIRECTS the Registrar, pursuant to article 89(3) of the Statute, to prepare and transmit to any State any request for transit which may be necessary for the surrender of Omar Al Bashir to the Court.

REJECTS the Prosecution's Request for an *ex parte* hearing, the Applications of Victims a/0011/06, a/0012/06, a/0013/06 and a/0015/06 and Victims a/0443/09, a/0444/09, a/0445/09, a/0446/09, a/0447/09, a/0448/09, a/0449/09 and a/0450/09 to participate in the current proceedings, the Application of the Sudan Workers Trade Unions Federation and the Sudan International Defence Group to submit observations as *amici curiae*

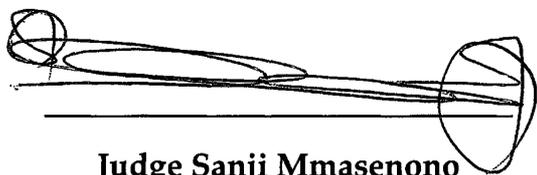
and the Application of the Ad-Hoc Counsel for the Defense to file a response.

Done in both English and French, the English version being authoritative.



Judge Sylvia Steiner

Presiding Judge



Judge Sanji Mmasenono

Monageng



Judge Cuno Tarfusser

Dated this Monday 12 July 2010

At The Hague, The Netherlands