



Myths versus Reality

The expulsion of international aid agencies from Darfur and the International Criminal Court arrest warrant for President Omar al- Bashir

March 9, 2009

On March 4, 2009, the International Criminal Court (ICC) issued an arrest warrant for President Omar al-Bashir of Sudan on charges of war crimes and crimes against humanity. On March 5 the government of Sudan sought to divert attention from al-Bashir's alleged responsibility for widespread atrocities by announcing its intention to expel aid agencies from Darfur and blaming the ICC. The intense public controversy generated by these events includes a number of myths, which are not borne out by reality:

1. **Myth:** The International Criminal Court has put people at risk by issuing an arrest warrant for the Sudanese president because international aid groups will be expelled from Sudan as a result.

Reality: It is the Sudanese government, not the International Criminal Court, that is creating catastrophic consequences for the people of Darfur by ousting humanitarian assistance. Expelling aid groups will further victimize those already made victim by atrocities al-Bashir is accused of committing in Darfur. This step compounds the responsibility of the top Sudanese leadership for the gravest crimes committed in Darfur, and highlights the risks of allowing those allegedly responsible for these crimes to escape accountability.

Sudan has an obligation under international humanitarian law to ensure that relief aid reaches people in need in conflict situations. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), the agencies to be expelled

provide roughly half of the total humanitarian assistance for all of Darfur. The number of people who will be affected by lack of water, food, sanitation and medical care are in the millions. For example, OCHA has described the situation for the Kalma camp—one of the largest camps for displaced people in Darfur—as dire. In addition to providing medical care and other essential assistance, the agencies being expelled are responsible for Kalma’s water supply, which could run dry in 48 hours.

2. **Myth:** Since the ICC lacks the means to arrest al-Bashir, the warrant just creates difficulties without helping the people of Darfur.

Reality: The International Criminal Court does not have its own police force and relies on cooperation by states to execute its warrants. Security Council Resolution 1593—which referred Darfur to the court—obligates Sudan to cooperate with the court, including making arrests in response to ICC warrants. The ICC’s statute also requires that states that are parties to the court cooperate with it, and Resolution 1593 urges non-states parties to cooperate with the ICC on Darfur.

However, even if al-Bashir is not arrested promptly, the warrant can produce real and immediate positive benefits. As has happened before when an international court issues an arrest warrant for a senior figure—Charles Taylor of Liberia, for example, or Slobodan Milosevic of what was then Yugoslavia—al-Bashir is now stigmatized as an accused war criminal and fugitive from justice. The warrant can marginalize al-Bashir and loosen his grip on power, which could help prevent further crimes.

3. **Myth:** Issuing the arrest warrant threatens the peace process to end the conflict in Darfur.

Reality: No real peace process is currently under way because of a lack of adequate political will by both the government and rebel forces to end the conflict in Darfur. The peace process has long been stalled. Although one rebel group, JEM, and the government signed a “declaration of intent” in February, this

did not include a commitment to a ceasefire. None of the parties appear committed to finding a solution through peace talks. This failure is wholly unrelated to the ICC.

4. **Myth:** The International Criminal Court is unjustly targeting African leaders.

Reality: While the ICC's current investigations are entirely in Africa, three out of the court's four investigations were referred voluntarily by the governments where the crimes were committed. The fourth situation, Darfur, was referred by the UN Security Council.

The court makes decisions about its investigations based on a variety of factors, including whether it has jurisdiction over the crimes and their gravity. The court's authority extends primarily to crimes committed in states that are parties to the ICC treaty unless the Security Council refers a situation to the court or a state that is not a party to the court voluntarily accepts its authority. Some of the worst crimes perpetrated since 2002 have been committed in states that are not parties to the court and are thus outside the court's jurisdiction, including in Sri Lanka, Myanmar, and Iraq.

Admittedly, the landscape in which international justice is applied has been uneven. Leaders of powerful states are less likely to be prosecuted by international courts when they are associated with serious crimes. Nevertheless, justice should not be denied where it can be achieved simply because it is politically impossible to ensure justice for all. Rather, the reach of accountability should be extended to wherever serious crimes occur. This can be done in part by expanding participation in the ICC.

5. **Myth:** The International Criminal Court is a new form of Western imperialism in Africa.

Reality: African states have been some of the most important supporters of the establishment and effective functioning of the ICC. African states played an active role at the negotiations on the statute in Rome, and 22 African countries

were among the founding ratifiers of the court's statute, the Rome Treaty. Of the ICC's 108 states parties, 30 are in Africa. In the most recent judicial elections for the ICC, African governments nominated 11 candidates. Africans are among the highest-level officials and staff at the ICC.

6. **Myth:** The warrant is not that serious because the judges did not approve charges of genocide.

Reality: The ICC's warrant for the Sudanese president is for massive atrocities in Darfur over a period of years, not insignificant crimes. Under the warrant, Omar al-Bashir is accused of war crimes and crimes against humanity. The specific counts include widespread or systematic murder, extermination, rape, torture and forcible transfer of large numbers of civilians. They also include pillaging and intentional attacks against the civilian population. These are obviously horrific crimes of the utmost gravity.

For Human Rights Watch's release on the issuance of the ICC arrest warrant for President Omar al-Bashi, please visit:

<http://www.hrw.org/en/news/2009/03/04/icc-bashir-warrant-warning-abusive-leaders>

For Human Rights Watch's release on the announced intention to expel aid agencies, please visit:

<http://www.hrw.org/en/news/2009/03/05/sudan-expelling-aid-agencies-harms-victims>

A televised debate on these issues is also available at:

http://www.democracynow.org/2009/3/6/hrws_richard_dicker_and_scholar_media_tor.