

## IN THE PURSUIT OF JUSTICE:

A Comment on the Arrest Warrant for President Al-Bashir of Sudan

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*The arrest warrant issued against President Omar Al-Bashir of Sudan in March 2009 led to uproar and outrage in the international community. While the International Criminal Court's efforts to prosecute those most responsible for serious crimes of concern have been congratulated by some, others have criticized the Court's approach. This paper questions whether the Court's decision was the appropriate method by which to fulfill, or at least pursue, the "interests of justice." This paper analyzes the manner in which the decision was issued and the Majority's assessment of the genocide charges. By making the arrest warrant public at such an early stage of the proceedings, and by using a higher evidentiary threshold to determine the genocide charge, this paper concludes that the ICC's actions may prove counterproductive to achieving justice and securing relief for the victims of the conflict.*

**O**n March 4, 2009, amidst the six-year devastating insurgency counter-campaign, the Pre-Trial Chamber ("PTC" or "The Chamber") of the International Criminal Court (the "ICC" or the "Court") issued an arrest warrant (the "Decision") for President Omar Al-Bashir of Sudan for the commission of war crimes and crimes against humanity in Darfur, Sudan.<sup>1</sup> By indicting a sitting Head of State, the Court has boldly taken its first steps in handling such a precarious case. Yet the Court Majority's failure to indict Al-Bashir on charges of genocide led to great disappointment among the victim groups of Darfur. The decision further caused controversy within the international criminal legal field and the Judging panel itself, as firmly exemplified by Judge Anita Ušacka's dissenting opinion on the issue. In issuing the indictment for war crimes and crimes against humanity, however, the Court has demonstrated its power over those most responsible for the most serious crimes of concern in the ultimate pursuit for justice. But for whose benefit? And at what cost? At the time the decision was issued, Al-Bashir expelled humanitarian aid agencies from Darfur and the Prosecutor for the ICC, Luis Moreno-Ocampo (the "Prosecutor") filed an Application for Leave to Appeal ("Prosecutor Appeal") contesting the failure to find that genocide has occurred.<sup>2</sup> As a result, journalists, blog-savvy academics and lawyers alike wrote extensively on the implications of the arrest warrant and the finer details of the judgment itself. It is my aim, using these opinions and blogs as a foundational basis, to determine whether the Court's decision places the first judicial stepping stone in achieving substantial and effective justice for the victims of Darfur and the wider international commu-

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<sup>1</sup> The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09, Warrant of Arrest for Omar Hassan Ahmad Al Bashir (4 Mar. 2009) [hereinafter Al Bashir Warrant Short].

<sup>2</sup> The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09, 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" (10 Mar. 2009) [Prosecutor Leave to Appeal]. Note that only the first ground of the Prosecutor's application was granted leave to appeal by PTC 1 on 24 June 2009. See The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09, Decision on 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" (24 June 2009) [Decision on Prosecution's Leave to Appeal].