

URGENT ACTION APPEAL TO MEMBERS OF THE CICC

Bashir's Visit to Chad

July 2010

What is happening?

On July 12, 2010, Pre-Trial Chamber I issued a second arrest warrant for Omar Al Bashir, President of Sudan, on three counts of genocide committed against the Fur, Masalit and Zaghawa ethnic groups.

On July 21, 2010, Bashir arrived in Ndjamena, Chad to attend the 12th Session of the Conference of Leaders and Heads of State of the Community of Sahel-Saharan States (CENSAD). The *Chadian government, a state party to the Rome Statute of the ICC, has allowed Bashir to enter Chad and has not arrested him.* Chad argues that it is fulfilling its legal obligations under the July 2009 African Union declaration calling on African Union members states not to cooperate with the ICC in arresting and surrendering Bashir.¹ Interestingly, Chad entered a reservation to the non-cooperation decision of the AU, which it now claims to be abiding by². Following the issuance of the declaration, South Africa³, Botswana⁴ and others made clear their continuing obligations to arrest and surrender under the Rome Statute.

¹ African Union; Assembly/AU.Dec.245 (XIII), para. 10. [http://www.africa-union.org/root/au/Conferences/2009/july/summit/decisions/ASSEMBLY%20AU%20DEC%20243%20-%20267%20\(XIII\)%20 E.PDF](http://www.africa-union.org/root/au/Conferences/2009/july/summit/decisions/ASSEMBLY%20AU%20DEC%20243%20-%20267%20(XIII)%20 E.PDF)

² While we acknowledge that Chad's reservation was likely motivated by its then conflict with Sudan, it is a matter of record that Chad expressed reservation with regard to the non-cooperation clause of the AU declaration.

³ Statement by South Africa after the July AU decision: As a founding Member of the ICC and a signatory to the Rome Statute of the International Criminal Court, South Africa is under international obligation to comply with the ICC's request should any person against whom an arrest warrant has been issued. As an international arrest warrant for President El Bashir has been received and endorsed by a South African magistrate, this means that if President El Bashir arrives on South African territory, he will be liable for arrest. Provisions of the Rome Statute have been domesticated through the International Criminal Court Act into South African Law. This has been given constitutional endorsement by Section 232 of the Constitution, which provides that, "Customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament." As a founding Member of the ICC and a signatory to the Rome Statute of the International Criminal Court, South Africa is under international obligation to comply with the ICC's request should any person against whom an arrest warrant has been issued. As an international arrest warrant for President El Bashir has been received and endorsed by a South African magistrate, this means that if President El Bashir arrives on South African territory, he will be liable for arrest. Provisions of the Rome Statute have been domesticated through the International Criminal Court Act into South African Law. This has been given constitutional endorsement by

THE CICC IS A GLOBAL NETWORK OF OVER 2,500 CIVIL SOCIETY ORGANIZATIONS SUPPORTING
A FAIR, EFFECTIVE, AND INDEPENDENT INTERNATIONAL CRIMINAL COURT.

Steering Committee: Amnesty International (AI), Asian Forum for Human Rights and Development (FORUM-ASIA), Asociación Pro Derechos Humanos (APRODEH), Civil Resource Development and Documentation Centre (CIRDDOC-Nigeria), Comisión Andina de Juristas (CAJ), Fédération Internationale des Ligues des Droits de l'Homme (FIDH), Human Rights First (HRF), Human Rights Network- Uganda (HURNET-U), Human Rights Watch (HRW), No Peace Without Justice (NPWJ), Parliamentarians for Global Action (PGA), The Redress Trust (REDRESS), Women's Initiatives for Gender Justice, and World Federalist Movement (WFM).

By allowing Bashir to visit Chad, the Chadian government has violated its obligations under the Rome Statute, to execute the ICC's arrest warrants. As such, "Chad [has] the shameful distinction of being the first ICC member state to harbor a suspected war criminal from the court," said Elise Keppler, International Justice Program senior counsel at Human Rights Watch. Non-cooperation with the Court undermines the ICC and sets an unfortunate precedent.

Why did this happen?

The decision to allow Bashir to travel freely in Chad is a political one. The governments of Chad and Sudan, formerly foes, reached an agreement in January 2010 to stop supporting the other country's rebels.

The Chadian government allowed Bashir into its territory even after the chief prosecutor of the ICC met with the presidents and a minister of foreign affairs of Senegal, Chad, Burkina Faso and Gabon, and called upon them to cooperate with the ICC.

What civil society can do:

Urgently (before Bashir leaves Chad):

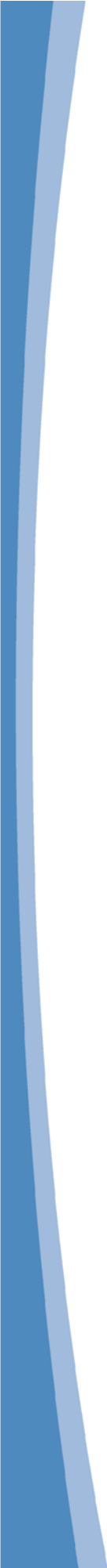
1. Bar Associations and civil society in Chad could file submissions to the courts of law in Chad compelling the Chadian government to issue an arrest warrant for Al Bashir, based on Chad's obligations under national and constitutional law to cooperate with the Court.
2. Hold demonstrations in Ndjamena and other African capitals calling for the arrest and surrender of Al Bashir to the ICC.

Urgently (ideally before Bashir leaves Chad, but still relevant after):

3. Write op-eds, hold radio and television talk shows, write letters to President Idriss Déby of Chad and the minister of justice reminding them that as a state party to the ICC, Chad has an obligation to arrest suspect Bashir and hand him

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⁴ Botswana's Foreign Minister, H.E. Mr. Phandu Skelemani issued a statement in which he openly disagreed with the AU Decision and reaffirmed Botswana's position that it has treaty obligations to cooperate with the ICC in Bashir's arrest.



over to the ICC as has been mentioned in the past by the governments of Uganda, South Africa and Nigeria. Remind the Chadian government it was the only African state party to the ICC that opposed the non-cooperation decision of the AU in July 2009. Hence, it is contradictory for them to claim that they are abiding by an AU decision they are on record as not agreeing to.