



**Cour
Pénale
Internationale**

**International
Criminal
Court**

Arresting ICC suspects at large:

Why it matters

What the Court does

What States can do



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The States Parties to this Statute, [...]

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, [...]

Resolved to guarantee lasting respect for and the enforcement of international justice.

Preamble to the Rome Statute of
the International Criminal Court, 1998

Why it matters:

So that justice
is rendered

Who is at large?

To date, 15 persons for whom the International Criminal Court (“ICC” or “Court”) has issued warrants of arrest remain at large.

Some of these arrest warrants were issued by the ICC over a decade ago. According to the ICC Office of the Prosecutor (“OTP”) investigations, there are reasonable grounds to believe that some of the most serious crimes of concern to the international community proscribed by the Rome Statute (“Statute”) were committed by those persons. These arrest warrants relate to crimes allegedly committed in six ICC situation countries (“situation”): the Democratic Republic of the Congo, Uganda, Darfur (Sudan), Kenya, Libya and Côte d’Ivoire.

These suspects, as a whole, are sought for a total of 206 counts: 87 counts of crimes against humanity, 116 counts of war crimes and three counts of genocide, in addition to thirteen counts of offences against the administration of justice under article 70 of the Statute. The Court has withdrawn arrest warrants for a further four persons who died before the warrants could be executed.

For further information, see the profiles of the fifteen suspects at large on the last page of this document or on the [ICC Web site](#).

What if a suspect is not surrendered and remains at large?



Article 63 of the Statute lays down that proceedings before the ICC take place in the presence of the person, that is, the suspect at the pre-trial stage, and the accused person, after the confirmation of the charges. Without arrests, the judicial process cannot take place, the judges of the ICC cannot make a determination on guilt or innocence and victims cannot be heard.

Timely arrests also mean a more efficient use of resources. On the contrary, failure to surrender suspects at large has financial implications for the Court and the States Parties.

Impunity and instability are closely interrelated. The fact that an alleged perpetrator of crimes remains at large jeopardizes the collection and preservation of evidence and the safety and well-being of possible witnesses and victims. It also means that he or she might be free to continue committing crimes and that there is no deterrent to other or future perpetrators.

Crimes proscribed by the Rome Statute rarely occur in a vacuum; they arise in a context of large-scale criminality, such as transnational organised crime, terrorism, trafficking (of humans or natural resources), corruption or financial crimes. Typically, most of the crimes under the Statute are perpetrated – through, for example, planning, financing or devising strategies – by persons at the highest political or military level or by other leaders, or members of or persons associated with organised groups.

Failure to execute arrest warrants breeds a climate of impunity. Justice is a strong deterrent against future crimes, which the international community undertook to prevent when it created the Court and, with it, the Rome Statute system, in 1998.

What the Court does:

Issues arrest warrants, fosters their implementation and provides expertise

How are arrest warrants issued at the ICC?

The ICC has jurisdiction over individuals who bear criminal responsibility for the most serious crimes of concern to the international community: war crimes, crimes against humanity, genocide, and, as of 17 July 2018, the crime of aggression. On the basis of the investigations, the Prosecutor can apply for the issuance of a warrant of arrest by the Pre-Trial Chamber overseeing the proceedings of the relevant situation under investigation.

To issue a warrant, the judges must be satisfied that there are reasonable grounds to believe that the suspect has committed a crime within the jurisdiction of the ICC.

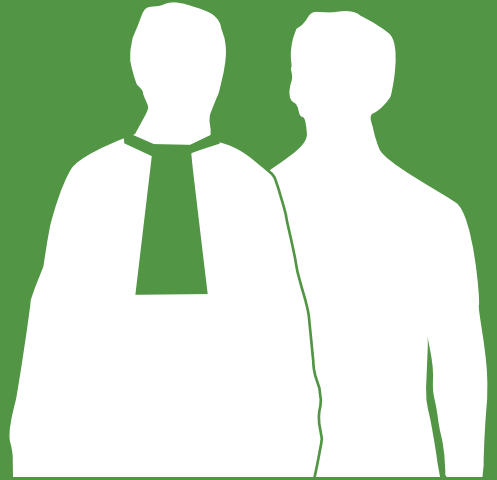
The judges then issue a warrant of arrest, to ensure that the person appears at trial, that the person does not obstruct or endanger the investigation or the court proceedings, or to prevent the person from continuing with the commission of that crime or a related crime (article 58(1)(b) of the Statute). An arrest warrant remains in effect unless the Chamber decides otherwise (article 58(4) of the Statute). As an alternative, the judges might issue a summons to appear if they are satisfied that this would be sufficient to ensure the person's appearance.

The Registry is responsible for transmitting the arrest warrant and requests for arrest and surrender to the relevant State(s), in consultation and coordination with the OTP.

What are the rights of suspects and accused persons and how are they guaranteed before the ICC?

The rights of defendants are among the fundamental principles enshrined in the Rome Statute and are guaranteed at all stages of the proceedings, from the moment a person is surrendered to the Court. The guarantees include:

- The presumption of innocence; the burden lies with the Prosecutor to prove guilt (article 66 of the Statute);
- The right to a public, fair and impartial hearing, to legal assistance for the purpose of mounting a defence, and, where a finding of indigence is made, to legal assistance paid by the Court for the duration of the proceedings (articles 66 to 67 of the Statute);
- The right, during surrender, of a suspect to be informed by the competent national judicial authorities of the arrest warrant and the charges, to be represented by counsel, to have notice of the charges in a language that he or she understands, not to incriminate himself or herself, and to apply for interim release pending surrender (article 59(3) of the Statute);
- The right to periodic reviews of detention throughout the proceedings (article 60(3)).



Arrest warrant or summons to appear?

An arrest warrant is issued against a suspect to ensure that the person appears at trial, does not endanger or obstruct the investigation or the court proceedings or, where applicable, to prevent the person from continuing with the commission of that crime or a related crime (article 58(1)(b) of the Statute).

As an alternative, a summons to appear may be issued when there are reasonable grounds to believe that the suspect will appear voluntarily before the Court. Nevertheless, restrictions on the person's liberty (other than detention) may be imposed (article 58(7) of the Statute).

What challenges does the Court face in securing the arrest and surrender of suspects and how are they overcome?

The challenges are numerous – among them, the fact that under the Rome Statute system of international criminal justice, the Court does not have its own enforcement mechanism, and recurring instances of non-compliance with requests for execution of arrest warrants.

The ICC's Assembly of States Parties ("ASP") has adopted a series of resolutions on cooperation, underscoring that failure to

execute cooperation requests hampers the Court's fulfilment of its mandate, in particular as regards arrest and surrender.

The Registry and the OTP have developed longstanding cooperation on the execution of arrest warrants, building on the OTP's extensive knowledge of the situations it investigates and the networks available to both the OTP and the Registry. In 2016, an internal ICC Arrest Working Group was set up to formalize this cooperation and enhance synergies and information-sharing on tracking, and on the judicial and operational phases of the execution of arrest warrants.

The ICC reports annually to the ASP, the United Nations Security Council ("UNSC") and the United Nations General Assembly on the status of the execution of arrest warrants. The issue is raised in international fora and in the course of bilateral meetings.

Systematic reminders of arrest warrants are sent to States through the relevant channels, for instance when suspects travel abroad. If a State fails to comply with a request to cooperate, the Registry or the OTP might refer the matter to the relevant Pre-Trial Chamber, which in turn may refer a State's failure to comply to the ASP or, where the UNSC referred the matter to the Court, to the UNSC (article 87(7) of the Statute).

Greater consistency in the support provided by States Parties for the execution of the warrants and greater information sharing are two easily identifiable areas where progress can be achieved.

What States can do:

Strengthen judicial cooperation and
increase prospects for arrest

Who is responsible for the arrest of ICC suspects?



The powers to execute the ICC's arrest warrants are vested in States.

States Parties to the Rome Statute have an obligation to cooperate fully with the ICC (article 86 of the Statute) and to ensure that there are procedures available under their national law to execute all cooperation requests from the Court made under Part 9 of the Statute (article 88 of the Statute).

Additionally, States may be obliged to cooperate with the ICC by virtue of UNSC resolutions referring situations to the ICC. This applies also to requests for arrest and surrender from the ICC. Such requests are to be executed in accordance with the applicable provisions of the Rome Statute, namely articles 59 and 89, and procedures available under national law.



How can States Parties help with the arrest of a suspect?

The support of the States, at the diplomatic or operational level, is crucial. States alone have the powers to execute arrest warrants.

Although some arrest warrants attract more publicity than others, they are all equally important and are all issued on the basis of the same evidentiary threshold. The Court strives to ensure that they are all executed. Considering the obligations of States Parties under the Rome Statute, the warrants cannot be left unexecuted.

In 2011, the ASP adopted procedures relating to non-cooperation ([ICC-ASP/10/RES.5, annex](#)), and the Court hopes that, in furtherance of responsibilities and obligations under the Statute, the ASP will step up efforts to prevent non-compliance, especially in the critical matter of arrest of persons subject to warrants issued by the Court.

From its experience, the Court has seen that in order to encourage arrests, various measures, all of relevance to States, need to be taken for every warrant at different stages.

They include:

Tracking of suspects (their whereabouts, movements and activities), through:

- 1 Access to information from national authorities, and, when appropriate, specialised services, including for the purpose of confirming or discounting information in the Court's possession;
- 2 Dissemination of information and alerts on suspects.

Identification of possible leverage and partners, through:

- 1 Support in multilateral fora (at the UN and regional and in specialised networks) and bilateral meetings, and efforts to keep the issue on the agenda;
- 2 The inclusion of the execution of arrest warrants in talking points and external relations strategies;
- 3 A focus on compliance with ICC decisions;
- 4 Linkages between arrests and the importance of the Court's mandate; outreach and reminders about the alleged crimes and the charges; and
- 5 Responsiveness when information is provided about suspects' movements.

Operational support, through:

- 1 Surrender procedures and availability of legal and technical processes;
- 2 Exceptions to UN travel bans for the purpose of a judicial process, which are also a useful tool for the ICC to bring arrestees to the Court and should be made on an urgent and simplified basis;
- 3 Transport and logistics: providing confidential, secured and dedicated air transport, with the capacity to reach sensitive areas within a short timeline; responding positively to requests for overflight of the national territory.

Can non-States Parties provide assistance to the arrest and surrender of suspects?



Yes. The ICC may invite any non-State Party to provide assistance in the arrest and surrender of a person against whom an arrest warrant has been issued.

Non-States Parties have no obligation under the Statute to cooperate with the Court but they are encouraged to do so. In fact, some of them have played an active role in previous surrender operations. However, when the UNSC triggers the Court's jurisdiction over a given situation, the duty to cooperate binds the relevant UN Member States, regardless of whether or not they are a State Party to the Rome Statute. For instance, when the UNSC referred the situations in Darfur (Sudan) and Libya to the ICC, it imposed an obligation on those two States to cooperate. It also urged all other States to cooperate fully with the Court.

How is an arrest made?

Arrest operations are carried out on the basis of a request for arrest and surrender – transmitted by the Registry, in consultation and coordination with the OTP – to the State(s) on whose territory a suspect might be present. The Registry ensures that the request for arrest and surrender is accompanied by a translation of the arrest warrant and the relevant provisions of the Rome Statute in a language that the suspect fully understands and speaks.

When a suspect is arrested by the competent national authorities in execution of an ICC arrest warrant, he or she must be brought promptly before the competent judicial authority in the custodial State, which undertakes the arrest proceedings (article 59 of the Statute).

The procedure for surrender to the Court is different from an extradition process.

It consists of the transfer of a suspect by a State to the ICC and relies on the national courts to determine that:

- the arrest warrant applies to the person;
- the person has been arrested in accordance with the applicable procedure; and
- the person's rights have been respected.

State authorities are required to inform the Registry when they are ready to commence the surrender procedure. Surrender can take place in the country of arrest or in the Netherlands, where the Court's Detention Centre is located.

Toolkit on non-cooperation

The ASP developed a toolkit for "the implementation of the informal dimension of the Assembly procedures relating to non-cooperation", as a resource for States Parties to encourage more standardized responses to possible instances of non-cooperation and to depoliticize the action that State Parties take to encourage other States to meet their cooperation obligations. The toolkit is available in English, French, Spanish and Arabic on the [ASP web page](#).

Contact:

For any question or to provide information, please contact: ICCArrest@icc-cpi.int

Suspects at large



Joseph Kony

Arrest Warrant: 8 July 2005

Charges: 33 counts of crimes (12 crimes against humanity and 21 war crimes) committed from 2002 to 2004 in Uganda, as the alleged leader of the Lord Resistance Army (LRA).



Vincent Otti

Arrest Warrant: 8 July 2005

Charges: 32 counts of crimes (11 crimes against humanity and 21 war crimes) committed from 2002 to 2004 in Uganda, as an alleged Vice-Chairman and Second-in-Command of the LRA.



**Ali Muhammad Ali
Abd-Al-Rahman (“Ali Kushayb”)**

Interpol Red Notice

Arrest Warrant: 27 April 2007

Charges: 50 counts of crimes (22 crimes against humanity and 28 war crimes) committed from 2003 to 2004 in Darfur, Sudan as a Senior Commander of the Janjaweed militia.



Ahmad Muhammad Harun

Arrest Warrant: 27 April 2007

Charges: 42 counts of crimes (20 crimes against humanity and 22 war crimes) committed from 2003 to 2004 in Darfur, Sudan, as Minister of State for the Interior of the Government of Sudan.



Omar Hassan Ahmad Al Bashir

Arrest Warrants: 4 March 2009
12 July 2010

Charges: 10 counts of crimes (5 crimes against humanity, 2 war crimes and 3 crimes of genocide) committed from 2003 to 2008 in Darfur, Sudan, as the President of the Republic of Sudan.



Saif Al-Islam Gaddafi

Interpol Red Notice

Arrest Warrant: 27 June 2011

Charges: 2 counts of crimes against humanity committed in 2011 in Libya, as a *de facto* Prime Minister.



Simone Gbagbo

Arrest Warrant: 29 February 2012

Charges: 4 counts of crimes against humanity, committed from 2010 to 2011 in Côte d'Ivoire, as a member of President Gbagbo's inner circle.



**Abdel Raheem
Muhammad Hussein**

Arrest Warrant: 1 March 2012

Charges: 13 counts of crimes (7 crimes against humanity and 6 war crimes) committed from 2003 to 2004 in Darfur, Sudan, as Minister of Interior and Sudanese President's Special Representative in Darfur.



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Sylvestre Mudacumura

Arrest Warrant: 13 July 2012

Charges: 9 counts of war crimes committed from 2009 to 2010 in the Democratic Republic of the Congo, as the alleged Supreme Commander of the army for the *Forces Démocratiques pour la Libération du Rwanda (FDLR)*.



Al-Tuhamy Mohamed Khaled

Interpol Red Notice

Arrest Warrant: 18 April 2013

Charges: 7 counts of crimes (4 crimes against humanity and 3 war crimes) committed in 2011 in Libya, as Lieutenant General of the Libyan army and head of the Libyan Internal Security Agency (ISA).

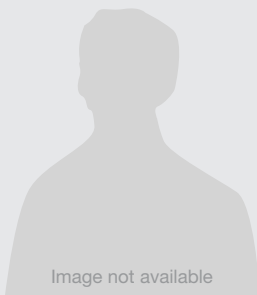


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Walter Osapiri Barasa

Arrest Warrant: 2 August 2013

Charges: 3 counts of offences against the administration of justice committed in 2013 in Uganda, as an intermediary for the Prosecutor in the context of the investigation on the situation in Kenya.



Abdallah Banda Abakaer Nourain

Interpol Red Notice

Arrest Warrant: 11 September 2014

Charges: 3 counts of war crimes committed in 2007 in Darfur, Sudan, as Commander-in-Chief of the Justice and Equality Movement (JEM).



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Paul Gicheru

Arrest Warrant: 10 March 2015

Charges: 6 counts of offences against the administration of justice in the Kenya situation committed from 2013 to 2014, as lawyer.



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Philip Kipkoech Bett

Arrest Warrant: 10 March 2015

Charges: 4 counts of offences against the administration of justice in the Kenya situation, committed from 2013 to 2014.



Mahmoud Mustafa Busyf Al-Werfalli

Interpol Red Notice

Arrest Warrants: 15 August 2017
4 July 2018

Charges: One count of war crimes committed from 2016 to 2018 in Libya, as a Major in the Al-Saiqa Brigade.



**Suspects
AT LARGE**



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