



The Darfur Consortium

*African and International
Civil Society Action for Darfur*

ENSURING ACCOUNTABILITY AND PROTECTION OF CIVILIANS IN DARFUR: NEXT STEPS FOR THE DARFUR CONSORTIUM

Key Findings and Conclusions



September 2005

--The Darfur Consortium: African and International Civil Society Action for Darfur--

ABOUT THE DARFUR CONSORTIUM

The Darfur Consortium is a coalition of more than thirty Africa-based and Africa-focused NGOs dedicated to the working together to promote a just, peaceful and sustainable end to the ongoing humanitarian and human rights crisis in Darfur.

The Consortium came together in September 2004 as concerned NGOs gathered on the fringes of the third extraordinary session of the African Commission on Human and Peoples' Rights in Pretoria, South Africa. The Consortium reflects the unique perspective of African civil society and provides a forum for unified action, particularly through sustained engagement with the institutions of the African Union.

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The cover photograph was taken by Ashraf Milad Ruxi, a member of the Darfur Consortium, during the Consortium's mission to Chad, in February 2005.

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Introduction

Conflict and violence in Darfur, Western Sudan, have forced millions from their homes and left tens of thousands dead. Over two million Darfurians are now estimated to be internally displaced (IDPs) and greater than two hundred thousand are living precariously as refugees in Chad. Although killing and forcible displacement on the basis of tribal origin continues to be a hallmark of the violence, response to the crisis from national and international actors has failed to protect the vulnerable.

Non-governmental organizations (NGOs) working with human rights, refugees and the forcibly displaced in Africa are deeply concerned about the situation in Darfur. Since September 2004, the Darfur Consortium, an umbrella group of more than thirty primarily Africa-based civil society organizations, has been committed to working together towards finding a peaceful, just and lasting resolution to the current human rights and humanitarian crisis in Darfur (see www.darfurconsortium.org).

On March 31, 2005, further to a report of a United Nations (UN) International Commission of Inquiry, the UN Security Council decided to refer the situation in Darfur to the International Criminal Court (ICC). During February and March 2005, the members of the Darfur Consortium worked to ensure this historic decision. In terms of securing protection and justice for the people of Darfur in the long term, however, the referral was only a first step. The establishment of security for millions of Darfurians on the ground and a carefully calibrated process of engagement by the ICC, strongly and strategically supported from within and outside Sudan, are both equally critical if peace, reconciliation, and development are to be sustainable.

Over the summer of 2005 a series of meetings and discussions between members of the Consortium were held in order to identify next steps for the Consortium's advocacy program, focusing on the areas of accountability and protection of civilians. Training on the ICC Statute, international criminal law, and on the operation of the Court in areas such as victim participation and reparations was also conducted during this period. The largest gathering of Consortium members took place in Nairobi in late June and included representatives of NGOs, civil society and the legal profession from Sudan and elsewhere in Africa, representatives of international human rights organizations and experts on international criminal law, gathering both in plenary and in specialist sessions.¹ This report summarizes the discussions and key conclusions of the Consortium's deliberations.

Overview of the Human Rights and Humanitarian Situation in Darfur

Despite the cessation of aerial bombings in January, and a decrease in direct attacks by government troops post the ICC referral, Consortium members noted that attacks on civilians and destruction of villages nonetheless continued in June and July, with some areas in fact seeing an

¹ A copy of the agenda of the Nairobi meeting, June 19-21, 2005, is available from the Darfur Consortium.

increase in the number of reported incidents (e.g. east of Nyala).² Assault and arbitrary arrest by governmental authorities, particularly in the context of attempts to force relocation of the displaced were among the frequent allegations. Participants told, for example, how on May 19, police in Kalama Camp arrested, detained and beat thirty IDPs, ultimately releasing them without charge. A blockade on travel to and from the camp had subsequently been imposed, resulting in the removal of essential livelihood support—most families relied on additional work and commercial exchange, in addition to humanitarian rations, for survival.

Banditry and general criminal activity was identified as a major factor in a generally increased sense of insecurity in Darfur, especially on key travel routes. De facto restriction on freedom of movement for both civilian and humanitarian personnel was the result, with uncontrolled militia operating in a climate of impunity. Having been the target of particular violence during the height of the conflict, displaced women were shouldering ever more dangerous burdens as it became more difficult for men to safely leave the camps. In the vicinity of IDP camps, participants had observed an alarming rise in reported attacks by militia on increasingly younger girls. As the UN Secretary General reported in July, “sexual violence committed by soldiers, police and government-aligned militias remains a widespread feature of the Darfur conflict.”³ A pattern of harassment and abduction of humanitarian personnel and elements by opposition militia appeared also to be emerging.⁴

Significant difficulties were encountered by members of the Consortium seeking to have investigations commenced in the wake of attacks on civilians, even where the alleged perpetrators had been clearly identified. This was particularly the case where sexually based offences were at issue. As the Secretary General confirmed to the Security Council in July, “[m]any police stations still refuse to even register, let alone investigate, sexual violence complaints. When cases are registered, police officials often do not thoroughly investigate the claims, and there appears to be a clear bias in favor of accused members of the security services.”⁵

Participants noted that the number of displaced and conflict affected persons continued to grow and it was expected that there would be even greater humanitarian need as the rainy season advanced into August and September. By August 2005, over 3.2 million people in Darfur were in need of assistance with almost 1.9 million internally displaced⁶ and despite recognition of “some

² In July, the Secretary General reported that as of June, “while the number of militia attacks on villages ha[d] decreased since last year, they continue[d] in significant numbers.” Monthly Report of the Secretary General on Darfur, July 18, 2005, UN Doc. No. S/2005/467 at para 15. In the final week of July 2005, however, use of Sudanese government aircraft against villages was again reported. See Monthly Report of the Secretary General on Darfur, August 11, 2005, UN Doc. No. S/2005/523 at paragraph 2. This was clearly contrary to Security Council Resolution 1591 (March 29, 2005) which *inter alia*, demanded an end to offensive military flights over Darfur. In paragraph 6 of that Resolution the Council demanded that, “the Government of Sudan, in accordance with its commitments under the 8 April 2004 N’ djamena Ceasefire Agreement and the 9 November 2004 Abuja Security Protocol, immediately cease conducting offensive military flights in and over the Darfur region.”

³ Monthly Report of the Secretary General on Darfur, July 18, 2005, UN Doc. No. S/2005/467 at paragraph 21.

⁴ In August the UN Secretary General reported “a considerable rise in abductions, harassment, extortion and looting, by both the Justice and Equality Movement (JEM) and the Sudan Liberation Movement/Army (SLM/A), victimizing civilians and jeopardizing humanitarian activities.” (Monthly Report of the Secretary General on Darfur, August 11, 2005, UN Doc. No. S/2005/523 at paragraph 3.)

⁵ Monthly Report of the Secretary General on Darfur, July 18, 2005, UN Doc. No. S/2005/467 at paragraph 21.

⁶ Monthly Report of the Secretary General on Darfur, August 11, 2005, UN Doc. No. S/2005/523 at paragraph 16,17 and 18.

stabilization” the UN Secretary General was reporting that “living conditions [we]re steadily deteriorating.”⁷

Next Steps for the Darfur Consortium

In discussions of the possible role which the Darfur Consortium might play in helping to improve the situation in Darfur three main areas were identified (support for the efforts of civil society within Sudan and Darfur was understood as a cross cutting theme):

- A. Contributing to the process of ensuring that those who have committed serious violations of human rights and humanitarian law in Darfur are held to account through mechanisms which ensure lasting peace and reconciliation, and building on the Consortium’s efforts around the ICC referral (**accountability**);
- B. Engaging more systematically with international and regional actors, particularly the AU in relationship with the UN, in order to generate support for effectively ensuring physical security and protection of civilians in Darfur, including the question of the return of the displaced to their homes in safety, dignity and full voluntariness (**the AU and protection**);
- C. Working to ensure that human rights principles are the foundation of any agreements generated during the peace talks aimed at resolving the conflict (**the peace process**).

A. ACCOUNTABILITY

The decision by the Security Council to refer the situation in Darfur to the ICC on March 31 was followed on June 6 by an announcement by the ICC Prosecutor that he would indeed open an investigation.⁸ Consortium members working on the ground in Darfur reported that that the news had been greeted very positively by many in Sudan and in Darfur, particularly in displaced communities. The response from the government of Sudan had been swift. A new Special Criminal Court on the Events in Darfur (the Special Court) was established barely a week following the decision of the ICC Prosecutor.⁹ It was also reported that government engagement with tribal reconciliation mechanisms were stepped up, in an attempt, it was suggested, to further the groundwork for presenting non-judicial alternatives to the process.

There had been concern prior to the ICC referral about the effect which a decision by the Security Council to invoke the jurisdiction of the ICC would have on the ground in Sudan, particularly whether it would exacerbate the humanitarian and human rights crisis in Darfur. In the wake of its mission to Chad, however, the Consortium’s assessment was that the referral was likely to have a protective effect. This assessment was a critical element of the Consortium’s advocacy for an ICC referral. Measurement of the impact of the Darfur referral, however, both in terms of achieving a measure of accountability and in how it contributed more broadly to the achievement of a just

⁷ Ibid at paragraph 28.

⁸ The ICC Prosecutor briefed the UN Security Council on June 29 on the progress of the investigation; *see* Darfur Consortium, “Darfur Consortium Welcomes ICC Prosecutor’s UN Security Council Report” June 29, 2005 at www.darfurconsortium.org.

⁹ An English translation of Decision No 702 of 2005 by the Chief Justice, dated June 11, 2005, and of the Decree Establishing the Special Criminal Court on the Events in Darfur, dated June 7, 2005 was transmitted to the UN Security Council (UN Doc. No. S/2005/403).

peace was important, not just in the context of action on Darfur, but in understanding framework for effectively using the Article 13(b) referral power in the future.¹⁰

Consortium members noted that despite the ICC referral and the commencement of Special Court hearings, a general climate of impunity continued to persist in Darfur. Legal provisions providing for immunities for the actions of government officials offered formal shields to many perpetrators, and, in practice, even where the identity of the attackers was known, the police and local administration failed to act. The bulk of the government of Sudan's response to significant allegations of rape, for example, had been the setting up of rape committees, a process which had not to date resulted in any successful prosecutions; significant evidentiary and procedural obstacles to achieving convictions in such cases remained.

In terms of the role which the Consortium could appropriately play in helping to redress obstacles to justice and accountability, much of the discussion focused on the modalities for engagement with the ICC referral and investigation, including leveraging the referral to assist in bringing Sudanese criminal justice standards to the level minimally required by international law.

The need to provide support and encouragement for the web of complementary accountability and reconciliation mechanisms which must be pursued in Darfur (the ICC investigation would only target a few of those most responsible for the violations) was also emphasised, particularly through support for members of the Consortium which had particular expertise in these areas. One area where it was mentioned there might be a role for the Consortium would be where comparative experiences, such as those relating to reparations schemes in other African contexts, might be usefully studied.

Engagement with the ICC Referral and Investigation

Consortium members emphasised that every effort should be made to ensure that the ICC Registry and investigation team would be permitted to enter, freely move and operate in Sudan. The myriad difficulties which might face not only the ICC Prosecutor and his team in Sudan but also those with whom the team came into contact were, however, acknowledged.

Although it was understood that visas had not yet been requested formally from the government of Sudan, discussions were underway. It was noted that the government of Sudan had been oscillatory in its public utterances about cooperation with the Court and that there had been some differences in the positions presented to the Sudanese public and the messages delivered to the international community. In urging cooperation with the Court it should be pointed out that not only has Sudan signed the Rome Statute¹¹ but that the Chapter VII decision by the Security Council to refer the case of Darfur specifically demanded cooperation from the government of Sudan. It should be emphasised, however, that the ICC system is carefully calibrated to operate in complementarity with, and not in opposition to, the Sudanese system.¹²

In terms of the legal process itself, it was expected that the government of Sudan would consider challenging the decision of the Prosecutor to commence an investigation and/or the admissibility

¹⁰ Rome Statute of the International Criminal Court (UN Doc. No. A/CONF.183/9, 1998, entered into force July 1, 2002 (Rome Statute).

¹¹ Although the government of Sudan has signed the Rome Statute, it has not yet ratified.

¹² See Security Council Resolution 1593, UN Doc. No. S/RES/1593 (2005), March 31, 2005 (Resolution 1593).

of a particular prosecution before the Court. It was expected that such challenges would be based on either the grounds of lack of jurisdiction or the principle of complementarity.

The principle of complementarity provides, *inter alia*, that notwithstanding the existence of jurisdiction the Court will be able to admit a case *only* where the state concerned is unwilling or unable to prosecute.¹³ It was pointed out that a challenge to the admissibility of a case under Article 19 of the Rome Statute could be made at any time before, or at the commencement of, a trial. It was felt that an immediate challenge was not likely, but could be expected when the first indictments are handed down. It was noted that the lodging of a challenge to admissibility *by a state* would have the effect of suspending the investigation while the application was pending before the Court.

In terms of the criteria which would be used to assess admissibility, the question was raised as to the Court would employ different criteria in considering the admissibility of a *situation* and that of an individual *case*. Some participants considered that the provisions of the Rome Statute were ambiguous in this regard. Another matter which would require further study was to what extent the existence of immunities for security and governmental personnel at national law would be considered in the context of an admissibility challenge, particularly taking into account the provisions of the Rome Statute.¹⁴

There was a view that the government of Sudan might be considering putting in place the fact basis for a legal challenge to the jurisdiction of the ICC, particularly in the light of the timing of the establishment of the Special Court. In some respects, this latter development could be presented as evidence of a willingness on the part of the government of Sudan to proceed with greater vigor against those who had committed the most serious crimes in Darfur. The fact that the UN Security Council in Resolution 1593 had specifically requested the ICC “to support international cooperation with domestic efforts to promote the rule of law, protect human rights and combat impunity in Darfur” was noted.¹⁵

In addition to the formal mechanism of the Special Court, the impact of a number of other initiatives on the ICC referral was discussed. It was noted, for example that the government of Sudan had recently begun stepping up efforts at inter-tribal reconciliation, perhaps with view to juxtaposing alternative local justice mechanisms with the imperative of an ICC investigation. Further, in the light of discussions at the AU level around a Truth and Reconciliation Commission for Darfur the question was raised as to what weight preparations for such a body would be given in assessments of admissibility of cases before the ICC, especially if the Commission was of a hybrid nature involving the imposition of penalties. The explicit mention of such processes in Security Council Resolution 1593 was referenced, although most agreed that the Security Council did not intend that such efforts should be exclusively pursued.¹⁶ Participants agreed that while it was essential that a variety of justice mechanisms be pursued, a Truth and Reconciliation Commission alone would not be a sufficient response in view of the gravity and scope of crimes committed. In addition, government forces and the government itself could not be held

¹³ See Rome Statute, art. 1 and 17.

¹⁴ See, for example, Rome Statute, art. 27.

¹⁵ Security Council Resolution 1593 at paragraph 4.

¹⁶ In Resolution 1593 the Security Council encouraged “the creation of institutions, involving all sectors of Sudanese society, such as truth and/or reconciliation commissions, in order to complement judicial processes and thereby reinforce the efforts to restore long lasting peace, with African Union and international support as necessary” (paragraph 5).

accountable through “tribal mechanisms” which were being promoted as an alternative method of accountability.

In parallel with pursuit of available legal channels, it was also open to the government of Sudan to pursue a political strategy of opposition to the ICC process. The option of the UN Security Council to use its power to request the Court to suspend an investigation or prosecution, further to the provisions of Article 16 of the Rome Statute, was noted.¹⁷

Although it was argued that new initiatives in Sudan to promote new domestic prosecution channels and alternative justice mechanisms could only be understood as intended primarily to avoid attracting the jurisdiction of the ICC, it was recognized at the same time that these developments provided an opportunity for the Consortium to engage constructively—particularly to advocate for the rectification of those elements of law and practice which had led to the decision to commence the ICC investigation in Darfur.

The Special Criminal Court on the Events in Darfur

It was agreed that the Consortium would take a role in assessing the framework and operation of the Special Court, with view to, *inter alia*, being able to submit information on the new Court to the ICC. Permission would also be sought attend at the hearings and monitoring the operation of the new Court. This might provide the foundation for drafting a more extensive *amicus curiae* in the future, if the ICC was called on to consider the question of admissibility further to an Article 19 challenge. It was important also that victims be assisted to present their views to the court in such a circumstance (Article 19(3)).

A translation of the Order constituting the Special Court was prepared by participants at the Nairobi meeting as a working document for the discussion. A preliminary analysis of the Order by the Consortium’s legal working group found that a number of the key defects in the Sudanese criminal justice system which had been the basis for widespread impunity had not been rectified in the constitution of the Special Court.¹⁸

First, the scope of the jurisdiction of the Special Court, while broad in terms of Sudanese domestic law, was unlikely to permit effective prosecution some of the most serious international crimes which have been committed in Darfur e.g. war crimes, crimes against humanity, torture and rape. It had been open to Sudan to expand the jurisdiction of the Special Court to include such crimes as they are defined in the international criminal or customary law to which Sudan is bound—but the authorities had not done so (there is, however, some scope in the Order for this to be contemplated later).¹⁹

¹⁷ “No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions,” Rome Statute, art. 16.

¹⁸ A copy of the final analysis is available from the Darfur Consortium.

¹⁹ Sudan is a party to a number of international treaties which explicitly require the establishment of processes for investigating and prosecuting serious international crimes, such as the four Geneva Conventions. The Geneva Conventions comprise: the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 UNTS 31 *entered into force* October 21, 1950; the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, 75 UNTS 85, *entered into force* October 21, 1950; the Geneva Convention relative to the Treatment of Prisoners of War, *entered into force* October 21, 1950; and the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Sudan has, however, not signed or ratified the two Additional Protocols of 1977 to the Geneva Conventions. In addition

Second, the Decree establishing the Special Court was completely silent on those aspects of the current evidentiary burdens which render the prosecution of certain crimes endemic in Darfur nearly impossible. In the case of rape, for example, a number of witnesses are required to testify as having directly observed the act of penetration. In many cases this burden is almost impossible to attain and the result is either acquittal or conviction on a lower charge which carries a cursory penalty. Consortium members referenced a recent case in Darfur involving the rape of two minors which resulted only in a short sentence for indecent assault.

Third, the Order establishing the Special Court did not lift the immunities for security and governmental officials which currently circumscribe the potential for ensuring accountability in Sudanese law. Fourth, key fair procedure guarantees were also missing.²⁰

Communicating Clear and Accurate Information about the ICC Process within Darfur

It was agreed that there was a need for a sustained information effort on the ICC process, both to ensure that both the Darfurian and Sudanese populations understood the scope of the referral and investigation and how they could be engaged. Although the ICC Registry had the primary responsibility for developing such a strategy, in view of the particular situation on the ground in Darfur, NGOs had a huge role to play—although it was important to be aware of differential strengths with respect to reaching different audiences.

There had been some brave efforts to disseminate information about the ICC process and the UN Commission of Inquiry within Sudan: one newspaper had even serialized the UN Commission of Inquiry Report.²¹ Much remained to be done, however. It was recognized by participants that not only was there a lack of information on the process, but that deliberate misinformation was circulating. Some characterized the extent of this latter as proof of an active campaign to discredit the ICC. The misinformation promulgated related to a variety of issues ranging from the origin and affiliation of the Court to its political agenda and the argument that the recently constituted Special Court for Darfur obviated the need for an ICC investigation. Participants acknowledged that the confusion of issues had the potential to affect not only public understanding and acceptance of the validity and necessity of the referral, but also went to the core of the security of victims, witnesses and other interlocutors during the investigative and trial periods.

It was agreed that a range of diverse strategies to promote understanding of the ICC process needed to be developed, whether for communities of potential victims and witnesses or communities in other parts of Sudan where a different political context pertained. The type of

Sudan has ratified or acceded to the following human rights treaties which are relevant to the conduct of fair trials and the prosecution of serious crimes: International Covenant on Civil and Political Rights, 999 UNTS 171, *entered into force* March 23, 1976; International Covenant on Economic, Social and Cultural Rights, 993 UNTS 3 *entered into force* January 3, 1976; International Covenant on the Elimination of all Forms of Racial Discrimination 660 UNTS 195 *entered into force* January 4, 1969; African Charter on Human and People's Rights OAU Doc. CAB/LEG/24.9/49 (1990) *entered into force* November 29, 1999 and Convention on the Right of the Child, GA Res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. No. A/44/49 (1989), *entered into force* September 2, 1990. Sudan has a dualist system of international law recognition and there has not yet been any implementing legislation in respect of the above treaties. Of particular importance is the fact that Sudan has signed by not yet ratified the UN Convention Against Torture.

²⁰ See for further details, *Preliminary Analysis of the Order Establishing the Special Court for the Events in Darfur*, available from the Darfur Consortium.

²¹ Report of the International Commission of Inquiry on Darfur to the UN Secretary General, January 25, 2005.

positioning required and the extent of the need to fill information gaps or correct misinformation might be significantly different.

It was suggested, for example, that the establishment of the new Special Court for Darfur opened the way for a discussion of complementarity and of the ICC in a way which could be anchored to legal, rather than political, discourse. Support for local lawyers in their analysis and critique of the Special Court, and engagement as defense lawyers, might provide a way in for more dispassionate debate.

It was understood that lawyers within Sudan were seeking more information and training on ICC law and procedure and that efforts should be made to conduct workshops openly within Sudan, with invitations proffered to Sudanese government officials. It was pointed out that a strong coalition within civil society had advocated for the signature and ratification of the Rome Statute and that leading lawyers in Khartoum had spoken out in support of the recent ICC referral. The Consortium would endeavor to ensure that a workshop on the law, practice and process of the ICC took place in Sudan, a particular request of some of the Sudanese lawyers present, including the Association of Darfur Lawyers. It was noted that one Consortium member was already working to disseminate information on international standards through the prism of a campaign on the ratification of the Convention Against Torture.²² In discussions of ways to engage the Sudanese judiciary, it was noted by Consortium members that the agreement inherent in the Comprehensive Peace Agreement (CPA) to proceed with a reform of the justice system in Sudan as a whole could be used as a starting point for discussion on the ICC and international standards.²³

It was emphasized that knowledge and understanding of the ICC process among the general public in Sudan was not just important for the progress of the ICC's investigation. It could also help to encourage support for, engagement with, and confidence in, parallel accountability processes within Sudan, including community based mechanisms of justice and reparations.

In thinking through how the function and role of the ICC could be communicated to Sudanese civil society broadly the following points were made about the message emphasis:

- The pre-eminence of the principle of complementarity within the ICC system and the due deference accorded the Sudanese system;
- Sudanese signature of the Rome Statute;
- The international character of the Court, including involvement of African judges, and strong support from African states; and
- International commitment to supporting the full range of justice and compensation mechanisms within Sudan and support for the reform of the criminal justice system as a whole.

Consortium members told how displaced communities in Darfur were generally aware of the ICC and had welcomed the referral: one of the main challenges, however, would be carefully managing expectations both around the timeframe for, and scope of, the process going forward.

²² Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, GA Resolution 39/46 UN GAOR Supp. No. 51 at 197, UN Doc. No. A/39/51 (1984), *entered into force* June 26, 1987.

²³ The Comprehensive Peace Agreement (CPA) was signed on January 9, 2005. See the Comprehensive Peace Agreement between the government of the Republic of the Sudan and the Sudan Liberation Movement/Army, available online at <http://www.iss.co.za/AF/profiles/Sudan/darfur/compax/>.

Concern was expressed that ultimately there was a danger of disappointment with the process. There were many incorrect assumptions about the scale of the investigation and its expected outcomes. At one end of the spectrum many believed that the decision to refer the case of Darfur presaged armed intervention by the international community, or, at least, a proactive arrest strategy with or without the cooperation of the government of Sudan. There was an assumption that at a minimum, persons on the confidential list drawn up by the UN Commission of Inquiry and transmitted to the Office of the Prosecutor would be subject to indictments, with much speculation as to the constitution of the list. Further, some who had been among those most strongly urging the referral (including some Darfur opposition leaders) were under the misconception that the ICC would be the framework for accountability for all the serious crimes which had been committed.²⁴

In addition to providing clear factual information on the structure of the ICC and the expected process of the Darfur investigation, NGOs agreed that in terms of reaching out to victims and witnesses and communities in Darfur information around the following issues would have to be prepared with the utmost care:

- *Reparations for victims*: there needed to be a clear articulation of the scope and limitations of such schemes and clarity about differentiation between the ICC process and local mechanisms of compensation which might be developed.
- *Protection of witnesses and others*: the type of protection which could be offered to those who cooperated in any manner with the ICC with the prosecution, investigation or reparations assessment should be carefully delineated. It was pointed out that there were a range of measures which the ICC could take ranging from preventative efforts during on the ground engagement to arranging for relocation of persons in cases of extreme and imminent threat. During a trial in camera proceedings were possible and disclosure of witness names could be restricted to the defence. There was little, however, the Court could do to ensure total anonymity. Ultimately the ICC did not have the capacity to provide absolute security guarantees.

In discussion of how a successful information strategy within Darfur might be pursued a number of points were raised:

- Due to the low levels of literacy among many of those who would likely be the targets of an information campaign, radio was one of the most efficient and effective means of communication, whether through listening groups, distribution of audio tapes in the local languages, or the provision for the availability of wind up radios and equipment.
- Recording the views of the displaced and local communities on the process and encouraging a dialogue through the distribution of such recordings was also mentioned, an approach which had been very successful in Burundian refugee camps in Tanzania.
- It was noted that Internews was developing a new community radio for refugee camps in Chad and that the BBC was preparing to broadcast specific programming for Darfur in Arabic.
- As dialects spoken in Darfur were generally not written, material for NGOs and other should be in Arabic. The Coalition for the International Criminal Court representative at

²⁴ There was at the same time evidence of differing views within the rebel groups around the extent to which cooperation with an ICC investigation should be pursued, in some respects along operational and political leadership lines.

the Nairobi meeting actively sought ideas on the kinds of material it might be useful to translate into Arabic, in addition to proposals for information programs.

- The visiting professional program run by the ICC was mentioned as a useful channel for informing journalists about the work of the Court: for example, a Congolese journalist was in the Hague at the time of the discussion.
- Interpreters for information sessions should be carefully screened and identifying and targeting trusted community leaders as part of any communication strategy was vital.

Finally, it was suggested that the Consortium might be in a good position to make formal contact with the rebel groups to ensure dissemination of information on the ICC process within areas under their jurisdiction.

Supporting the Efforts of Civil Society within Sudan

It was recognized that local civil society and international NGOs within Darfur were working in highly restrictive circumstances with increasing incidents of harassment, arrest and kidnapping of humanitarian staff.²⁵

Participants noted that some democratic civil society groups had been attempting to oppose the misinformation circulating about the ICC. Although national NGOs had a vital role in dissemination of information on accountability processes, it was recognized that there was often a very narrow margin of freedom of action—especially when it came to human rights NGOs. Access to certain areas was often a problem—no national NGOs had been allowed into Kalma camp, for example, in the wake of violent incidents in May. In this respect it was suggested that collaborative activities with UN agencies might provide a protective umbrella for local NGOs. At the same time, harassment of persons who had had contact with international actors had been reported. Further, in thinking through the range of actors which could be involved in disseminating clear information on the ICC and other accountability processes it was important to look beyond NGOs and to engage trusted local administrative officials and community leaders.

It terms of security, it was acknowledged that the context was extremely volatile, and that before some audiences the mere mention of the ICC was incendiary. For example, one participant pointed out that although NGO engagement in collecting victims' statements for purposes of reparations was of a different order than direct engagement in an investigation, local officials might not appreciate the difference. It was pointed out, for example, that there were allegations circulating that persons viewed as potential witnesses before the ICC had been forcibly relocated to prevent their giving testimony.

Although it was recognized there could be a role for NGOs in assisting in the identification and collection of certain types of evidence for purposes of the various accountability mechanisms under discussion for Darfur, this was obviously a very sensitive matter, both from the point of view of security and the inherent limitations of the NGO function.

First, it was noted that it was important to bear in mind that persons involved in the collection of evidence to be used formally before national or international judicial processes, could be called to

²⁵ In early September the situation was further exacerbated with the announcement of a new decree restricting the funding and operation of both national and international NGOs. It is not yet clear whether this decree will come into force, and indeed there are questions as to its constitutionality.

testify at trial. Mindful of security considerations, however, in the context of the ICC the Rome Statute, provides that the prosecutor can agree:

...not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents.²⁶

Second, technical legal issues around the admissibility of evidence gathered by NGOs might arise. In terms of statement gathering, for example, the existence of multiple statements from the same witnesses could sometimes provide a window for undermining the credibility of the evidence.

Generally, NGOs should also refrain from attempting to gather physical or forensic evidence, simply noting its location or the details of the person in whose possession it was—maintaining a clear chain of custody was noted as essential for establishing the quality of evidence.

In summary, it was agreed that for purposes of prosecutions before the ICC evidence gathering was clearly the responsibility of the Office of the Prosecutor. The most useful role which NGOs could play was that of identifying persons, or information generally, which might be of interest, and presenting it in an organized and searchable manner. The Office of the Prosecutor would then be responsible for building its own case.

It was recalled also that information gathered by NGOs could be extremely useful for the broader range of accountability and reparations mechanisms which might be put in place for Darfur, including a possible Truth and Reconciliation Commission.

Reaching Out to Civil Society outside Sudan

A draft video advocacy piece on accountability in Darfur and the perspectives of displaced communities developed further to the Consortium's mission to Chad in February was presented and discussed at the Nairobi meeting. The objective of the piece, created as part of the Consortium's mission earlier in the year to Chad, was to sensitize African civil society more broadly to the events in Darfur and generate support for accountability efforts, particularly the ICC. Recommendations on the final editing of the piece and the need for some additional footage to be inserted were made. It was agreed that the final version of the piece would be disseminated to TV stations across the region and that nationally based Consortium members would also organize panel discussions around the screenings. Discussion ensued as to whether those aspects of the video which emphasized the critical role of the AU, and the need for continued support from contributing countries, might be developed into a companion video piece which could be used as part of the Consortium's advocacy on the need for support for the AU mission in Darfur. It was agreed that funding would be sought to support this distribution strategy and that Arabic, French and English versions would be prepared.

Finally, it was recognized that it had been difficult to engage Arab human rights and civil society NGOs on the situation in Darfur, particularly in the light of the ICC referral. There was a concern expressed that the momentum which had begun last year, especially round a strongly worded statement on Darfur by 31 Arab human rights organizations, had dissipated. Unfortunately, only one of the key North African members of the Consortium was able to attend the Nairobi meeting.

²⁶ Rome Statute, Article 54(3)(e).

It was suggested that the prominent involvement of the AU in Darfur might have contributed to the marginalization of perceptions of the role and responsibilities of North African and Arab states in the crisis. At the same time the impact and involvement of North African states from Egypt to Libya, both directly and indirectly, on the conflict in Darfur and their potential engagement in the ICC process (through rendition requests, for example) made them key to finding a resolution to the Darfur conflict. It was agreed that the Consortium would explore ways of reaching out to re-engage North African and Arab NGOs, perhaps seeking to support a workshop which would focus particularly on exploring North African Arab civil society perspectives on the Darfur crisis. It was noted in this regard, that there had been a welcome shift in some respects in the position of the Arab League position with a recent public recommendation that the government of Sudan should comply with requests for cooperation with the ICC process.

B. THE AFRICAN UNION AND PROTECTION

Participants acknowledged that the AU Mission in Sudan (AMIS) mission was critical to ensuring the effective protection of civilians in Darfur, the timely delivery of humanitarian assistance and ultimately achieving a lasting solution to the crisis. In terms of the African continent itself, the AMIS mission also presented a vital opportunity for the AU to develop a model of peacekeeping/intervention which could serve in future crises. By the end of July 2005, AMIS had 4,361 personnel on the ground in Darfur: 3,690 military and 634 civilian police, with a total authorized strength of military, police and civilian staff of 7,447 persons (5,887 military personnel and 1,560 police) intended to be achieved by September 2005.²⁷

In general, participants agreed that the presence of AU troops and the mission as a whole had made a significant practical difference in the lives of those on the ground, particularly since the partial expansion of the mission mandate in October 2004 and the subsequent authorization of increases in civilian staff and troop numbers.²⁸ For example, military patrols in some areas were now accompanying women from the IDP camps to collect firewood thus reducing the incidents of attacks (patrols were also being conducted by government of Sudan police forces). Within the camps themselves AU civilian police were beginning to be operational, often alongside Sudanese police, although they continued to require military back up on occasion. These kind of activities had been having some positive effect in mitigating the population's fears of the national police force: in his report to the UN Security Council in July the UN Secretary General had told of "a persistent, deep mistrust of the police among the internally displaced population and many non-internally displaced civilians" toward the government of Sudan police force. Such fear was attributed to:

... police inaction and indifference to criminal complaints from internally displaced persons and security incidents within camps, some of which were apparently triggered by the police themselves and Janjaweed members being recruited into the police.²⁹

²⁷ On April 28, 2005, the Peace and Security Council of the African Union decided to endorse the findings of the Chairperson of the Council on the situation in Darfur, including an increase the strength of AMIS to a total of 6,171 military personnel, with an appropriate civilian component, including up to 1,560 civilian police. AU PSC Communiqué, PSC/PR/Comm. (XXVIII), Addis Ababa, April 28, 2005.

²⁸ AU PSC Communiqué PSC/PR/Comm. (XVII), October 20, 2004 ; AU PSC Communiqué, PSC/PR/Comm (XXVIII), Addis Ababa, April 28, 2005 ; AU PSC Statement, PSC/PR/ Stat. (XXXVI)-(i), August 4, 2005.

²⁹ Monthly Report of the Secretary General on Darfur, July 18, 2005, S/2005/467 at paragraph 7.

Despite its welcome contribution to the protection environment, however, the AU mission was still struggling to deliver on the wide range of responsibilities it had been assigned. It frequently failed to meet the expectations of the population, constrained by the limits of its forces and civilian staff components, its general operational capabilities and the scope of its mandate. Further, the security and political climate within which the mission was operating was clearly in flux, with increasing attacks on mission elements reported.

Finally, in a very worrying development which engendered considerable debate amongst Consortium members, there were reports of credible allegations of rape, demands for sex in exchange for food and sexual harassment by AU soldiers (specifically at camps near El Fasher). Without transparent investigation, such allegations had the capacity to harm the reputation and capacity of the mission to effectively protect.

Participants felt that the Darfur Consortium was particularly suited to play a leading role in developing realistic and detailed proposals for the enhancement of the AMIS mission and in generating the political will and support for such recommendations. Identifying the specific content of such an advocacy platform was a complex task, however, and required more detailed consideration. There were a range of views under discussion in the advocacy community and each of the proposals for change carried significant political implications.

It was agreed that the Consortium would begin to look at how best to support an expansion of the AU mission's mandate and operations, in particular, the development of specific proposals relating to enhancement of capacity to protect civilians.

Mandate, Size and Composition of the AMIS Mission

There was general agreement on the need for an expanded AMIS mandate. It was acknowledged, however, in order to agree on a precise set of recommendations, detailed examination by the Consortium of how the current mandate was being interpreted and understood on the ground, and an assessment of the effect of the expansion of the mandate in October 2004, would have to be conducted. This might involve a mission to Sudan in late 2005 for purposes of gathering of information and formulation of policy guidance to be presented to AU political and other actors at the time of the January summit (currently scheduled for Khartoum).³⁰

The AMIS mission mandate, as revised in October 2004, had charged the mission, *inter alia*, with the responsibility to:

... protect civilians encountered who are under imminent threat and in the immediate vicinity, within the limits of mission capability, it being understood that civilian protection is the government's responsibility ... [and] ... contribute to a secure environment for the delivery of humanitarian relief and the eventual return of IDPs and refugees to their homes.³¹

It had been formulated by the AU Peace and Security Council in the context of a consensual deployment and as a buttress to what was initially conceived of as a ceasefire monitoring force.

³⁰ That Sudan would take over the Presidency of the AU was confirmed at the July summit in Libya. This access, which the Consortium opposed, will affect the strategies which will be developed by the Consortium.

³¹ AU PSC Communiqué PSC/PR/Comm. (XVII), October 20, 2004.

The Consortium recognized that there were contradictory elements to the current mandate. First, a ceasefire monitoring function involving all sides in the conflict had been combined with a partial civilian protection mandate, foreseeably comprising the taking of hostile action against the same parties. Second, the assumption that the government of Sudan would fulfill its primary responsibility for civilian protection, which was the foundation stone of the circumscribed mandate, was clearly not sustainable.³² Third, it was noted that the formulation of the mandate itself was ambiguous, reflected in the fact that to date the mission had no approved rules of engagement. It was acknowledged at the same time that some commanders on the ground had been interpreting the mandate to permit robust action during particular operations.

There were a variety of suggestions for an expansion of the mandate which the Consortium needed time to assess. One international NGO, the International Crisis Group, had recommended that the mission mandate should be expanded to encompass the power to:

...undertake all necessary measures, including offensive action, against any attacks or threats to civilians and humanitarian operations, whether from militias operating with the government or from the rebels.³³

The military advisor to the special representative of the chairperson of the African Union Commission and head of the AMIS headquarters in Khartoum had gone further in a recent article, urging that the mandate include, but not be limited to:

- assisting the government of Sudan to maintain law and order in Darfur;
- protecting civilians in Darfur where the GOS is unwilling or unable to do so;
- undertaking the cantonment of the Janjaweed and rebels; and
- undertaking the disarmament, demobilization and reintegration (DDR) of their combatants into the society.³⁴

At the same time, the AU had made it clear it was not currently considering an expansion of the mandate. In his report to the AU Peace and Security Council on the progress of the mission in April, a report ultimately endorsed by the Council, the Chairperson of the Commission declared that the mandate did not need to be strengthened. He emphasized, however, that:

...the tasks within that mandate may need to be reprioritized, with greater emphasis on creating a secure environment, particularly in the context of the delivery of humanitarian relief, and confidence-building measures.³⁵

While it was acknowledged that the political climate did not seem ripe for successful advocacy around a *consensual* expansion of the mandate, it was noted that NGOs should keep in mind that the strengthened AU constitution maintained a right for the AU to “intervene in a Member State

³² It appears that not even the government of Sudan believes that it has such a capacity and responsibility. In early September, for example, further to a spate of attacks on humanitarian personnel the Acting State Minister for Foreign Affairs called on the AU and the UN to “move beyond condemning the attacks and compel the rebels” warning that failure to do so would bring Darfur conditions “back to square one.” See UN IRIN, “Sudan: Ongoing Insecurity Jeopardizes Darfur Peace Talks,” September 8, 2005.

³³ International Crisis Group, “The AU’s Mission in Darfur: Bridging the Gaps,” Policy Briefing No. 28, July 6, 2005, at Part I.

³⁴ Seth Appiah Mensah, “AU’s Critical Assignment in Darfur: Challenges and Constraints,” *African Security Review* (14) 2 at page 13.

³⁵ See Report of the Chairperson of the Commission on the Situation in the Darfur Region of the Sudan, PSC/PR/2(XXVIII), April 28, 2005, at paragraph 106.

pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity.”³⁶ In the light of the expected publication of the report of the African Commission on Human and Peoples’ Rights on the situation in Darfur, and its eventual transmission to the AU Peace and Security Council, there could be a foundation for arguing that the “grave circumstances” threshold has been reached.

In addition to calls for a more robust mandate, Consortium member organizations generally agreed that there was the need for a larger force of peacekeeping troops on the ground. There was disagreement, however, as to the best way to achieve this. Member organizations had, at various times, called for an augmentation of the AU mission size and the need for the involvement of other forces, from an expanded UN Mission in Sudan (UNMIS) to the involvement of troops from SPLA divisions and NATO. Further information and discussion was needed to arrive at a joint position.

First, it was noted that the possibility of an expanded AU deployment beyond the 7,447 authorized for September 2005 had been proposed for consideration by *both* the UN Secretary General and the AU Peace and Security Council. The UN Secretary General in a May report had envisaged the deployment of 12,000 military and police personnel in a “complex, multidimensional operation”³⁷ after September 2005. Similarly, in a report to the AU Peace and Security Council on April 28, 2005, the Chairperson of the Commission had recommended the deployment of over 12,300 personnel which would take “the operation to an entirely new stage, [...] to contribute to a secure environment throughout Darfur in order to enable full return of displaced persons.”³⁸ In a subsequent NGO expert assessment in June 2005, the International Crisis Group recommended the immediate deployment of between 12,000 and 15,000 troops.³⁹

Second, in the face of AMIS failures around civilian protection, many believed that only UN troops, or indeed those of other organizations such as NATO, could provide the needed security. In stark terms, confidence was fading in AU capacity to deliver against a background of growing general instability in Darfur. As the UN Secretary General put it in July:

Darfur may be a less active war zone than it was a year ago, but violations of human rights continue to occur frequently, and active combat has been replaced by a suffocating environment of intimidation and fear, perpetuated by ever-present militias.⁴⁰

The Secretary General had himself opened the door to consideration of a new force composition in May when he noted that:

While it would be up to the States members of the African Union to decide on how to proceed, they may conclude that the completion of phase II [deployment to a strength of 7,447] provides an

³⁶ The Constitutive Act of the African Union, art. 4(h).

³⁷ Report of the Secretary General on United Nations Assistance to the African Union Mission in Sudan, May 3, 2005, S/2005/285 at paragraph 8.

³⁸ See Report of the Chairperson of the Commission on the Situation in the Darfur Region of the Sudan, PSC/PR/2(XXVIII), April 28, 2005, at 115.

³⁹ International Crisis Group, “The AU’s Mission in Darfur: Bridging the Gaps,” Policy Briefing No. 28, July 6, 2005, at Part I.

⁴⁰ Monthly Report of the Secretary General on Darfur at 40.

opportune moment for the wider international community to assume its responsibilities by fielding this larger operation, which would also require a substantial increase in resources.⁴¹

The Consortium recognized that there was certainly scope in the wording of Security Council Resolution 1590 which had authorized the UNMIS deployment in Sudan for involvement in Darfur. There the Security Council had decided that UNMIS would “closely and continuously liaise and coordinate at all levels with the African Union Mission in Sudan (AMIS) with a view towards expeditiously reinforcing the effort to foster peace in Darfur.” UNMIS could assist through *inter alia*, “logistical support and technical assistance [...] and operations support elements.”⁴² Although no direct logistical support by the UN mission to the AU mission was envisaged in May by the UN Secretary General, the UN did offer to assist the AU to develop an operational plan for the expansion of AMIS, to engage in pre-deployment training for AMIS personnel and to help in identifying and supporting the recruitment and structuring of the civilian police force, including the identification of concept of operations and operating procedures.⁴³

Finally, some commentators had called for consideration of a NATO bridging force which could assume command while the AU force assembled to its full required deployment, or indeed the engagement of NATO or states outside the region individually in policing a no-fly zone.⁴⁴ Coalitions of NGOs and civil society in the US were strongly advocating for the deployment of an international force.⁴⁵

Deployment of forces other than AU on the ground in Darfur was recognized as a highly controversial question. It was suggested that at a minimum the Consortium could fruitfully examine the potential for the AMIS mission to engage more effectively with, and benefit from, the deployment of UNMIS. There was however a need for further information and the gathering of a “sense from the field” as to how the current relationship was being managed.

Tasks of the AMIS Mission

Disarmament: There was unequivocal agreement that disarmament of the Janjaweed militia would contribute significantly to enhancing security in Darfur and should be a central plank of the Consortium’s advocacy platform. It had been a key demand of a series of Security Council Resolutions, and the government of Sudan was due to present a plan on disarmament shortly to the AU. There was, however, recognition that the situation was complex and that a possible role for the AU, whether in terms of active forceful disarmament or monitoring the process, needed to be carefully considered. First, representatives of the Janjaweed were not part of the Abuja negotiations and did not therefore participate in the joint ceasefire monitoring mechanism, requiring them to advise of troop movements and character. Second, the will of the government of Sudan with respect to disarmament was not steadfast. Despite government of Sudan’s protestations of a lack of capacity to disarm, there were allegations that it “continues to recruit,

⁴¹ Report of the Secretary General on United Nations Assistance to the African Union Mission in Sudan, May 3, 2005, S/2005/285 at paragraph 9.

⁴² Security Council Resolution 1590, UN Doc. No. S/RES/1590, March 24, 2005, at paragraphs 2 and 5.

⁴³ Report of the Secretary General on United Nations Assistance to the African Union Mission in Sudan, May 3, 2005, S/2005/285 at paragraph 14 – 18.

⁴⁴ International Crisis Group, “The AU’s Mission in Darfur: Bridging the Gaps,” Policy Briefing No. 28, July 6, 2005.

⁴⁵ The Save Darfur Coalition has participated in an international statement calling for a Security Council authorized force, see Save Darfur Coalition, “Joint Call on the United States, United Kingdom and France to Sponsor a Resolution for Peace Enforcement in Darfur.”

train, financially support, and arm ethnically-based militias and police forces.”⁴⁶ In July the UN Secretary General reported that the government of Sudan had “unilaterally introduced a conditionality on future compliance [with the disarmament process] that contravenes its obligations and sets back efforts to provide safety and security for civilians.”⁴⁷

Ensuring accountability for human rights violations, including the ICC process: It was pointed out that the success of efforts to counter impunity in Darfur was intimately linked to security of persons and places on the ground. It was suggested that the Consortium explore how the AU mission might be supported to play a more effective role in contributing to the twin goals of protection and accountability. A number of issues and questions were raised:

- It was clear that the AU mission itself, particularly the ceasefire monitoring team, had gathered a broad swathe of evidence of serious human rights and humanitarian law violations. Earlier in the year some photographic evidence had in fact been leaked to the media. What role might the AU be able to play in evidence gathering or in engagement with investigations, whether national or international, and how might it ensure its primary functions were not jeopardized?
- Against the background of reports that sites which might have forensic value for future accountability processes were being destroyed in Darfur, could the AU mission be called upon to preserve mass graves?
- In terms of the conduct of the ICC investigation and related information dissemination on the process, was there a role for the AU in providing protection and security to ICC personnel, or persons who interacted with ICC staff? It was noted, for example, that it the AU mission was currently providing limited escort services to humanitarian actors, despite it arguably being outside the mission mandate.
- Could there be a role for the AU mission in the ultimate apprehension of suspects who might be indicted by the ICC, where the government of Sudan was unwilling to act, or where the suspect was not in government controlled territory? Where there any similar issues which could be comparatively explored *vis a vis* the mandate of UNMIS, either independently, or jointly with the AU?

It was noted that the AU had publicly urged Sudan to cooperate without reservation with the investigation process. It had, however, taken an equivocal stance during the negotiations prior to the agreement on the referral. The Consortium should work to ensure that the AU remained steadfast in its support for the process. It was noted, for example that Resolution 1593 specifically invited the Court and the AU to discuss “practical arrangements” that would facilitate the work of the Prosecutor and of the Court, “including the possibility of conducting proceedings in the region, which would contribute to regional efforts in the fight against impunity.”⁴⁸ It was agreed that the Consortium would make an analysis of the implications of the AU-ICC cooperation agreement under negotiation, as soon it was available, and explore the implications of other agreements, such as that with Uganda, for the Darfur investigation.

AMIS and the protection of the rights of women: The Consortium agreed that here was an urgent need for gender issues to be more effectively mainstreamed both in AMIS mission planning and in how the monitoring function currently operated. Second, in the light of the serious allegations

⁴⁶ International Crisis Group, “The AU’s Mission in Darfur: Bridging the Gaps,” Policy Briefing No. 28, July 6, 2005. Part II.

⁴⁷ Monthly Report of the Secretary General on Darfur, July 18, 2005, S/2005/467 at paragraph 10.

⁴⁸ Resolution 1593, at paragraph 3.

of sexual abuse by AMIS troops, mechanisms for prevention and prosecution needed to be reviewed. The Consortium agreed that it would:

- Analyze the AMIS mission framework documents and guidelines in the light of the need to ensure gender sensitive operations;
- Examine the pre-deployment training received by troops in the areas of gender sensitivity and women's rights;
- Highlight the AU troop abuse allegations and review mechanisms for prevention, oversight and prosecution from AU military code of conduct to status of forces agreement, comparing UN guidelines on prevention of abuse;
- Advocate for the deployment of increased number of female troops and police and civilian staff within AMIS;
- Engage with the Gender Directorate of the AU on these issues.

Strategies of Engagement

It was important that the Darfur Consortium develop a comprehensive strategy for engagement with the AU mission in order to explore the issues set out above, develop coherent positions and advocate effectively both on the ground in Darfur and at headquarters in Addis Ababa. It was felt that the Consortium could play an important role in:

- Evaluating the mission as a whole, including the preparation of shadow reports to official assessments on thematic areas, such as, for example, development of civilian policing programs, and AMIS involvement with civil society and local communities.⁴⁹
- Generating the necessary political will and financial support for the implementation of the AU mission, both internationally and via key AU member states. Although support was forthcoming from the international community in terms of military equipment, troop transport etc., essential monetary support was insufficient. By August, the AU was reporting a shortfall of US \$173 million to fund its operations in Darfur and payment of troop salaries was in danger. It was suggested that a strategy might be drawn up focusing on generating support in African parliaments and also linking with other NGO networks (e.g. in Europe and the US) to ensure adequate funding.
- Raising awareness among African civil society, both at the level of the general public and with national parliaments, around the need to ensure fulfillment of the ambitious AU mission force deployment plan.
- Encouraging the AU to engage more vigorously and systematically with the NGO sector in Darfur and the advocacy community more broadly.
- Engaging with the AU in its plans for the development of information offices both in Darfur and Khartoum.

⁴⁹ It was noted that a mapping exercise by the AU with international partners was planned for August was intended to streamline command and control matters, ensure full exploitation of current resources and integrate the various military, civilian police and humanitarian components of the mission.

Engaging with the Political Organs of the AU

The Consortium also addressed ways of engaging with the full range of AU organs including:

- *The AU Presidency*: The country holding the rotating Presidency of the AU should be an essential focus of Consortium advocacy: Libya and Sudan were expected to take over for the next twelve months. A statement from the Consortium introducing its work and setting out its priorities should be prepared.
- *Conference of Heads of State/ Peace and Security Council/ Executive Council*: It was suggested that once the Consortium had developed specific proposals around the AMIS mandate it, or a member organization on its behalf, should seek to use the procedural rule which would permits, *inter alia*, NGOs to address the Peace and Security Council.⁵⁰ NGOs agreed to approach individual Commissioners in order to communicate this message. A letter would be drafted seeking clarification of the procedure for submitting requests to attend.
- *The Permanent Representative Committee*: The Permanent Representative Committee is a gathering of all African Ambassadors in Addis Ababa, divided into sub-regions, East, West, Central, North and South, with coordinating Deans, and monthly regional sub-grouping meetings). The Consortium should travel to Addis and meet with the leading Ambassadors of the regional groups prior and post a future mission to Sudan. In the experience of members of the Consortium, the Permanent Representatives were very open to approach.
- *Pan-African Parliament*: The new AU Parliament was an important organ for furthering awareness around the situation in Darfur, but had little decision making heft at the AU level. It had a role however in terms of seeding messages in national parliaments, as a first step in influencing critical decisions relating to support for the AU effort. At a previous meeting of the Consortium in Kampala, Uganda⁵¹ it had been agreed that a major effort with African parliamentarians would be coordinated through a Consortium member. Further to a round of meetings between Dr Usman Bugaje, a Nigerian parliamentarian, and the chairpersons of parliamentary foreign affairs committees in Ethiopia, Uganda, Nairobi, Ghana and South Africa, this initiative was still in development. It was clear from these meetings that African parliaments were open to understanding the needs in Darfur and open to learning what they could contribute.
- *Economic and Social Council*: Although a very new forum, the Council could be a channel for reaching out to NGOs and garnering new members for the Consortium.
- *The AU Secretariat*: The Secretariat was identified as a critical interlocutor. It was suggested that a Consortium mission to Addis Ababa be completed urgently to meet with the Secretariat assess their needs for support, and identify key information channels, focusing particularly on the civil society, gender and security divisions.

It was noted that the Consortium had not, to date, engaged systematically with other sub-regional organizations such as IGAD, ECOWAS, and the Arab League. It was suggested that this should be done along certain thematic expertise or through NGO coalitions. Finally, in terms of the emphasis on engagement with the AU, it was pointed out that the Consortium also needed to continue what had been a fruitful advocacy effort before UN bodies. It was important to ensure that the voices of African civil society continued to be heard at all levels.

⁵⁰ Rules 15 (2), 21 and 22 of the Rules of Procedure of the AU Peace and Security Council.

⁵¹ Darfur Consortium, Post-Mission Consultation with NGOs, February 12-13, 2005.

C. THE PEACE PROCESS

There was a sense of hope throughout the discussions that the coming into force of the new Constitution in Sudan and the formation of the new government would create a strengthened human rights basis for the discussions of a final peace agreement on Darfur. At the time of the meeting in Nairobi, the 5th Round of the Inter-Sudanese peace talks, were underway in Abuja, touted by the government of Sudan as “final and comprehensive.” A 30 point Draft Declaration of Principles was under debate and discussions were being mediated by the AU Special Envoy, Salim Ahmed Salim. Members of the Consortium attended the talks and reported to the Nairobi meeting.

It was noted that the commencement of the 5th Round of the talks in Abuja had not been auspicious with initial objections to the presence of the Eritrea and Chad delegations halting the discussions. Further, fighting was still continuing on the ground despite the ostensible ceasefire and some members of the rebel delegations had abandoned the talks to return to their positions, igniting concerns of splits both within and between the Darfur rebel groups. A number of preoccupations were discussed:

- It was important that the “peace partners” and the international community did not pressure delegates to produce a speedy, but less sustainable, result, despite understandable concerns about the potential of protracted Darfur negotiations to derail implementation of the North-South CPA.
- Alarm was expressed about the absence of women and women’s issues from the peace negotiations, especially as women had suffered particularly during the conflict. This issue needed to be raised with all parties to the conflict and with the international “peace partners.” It was noted that civil society groups had attempted to develop strategies and create networks of women’s representatives within Darfur but it was difficult to see the impact at the higher levels of government and rebel leadership. The hosting by UNMIS of a meeting on the implementation of Security Council Resolution 1325 was only the first step. It was suggested that donors be urged to particularly demand the involvement of women and explicit attention to women’s rights issues as part of the modalities of their support for the peace negotiations.
- In the light of the AU emphasis during the talks on non-judicial forms of accountability for atrocities, it was vital that the need for cooperation with the ICC process as part of a comprehensive approach to accountability was accepted as part of the agreement.
- There was a general view that parties at the talks needed to recommit to honoring the current ceasefire absolutely and prioritizing the protection of civilians as a prerequisite to detailed discussion of formulas for wealth and power sharing.

In the wake of this discussion at the Nairobi meeting, the Consortium prepared a statement on civil society priorities for the Abuja talks and a delegate from the Consortium traveled to Abuja after the meeting to present the views.

On July 5, a Declaration of Principles for the Resolution of the Sudanese Conflict in Darfur was signed in Abuja.⁵² Although the Declaration included a recognition of the “paramount importance” of “accommodation of the multi-ethnic, multi-religious, multi-cultural situation,”

⁵² Talks had been slated to resume on August 24, but were later postponed to September 15, 2005.

and pledged that “refugees and internally displaced persons (IDPs) ha[d] an inalienable right to return to their places of origin in accordance with International Law and UN norms and standards,” there was no mention of the need for justice and accountability, let alone an acknowledgement of the ongoing ICC process.

Conclusion

It was acknowledged that over the previous year the Consortium had coalesced into a strong a respected coalition of NGOs which had had a significant impact on the debate and actions by the international community around questions of accountability and protection in Darfur. Much remained to be done, however. It was agreed that a revised platform of action would be drawn up, particularly encompassing a more systematic outreach to African Union organs, one area where the Consortium could play a unique role.

At the beginning of July the investiture of Vice-President John Garang had seeded hope that fresh impetus for finding a political solution to the crisis and tackling the deteriorating humanitarian situation would be found. With the announcement of the death of the Vice-President in a helicopter crash in southern Sudan in the first week of August 2005, however, prospects for peace in Darfur appeared to have been dealt a severe blow. In the wake of the tragedy, inter-racial violence erupted in Khartoum and other cities and the state of emergency was reestablished. By early September, Presidential decrees consolidating immunities for members of the armed forces and restricting the operation and funding of NGOs had been issued.

Although aspects of the analysis in this report may have to be reviewed as the situation develops, the program of work identified by the Consortium remains valid. It is clear that a renewed effort is required to support civil society in Darfur and Sudan in the work of grappling with the changing political and humanitarian context on the ground in Darfur. The challenges facing the Consortium are how to maintain its momentum, expand and more deeply engage its membership, deliver on the detailed program agreed in Nairobi and explore how the solidarity generated within the Consortium might be built upon to generate effective advocacy around other African crises in the future.
