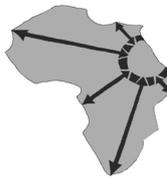




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Darfur Consortium



Cairo Institute
for Human Rights Studies

PEACE REQUIRES JUSTICE:

U.N. SHOULD IMMEDIATELY REFER DARFUR TO THE ICC

Press Release

CAIRO, 23 February 2005 – The Darfur Consortium, an umbrella group of more than forty mainly African civil society organizations, along with the Cairo Institute for Human Rights Studies and Human Rights First (formerly the Lawyers Committee for Human Rights), urge the U.N. Security Council to refer the situation in the Darfur region of the Sudan to the International Criminal Court (ICC) without further delay. A Security Council resolution to refer the Darfur situation to the ICC would grant that court jurisdiction to investigate and prosecute the atrocities committed in the region.

“The restoration of peace in Darfur is not possible unless those responsible for the grave crimes committed there are brought to justice and the damage done to the victims is satisfactorily repaired,” said Magdi El Na’im, Executive Director of the Cairo Institute for Human Rights Studies, which is a member of the Darfur Consortium. “As a first step, the ICC must be permitted to investigate and prosecute those who bear the greatest responsibility for these crimes.”

Last week, the report of the U.N.-appointed International Commission of Inquiry on Darfur was presented to the Security Council. The Commission – a five-member panel that includes Mohammed Fayek, Secretary-General of the Arab Organization for Human Rights – found that crimes against humanity and war crimes have been committed in Darfur. In particular, it found that killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging, and forced displacement have been committed on a widespread and systematic basis. The Commission also provided to the U.N. Secretary-General a sealed list of individuals suspected of criminal responsibility for these violations and strongly recommended immediate referral of the Darfur situation to the ICC.

Despite the Commission’s urgent recommendation, the current draft of a Security Council resolution on Darfur, which is sponsored by the United States, fails to refer the Darfur situation to the ICC – or indeed to provide for any acceptable mechanism for expeditiously holding accountable those responsible for what the U.N. Secretary General has described as a “hell on earth” for the people of Darfur.

“It is unacceptable to delay justice for victims in Darfur,” said John Stompor, Senior Associate in the International Justice program of Human Rights First. “A vague promise of future accountability is an inadequate substitute for immediate referral to the ICC.”

A recent mission by members of the Darfur Consortium observed firsthand how Darfurians continue to suffer under Khartoum’s defiance of the international community and the ineffectiveness of existing

Security Council resolutions. More than 2.1 million people have been cast out of their homes and are living in fear in precarious conditions as internally displaced persons in Sudan or as refugees in Chad. As many as 300,000 people may have already died as a result of the conflict.

“Darfurians who fled their homes are enduring a desperate lack of adequate food and medical care,” said Ashraf Milad Ruxi, a representative of the Darfur Consortium. “They also express fear at returning to their villages until there is a process for holding accountable those responsible for the grave crimes committed in Darfur.”

“The people of Darfur must not struggle for justice alone. They should have the support of all peace-loving people – particularly their brothers and sisters throughout Africa as well as the Arab and Muslim world,” said Dismas Nkunda, also a representative of the Darfur Consortium. “The heinous crimes committed in Darfur demand international action. We challenge the African Union and its member countries – particularly Algeria, Benin, and Tanzania, who have seats on the Security Council – to put their full support behind a referral of the Darfur situation to the ICC.”

Sudan Has Failed to End Impunity.

The Sudanese government, whose army and proxy militia, the Janjaweed, are responsible for much of the violence in Darfur, has failed to bring those responsible for these crimes to justice.

“In July 2004 during the U.N. Secretary-General’s visit to Sudan, the Sudanese government promised that it would investigate the grave crimes in Darfur, but since then, there has been no serious action to end impunity,” said Abdel Mon’im El Gak, Sudan Program Officer at the Cairo Institute for Human Rights Studies. “The Government of the Sudan has no one to blame but itself for its lack of credibility when it talks about justice for these crimes.”

Indeed, the International Commission of Inquiry on Darfur found that “the Sudanese judicial system has proved incapable, and the authorities unwilling, of ensuring accountability for the crimes committed in Darfur.”

The ICC Is an Essential First Step for Justice.

The ICC is the only permanent international judicial institution with the power to exercise jurisdiction over persons for the most serious crimes of international concern – genocide, other crimes against humanity, and war crimes. Pursuant to article 13 of the Rome Statute, the Security Council acting under Chapter VII of the U.N. Charter may immediately authorize the ICC to exercise its jurisdiction over the serious crimes committed in Darfur.

Because the ICC is now operating, it could rapidly begin investigating and prosecuting those who bear the greatest responsibility for the serious crimes committed in Darfur. The court has existing facilities and infrastructure, its senior officials are in place, and there already is a staff of over 250 people at work.

The U.S. Proposal for New Tribunal Has Many Drawbacks.

In recent weeks, U.S. officials have sought to derail a referral to the ICC by advocating for a new, temporary international tribunal, mandated and established by the Security Council, and jointly administered by the U.N. and the African Union.

U.S. support for a new tribunal is based on its ideological opposition to the ICC – not practical rea-

sons related to ensuring justice for the people of Darfur. Indeed, the U.S.-proposed tribunal would be burdened by unnecessary delay and expense.

“It is disheartening to see the United States undermine the leadership role it has played in focusing the world’s attention on the human rights emergency in Darfur,” said John Stompor.

Experiences with the temporary international criminal tribunals that were created for the former Yugoslavia and Rwanda – in the absence of the permanent ICC – suggest that it would take many months, if not years, to get a new tribunal for Sudan up and running.

Such a tribunal would also require substantial and continuing financial commitments of hundreds of millions of dollars. It seems highly unlikely that any of the ninety-seven ICC member countries would support the creation of a new court, when they are already paying for the ICC, which is ready and able to take on the case of Darfur.

Another drawback of a new tribunal is that it likely would have problems of non-cooperation similar to those that have plagued the other temporary courts. Some of those who have been indicted by these tribunals are successfully avoiding appearing in court, hoping to exploit the limited time frame that such temporary tribunals have to finish their work. In contrast, the ICC is a permanent tribunal whose continuing jurisdiction is substantially more difficult for accused persons to avoid.

Africa Has a Large Stake in Peace in Darfur and Referral to the ICC.

The African Union and its member countries have played a pivotal role in the pursuit of peace in Darfur – brokering a ceasefire, hosting the political process, and sending a monitoring force to Darfur. African countries have also clearly expressed a commitment to the ICC – a commitment that is disregarded by the U.S. proposal for a new tribunal.

“The ICC is not only an international court – it is also an African court,” said Dismas Nkunda. “The ICC has been identified by numerous African countries as the most appropriate mechanism for pursuing accountability for serious crimes under international law when domestic courts are unwilling or unable to act.”

Forty-four African countries – including Sudan and Egypt – have signed the Rome Statute, the treaty establishing the ICC. Twenty-six African countries have ratified the Rome Statute and are full parties to the ICC.

In addition, many of the ICC’s key officials are African jurists. The ICC also has the capacity to hold its proceedings in Africa, if desirable.

A Range of Additional Measures Are Needed.

A referral of the situation of Darfur to the ICC is just one of a number of critical steps that must be taken in order to ensure peace, justice, reconciliation and reparation for the people of the region.

The ICC would only be able to investigate and prosecute a small number of persons for the serious crimes committed in Darfur.

For the thousands of rank and file members of the Janjaweed and others suspected of committing atrocities in Darfur, justice must be sought and achieved at the local level. Additional mechanisms should be developed with the full and informed involvement of the people of Darfur, in particular the victims of the recent violence. This is a huge but vital task. It would necessitate not only support for reform of the justice system within Sudan but also recognition of the important role that local, tradi-

tional conflict resolution mechanisms could play in Darfur.

In addition, a scheme of reparations for the victims of the conflict, educational programs that promote a culture of peace and human rights, and at a later stage, a truth and reconciliation commission, need to be part of a long-term strategy to promote a lasting peace.

“Side by side with a referral of the situation of Darfur to the ICC, the international community must commit to providing substantial and sustained support to the people of Darfur to pursue accountability and reconciliation at the local level,” said Abdel Mon’im El Gak. “This must involve understanding the roots of the conflict and its effects on Darfur communities. It also requires making available the additional resources needed by Darfurians to rebuild the region’s social and material infrastructure, which has been utterly decimated.”

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