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HUMAN RIGHTS COUNCIL  
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**HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S  
ATTENTION**

**Written statement\* submitted by the Cairo Institute for Human Rights Studies  
(CIHRS), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is  
circulated in accordance with Economic and Social Council resolution 1996/31.

[25 August 2008]

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\* This written statement is issued, unedited, in the language(s) received from the  
submitting non-governmental organization(s).

**Judicial Proceedings of the International Criminal Court (ICC) Against the President of Sudan, and the International Communities Obligation to Support the ICC**

1. The request filed by the Prosecutor of the International Criminal Court (ICC) to the pre-trial chamber of the ICC for the issuing of an indictment for the Sudanese President, Omar Al-Bashir, on 14 July 2008, should be supported by the international community, and, in particular, the UN Human Rights Council. The evidence available to the Prosecutor has been deemed by his office as sufficient to charge Al-Bashir with genocide, war crimes and crimes against humanity committed against the Sudanese people in Darfur.

2. The issuing of this request represents a significant step towards limiting the impunity exercised by government regimes in the Arab world and ensuring civilian protection in war zones throughout African and the Arab region; and constitutes one of the strongest attempts to bring justice to the victims of the atrocities perpetrated by the Sudanese army and the Janjaweed militias in Darfur. Atrocities committed by government supported Janjaweed militias and governments forces, have been responsible for the death of more than 300,000 people, the displacement of more than 3 million Sudanese to places inside and outside of Sudan, the brutal rape of thousands of women and children, and the burning down of hundreds of villages throughout Darfur. Such atrocities have been committed with almost total immunity from governmental prosecution, and often with the active support and coordination of governmental officials.

3. The prosecution of perpetrators of such crimes is a necessary milestone for establishing peace in Sudan and putting an end to the growing retaliatory attacks carried out by various armed groups in Darfur. The enforcement of the rule of law and prosecution of those who have carried out war crimes and crimes against humanity constitute a long term necessity for providing a safe environment that allows the voluntary return of refugees and displaced persons and preparing the way for a long term settlement of the conflict in Darfur.

4. CIHRS underlines the responsibility of the Sudanese authorities for the impasse they are now in. The Sudanese regime has continuously refused to comply with Security Council Resolution 1539, which obliges the Sudanese Government to cooperate unconditionally with the International Criminal Court. Sudanese authorities have further refused to use the national judicial system to hold those who committed atrocities in Darfur accountable, and have failed to cooperate with the ICC and to respond to the request, dated April 2004, to surrender two suspects, namely, Ahmad Harun, State Minister of Humanitarian Affairs and Ali Kushayb, the former Janjaweed leader. These two individuals have not even been summoned before national courts. Moreover, the Sudanese government has shown flagrant disrespect for the ICC's request and the victims of war crimes in Darfur by assigning Ahmed Haroun to supervise a census in southern Darfur, as well as giving him the leadership of a committee to investigate human rights violations in both the North and the South of Darfur. Moreover, President Al-Bashir issued a decree in January 2008 appointing one of the most influential leaders of the Janjaweed Militias as an advisor to the Sudanese Government

5. For five years, the Sudanese government has continually attempted to frustrate and manipulate all international efforts to begin to provide protection to victims in Darfur, including efforts by both the African Union and the United Nations. It has stalled the deployment of the United Nations and the African Union peace-keeping forces and greatly increased the suffering of the Sudanese people by disrupting and obstructing the work of

humanitarian agencies or supporting militias that commit assaults against relief missions and staff. Sudanese authorities have also refused to cooperate and/or allow fact finding missions to be conducted within Darfur by the United Nations Human Rights Council and other entities, including CIHRS and other Arab NGOs. In addition, the Sudanese Government has completely failed to implement any serious measures with a view to halting the attacks of the Janjaweed militias in Darfur and disarming them, thus ignoring their obligations under Security Council Resolutions 1556 and 1564, as well as various resolutions of the African Union, the N'djamena Agreement, and the Abuja Peace Agreement for Darfur.

6. Unfortunately, the plan of legal and political action proposed by the Secretary General of the Arab League on 23 July, 2008 in response to the ICC prosecutor's request for charges to be issued against President Al Bashir, aims primarily at obstructing or stalling the procedures that should be followed to guarantee that the perpetrators of the war crimes in Darfur will be brought before the ICC. This plan claims to give priority to the political settlement of violence in Darfur, and to allow the Sudanese judiciary more time to continue considering the crimes committed in Darfur. The plan also calls on the international community to allow the Sudanese legislative branch more time to incorporate the crimes provided for in International Humanitarian Law within the framework of the Sudan's penal code, and to provide an opportunity for experts from the African Union, the Arab League and the United Nations to examine the consistency and comprehensiveness of the Sudanese laws as well as the soundness of litigation proceedings.<sup>1</sup>

7. In spite of the seemingly good intentions of this plan, there remains no grounds to believe that Sudanese authorities will begin to provide genuine accountability for crimes committed in Darfur. For years, the Sudanese authorities have turned a blind eye to dozens of urgent appeals by the United Nations, and other international, regional and national organizations stressing the dire need to reconstruct the national judiciary in order to effectively provide accountability for crimes committed in Darfur. The Sudanese government has proven beyond a doubt that it lacks the political will to reform its legal and judicial system.

8. In particular, since June 2005, the Sudanese authorities have attempted to give the impression that they are determined to deal with crimes committed in Darfur. However, the six cases tried during the years 2006 and 2007, by the Special Darfur Courts, have only dealt with case files of the ordinary courts, and Darfur's Special Court President has notified the office of the Prosecutor of the ICC that there were no cases involving serious violations of International Humanitarian Law.<sup>2</sup>

9. Over the last several months 38 persons have been sentenced to death in Sudan by courts established in 2001 to try "terrorist" cases, after being indicted for their participation in the armed attack on Khartoum launched by the Justice and Equality Movement (JEM), and which resulted in more than two thousand fatalities. The Arab League, however, made no effort to suspend these verdicts, or to warn that they may jeopardize the peace process as it

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<sup>1</sup> For more information, refer to the statements of the Arab League Secretary General on the website of the Arab League, date 23/7/2008 at [http://www.arableagueonline.org/las/arabic/details\\_ar.jsp?art\\_id=5666&level\\_id=944](http://www.arableagueonline.org/las/arabic/details_ar.jsp?art_id=5666&level_id=944)

<sup>2</sup> Seventh Report of the Prosecutor of the International Criminal Court to the UN Security Council at [http://www.cihrs.org/darfur/Darfur\\_Report\\_details.aspx?rep\\_id=93&class\\_id=8](http://www.cihrs.org/darfur/Darfur_Report_details.aspx?rep_id=93&class_id=8)

had done when the ICC prosecutor requested an indictment to be issued against the Sudanese President. Nor did the Arab League criticize these courts as they have the ICC despite the fact that their proceedings are inconsistent with the constitution of Sudan and international standards; such courts recognize and allow for confessions extracted under torture or through coerced interrogations, and only allow the defense one week to appeal judgments arrived at by the court. Furthermore, during these trials, several defense lawyers were forced to withdraw because they were denied access to those they represented.<sup>3</sup>

10. The judicial proceedings of the ICC if begun against Al Bashir, unlike the judicial proceedings in Sudan and of various regimes within the Arab region, conform to the highest standards of fairness and due process. As such, President Al-Bashir will be afforded a legitimate and fair judicial process in which he may plead not guilty and be acquitted of all charges if the evidence to prove his guilt is not highly convincing.

11. CIHRS is concerned about the likely retaliatory actions that might be carried out and/or organized by the Sudanese government against innocent civilians and aid workers, and that may escalate armed conflict in Darfur and, thus exacerbate the five-year humanitarian tragedy that has been occurring in this region. In this context, CIHRS calls upon the League of Arab States and Arab governments to urge the Sudanese leaders to put, for once, the interests of the Sudanese people first. CIHRS appeals to the international community to act through the AU and UN in order to fulfill their responsibility to prevent further atrocities from taking place in Darfur by providing protection to the civilian population in Darfur.

12. CIHRS is well aware of the many challenges to international justice, given the double-standards that exist within the policies of the Security Council, including the immunity provided to perpetrators of war crimes and crimes against humanity committed in places such as Palestine and Iraq. None-the-less, the rule of law and international justice must be supported and advocated for by the UN and, in particular, by the Human Rights Council, in all incidences in which atrocities and war crimes have been committed.

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<sup>3</sup> Human Rights Watch, Sudan: End Unfair Trials, June 25, 2008 at <http://hrw.org/arabic/docs/2008/06/25/sudan19202.htm>