

Darfur and the ICC: Ensuring Accountability

Situation in Darfur

In response to attacks in early 2003 on government targets by rebel forces in Sudan's western province of Darfur, the Sudanese government mounted a campaign that has killed hundreds of thousands of Darfurians, caused millions to flee their homes, and wrought untold devastation. In addition to sponsoring horseback attacks by nomadic Arab militias known as the *janjaweed*, the Government of Sudan has launched aerial bombardment campaigns and helicopter gunship attacks against the people of Darfur. Using weapons supplied by the Sudanese government, the *janjaweed* routinely raid villages, burn houses and attack innocent civilians. In turn, the major Darfur rebel groups – the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) faction of the Sudan Liberation Movement/Army (SLM/A) – have attacked government military targets and *janjaweed* tribesmen. These horrendous acts have helped destabilize and depopulate a region as large as Texas, with survivors fleeing to other parts of Sudan or neighboring Chad. The United States has publicly stated that genocide is occurring in Darfur.

The Government of Sudan and a faction of the Sudan Liberation Army led by Minni Minnawi signed the Darfur Peace Agreement (DPA) in May 5, 2006. Though a significant step towards ending the crisis in Darfur, the DPA does not address many grievances of Darfuri civilians, is not inclusive of all rebel factions, and has thus far failed to bring peace to the troubled region. Both the Government of Sudan and the rebel groups have failed to live up to their respective commitments to disarm the *janjaweed* and uphold a ceasefire. The remaining rebel groups have recently mobilized under the umbrella of the National Redemption Front and continue to fight the *janjaweed*. In order to address the crisis in Darfur, the United Nations Security Council passed [Resolution 1706](#) in August 2006 calling for the deployment of United Nations (UN) peacekeepers in Darfur to replace the under-resourced and under-funded current African Union (AU) mission on the ground. The situation in recent months has spread increasingly to eastern Chad, where the Chadian government has declared a state of emergency and hundreds of thousands of Chadians are forced to flee their homes in fear of *janjaweed* attack. The Government of Sudan accuses the Chadian government of backing Darfur rebels, while the Chadian government accuses Khartoum of the spread of genocide into Chad.

UN Security Council Referral

Sudan is not a member of the International Criminal Court, and thus only the United Nations Security Council has the power under Chapter 7 of the [U.N. Charter](#) and Article 13(b) of the [ICC treaty](#) to refer the atrocities in Darfur to the ICC. On March 31, 2005, the Security Council voted to refer the situation in Darfur to the ICC. This was the first time the Security Council referred a situation to the Court. United Nations Security Council Resolution 1593 passed 11-0 with four members abstaining: the United States, Algeria, Brazil and China. Ideological [opposition](#) of the ICC by the U.S. prevented the U.S. from voting in favor of the Resolution. Since the referral, investigations have taken place in neighboring Chad and other countries outside the Sudan by the ICC's chief prosecutor, Luis Moreno Ocampo. In all, the Office of the Prosecutor has conducted 40 missions to neighboring countries to investigate the Darfur atrocities. Unfortunately, the Sudanese government has blocked access to Darfur, meaning that ICC staff has not been able to visit possible sites of mass graves or gather testimony from inside Darfur.

FACT SHEET

The next step for the Office of the Prosecutor is to issue arrest warrants and call on the international community, including the U.S., to carry out arrest warrants so cases can be brought to trial. At the moment, the Darfur investigation is currently in the pre-trial process with further missions to come. The Sudanese government has not cooperated with the ICC's investigation in Darfur and continues to impede the process of accountability in the region. Khartoum fears that the presence of UN peacekeepers in Darfur – a move that continues to be blocked and remedied with mixed AU-UN forces – would make more resources available to assist the ICC's investigation. Despite Sudan's undermining tactics, accountability for the horrendous atrocities committed in Darfur is a key component to sustainable peace in the region.

Specific Crimes

The [Rome Statute](#) of the International Criminal Court has jurisdiction over genocide, war crimes, and crimes against humanity. Genocide, for the purpose of the Statute, means any acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, including killing members of the group, causing serious bodily or mental harm, or deliberately inflicting on the group conditions of life calculated to bring about its physical destruction. In addition to the mass killings, examples of these crimes in Darfur include systematic, almost daily, attacks by the *Janjaweed* on civilian villages and attacks by the Sudanese government involving bombing of both civilians and the social infrastructure that supports them (hospitals and schools, for example), which have had a devastating impact on the population. Further, the accounts of rape and other forms of sexual slavery, including enforced prostitution, forced pregnancy, and other forms of sexual violence, constitute crimes against humanity and would also be punishable under the Statute.

Who Could Be Indicted

Under the statute's mandate, the ICC only prosecutes individuals who bear the greatest criminal responsibility. Government and civilian leaders on both sides of the conflict – including the leaders of the *Janjaweed* and Darfur rebel groups – are among those the ICC could choose to indict. In addition, if leaders in the Sudanese armed forces knowingly let their subordinates commit atrocities without any action to stop or prevent atrocities from occurring, Sudanese officials bear command responsibility for those actions and can be brought before the ICC. The Office of the Prosecutor is currently working to release names of those most responsible for crimes committed in Darfur by early to mid-2007. On November 23, 2006, ICC Prosecutor Luis Moreno Ocampo told the annual meeting of the Assembly of States Parties – the legislative body of member states that oversee the ICC – that his office has collected enough evidence to identify perpetrators of crimes against humanity in Darfur.

Chad's Ratification of the ICC and Implications for Darfur

On November 1, 2006, the country of Chad, which neighbors Sudan's Darfur region, ratified the Rome Statute of the International Criminal Court to become the newest member of the ICC. [Chad's ratification](#) will significantly impact the future of impunity in Africa and the current crisis in Darfur. Chad is the 19th member of the Organization of the Islamic Conference and the 29th African nation to join the ICC. Chad's ratification of the Rome Statute is a critical and laudable step forward in light of the Darfur crisis, especially as violence from Darfur increasingly spreads into eastern Chad. The much-needed access to Darfuri refugees that Chad provides to the ICC's Office of the Prosecutor, coupled with *Janjaweed* atrocities committed in recent months in Chad, make Chad's ratification particularly timely.

Action Needed

Strong, comprehensive action by the U.S., the international community, and the UN Security Council is necessary to end the violence in Darfur and work toward ensuring a sustainable peace in the region. The ICC is a critical part of this process. To that end,

The U.S. Administration must:

- Support prompt accountability for those most responsible for the Darfur atrocities
- Turn over evidence gathered by the U.S. to the ICC in its investigation on Darfur
- Do not impede or interfere with the Office of the Prosecutor's investigations on Darfur and its indictment process
- Recognize that cooperation on the specific case of Darfur at the ICC does not mean broad support for the ICC

Security Council Members and the International Community must:

- Provide any intelligence that could aid the Office of the Prosecutor in issuing arrest warrants
- Continue to push for a robust AU and U.N. presence in Darfur
- Continue to support the legal process of the Darfur case by (1) exerting political pressure on Sudan to allow ICC investigators access to any and all areas, documents and witnesses necessary in completing their inquiry and (2) execute arrest warrants issued by the Office of the Prosecutor and transport suspects to the ICC