The Tearful Janjaweed Trail of Violence, Rape, Murder and Genocide

The Continuing Human Rights Offenses and Violations of Humanitarian Law against Darfurians

Statement on the human rights situation in Darfur before the conclusion of the 4th Special session of the Human Rights Council

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“Halima, 20, belongs to the Dajo tribe, one of the black African tribes being slaughtered. Halima says that the janjaweed, many of them wearing Sudanese military uniforms, mocked the women with racial epithets against blacks, beat them with sticks, and gang-raped them all. Halima, who was then four months pregnant, says she was raped by three men and saw two rape Sadia — who was just 10 years old. After two days of torment, the janjaweed released them. “But Sadia refused to give up her donkey, and so they shot her,” Halima recalled. “I was with her. She died right away.”

Times Select 21 November 2006\(^1\)

“We share responsibility for each others’ security”

Kofi Annan, 11 December 2006\(^2\)

The Darfur Peace Agreement (“DPA”), which was signed by the government of Sudan and the Minni Minawi faction of the Sudan Liberation Movement in May 2006, has not resulted in an overall reduction of violence.\(^3\) “Instead attacks against civilians increased in the second half of 2006, resulting in more internally displaced persons (IDP), less access by aide organizations, and an overall deterioration of the humanitarian situation in Darfur.”\(^4\)


The draft resolution A/HRC/S-4/L.2 submitted 6 December 2006 by Algeria (on behalf of the African Group) before the Human Rights Council (HRC) today, “Notes with concern … despite the conclusion of the Darfur Peace Agreement which some parties have yet to sign” and “[c]alls upon the parties which did not sign … to do so and all parties to observe the ceasefire.” This emphasizes the need after all the years of violence, for a credible response, beyond words and rhetoric. The HRC should encourage the deployment of a UN peace keeping force into the region.

It should be recognized that Security Council Resolution 1706 “invite[ed]” the Sudanese government to consent to such forces. While Security Council Resolution 1706 explicitly guarantees the Sudanese government’s national sovereignty, it was passed under UN Charter, Chapter VII authority and confers enforcement authority upon a deploying force. What is required is not Sudan’s consent but the international will to accept unambiguously the responsibility to protect civilians threatened by genocide, ethnic cleansing, or crimes against humanity. A responsibility which was unanimously accepted by the UN at its World Summit in September 2005 and explicitly reaffirmed by the unanimous passage of UN Security Council Resolution 1674.

The Sudanese Government reaffirmed its commitment to the Security Council Special Session on Darfur, to implement the DPA Agreement, yet this commitment has not

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7 Id.; UN. Charter art. 42 para.1.
been actively demonstrated. The peoples of Sudan, and particularly of Darfur, have been given written resolutions and empty rhetoric but little relief from the violence, rape, torture and murder inflicted on a daily and indiscriminate basis. Understandably the deployment of UN peace keepers should respect the sovereignty of Sudan as called for in UN Security Council Resolution 1706, however, this respect should not fall subservient to international humanitarian law, respect of human rights and life.

The efforts of the African Union (“AU”) deployment and the decision of the African Union Peace and Security Council of 10 March 2006, and its decision of 27 June 2006, confirming the continued support of its mandate should be commended. Yet the African Union's “7,000 peacekeepers are over-stretched and have found themselves shot at, kidnapped by rebel groups,” and continuously prevented from accessing a number of principal locations. Furthermore, their mandate is only to protect civilians in immediate

10 S.C. Res. 1706, supra note 6, ¶ 4. See Darfur Peace Agreement, supra note 3.


12 S.C. Res. 1706, supra note 6, ¶ 3.


danger and only where possible. As a result the mandate is open to a variety of different interpretations.

As an account of a 35-year-old Masalit woman, from the village of Tungfuka, West Darfur demonstrates.

*Over the two years . . . the situation got steadily worse. The AU is not present in the . . . camp or in Mornay, but they often come to do errands . . . . When they are present, the Janjawid do not dare to attack. [However] the AU is not interested in the displaced . . . . When girls are raped in the neighborhood of the camp, the African Union’s only action is to bring the girl back to the camp. They do not carry out any investigation into the event. A raped girl comes back to her family, and eventually delivers the baby and raises the child, as infanticide would be haram [forbidden].*

The African Union is making admirable attempts to keep peace, yet because of their admitted lack of resources justice remains non-existent for the people of the Darfur region.

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19 Interview with Abdikarin Farrah, Somali Ambassador to the African Union Headquarters, in N.Y., N.Y. (Sept. 20, 2006) (answering the question, “Does the AU desire increased UN assistance?” Ambassador Farrah responded by stating, they do not have sufficient resources and manpower to do it alone); Jonah Fisher, *The African Union is faced with the most difficult decision of it’s short history*, BBC NEWS, Mar. 23, 2006) (responding to questions assessing the AU’s success in Darfur Maj Gen Collins Ihekire, the Nigerian Force Commander of the AU in Darfur, stated, “If someone hasn't got wings and you say he has failed to fly
Additional effort is required to reconcile divergent numbers in reports and investigations as “[a] wide gap exists between the Sudanese government’s statements and the reality they claim to depict. In October this year there were 1,974,527 displaced persons living in camps and a further 2,021,684 who had been affected by the conflict and were living in villages or towns in Darfur.” With the total population of Darfur being an estimated seven million, four million affected amounts to over half the population of Darfur.

Sudanese President Omar al-Bashir stated that no more than 9,000 had died in Darfur. Additionally, the Sudanese government is denying any link can be proven between the Janjaweed and the internal displacement of persons caused by the violence, torture, rape and murder. In Security Council Resolution 1564 the Security Council for the first time authorized an explicit human rights investigation on Darfur under the UN Charter, Chapter VII, dealing with maintenance of peace and security. The International Commission of Inquiry on Darfur in its report to the Secretary General documented

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evidence of war crimes and crimes against humanity\textsuperscript{24} and left open for determination by a court of competent jurisdiction the determination of whether the acts in Darfur by the government of Sudan constituted genocide.\textsuperscript{25} The Report of the International Commission of Inquiry on Darfur to the Secretary-General indisputably establishes the link between the human rights violations and the Janjaweed,\textsuperscript{26} which findings are supported further by the reports and findings of special rapporteurs.\textsuperscript{27}

The Commission further calls upon the Security Council to refer the matter of Darfur to the International Criminal Court for investigation and prosecution.\textsuperscript{28} The combination of these acts of precedent open an opportunity for the development and enhancement of international human rights law and the scope of those persons who may be held responsible for violation of same through prosecution.\textsuperscript{29} The HRC should take this


\textsuperscript{25} \textit{Id.} at 4-5, 144-57.

\textsuperscript{26} \textit{Id.} at 135-36, 138, 140-43


\textsuperscript{29} Ad Hoc Courts formed as a result of armed conflict such as those in Rwanda and Yugoslavia are not advisable for the current situation in Sudan. Ad Hoc criminal tribunals seemingly have proven unsuccessful because of high expenditures, dilatory prosecutions, and lack of political will demonstrated within such courts. See International Commission of Inquiry on Darfur, \textit{supra} note 24, at 146; Lauren Etter, \textit{Deadlock over Justice for Warcrimes in Darfur}, CRIMES OF WAR PROJECT, Mar. 18, 2005 (stating ad hoc tribunals “cost too much money, take too much time and are vulnerable to non-cooperation and obstruction”).

According to Richard Dicker, director of the International Justice Program at Human Rights Watch, “[t]he ICC was created precisely to address the kind of horrific crimes that have occurred in Darfur;” thus, it has the advantage of becoming an unprecedented judicial institution having the ability to ‘limit the delay time for an investigation to get underway.’ Referring cases to any currently existing ad hoc courts, already possessing overcrowded dockets, would likely not only delay further justice of those with cases before these courts, as
opportunity at the infancy of its new incarnation and protect the human rights of Darfurians. The HRC should *encourage* the Security Council to deploy UN peace keepers, and *encourage* the referral of the Darfur atrocities to the International Criminal Court for the appointment of a special prosecutor. Those in Sudan who have chosen to inflict their will on the minority through violence, torture, rape and murder should be identified, arrested and removed from the region pending trial. The HRC should take this opportunity to define its own destiny and global position as the international organization primarily responsible for the promotion and development of humanitarian law and the protection of human rights.

President Bashir asserts the number of atrocities have been fabricated and has referred to them as an invention of the Western media. In referencing such allegations of human rights violations, on August 9, 2004 Vice President Ali Osman Taha stated, the Sudanese Government “stand[s] to call on international communities to set up commissions to verify and investigate these allegations.”

If then the Government of Sudan is truly committed to ascertaining the truth and establishing justice for all human rights violations committed within its borders, it should accept and fully cooperate in any endeavors of the HRC and the Security Council to probe and fully investigate the complaints of persons in the Darfur region.

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many of the prosecutors would be diverted from Rwanda tribunals to assist any ad hoc courts dealing with issues in Sudan, but would stalemate justice for those in Sudan. Etter, *supra*. Secretary General, Kofi Annan, noted the ICC is now more prepared to take on prosecuting cases of genocide in Sudan then when the tribunals in Rwanda were originally established. Since, “[t]he jurisdiction of the ICC only began in July 2002, it has so far been preoccupied primarily with setting up its structures and has not yet heard” many cases. Ernest Harsch, *UN seeking to avert a ‘new Rwanda’*, 18 Africa Renewal 14, 17 (2004).


The Darfur Special Court\textsuperscript{33} presented by the “Government of Sudan as an alternative to the prosecution of cases by the International Criminal Court [ultimately] invoking the complementary framework underpinning the Rome Statute”\textsuperscript{34} should be commended. However, the current progress of this court is unacceptable with less than 10 trials involving less than thirty suspects having been brought to trial by mid year 2005.\textsuperscript{35}

\textsuperscript{32} See EU and Africans rally to call special human rights session on Darfur, AFP, Nov. 29, 2006, (“The European Union’s chief delegate, Finnish ambassador to the UN Vesa Himanen, indicated that the Europeans would press the 47 member UN rights forum to set up a mission to probe into Darfur”).

\textsuperscript{33} The Darfur Special Court’s purpose is to try suspected criminals in the west region of Darfur. However, the formation of this court on June 7, 2005, one day after the ICC stated it was launching its own investigation on June 6, 2005 was “interesting timing” according to U.S. Special Representative of Secretary General for Sudan, Jan Pronk. See Press Release, International Criminal Court [ICC], The Prosecutor of the ICC open investigations into Darfur, ICC-OTP-0606-104 (June 6, 2006), http://www.icc-cpi.int/press/pressreleases/107.html (last visited Dec. 15, 2006); Press Release, U.N. Office of the Coordination of Humanitarian Affairs, Integrated Regional Information Network [IRIN], Sudan: Judiciary challenges ICC over Darfur cases (June 24, 2005), http://www.irinnews.org/report.asp?ReportID=m=47802&SelectRegion=East_Africa&SelectCountry=SUDAN (last visited Dec. 15, 2006); Entrenching Impunity: Government Responsibility for International Crimes in Darfur, 17(a) Human Rights Watch 56-57 (2005). Despite inter-dialogue between the two courts to consider working side by side, ICC Article 17 seems to convolute matters stating, a case is inadmissible when “[t]he case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.” Rome Statute of the International Criminal Court, Art. 17(1)(a), U.N. Doc. A/CONF.183/9 (July 1, 2002) http://www.un.org/law/icc/statute/romefra.htm (last visited Dec. 15, 2006). Regardless, Pronk referenced “the International Criminal Tribunal for Rwanda in Arusha and the national court in Rwanda’s capital, Kigali, which operate alongside each other,” as an example of how the two courts could work successfully side by side. Integrated Regional Information Network [IRIN], supra note 19.

\textsuperscript{34} International Criminal Court [ICC], Office of the Prosecutor, Third Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSCR 1593, at 6 (June 14, 2006), http://www.icc-cpi.int/library/cases/OTP_ReportUNSC_3-Darfur_English.pdf (last visited Dec. 15, 2006).

Of these cases most are petty crimes incomparable to the deplorable human rights violations being committed in Darfur. 36

The Human Rights Council, in the infancy of its most recent incarnation, is faced with a humanitarian challenge of global proportions, how it chooses to act at this delicate point in it’s history will define in a major way itself and its role as an international organization charged with the primary responsibility for promotion and protection of international human rights. The action of the HRC must be decisive, comprehensive, and effective. “Past experiences in Darfur and lessons learned from U.N. operations in other countries have repeatedly demonstrated the importance of providing international forces with unambiguous guidance . . . .” 37 Members of the HRC must take on the moral responsibility for lobbying member states in the General Assembly and the Security Council, to assure implementation of all adopted resolutions and recommendations.

Furthermore and most pertinent is the role the International community, civil society, members states, and the role private actors must play in assembling a coordinated massive support for Darfur. The violence, killing, and blatant human rights violations under international law will not stop until genocide succeeds or the international community acts collectively.

It should also be noted the impact that violence has on relief efforts. No matter how much humanitarian aid is available, it will not reach those in need if aid workers and volunteers are killed, threatened, or not-permitted access. One third of humanitarian aid never reaches the intended beneficiaries. 38 Humanitarian aid can only be successful if the violence and human degradation is stopped and the roads to helping victims are opened.

36 Id.
One must not forget the efforts it will take to pick up the pieces of those lives spared. Rape, disease, malnutrition, and the internally displaced persons will still linger in the aftermath of this long-term genocide.

HRC should advocate for the immediate cessation of the violence and mass human rights violations in the region by encouraging the deployment of UN peacekeeping troops; assist in providing access to justice to those whose lives have been lost by thoroughly investigating all human rights violations; establish respect for the rule of law by providing a independent fair judicial forum for all to be heard; help rebuild the region of Darfur by giving back the victims of human degradation control of their lives and destiny.

Ultimately, it is time for Human Rights Council to assume its mandate of “promoting and encouraging respect for human rights and fundamental freedoms for all” by concretely and effectively setting measures to end the suffering of the people of Darfur.39