



Briefing paper

Human Security Failure & ICC Stalemate in Darfur

Recommendations

The Darfur Australia Network recommends that the Australian Government should use its seat on the UN Security Council to:

- Urge African State signatories to the ICC to enforce arrest warrants for the Sudanese President and other government officials;
- Encourage the ICC to continue investigations on Sudan regime members and rebel leaders for war crimes and crimes against humanity in Darfur;
- Continue to speak out on crimes against humanity in Darfur and wider Sudan.

Key issues

Human Security Failure in Darfur

TEN YEARS AFTER violence erupted between the Sudanese Government and its own people, Darfur still faces genocide by attrition and a downward spiral of human security. Second Prosecutor for the International Criminal Court (ICC), Ms Fatou Bensouda, reported to the UN Security Council that ICC Pre-Trial Chamber investigations “concluded that the Government of the Sudan Forces committed war crimes, crimes against humanity and genocide in Darfur, following a strategy adopted at the highest echelons of the State’s apparatus.”¹ Yet the ICC remains in stalemate, unable to prosecute key Sudanese Government and militia leaders – including President Omar Ahmad Al-Bashir – for crimes against humanity.

Despite the Sudanese Government and international community’s ‘Responsibility to Protect’, the United Nations reports that more than 300,000 people have been killed in Darfur in the last decade.² The United Human Rights Council estimates approximately 400,000 deaths; the Sudanese Government put the toll at 10,000.³ Amnesty International says government forces and pro-government militias continue to attack civilians, while security services torture detainees and, with the police, use excessive force against peaceful protesters.⁴ More than 2.3 million are internally displaced persons, refugees exceed 500,000 and approximately 31,000 are asylum seekers.⁵ About 300,000 of these exist in refugee camps in Chad.⁶

Darfur faces massive human security threats, not simply a reported ‘uptick’ in tribal conflict.⁷ Gross atrocities, high inflation, fiscal crises and the need for humanitarian assistance have all escalated as the Khartoum regime allegedly continues human destruction and starvation tactics, particularly in Blue Nile and the Nuba.⁸ Attacks on civilians have led to an escalated rate of displacement since January 2013.⁹ In the last three months alone, 500 people are reported to have been killed and more than 100,000 displaced following Government attacks.¹⁰ The 1,800 new refugees and asylum-seekers arriving each month in Eastern Sudan must brave traffickers, smugglers and kidnappers.¹¹ Independent reports tell of refugee camps under siege by Khartoum-

allied militia forces, road closures, aerial bombings on civilians, extortion schemes under threat of murder, forced appropriation-by-burning of black African land by Arab tribal groups, and the brutal use of rape as a weapon of war.¹²

The UN Food and Agriculture Organisation indicate that more than 6.9 million Sudanese are in need of humanitarian assistance, while more than three million face acute food insecurity.¹³ Food security is affected by an extreme lack of basic infrastructure, conflict and internally displaced populations.¹⁴ Yet humanitarian relief efforts face systematic obstruction and violence. The under-resourced African Union-UN Hybrid Operations in Darfur (UNAMID) has sustained 145 fatalities to date.¹⁵ Since the expulsion of 13 international humanitarian organisations in March 2009 – removing 40 per cent of foreign aid workers in Sudan – the remaining organisations have continued to face work restrictions and impeded access to conflict-affected areas of Darfur, notably in eastern Jebel Marra.¹⁶ Government-imposed restrictions affect the ability of UNHCR and its partners to assist the most vulnerable people.¹⁷ Despite the shortage of medical, water, sanitation and logistical experts, donor fatigue has led individual supporters and major foundations to turn their attention elsewhere precisely when humanitarian need is at its greatest.¹⁸

International Criminal Court (ICC) Stalemate in Darfur

The ICC has issued five arrest warrants, including two for President Omar Ahmad Al-Bashir, and three summonses to appear before the court.¹⁹ The ICC projected a 2013 trial for two of three individuals charged with war crimes, but faces delays until 2014.²⁰ However, the Court is yet to apprehend key Sudanese Government and militia leaders for crimes against humanity, war crimes and genocide.

The ICC is yet to execute an arrest warrant for Abdel Raheem Muhammad Hussein, Sudan's Minister of National Defence, for 13 charges of war crimes and crimes against humanity. The ICC issued the warrant on March 1, 2012. The crimes were allegedly committed between 2003 and 2004, when the Janjaweed militia and Sudanese armed forces led attacks against the towns of Kodoom, Bindisi, Mukjar and Arawala, primarily targeting civilians belonging to the Fur, Masalit and Zaghawa ethnic groups.²¹

Two rebel leaders opposing the Sudanese Government have been scheduled to face the ICC, each co-charged with three war crimes for allegedly attacking African Union Peacekeepers in September 2007, killing 12.²² Commander-in-Chief for the Justice and Equality Movement (JEM) of the United Resistance Front, Abdallah Banda Abakaer Nourain, and former Chief of Staff of SLA-Unity, integrated into JEM, Saleh Mohammed Jerbo Jamus, are to face the ICC on May 5, 2014.²³

Mr Jerbo, however, has reportedly been killed in North Darfur during an attack by the Justice and Equality Movement faction, led by Gibril Ibrahim.²⁴ Mr Jerbo's defence team informed the ICC that he was allegedly killed and buried on April 19, 2013, and have called upon the ICC to verify his death.²⁵

Meanwhile, the Sudanese President, a Government Minister and a Militia leader continue to evade the ICC. The Court issued two arrest warrants for President Al-Bashir for 10 counts of crimes against humanity, war crimes and genocide. The President remains at large, despite having made official visits to a number of countries signatory to the ICC's Rome Statute.²⁶ ICC Second Prosecutor Ms. Bensouda cited Malawi and Chad before the UN Security Council for having failed to surrender President Al-Bashir at the request of the court.²⁷

Sudan's Minister of State for Humanitarian Affairs, Ahmad Muhammad Harun, is charged with 42 counts of crimes against humanity and war crimes. The alleged leader of the Janjaweed Militia, Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb"), is charged with 50 counts of crimes against humanity and war crimes.²⁸

Appendix

Abdel Raheem Muhammad Hussein

The arrest warrant (March 1, 2012) for Sudan Minister of National Defence, Abdel Raheem Muhammad Hussein, lists 13 charges as an indirect (co)perpetrator under article 25(3)(a) of the Rome Statute:

- Seven counts of crimes against humanity: persecution, murder, forcible transfer, rape, inhumane acts, imprisonment or severe deprivation of liberty, and torture;
- Six counts of war crimes: murder, attacks against a civilian population, destruction of property, rape, pillaging, outrage upon personal dignity.

Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus

Commander-in-Chief for the Justice and Equality Movement (JEM), Abdallah Banda Abakaer Nourain, and former Chief of Staff of SLA-Unity, now integrated into JEM, Saleh Mohammed Jerbo Jamus, are co-charged with three war crimes:

- Committed or attempted violence to life;
- Intentionally directing attacks against a peacekeeping mission;
- Pillaging.

Each appeared before the ICC on June 17, 2010, and the December 8 the same year to hear confirmation of charges. The ICC again confirmed charges on March 7, 2011, yet the matter remains unresolved.

Omar Ahmad Al Bashir

President of Sudan, Omar Ahmad Al Bashir, faces two arrest warrants (March 4, 2009, and July 12, 2010) for:

- Five counts of crimes against humanity: murder, extermination, forcible transfer, torture and rape;
- Two counts of war crimes: directing attacks against civilians not taking part in hostilities, and pillaging;
- Three counts of genocide: genocide by killing, genocide by causing serious bodily or mental harm, and genocide by inflicting conditions of life calculated to bring about physical destruction.

Ahmad Muhammad Harun

Sudan's Minister of State for Humanitarian Affairs, Ahmad Muhammad Harun, has been charged (April 27, 2007) with:

- Twenty counts of crimes against humanity: murder, persecution, forcible transfer of population, rape, inhumane acts, imprisonment or severe deprivation of liberty, and torture;
- Twenty-two counts of war crimes: murder, attacks against civilian population, destruction of property, rape, pillaging, and outrage upon personal dignity.

Ali Muhammad Ali Abd-Al-Rahman

Alleged leader of the Janjaweed Militia, Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb") has been charged (April 27, 2007) with:

- Twenty-two counts of crimes against humanity: murder, deportation or forcible transfer of population, imprisonment or severe deprivation of physical liberty, torture, persecution, and inflicting serious bodily injury and suffering;
- Twenty-eight counts of war crimes: violence to life and person, outrage upon personal dignity, attack against a civilian population, pillaging, rape, and destroying or seizing property.

Bahar Idris Abu Garda

Chairman and General Coordinator of Military Operations of the United Resistance Front, Bahar Idris Abu Garda. faced the ICC on October 19-29, 2009, for three war crimes:

- Violence to life in the form of murder, whether committed or attempted;
- Intentionally directing attacks against a peacekeeping mission;
- Pillaging.

On February 8, 2010, Pre-Trial Chamber I refused to confirm the charges against Mr Abu Garda. On April 23, 2010, the Chamber rejected the Prosecutor's application to appeal the decision. The decision does not preclude further requests from the Prosecutor to confirm the charges, if supported by additional evidence.

More information can be found at the ICC website: http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/Pages/situation%20icc-0205.aspx.

¹ UN Security Council, 6887th meeting Dec 13 2012, <http://webtv.un.org/watch/sudan-security-council-6887th-meeting/2033750569001/>, accessed April 3, 2013; ICC, *Eighth Report of the International Criminal Court to the United Nations for 2011/12*, http://www.icc-cpi.int/en_menus/icc/reports%20on%20activities/court%20reports%20and%20statements/Documents/A67308EN.pdf, accessed April 9, 2013.

² UN News Centre, *UN welcomes accord signed between Sudan and Darfur rebel group*, <http://www.un.org/apps/news/story.asp?NewsID=39044&>, accessed May 8, 2013.

³ Sudan Tribune, *Darfur Conflict*, <http://www.sudantribune.com/spip.php?mot26>, accessed April 3, 2013; UNHCR - *Country Operations Profile – Sudan*, <http://www.unhcr.org/pages/49e483b76.html>, accessed May 8, 2013.

⁴ Amnesty International, *10 Years on – Violations Remain Widespread in Darfur*, <http://www.amnesty.org/en/library/asset/AFR54/007/2013/en/9233d37f-a7da-45d5-9e34-d4523289fb88/afr540072013en.pdf>, accessed April 3, 2013.

⁵ UNHCR, *Country Operations Profile – Sudan*, *ibid.*, accessed May 8, 2013.

⁶ Refugees International, <http://www.refintl.org/where-we-work/africa/sudan>, accessed April 3, 2013; UN News Center, *Fresh tribal clashes in Darfur trigger largest influx of refugees into Chad in years, UN says*, <http://www.un.org/apps/news/story.asp?NewsID=44636&Cr=darfur&Cr1=>, accessed April 24, 2013.

⁷ Reeves, Eric, *Human Security in Darfur Enters Free-Fall*, <http://www.sudanreeves.org/2013/03/20/human-security-in-darfur-enters-free-fall/>, accessed April 2, 2013; UNHCR, *op. cit.*, accessed April 3, 2013.

⁸ Reeves, Eric, *ibid.*, accessed April 2, 2013; UNHCR, *ibid.*, accessed April 3, 2013.

⁹ Reeves, Eric, *ibid.*, accessed April 2, 2013.

¹⁰ Amnesty International, *op. cit.*, accessed April 3, 2013; Reeves, Eric, *ibid.*, accessed April 2, 2013.

¹¹ UNHCR, *op. cit.*, accessed April 3, 2013.

¹² Reeves, Eric, *op. cit.*, accessed April 2, 2013; Amnesty International, *op. cit.*, accessed April 3, 2013.

¹³ Food and Agriculture Organisation of the United Nations, *The FAO Component of the Consolidated Appeals*, 2013, Sudan, http://www.fao.org/fileadmin/user_upload/emergencies/docs/CAP_2013_Sudan.pdf, accessed April 3, 2013.

¹⁴ World Food Program, Interactive Hunger Map, <http://cdn.wfp.org/hungermap/#SD>, accessed April 3, 2013.

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- ¹⁵ UN Peacekeeping Fact Sheet, <http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml>, accessed April 3, 2013.
- ¹⁶ Amnesty International, *op. cit.*, accessed April 3, 2013.
- ¹⁷ UNHCR, *op. cit.*, accessed April 3, 2013; Refugees International, *op. cit.*, accessed April 3, 2013.
- ¹⁸ Reeves, Eric, *op. cit.*, accessed April 2, 2013.
- ¹⁹ UN Security Council, *op. cit.*, accessed April 3, 2013.
- ²⁰ UN Security Council, *ibid.* accessed April 3, 2013.
- ²¹ ICC, *op. cit.*, accessed April 9, 2013; Le ministre soudanais de la Défense visé par un mandat d'arrêt de la CPI, <http://www.france24.com/fr/20120301-soudan-darfour-justice-ministre-soudanais-defense-abdelrahim-mohammad-hussein-mandat-arret-cour-penale-internationale>, accessed April 9, 2013; ICC, *Situation in Darfur, Sudan*, http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/Pages/situation%20icc-0205.aspx, accessed April 3, 2013.
- ²² CapitalFM News, *ICC war crimes suspect killed in Darfur*, April 24, 2013, <http://www.capitalfm.co.ke/news/2013/04/icc-war-crimes-suspect-killed-in-darfur/>, accessed April 30, 2013.
- ²³ ICC, *Situation in Darfur, Sudan*, *op. cit.*, accessed April 3, 2013.
- ²⁴ CapitalFM News, *op. cit.*, accessed April 30, 2013.
- ²⁵ CapitalFM News, *ibid.*, accessed April 30, 2013.
- ²⁶ ICC, *Situation in Darfur, Sudan* *ibid.*, accessed April 3, 2013; BBC, <http://www.bbc.co.uk/news/world-africa-16454493>, accessed April 3, 2013; The Guardian, <http://www.guardian.co.uk/world/2011/jun/16/china-welcomes-sudanese-president-omar-al-bashir>, accessed April 3, 2013; Amnesty International, *op. cit.*, accessed April 3, 2013.
- ²⁷ ICC, *Situation in Darfur, Sudan*, *op. cit.*, accessed April 3, 2013.
- ²⁸ ICC, *Situation in Darfur, Sudan*, *ibid.*, accessed April 3, 2013.