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Security Council Referral of Sudan to ICC Offers Hope of Justice for Darfur Victims

NEW YORK, April 1, 2005—The International Center for Transitional Justice (ICTJ) welcomed yesterday's decision by the UN Security Council authorizing the International Criminal Court (ICC) to investigate and prosecute serious crimes committed in Sudan's Darfur region.

The Center also called on the Government of Sudan and all other parties to the Darfur conflict to fully cooperate with an ICC investigation.

The ICTJ further welcomed the UN Security Council's holistic approach to fostering truth and justice in Sudan, in particular its call for inclusive national initiatives to promote healing and reconciliation, as well as domestic capacity-building measures. While the immediate priority must be to stop the atrocities being committed against civilians in Darfur, the kinds of long-term mechanisms proposed in the resolution could complement the role of the ICC and contribute to lasting peace in Sudan.

Since early 2003, ongoing attacks in the Darfur region by Janjaweed militias and Government forces have left between 180,000 and 300,000 people dead and have displaced more than two million. The attacks have been carried out with almost complete impunity, and have included systematic torture, rape, abduction, forced displacement, and pillaging of the civilian population. Thousands of villages have been looted and destroyed, and large numbers of people have been left without means of survival.

In January 2005, an international commission of inquiry appointed by the UN recommended that the UN Security Council refer the situation in Darfur to the ICC — the only means by which the Court could assume jurisdiction in this instance. The commission found that the Sudanese Government and militias were responsible for

serious violations of international human rights and humanitarian law, amounting to crimes under international law.

“Yesterday’s long-awaited referral to the ICC offers renewed hope of finally ending the suffering in Darfur and bringing justice to victims. It sends a strong signal that the international community will not tolerate impunity in the face of grave human rights violations,” said Hanny Megally, director of the ICTJ’s Middle East and North Africa Program.

Although the possibility of prosecution by the Court should serve to deter attackers, the Center stressed the urgent need for an increase in the number of forces on the ground in Darfur to protect civilians, and to facilitate an ICC investigation.

Further, the ICTJ urged the Government of Sudan to allow the ICC to investigate and prosecute suspected high-level perpetrators of grave abuses, rather than initiating domestic prosecutions as the Government announced earlier this week. The ICTJ expressed serious concern that deficiencies in the Sudanese legal system would prevent the prosecution of war crimes and crimes against humanity in accordance with international norms. Moreover, testimonies given by victims to the UN Commission of Inquiry indicate that they have little confidence in the ability of national courts to dispense justice.

Sudan should instead focus on reforming its domestic institutions, especially the judicial system, in order to foster accountability, promote the rule of law, and end impunity. When reforms have been implemented, lower-level perpetrators could be tried before domestic courts.

“In the longer term, a variety of comprehensive measures will be required to ensure accountability and justice for the victims of the Darfur conflict,” said Megally, “as well as for victims of armed conflict in other regions of Sudan.” The ICTJ notes with interest proposals advanced by the United Nations and Sudanese actors, including:

- The establishment of a truth and reconciliation commission, as recommended in Resolution 1593 adopted yesterday, and suggested by the UN International Commission of Inquiry on Darfur. Such a truth-seeking process could assist in developing an accurate historical record that includes the perspectives of victims. Any truth and reconciliation commission should be established as part of a broad consultative process, and should not be treated as a substitute for criminal justice.
- The establishment of a National Reparations Commission, such as the one described in the terms of the January 2005 agreement between the Government of Sudan and the National Democratic Alliance. Measures to restore the rights of victims and compensate them for the abuse they have suffered is integral to achieving justice, and widely regarded as a prerequisite for building trust and advancing reconciliation.

- A comprehensive, national Demobilization, Disarmament and Reintegration (DDR) program, such as the one described in the peace agreement between the Government of Sudan and the Sudan People's Liberation Movement / Sudan People's Liberation Army. DDR programs are vital for ensuring lasting peace and security within a conflict zone by discouraging former combatants from resorting to violence.

While welcoming yesterday's resolution, the ICTJ voiced regret over the insertion of a clause granting immunity from prosecution to personnel from states not party to the Rome Statute. Such personnel could only be prosecuted by courts in their countries of origin, not by the ICC, for crimes committed while operating in Sudan under the auspices of the UN or the African Union. The immunity clause contradicts the principles of accountability that the resolution seeks to foster in Sudan.

About the ICTJ

The ICTJ assists countries pursuing accountability for past mass atrocity or human rights abuse. The Center works in societies emerging from repressive rule or armed conflict, as well as in established democracies where historical injustices or systemic abuse remain unresolved. It provides comparative information, legal and policy analysis, documentation, and strategic research to justice and truth-seeking institutions, nongovernmental organizations, governments, and others.

The ICTJ assists in the development of strategies for transitional justice comprising five key elements: prosecuting perpetrators, documenting violations through nonjudicial means such as truth commissions, reforming abusive institutions, providing reparations to victims, and advancing reconciliation. The Center is committed to building local capacity and generally strengthening the emerging field of transitional justice, and works closely with organizations and experts around the world to do so.

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