



Rhetoric vs. Reality The Situation in Darfur

“Even in Darfur, you can say most of it is safe. There are no problems and life is very normal.”¹

—Sudanese President Omar al Bashir, October 9, 2008

“Since January 2008, more than 230,000 civilians have been forced to flee violence, at a rate of nearly 1,000 per day. Many of them have fled to overcrowded camps near large towns or in some cases sought shelter in the desert until clashes subsided. As attacks on humanitarian agencies also continued to climb, incidents of violence against aid workers in the first eight months of 2008 have already surpassed the total records in 2007.”²

—United Nations Secretary-General Ban Ki-moon, October 17, 2008



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¹ Interview to Channel 4, 9 October 2008, http://www.channel4.com/news/articles/politics/international_politics/sudan+president+no+mass+rape/2493762

² United Nations Security Council, “Secretary-General Report on African Union–United Nations Operation in Darfur”, S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

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Summary

On March 31, 2005 the United Nations Security Council made its first ever referral of a situation to the International Criminal Court (ICC) for investigation—the situation in Darfur. The court issued its first two warrants in April 2007, for government minister Ahmad Harun and Janjaweed leader Ali Kushayb, for their leading roles in a series of attacks against civilians in West Darfur in 2003 and 2004. However, Sudanese authorities have from the start refused to cooperate with the ICC, and have refused to arrest and hand over the two suspects. Instead Ahmad Harun has been promoted to State Minister for Humanitarian Affairs.

On July 14, 2008 the ICC prosecutor announced he was seeking a third warrant, this time for Sudanese President Omar al Bashir, on 10 counts of war crimes, crimes against humanity and genocide. This time, rather than simply dismissing the ICC, the Sudanese government launched a major diplomatic campaign to convince the Security Council to defer the investigation. Under article 16 of the Rome Statute of the ICC, the United Nations Security Council is empowered, by way of a resolution, to grant such a suspension for up to a year at a time.

Since the request, the government of Sudan has spent considerable time and energy attempting to convince the international community of its willingness to cooperate on justice and to achieve peace in Darfur, and claiming that the situation there has improved, in the hopes of securing a suspension of the case. However, the government's actions on the ground reveal a very different reality for the people of Darfur.

This report focuses on four dimensions of the crisis in Darfur: continuing insecurity for civilians, the humanitarian situation, justice and accountability and deployment of the African Union-United Nations Hybrid Operation in Darfur (UNAMID). The report highlights the distance between the government of Sudan's rhetoric and the reality in each of these areas.

Only in relation to UNAMID has there been any notable progress, and even there the government of Sudan's commitments have yet to be tested in light of its long history of broken promises. The humanitarian situation and insecurity have deteriorated significantly since Sudan began its bid for a suspension of the ICC's investigation.

The armed conflict between the Sudanese government and rebel groups in Darfur continues unabated—with abuses of civilians carried out by all sides. On November 12, 2008, the Sudanese government announced a unilateral, unconditional ceasefire, but this has also proved more rhetoric than reality. On November 14, rebel sources claimed government forces had bombed Kurbia in North Darfur. The government initially denied any incident but then claimed it had been a clash with bandits. Over the ensuing two days reports were also received of government bombings near Kutum, in North Darfur, and of fresh clashes with rebel forces around Tine in West Darfur. It is not known if there are civilian casualties, as UNAMID had not at the time of writing been able to conduct an investigation.

These incidents are only the latest in a series of clashes and attacks by the Sudanese government that have continued to imperil civilians across Darfur since July. In September government forces intensified their bombing campaign in North Darfur, imperiling civilians across the area. In October in South Darfur, Sudanese forces and government-backed militias attacked more than a dozen villages during operations against rebel forces near Muhajariya, in which more than 40 civilians were killed.

Insecurity and fighting between government forces, rebels and ex-rebels resulted in the displacement of some 90,000 people in Darfur between July and October 2008³, which brings the total number of persons displaced in the first ten months of 2008 to 290,000. Even within camps civilians are at risk. On August 25 heavily armed government forces, in what was said to be an operation to confiscate weapons, surrounded the Internally Displaced Camp in Kalma, and, confronted by a crowd of

³ Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Coordinator, "Darfur Humanitarian Profile No.33", October 1, 2008, http://www.unsudanig.org/docs/DHP33_narrative_1%20October%202008.pdf (accessed October 30, 2008).

internally displaced persons, opened fire. In the ensuing skirmish 33 civilians were killed and 108 injured, including 38 children.⁴

Over 4 million people in Darfur remain in need of humanitarian aid.⁵ However insecurity prevented access by humanitarian agencies to 250,000 people in September 2008, the worst level of access this year. The Sudanese government continues to obstruct the delivery of assistance through bureaucratic constraints, harassment of humanitarian staff and lack of compliance with the Joint Communiqué regarding facilitation of humanitarian activities it signed with the U.N. on March 28, 2007. The result is an insecure environment for Darfuris and humanitarian workers alike. Since the beginning of the year, 170 aid workers have been abducted and 11 killed.

UNAMID, currently deployed at less than 50 percent of its mandated strength, still lacks the capacity to protect vulnerable civilians. Its forces have come under attack from armed actors on all sides of the conflict, and 14 UNAMID troops and police have been killed since the beginning of the year.⁶

Meanwhile, Sudanese authorities have claimed to have taken positive steps in relation to justice, announcing measures ostensibly designed to improve domestic accountability for crimes in Darfur. In October Sudanese justice officials announced that the new special prosecutor (hastily appointed in August) had completed an investigation into the actions of three men, including Ali Kushayb, one of the two individuals already subject to an ICC arrest warrant. Officials also announced that Kushayb had been taken into custody, but other sources report that he remains at his home. However, these initiatives have so far done little to provide genuine accountability for the crimes in Darfur. There have been no new prosecutions in

⁴ United Nations Security Council, "Secretary-General Report on African Union–United Nations Operation in Darfur", S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

⁵ By July 1, 2008, there were over 2 million residents in need of humanitarian assistance in addition to nearly 2.5 million internally displaced persons in Darfur: Office of UN Deputy Special Representative of the UN Secretary-General for Sudan, UN Resident and Humanitarian Co-ordinator, "Darfur Humanitarian Profile, no. 32", July 1, 2008, http://www.unsudanig.org/docs/DHP%2032_narrative_1%20July%202008.pdf (accessed October 30, 2008).

⁶ "UNAMID Facts and Figures", U.N. Department of Peacekeeping Operations UNAMID mission homepage, <http://www.un.org/depts/dpko/missions/unamid/facts.html> (accessed on October 30, 2008)

relation to major atrocities committed in Darfur, nor any steps taken to address the broad immunity provisions for members of the armed forces and national security agencies, nor the legal and practical obstacles to the prosecution of rape cases. Ahmad Harun, despite being subject to an ICC arrest warrant for war crimes and crimes against humanity, remains Minister of State for Humanitarian Affairs.

The government does not bear sole responsibility for the ongoing insecurity and suffering in Darfur. Rebel groups and bandits are also responsible for abuses of civilians and attacks on humanitarian operations and peacekeepers, and in November 2008 the ICC prosecutor sought three arrest warrants for rebel leaders accused of directing one such attack that killed 12 peacekeepers at Haskanita in September 2007. These crimes, while not on the scale of those committed as part of the Sudanese government's counterinsurgency campaign, are still serious international crimes that interfere with efforts to protect civilians in Darfur and it is essential that those responsible are held to account. However, this paper focuses on the actions and responsibilities of the government of Sudan, rather than those of the rebel groups, in order to expose the gulf between the government's rhetoric to secure impunity for President Bashir and the reality on the ground in Darfur. Far from trying to improve the situation as it claims, the government of Sudan continues to conduct large-scale military attacks against populated areas, to harass aid workers, and to allow impunity for the worst crimes committed in Darfur.

Introduction

On March 31, 2005 the United Nations Security Council for the first time referred a situation to the International Criminal Court (ICC) for investigation—the situation in Darfur. On April 27, 2007, the court issued arrest warrants for two men, government minister Ahmad Harun and Janjaweed leader Ali Kushayb, charging them with 51 counts of war crimes and crimes against humanity for their leading roles in a series of attacks against civilians in West Darfur in 2003 and 2004. In the year since the warrants were issued Sudanese authorities have refused to arrest and hand over the two suspects, and Ahmad Harun has been promoted to State Minister for Humanitarian Affairs.

On July 14, 2008 the ICC prosecutor announced he was seeking a third warrant, this time for Sudanese President Omar al Bashir, on 10 counts of war crimes, crimes against humanity and genocide. In response, rather than simply dismissing the ICC as it had until then, the Sudanese government launched a major diplomatic campaign to convince the Security Council to defer the investigation. Sudanese authorities have sought to convince the UN Security Council to delay the process of justice and accountability—and effectively grant Bashir immunity from international prosecution—in accordance with article 16 of the Rome Statute of the ICC. In addition to thinly veiled threats against peacekeepers, humanitarian workers and civilians should a warrant be issued, Khartoum has launched a public relations campaign to create a picture of new progress in Darfur, contingent on their goodwill.

In September 2008, to support its claim that improvements in Darfur justify an article 16 resolution, the Sudanese government provided a ‘progress report’ to the Commission of the African Union. In that report the government claimed it had ‘cooperated without reservation with the AU, UN and International community in their collective efforts to achieve peace and stability in Darfur’ and ‘will continue undertaking its responsibilities in the region of Darfur, in order to protect civilians, government and personal properties, and the humanitarian activities to the best of its ability, and facilitate the smooth and effective deployment of UNAMID’. In an

October interview, President Bashir declared that “even in Darfur, you can say most of it is safe. There are no problems and life is very normal.”⁷

This rhetoric intensified as the decision of the ICC Pre-Trial Chamber on the issuance of the arrest warrant approached. Khartoum’s launch of the Sudan People’s Initiative, its engagement with the Arab League plan for a peace process led by Qatar, its recent alleged commitment to facilitating UNAMID deployment, the announcement of measures ostensibly designed to improve domestic accountability for crimes in Darfur and the alleged arrest of Kushayb—all fully reversible developments—were invoked by the Sudanese government as proof that an article 16 resolution is justified.

The government does not bear sole responsibility for the ongoing insecurity and suffering in Darfur. Rebel groups and bandits are also responsible for abuses of civilians and attacks on humanitarian operations and peacekeepers, and in November 2008 the ICC prosecutor sought three arrest warrants for rebel leaders accused of directing one such attack that killed 12 peacekeepers at Haskanita in September 2007. These crimes, while not on the scale of those committed as part of the Sudanese government’s counterinsurgency campaign, are still serious international crimes that interfere with efforts to protect civilians in Darfur and it is essential that those responsible are held to account. However this paper focuses on the actions and responsibilities of the government of Sudan, rather than those of the rebel groups, in order to expose the gulf between the government’s rhetoric to secure impunity for President Bashir and the reality on the ground in Darfur.

This paper assesses developments in four key areas: insecurity in Darfur, the humanitarian situation, justice and accountability and UNAMID deployment. It looks at the claims and rhetoric of the government of Sudan and compares these familiar words during the Darfur crisis from Sudanese officials with actual events and conditions on the ground.

⁷ Interview to Channel 4, October 9, 2008, http://www.channel4.com/news/articles/politics/international_politics/sudan+president+no+mass+rape/2493762 (accessed October 30, 2008)

Continuing Insecurity on the Ground

"We can say that we have largely succeeded in bringing many people to peace and in achieving a large percentage of peace in Darfur."⁸

—President Omar al Bashir, June 2008

"We do not target schools, civilians or anyone else."⁹

—John Ukec Lueth Ukec, Sudanese Ambassador to the United Nations in Geneva, September 17, 2008

The rhetoric

The Sudanese government proclaims its commitment to providing security for civilian populations in Darfur and blames rebel groups for the continued unrest in Darfur. Declaring its commitment to seeking peace for the region, in July the government launched the “Sudan People’s Initiative” to consider ways to resolve the conflict. Khartoum has also stated its willingness to attend peace talks that Qatar has offered to host in late 2008. On November 12, 2008 the Sudanese government announced a “unilateral, unconditional ceasefire” in Darfur.

The reality

The situation in Darfur continues to be characterized by ongoing insecurity, numerous and widespread human rights abuses and violations of international humanitarian law (“the laws of war”) by all the parties to the conflict. Attacks on civilian populations by government forces and government-backed militias continue unabated. Since January 2008, more than 290,000 civilians have been forced to flee

⁸ Al Jazeera, “Sudan president talks on Somalia and Darfur”, Africanpath.com, June 16, 2008, http://www.africanpath.com/p_blogEntry.cfm?blogEntryID=5171 (accessed September 24, 2008).

⁹ Agence France Presse, “Sudan slams UN rights expert as ‘EU agent’”, EU business, September 17, 2008, <http://www.eubusiness.com/news-eu/1221658622.3> (accessed October 14, 2008).

the violence.¹⁰ An increase in violence in North Darfur during September 2008 alone displaced at least 40,000 people.¹¹

Sudanese armed forces continue to conduct indiscriminate attacks:

- On November 14—two days after the government announced a ceasefire—rebel sources claimed government forces had bombed Kurbia in North Darfur. The government said that its activity in the area was limited to clashes with armed bandits which were not a violation of the ceasefire. However, over the ensuing two days sources in Darfur also reported bombings near Kutum, in North Darfur, and fresh clashes around Tine in West Darfur. It is not known if there are civilian casualties; a U.N. investigation is underway.¹²
- In early October 2008, witnesses in South Darfur reported that militias were regrouping around the town of Muhajiriya. As well as engaging in armed clashes with rebel groups, the government-backed militias are reported to have killed civilians and burned villages.¹³
- Since August 2008, displaced people in North Darfur have reported that the government has heavily bombed at least 11 villages, including two attacks on the village of Tawila, causing large numbers of injuries and deaths.¹⁴
- In July 2008, the government launched at least 21 separate air attacks in Darfur, including attacks that the U.N. concluded were targeting civilian areas (in violation of U.N. resolutions banning offensive military flights), killing 12 people and destroying farming land and livestock.¹⁵

¹⁰ Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Coordinator, “Darfur Humanitarian Profile No.33”, October 1, 2008, http://www.unsudanig.org/docs/DHP33_narrative_1%20October%202008.pdf (accessed October 30, 2008).

¹¹ “Recent violence displaces thousands of Darfuris – UN”, Reuters Foundation, October 18, 2008, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/MYAI-7KK3AN?OpenDocument&rc=1&cc=sdn> (accessed October 30, 2008).

¹² Louis Charbonneau, “UN probes reports of violations of Darfur ceasefire”, Reuters, November 19, 2008, <http://www.alertnet.org/thenews/newsdesk/N19512886.htm>

¹³ Andrew Heavens, “Rebels say 11 killed in Darfur militia ambush”, Reuters, October 12, 2008, <http://www.alertnet.org/thenews/newsdesk/LC5901.htm> (accessed October 30, 2008).

¹⁴ “Sudan planes bombing Darfur positions: rebels”, Agence France Presse, September 18, 2008, <http://www.sudantribune.com/spip.php?article28708> (accessed October 14, 2008).

<http://afp.google.com/article/ALeqM5gKIEsoX8Mt6s352XwRcaG2b-C27Q> (accessed October 14, 2008). “UN urges humanitarian access to Darfuris affected by recent fighting”, Sudan Tribune, September 20, 2008, <http://www.sudantribune.com/spip.php?article28676> (accessed October 14, 2008).

¹⁵ United Nations General Assembly, “Human rights situations that requires the Council’s attention: Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar”, UN Index: A/HRC/9/13, September 2, 2008,

- According to Sima Samar, U.N. Special Rapporteur for Sudan, Sudanese government forces carried out at least 28 “indiscriminate” aerial bombings in Darfur in the first six months of 2008 leading to “extensive civilian casualties.”¹⁶

Sudanese armed forces have also used indiscriminate force in displaced persons camps.

- In early September 2008, government police entered Zam Zam internally displaced persons camp in North Darfur and fired indiscriminately. They allegedly killed two people, injured three, and abducted two more.
- On September 4, 2008, government police opened fire at a food distribution point at Um Shalaya camp, killing four.¹⁷
- On August 25, heavily armed government forces, in what was said to be an operation to confiscate weapons, surrounded the Internally Displaced Camp in Kalma, and, confronted by a crowd of internally displaced persons, opened fire. In the ensuing skirmish 33 civilians were killed and 108 injured, including 38 children.¹⁸

The human rights situation in Sudan in general and Darfur in particular remains of great concern.

- Violations of civil and political rights continue, including the arbitrary arrest and detention of individuals of Darfur origin following the attack by rebels on the capital, Khartoum, in May, 2008. At least thirty of those arrested have since been sentenced to death, but dozens more remain unaccounted for.
- Newspapers have been subject to increasing censorship over the course of 2008, in particular in relation to any reporting on the rebel attack on Khartoum in May and related arrests of alleged suspects, the situation in

[http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDdocUnidFilename/EGUA-7JJNR2-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDdocUnidFilename/EGUA-7JJNR2-full_report.pdf/$File/full_report.pdf) (accessed September 24, 2008).

¹⁶ *ibid.*

¹⁷ Van Oudenaren Daniel “UNAMID, IDPs and rebels attacked in North Darfur incidents.”, Sudan Tribune, September 12, 2008, <http://www.sudantribune.com/spip.php?article28601> (accessed September 24, 2008), and “Fighting restricts humanitarian access in Sudan’s North Darfur”, UNAMID Press release, September 19, 2008, <http://unamid.unmissions.org/Default.aspx?tabid=55&ctl=Details&mid=376&ItemID=216> (accessed September 24, 2008).

¹⁸ United Nations Security Council, “Secretary-General Report on African Union – United Nations Operation in Darfur”, S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

Darfur, and the International Criminal Court. Since May 2008, several journalists have been summoned or detained, and more than 150 articles (of which more than 50 related to the conflict in Darfur) have been removed or partly removed by NISS media censors. On November 17, 2008, over 60 journalists were arrested at a peaceful demonstration in Khartoum against government censorship. All were released later the same day but they may still face trial.¹⁹

- The U.N. Special Rapporteur on Sudan, Sima Samar, reported that “violence and sexual abuse of women and children... also continue almost unabated throughout Darfur” and that “conflict-related violence against women and girls includes rape, gang rape, attempted rape, serious assaults and beatings.”²⁰

¹⁹ Andrew Heavens, “Sudanese journalists detained at censorship protest”, Reuters, November 17, 2008, <http://africa.reuters.com/top/news/usnJOE4AGoFC.html>

²⁰ United Nations General Assembly, “Human rights situations that requires the Council's attention: Report of the Special Rapporteur on the situation of human rights in the Sudan, Sima Samar”, UN Index: A/HRC/9/13, September 2, 2008, [http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/EGUA-7JJNR2-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/EGUA-7JJNR2-full_report.pdf/$File/full_report.pdf) (accessed September 24, 2008).

The Humanitarian Situation in Darfur

[According to] Hassabo Abdelrahim, head of Sudan's Humanitarian Aid Commission, "99 percent is going well" in the aid sector and that the mortality rate in Darfur is now "normal." He said government forces were attacking rebels in Darfur to "protect the humanitarian workers" in the western region.²¹

—Associated Press, September 16, 2008

“On the humanitarian level, the Government of Sudan has been committed to the implementation of the humanitarian protocol concluded with the U.N. on the 28th of March 2007. And it has been implemented in an exemplary manner as a result of the supreme follow-up mechanisms to follow the implementation of the humanitarian protocol in addition to the effort of the government to open humanitarian corridors in Darfur and to facilitate the delivery of humanitarian assistance. And once more, we renew our commitment to this effort.”²²

—Ali Osman Mohamed Taha, Vice President of Sudan, September 25, 2008

The rhetoric

The government of Sudan claims it is facilitating the work of humanitarian organizations, implementing agreements with the U.N. on humanitarian assistance and expediting procedures and providing security for humanitarian workers. In short, it depicts a hospitable environment for humanitarian work in Darfur.

²¹ Associated Press “UN envoy fights to continue investigating Sudan”, International Herald Tribune, September 16, 2008, <http://www.iht.com/articles/ap/2008/09/16/news/UN-UN-Sudan.php> (accessed October 14, 2008).

²² Mr. Ali Osman Mohamed Taha, Vice-President of Sudan, speech to the UN General Assembly, 25 September 2008, <http://www.un.org/ga/63/generaldebate/sudan.shtml> (accessed October 30, 2008).

The reality

The deterioration of the security situation and the increased targeting of humanitarian workers are making it more and more difficult for aid agencies to reach the people who need help the most in Darfur. The extension on November 17 of the moratorium facilitating humanitarian aid—a key element of the Joint Communiqué signed with the UN—until January 2010 is welcome but its implementation remains to be tested. Indeed, the Sudanese government’s continued lack of compliance with the Joint Communiqué signed with the UN—which includes this moratorium—and continued harassment of humanitarian agencies seriously hampers their efforts.

Insecurity—and the failure of the Sudanese government to address it despite its responsibility to do so—is by far the biggest concern for both civilians and humanitarian staff.

- 170 humanitarian workers were kidnapped or abducted and 11 killed in the first nine months of 2008. 225 humanitarian vehicles were hijacked between January and October 2008.²³ In 2007, the figure for the total amount of vehicles hijacked during the entire year was 137.
- Observers on the ground said that government of Sudan military aircraft involved in the August attacks in North Darfur were painted white, the official color for UN aircraft. The government’s recent commitment to cease painting its helicopters white remains to be implemented.
- Two major NGOs suspended their activities in North Darfur in August as a result of repeated attacks against their personnel and assets. As a result, 415,000 people were temporarily left without food assistance.²⁴

The Sudanese government is failing to comply with the 2007 Joint communiqué on facilitation of humanitarian activities, as evidenced by its restrictions on humanitarian access, harassment of humanitarian workers and bureaucratic constraints.

²³ Office of UN Deputy Special Representative of the UN Secretary-General for Sudan UN Resident and Humanitarian Co-ordinator, “Darfur Humanitarian Profile No.33”, October 1, 2008, http://www.unsudanig.org/docs/DHP33_narrative_1%20October%202008.pdf (accessed October 30, 2008).

²⁴ Ibid.

- Two serious incidents involved United Nations Humanitarian Air Service (UNHAS)—a service that enables humanitarian workers to travel in the region—flights in West Darfur. In Abu Sorouj, Sudan Armed Forces (SAF) officers detained the crew and passengers. On August 27 in Golo (Jebel Marra), SAF officers temporarily detained one and beat UNHAS crew members and held passengers at gunpoint. UNHAS suspended its flights to Golo as a result.
- In South Darfur, Sudanese government restrictions on the transport of life-saving assistance to Kalma IDP camp lasted several weeks in August and September 2008.
- The Ministry of Pharmaceuticals has imposed stricter bureaucratic procedures in recent years on all medical drugs entering the country, leading to redundant testing of the same drugs and delays in clearing drug shipments from customs. Consequently, some health supplies for Darfur have been delayed for over 6 months.
- In North Darfur, the Humanitarian Aid Commission (HAC) promulgated new, stricter requirements for travel permits for rented vehicles. Humanitarians often travel in rented vehicles to reduce the likelihood of hijacking.

The increasing restrictions in humanitarian access have a severe impact on the population in Darfur.

- 250,000 people in need were beyond the reach of aid workers due to insecurity in September, the highest this year. In September and October 2008, overall UN accessibility in Darfur dropped to its lowest since October 2006.²⁵
- Only 65% of the affected population is currently accessible by humanitarian agencies.

²⁵ Ibid.

Domestic Justice and Accountability

“The Sudanese judiciary solely has the jurisdiction of ruling in cases in Sudan, especially those in Darfur.”²⁶

—President Bashir February 16, 2006

“The Sudanese judiciary “will fulfill its role completely in combating impunity in relation to crimes that may have been committed in Darfur.”²⁷

—Ramadan Al-Amamra, Commissioner of the AU Peace and Security Council, September 11, 2008

The rhetoric

Sudan has repeatedly rejected requests for cooperation from the ICC on the basis that it is not a party to the Rome Statute²⁸ and because the Sudanese government has the capacity to try these crimes in domestic courts, thereby making the cases before the ICC inadmissible.²⁹ To bolster these claims Sudan has periodically announced measures ostensibly designed to improve domestic accountability. These include establishment of a national commission of inquiry; the creation of Special Criminal Courts on the Events in Darfur characterized by Khartoum as “a substitute to the International Criminal Court”³⁰; the appointment of a new special prosecutor for Darfur and senior legal advisors in each of the Darfur states to

²⁶ “Sudan vows not to extradite suspects of Darfur war crimes,” Xinhua News Agency, February 19, 2006, http://news.xinhuanet.com/english/2006-02/19/content_4200443.htm (accessed September 25, 2008).

²⁷ “African Union Says Sudan Judiciary Will Look Into Darfur Crimes” *Sudan Tribune*, September 11, 2008, <http://www.sudantribune.com/spip.php?article28590> (accessed September 29, 2008).

²⁸ The Sudanese government has also claimed repeatedly that the ICC has no jurisdiction because Sudan has not ratified the Rome Statute that established the Court. This was reiterated following the announcement of the prosecutor’s request on July 14, 2008. However, the Security Council referral of the situation in Darfur to the International Criminal Court imposes on Sudan a binding legal obligation to cooperate with the Court.

²⁹ Under the Rome Statute, article 17, the Court will reject a case as inadmissible “if the State which has jurisdiction is investigating or prosecuting the case unless the State is unwilling or unable genuinely to carry out the investigation or prosecution”. However early rulings by the pre-trial chamber indicate that the national proceedings must encompass both the person and the conduct that is the subject of a case before the ICC for a case to be deemed inadmissible. Even if article 17 applies, the state must make an application to the judges at the ICC to rule the matter inadmissible.

³⁰ “Sudan: Judiciary challenges ICC over Darfur case,” IRIN, June 24, 2005, at http://www.irinnews.org/report.asp?ReportID=47802&SelectRegion=East_Africa@SelectCountry=SUDAN

investigate crimes that occurred since 2003; certain amendments to Sudan's Criminal Code that allow for crimes under the Rome Statute to be tried in Sudanese courts.³¹

In October, Sudanese justice officials announced that the Sudanese special prosecutor had completed an investigation of charges against Ali Kushayb, one of the two individuals already subject to an arrest warrant at the ICC for 51 counts of war crimes and crimes against humanity. Officials also announced that Kushayb had been taken into custody.

The reality

No progress towards ending impunity for atrocities in Darfur has been achieved since the UN Security Council referred the situation in Darfur to the ICC.

- The new Special Prosecutor has to date only considered only three cases – against Ali Kushayb and two other unknown individuals. The charges have not been specified, although an official has stated that the investigations relate to ‘killing and looting’.
- Ali Kushayb was arrested previously in an effort to raise an admissibility question before the ICC. The ICC prosecutor was informed that Ali Kushayb was arrested on November 28, 2006, but this was in relation to crimes in Darfur that were not covered by the prosecutor's application to the court, and the ICC prosecutor was given no documentation or information relating to Kushayb's arrest or the investigation against him. The court found that the case appeared admissible. In early October 2007, government officials announced that Kushayb had been released from custody due to lack of evidence against him, although other sources reported that he was at liberty for at least 3 months prior to this.
- Although in October 2008 Sudanese officials again claimed that Kushayb has been taken into custody, other sources have stated that he in fact remains at

³¹ In September 2005 the Sudanese government issued a decree establishing a Specialized Prosecution for Crimes against Humanity, and in November 2005 extended the jurisdiction of the Special Criminal Court on Events in Darfur (SCCED) to include these crimes. However these decrees do not define the crimes, and there is no evidence that any courts are applying international crimes such as crimes against humanity and war crimes. The Sudanese Criminal Code has not until now included these crimes, but in November 2008 the government passed amendments to the Code to include them for the first time. To date no individual has been charged with such crimes.

home. It appears that the recent investigations into his crimes were in fact the reopening of the earlier case.

- This is not the first time Sudan has attempted to create the appearance of national accountability in an effort to avoid ICC jurisdiction. One day after the ICC prosecutor's announcement that he was opening investigations in Darfur, Sudanese authorities established the Special Criminal Courts on the Events in Darfur (SCCED) to demonstrate the government's ability to handle prosecutions domestically. Yet these courts have tried only 13 cases of ordinary crimes, such as possession of stolen goods, theft or individual murders unrelated to larger attacks. To date, Sudanese authorities have failed to press charges before the SCCED for a single major atrocity committed in Darfur. No official has been charged on the bases of command responsibility for these crimes.
- Other individuals allegedly responsible for serious crimes in Darfur have been protected rather than prosecuted. Ahmad Harun remains in his position as State Minister for Humanitarian Affairs despite the issuance of an ICC arrest warrant for him on April 27, 2007. In that position, Harun also participates in overseeing UNAMID deployment. Sudanese government officials have indicated that there is no evidence against Harun and that he will not be prosecuted.³²
- Amendments to Sudan's criminal codes were finally passed in November 2008 that formally included international crimes such as crimes against humanity and genocide in Sudan's criminal law. However, no individual has yet been charged under these provisions. Sudan's laws also do not provide for the principal of command responsibility.
- Broad immunity provisions in Sudan's laws create obstacles for successfully prosecuting members of the armed forces (including the Popular Defense Forces and some militias), national security agencies and police for their role in events.

³² " ICC Chief Prosecutor reject Sudanese Justice Minister Statements", February 28, 2007 at http://www.sudantribune.com/spip.php?article20478&var_recherche=haroun%20investigate; "No Evidence against ICC Suspect," Reuters, May 4, 2007, at http://www.sudantribune.com/spip.php?article21701&var_recherche=haroun%20investigate

- Significant legal and practical obstacles exist for prosecution of rape cases. Victims risk prosecution for adultery and police and judicial authorities remain unwilling to prosecute perpetrators of widespread sexual violence.
- In any case, the question of whether there are national proceedings able to try these individuals for these crimes is a matter for the ICC. The proper mechanism for challenging the admissibility of a situation or a case is set forth in article 19 of the Rome Statute. Under that provision, ICC judges can rule on whether Sudanese authorities are genuinely willing and able to investigate or prosecute crimes under its jurisdiction. This judicial procedure is entirely unrelated to the Security Council's power to suspend the investigation under article 16.

UNAMID - African Union/United Nations Hybrid operation

“You [UNAMID] are our guests and our partners and we are ready to provide any assistance that will help you do your work.”

—Sudanese President Omar al Bashir, July 23, 2008³³

The rhetoric

The government of Sudan has repeatedly promised to facilitate the deployment of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) in accordance with their international legal obligations.³⁴ Sudanese authorities claim that delays are due to unfulfilled commitments of the international community. On September 18, 2008, for instance, Sudan's Ambassador to the United Nations rejected his government's responsibility for severely hampering UNAMID deployment stating that “[if] there are delays, it's because of the United Nations.”³⁵

Recently, the government of Sudan's tone has emphasized more open cooperation with the international community on the deployment of UNAMID. On October 7, 2008, the government participated in a tripartite meeting with the African Union and the United Nations, aimed at addressing the barriers to deployment, at which Khartoum agreed to remove various administrative hurdles to UNAMID.³⁶ In recent public statements, the government of Sudan has touted these developments as evidence of their commitment to peace and security in Darfur.³⁷

³³ “UN-African Union mission chief meets with Sudanese President in Darfur”, U.N. press release, July 23, 2008, <http://www.un.org/apps/news/story.asp?NewsID=27465&Cr=Darfur&Cr1> (accessed October 14, 2008).

³⁴ Security Council resolution 1769 authorizing UNAMID imposes on all states, including Sudan, an obligation to facilitate deployment of the force : United Nations Security Council Resolution 1769 (2007), UN Index S/RES/1769 (2007), July 31, 2007, <http://daccessdds.un.org/doc/UNDOC/GEN/No7/445/53/PDF/No744553.pdf?OpenElement> (accessed October 30, 2008).

³⁵ Louis Charbonneau, “Sudan blames UN for peacekeeper deployment delays”, Reuters, September 18, 2008, <http://www.alertnet.org/thenews/newsdesk/N18492730.htm> (accessed October 14, 2008).

³⁶ United Nations Security Council, “Secretary-General's Report on African Union – United Nations Operation in Darfur”, S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

³⁷ “AU, UN & GoS tripartite meeting held in Khartoum”, UNAMID Featured News, October 7, 2008, <http://unamid.unmissions.org/Default.aspx?tabid=55&ctl=Details&mid=376&ItemID=229> (accessed October 27, 2008).

The reality

Since UNAMID's authorization, the government of Sudan has consistently failed to assist in its deployment, and in many ways has been openly obstructive.

- The systematic campaign of obstruction includes stalling negotiations on the deployment of the UNAMID force, implementing administrative hurdles, and conducting deliberate attacks on peacekeepers. Despite the other impediments to the mission—too few critical technical assets, bureaucratic and political obstacles within the U.N. system, and poor basic infrastructure—the methodical obstruction by the government in Khartoum remains the major reason for the failure to deploy the mission.
- Khartoum initially insisted on provisions in the Status of Forces Agreement (SOFA) that would have significantly restricted troop mobility and communication. Ultimately, the agreement did not include these provisions, but the negotiations delayed preparation and deployment of the force for months.
- On January 7, 2008, (just seven days after UNAMID took over command from the AU) a UNAMID convoy was attacked by the Sudanese Armed Forces.³⁸
- On July 8, 2008, a well-organized and heavily armed militia contingent attacked a UNAMID military and police patrol, killing 7 U.N. peacekeepers. In a briefing to the Security Council, then-Undersecretary for Peacekeeping Operations Jean-Marie Guéhenno said that the attack “took place in an area under Sudanese government control and that some of the assailants were dressed in clothing similar to Sudanese army uniforms.” He also said the ambush was “pre-meditated and well-organized” and was “intended to inflict casualties.”³⁹
- Sudanese officials have stated that the issuance of an ICC arrest warrant for the Sudanese president would result in severe retaliation against U.N. and humanitarian staff in Darfur and throughout Sudan.⁴⁰ Already government

³⁸ “Attack on UNAMID Convoy”, U.S. Department of State Press Statement, January 9, 2008, <http://www.state.gov/r/pa/prs/ps/2008/jan/98954.htm> (accessed October 27, 2008).

³⁹ Margaret Besheer, “Concern Grows at UN for Peacekeepers, Staff in Sudan”, VOA News, July 11, 2008, <http://www.voanews.com/english/archive/2008-07/2008-07-11-voa65.cfm> (accessed on October 27, 2008).

⁴⁰ Sam Dealey, “Sudan: Retaliation Against the Hague?”, Time, July 15, 2008, <http://www.time.com/time/world/article/0,8599,1822833,00.html?xid=feed-cnn-topics> (accessed October 27, 2008).

forces, police, and militia, as well as rebels and bandits, harass UNAMID patrols and block security assessment missions.

The government's recent commitments to UNAMID deployment and the mission's ability to operate in Darfur have yet to be tested.

- Despite these past problems, the recent approach of the government of Sudan has allowed some limited progress. Following October 2008 meetings with government of Sudan officials, U.S. Special Envoy Richard Williamson expressed appreciation for the government's recent agreements to facilitate cooperation with UNAMID. However, Ambassador Williamson stated, "We are not concerned about the process or promises but with the results."⁴¹
- In order for there to be genuine progress in UNAMID deployment, these commitments need to be implemented permanently and in full, as must any other obligations of the government in relation to the force (for example those in the SOFA). Until then, all 'agreements' should be evaluated in light of the government of Sudan's history of broken promises.
- In a September 26, 2008 letter to the U.N. Department of Field Support, the government of Sudan agreed "to provide blanket clearance for airlift operations."⁴² However, this agreement has yet to take effect and the government recently stated that "24/7 [air] operations would be gradually implemented."⁴³ Since the beginning of UNAMID, despite provisions in the SOFA, the government of Sudan continued to deny UNAMID nighttime flight rights and blanket clearance for flights moving large contingents of troops and equipment. The latter hampers UNAMID's ability to rotate and deploy troops. Both obstructions likewise severely hinder UNAMID's ability to respond quickly to reported incidents.

⁴¹ Embassy of the United States of America, Khartoum, Official transcript following a meeting with Sudanese Presidential Advisor D. Nafie Ali Nafie, October 8, 2008, <http://sudan.usembassy.gov/media/press-releases-pdf/2008/20081008-williamsonpressstatements.pdf> (accessed October 27, 2008).

⁴² United Nations Security Council, "Secretary-General report on African Union – United Nations Operation in Darfur", S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

⁴³ "Sudan agrees to allow UNAMID night flights in Darfur – envoy", Sudan Tribune, August 18, 2008, <http://www.sudantribune.com/spip.php?article28310> (accessed on October 27, 2008) and United Nations Security Council, "Secretary-General report on African Union – United Nations Operation in Darfur", S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

- Sudanese government officials currently claim that all necessary land for UNAMID bases is now accessible. However, consistent obstruction since the signing of the SOFA has delayed engineering and construction of bases for months and the previous lack of bases resulted in delayed deployment and reduced capacity for UNAMID to operate effectively.⁴⁴
- The government of Sudan recently claimed that UNAMID equipment is now being cleared through customs at Port Sudan within seven days of arrival. During the tripartite meeting, the government of Sudan agreed to facilitate clearance by offering a “single clearance at point of entry.”⁴⁵ This commitment has yet to take effect. In the past, the government has routinely held UNAMID equipment at Port Sudan for months at a time, ostensibly in customs clearance, in spite of numerous requests by the UN and an explicit directive in the SOFA against such delays.⁴⁶
- The vital Thai and Nepalese peacekeeping units have now been approved by the Sudanese authorities. However, these units, which were self-sufficient and ready to deploy in January, are only due to arrive in Darfur in early 2009 at the earliest,⁴⁷ because of the nine month delay in the government of Sudan’s written confirmation of approval of the list of proposed troop contributing countries.
- The government of Sudan recently agreed “to provide security escorts for UNAMID road convoys as frequently as every 48 hours, with the expectation that convoys would take place every 24 hours in due course.” The government’s past failure to provide consistent and timely security escorts for equipment and materiel destined for UNAMID⁴⁸ has created a six months’

⁴⁴ United Nations Security Council, “Secretary-General report on African Union – United Nations Operation in Darfur”, S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

⁴⁵ Ibid.

⁴⁶ Report of the Secretary-General on the deployment of UNAMID, U.N. News Centre, February 14, 2008, available at <http://www.un.org/apps/news/docs.asp?Topic=Sudan&Type=Report> (accessed on October 27, 2008) & “KEEPING OUR WORD: Fulfilling the Mandate to Protect Civilians in Darfur”, Save Darfur Coalition and ENOUGH Project, June 12, 2008, http://darfur.3cdn.net/35b2008acd4c9385ae_3qm6bhv3u.pdf (accessed on October 27, 2008).

⁴⁷ “First batch of Nepalese troops join Darfur peacekeeping force”, Sudan Tribune, October 20, 2008, <http://www.sudantribune.com/spip.php?article28976> (accessed on October 27, 2008) and United Nations Security Council, “Secretary-General report on African Union – United Nations Operation in Darfur”, S/2008/659, October 17, 2008, <http://daccessdds.un.org/doc/UNDOC/GEN/No8/553/95/PDF/No855395.pdf?OpenElement> (accessed October 30, 2008).

⁴⁸ Keeping Our Word: Fulfilling the Mandate to Protect Civilians in Darfur”, Save Darfur Coalition and ENOUGH Project, June 12, 2008, http://darfur.3cdn.net/35b2008acd4c9385ae_3qm6bhv3u.pdf (accessed October 27, 2008).

backlog, which will have to be addressed before new equipment can be moved.⁴⁹

- The main body of the first Egyptian infantry battalion arrived in Darfur in mid-November. The equipment to support them had already arrived in Port Sudan on January 31, 2008, but was held up at customs for many months. Although the deployment of the main body of the battalion is a step forward, the remaining 184 personnel to complete the battalion is not expected until the end of 2008. Seven more infantry battalions, including an additional Egyptian contingent, are yet to deploy.⁵⁰

⁴⁹ Report of the Secretary-General on the deployment of the African Union –United Nations Hybrid Operation in Darfur, U.N. News Centre, October 21, 2008, available at <http://www.un.org/apps/news/story.asp?NewsID=28652&Cr=darfur&Cr1=unamid> (accessed October 27, 2008).

⁵⁰ “UNAMID welcomes the arrival of the main body of the Egyptian infantry battalion,” African Union-United Nations Hybrid Operation in Darfur Featured News, November 13, 2008, <http://unamid.unmissions.org/Default.aspx?tabid=55&ctl=Details&mid=376&ItemID=287> (accessed November 20, 2008). And “After Delays, Egyptian battalion to arrive in Darfur,” Sudan Tribune, November 12, 2008, <http://www.sudantribune.com/spip.php?article29239> (accessed November 20, 2008).