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## Darfur Briefing: September 2008

### I. Introduction

**Over the past five years Darfur has seen indiscriminate aerial bombardment, humanitarian assistance obstructed, and scorched earth tactics which deliberately target civilians.**

The conflict has resulted in around 300,000 deaths, the destruction of around 3,000 villages – particularly those from the Fur, Masalit and Zaghawa tribes – and the forced displacement of over 2.5 million people<sup>1</sup>.

Since the beginning of 2008, government forces, militias and rebel groups have all committed abuses, including looting and rapes, without being held accountable<sup>2</sup>. The UN's most recent estimate is that as of July 1st more than 200,000 people had been newly displaced in 2008, a rate of more than 1,000 people per day<sup>3</sup>. The UN Special Rapporteur on human rights in Sudan reported several air attacks by government forces in the first half of 2008, which hit civilian targets including a school and a market<sup>4</sup>.

### II. Protection in Darfur and Eastern Chad

**Personal safety within and around the camps is the primary security concern cited by most IDPs**

There are well documented fears of attacks, especially rape, when leaving the camps, for example to collect firewood<sup>5</sup> and within the camps IDPs and refugees are increasingly exposed to extortion, violence and recruitment by a variety of armed actors, including rebel groups<sup>6</sup>.

**Sudanese security forces have attacked the camps**

On 25th August 2008, Sudanese forces attacked Kalma camp in West Darfur which is home to 90,000 IDPs. The head of the joint UN-AU peacekeeping force (UNAMID) later expressed 'grave concern' over the killing of 31 IDPs, including seven children and ten women. An unusually strong UNAMID statement criticised the Government of Sudan for using 'excessive, disproportionate force' in the raid. Khartoum claimed its forces were searching for weapons, and suspected bandits and rebels. Reports are now emerging that Sudanese forces have started to build

up their position outside Kalma camp, raising fears of a new attack. Prosecutors at the International Criminal Court may add the attack to a list of war crimes allegations against President Omar al-Bashir<sup>7</sup>. On September 10, it was reported that Sudanese forces attacked ZamZam camp, causing significant civilian casualties<sup>8</sup>.

**Extract from Guiding Principles on Internal Displacement:** - Attacks against IDPs who do not ... participate in hostilities are prohibited in all circumstances. IDPs shall be protected, in particular, against: Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted [and] attacks against their camps or settlements...  
- IDPs have ... the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.<sup>9</sup>

### Insecurity threatens food shortages

In a press release issued on 7 September 2008, the World Food Programme (WFP) warned that it will have to suspend food distribution in Darfur if the security situation does not improve. Since the beginning of the year, more than 100 vehicles delivering WFP food assistance have been hijacked in Darfur, with many more shot at and robbed<sup>10</sup>. One person was killed and six were wounded when residents of Um Shalaya refugee camp in West Darfur rioted after having been informed about cutbacks<sup>11</sup>.

### IDPs need protection from forced relocation by the Government of Sudan

IDPs want to go home, but they want to return in safety. It has been reported that the areas to which GoS demand the IDPs relocate are lacking even the basic levels of security and humanitarian assistance available in the camps. The threat of forcible relocation is real:

- In July 2007, President Bashir spoke publicly about the need to empty the camps<sup>12</sup>.
- In early 2008 forced relocation reportedly took place in Kalma, Otash, and Kass<sup>13</sup>.



*John Holmes, the UN's under-secretary-general for Humanitarian Affairs and Emergency Relief Coordinator, has said, "... it is imperative that any relocation be wholly voluntary, in agreement with the internally displaced."*<sup>14</sup>

## III. Peacekeeping' in Darfur: UNAMID

**Only 10,000 of the agreed 26,000 troops and police have so far arrived in Sudan**



On July 31st 2007, the UN Security Council authorised the Joint UN – African Union hybrid mission in Darfur. UNAMID formally took over peacekeeping responsibilities on 1st January 2008.

General Martin Luther Agwai, who leads the joint UN and African Union peacekeeping mission, has portrayed the force as hamstrung<sup>15</sup>. The target of reaching 80% troop strength by the end of the year is now unlikely. UNAMID's deployment was slowed initially by the Sudanese government, which objected to the deployment of non-African troops. But now, according to Agwai, the principle bottleneck is logistical. Eighteen battalions had been pledged, but the force's capacity to absorb them and deploy them in areas where they are needed to guard IDP camps against warring factions and bandits is severely limited<sup>16</sup>.

One of the key gaps in the forces' capability is the lack of helicopters, essential for the force to be able to operate and react quickly in a region the size of France. The force is asking for 18 transport and 6 tactical helicopters, yet so far not a single one has been provided. This is despite the fact that, according to military aviation experts, NATO alone could provide as many as 140 helicopters for UNAMID<sup>17</sup>.

# IV. International Criminal Court investigation of President al Bashir

**Article 16 Rome Statute:** *No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.*<sup>18</sup>

Recently there have been calls for the UN Security Council to suspend the ICC investigations into President al-Bashir of Sudan. Article 16 of the Rome Statute of the International Criminal Court authorises the UN Security Council to defer investigations for a year. The deferral can be renewed each year.

## Calls for deferral do not reflect the original intent behind Article 16

Article 16 was envisaged as a method of suspending investigations if priorities of peace and security compel a delay of international justice. In particular it was intended as a way for the Security Council to slow down investigations by the ICC that were not yet fully underway and had emanated from the prosecutor or states parties to the ICC. Article 16 was not intended to be used for investigations which were several years old, had already issued arrest warrants, or had been initiated by the Security Council itself<sup>19</sup>.

## Threats driving calls to invoke Article 16

It is a combination of threats from Khartoum, fears about the Comprehensive Peace Agreement (CPA), and 'solidarity' between certain heads of state in the region, which have driven the calls by the African Union and Arab League to invoke Article 16.

There have been implicit threats from Sudanese ministers:

- Sudanese Justice Minister Sabdarat warned of "a devastating earthquake which will not only burn the fingers of those who are orchestrating these charges, but their livers as well,"<sup>20</sup>
- President al-Bashir has reportedly said in public that the UNAMID peacekeepers may be expelled if an arrest warrant is issued<sup>21</sup>.
- Salah Gosh, director of the National Intelligence and Security Services, has also made recent threats to expel humanitarian organizations<sup>22</sup>.

**Voice of Darfuri refugees:** "Sirs, please allow us to present this our complaint to the Security Council, United States and European Union:  
1- Support the decisions of the International Court's Prosecutor, Ocampo;  
2- Arrest al-Bashir and all the accused immediately. We, the refugees and displaced persons, reject the demands of the African Union and the Arab League..."  
*Petition from Omdas (traditional leaders) of Darfuri refugees in Goz Amir in Eastern Chad.*<sup>23</sup>

## If Article 16 is used, then tough benchmarks are needed to measure progress.

The arrest warrants have been almost the only point of leverage that the international community have in their dealings with Sudan. The UNSC should not waste this opportunity by employing Article 16 prematurely unless there is proof that Khartoum is changing its policies. The benchmarks against which the regime should be judged need to include the following<sup>24</sup>:

- Unconditional peace talks, and a demonstrated willingness to achieve a ceasefire in Darfur.
- A resolution acceptable to internally displaced people regarding their return or resettlement.
- Genuine cooperation with the UNAMID peacekeeping force and all humanitarian organisations working in the Darfur region.
- The surrender of Ahmad Harun, and 'Ali Kuyshab' to the ICC and the creation of robust justice and reconciliation mechanisms within Darfur to address the grievances of, and provide compensation to, all victims of the conflict.
- Expedited implementation of the CPA, including demarcation of the internal borders of 1956, establishment of an independent National Electoral Commission and follow through on the agreements on the regions of Abyei, South Kordofan / Nuba Mountains and Blue Nile.
- An improved democratic climate in advance of the national elections in 2009, through the reform of national security, intelligence law and the media laws.

# V. Protection in the UK

The Home Office argues that while it is not safe to remove non-Arab Darfuri asylum seekers back to Darfur, it is safe to return many failed asylum seekers to Khartoum – where there is a sizeable community of non-Arab Darfuris. However:

- There is evidence that some failed asylum seekers who are sent back to Khartoum are tortured or beaten on their return<sup>25</sup>.
- If returned asylum seekers are sent back to Khartoum the conditions they face in the IDP and squatter camps around the capital can be worse than they face in Darfur. UNHCR found that “harassment and arbitrary violence on the part of the authorities is a regular occurrence. IDPs from Darfur in Khartoum also often face protection risks, including forced relocation and forced return.”<sup>26</sup>
- Recent events after the May 2008 attack on Khartoum/Omdurman by the Darfur rebel group Justice and Equality Movement (JEM) demonstrate the dangers of arbitrary detention and disappearances for Darfuris living in Khartoum. The Aegis Trust, Human Rights Watch, and Amnesty have documented many cases of Darfuris who were illegally detained by the security services. Former detainees estimate that the total number may be as high as 3,000<sup>27</sup>.
- The extant UNHCR policy is to recommend that: “States provide international protection to Sudanese asylum-seekers from Darfur of “non-Arab” ethnic background, through according them recognition as refugees under the 1951 Convention ... [and that] no non-Arab Sudanese originating from Darfur should be forcibly returned until such

time as there is a significant improvement in the security situation in Darfur.”<sup>28</sup>

**Article 33 of the 1951 Refugee Convention:**  
*No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*<sup>29</sup>

A test case will be heard in November 2008 to determine whether Home Office guidance on returning asylum seekers to Sudan should be revised.



## Notes

1. Figures quoted by John Holmes, UN Under Secretary General for Humanitarian Affairs in a speech to the UN Security Council, April 22nd 2008
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3. UN Darfur Humanitarian Profile No. 32, page 4, at <http://www.unsudanig.org/library/profile/index.php>
4. General Assembly, A/HRC/9/13, Report covering the period January to July 2008 [September 2, 2008]
5. UN Human Rights Council 2007, *Human Rights Situations that Require the Council's Attention*, A/HRC/6/19 – 26 November
6. *Conflict, Arms and Militarisation: The Dynamics of Darfur's IDP Camps*, Clea Khan, The Small Arms Survey, September 2008
7. Court Probing Deadly Darfur Attack, Associated Press, September 13 2008
8. UNAMID, IDPs and Rebels attacked in North Darfur incident, Sudan Tribune, September 13 2008
9. Guiding Principles on Internal Displacement, <http://www.unhcr.ch/html/menu2/7/b/principles.htm>
10. Humanitarian Action in Darfur, Weekly Bulletin No. 32, OCHA, 11 September 2008
11. One dead in Darfur camp riot, AP, 3 September 2008
12. 'Darfur's New Security Reality' International Crisis Group African Report No.134, November 2007
13. 'Darfur Displaced to Protest Against Delay of Peacekeepers Deployment', Sudan Tribune, February 13 2008
14. UN Humanitarian Chief alarmed by forced relocation in Darfur, October 29 2007, <http://www.reliefweb.int/rw/rwb.nsf/db900sid/SHES-78FKYG?OpenDocument>
15. General Agwai, presentation to Kings College London, 12 September 2008
16. 'Darfur Peacekeepers Struggling to Cope' by Julian Borger, The Guardian, September 12 2008
17. Grounded: The International Community's Betrayal of UNAMID, Joint NGO Report, July 2008
18. <http://untreaty.un.org/cod/icc/index.html>
19. <http://jurist.law.pitt.edu/forumy/2008/08/security-councils-struggle-over-darfur.php>
20. <http://www.sudantribune.com/spip.php?article28570>
21. <http://www.sudantribune.com/spip.php?article28364>
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23. Letter received by the Aegis Trust, August 2008
24. <http://www.crisisgroup.org/home/index.cfm?id=5600>
25. <http://www.guardian.co.uk/world/2007/mar/28/sudan> and Aegis investigations
26. UNHCR's position on Sudanese asylum seekers from Darfur (accessed 10 September 2008). [http://www.unhcr.se/Pdf/Position\\_countryinfo\\_papers\\_06/UNHCR\\_position\\_Sudanese\\_as\\_Darfur.pdf](http://www.unhcr.se/Pdf/Position_countryinfo_papers_06/UNHCR_position_Sudanese_as_Darfur.pdf)
27. <http://hrw.org/reports/2008/darfur0608/darfur0608webwcover.pdf>
28. Ibid.
29. <http://www.unhcr.org/protect/3c0762ea4.html>