



Darfur Relief and Documentation Centre

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Darfur: No Peace Without Justice

In July 2004 the Darfur Relief and Documentation Centre (DRDC) issued its Briefing Paper N° One which addressed the necessity of combating impunity and bringing the perpetrators of atrocities that are being committed in Darfur to expeditious justice. It also called for the establishment of a mechanism to repair the damage done to the victims of the Darfur conflict. On 25th January 2005 the independent International Commission of Inquiry on Darfur (ICID) concluded its work and presented its report to the UN Secretary General. This report was the most authoritative and comprehensive document ever produced on the extent of the crisis in Darfur. It has based its findings on more than 8 weeks of *in situ* investigations and eyewitness accounts thus factually reflected the situation on the ground and established beyond doubt that large-scale and systematic war crimes and crimes against humanity have been committed in the region and that the government of Sudan and its allied militia groups bear the prime responsibility for these crimes.

Although the ICID was not able to collect enough evidence to ascertain itself of a genocidal policy collectively pursued and implemented by the government authorities, yet the ICID was clear that its conclusion “... should not be taken in any way as detracting from the gravity of the crimes perpetrated in that region.” The ICID also reported that these crimes have been continuing unabated during the period of its investigation in the region. It is now time for the international community to take decisive action to protect the defenceless civilian populations in Darfur and ensure that expeditious justice is carried out against all persons implicated in the commission, planning or support of these criminal acts without delay. As the ICID was established by the UN Security Council by means of its resolution 1564/2004 and indeed with the informed consent of all its members, it is therefore upholding upon all members of the Security Council to fully support ICID’s recommendations.

In his introductory remarks of ICID’s report before the Security Council on Wednesday, 16th February 2005, UN Secretary General Kofi Annan described the report as “... *one of the most important documents in the recent history of the United Nations.*” He added that: “*This report demonstrates, beyond all doubt, that the last two years have been little short of hell on earth for our fellow human beings in Darfur. And despite the attention the Council has paid to this crisis, that hell continues today.*” The Secretary General’s final distress signal should be heeded by all members of the Security Council without delay and that they live up to their moral and legal obligations as the custodians of global peace and security. This is the only way that members of the Security Council demonstrate that they accord equal treatment and protection to all people in need in the world without discrimination on any ground as to race, ethnicity or religion. Any other measure that falls short of fully endorsing the ICID recommendations would only prolong the suffering of the more than 2 million IDPs and refugees victims of Darfur’s “*hell on earth*” and sentence tens if not hundreds of thousands of them to imminent death.

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As recommended by ICID, two measures are of paramount importance in ensuring effective treatment of the Darfur crisis, halting the ongoing killing fields and eventually regaining peace and tranquillity in the region. These measures are: a). Immediate referral of the situation in Darfur to the International Criminal Court (ICC) to persecute individuals accused of executing, planning, supporting or condoning the crimes committed in Darfur, and b). Establishment of an International Compensation Commission to compensate the victims of the Darfur crisis for the loss they incurred and help repair the damage done to them. DRDC strongly supports these two recommendations. In fact in its July 2004 Briefing Paper, DRDC asserted that: “ ... *persecution of the massive criminal acts committed against the people of Darfur is based on fundamental justice. An injustice without remedy, relief and atonement is abhorrent to the spirit of law, fundamental justice and good conscious as vacuum is abhorrent to nature.*” It further called for “ ... *the speedy establishment of an effective and well-resourced mechanism to bring the perpetrators of the criminal acts committed against the innocent people in Darfur to justice. Equally, it is of pivotal importance that immediate and sincere efforts should also be made to repair the damage done to the indigenous African people of the region and compensate the victims and their descendants for their tremendous human and material loss as well as the immeasurable agony and sorrow ingrained in their minds and spirits by these acts.*”

DRDC maintains its position that two criminal aspects underpin the humanitarian crisis in Darfur viz. a). The premeditated mass killing and physical destruction - in whole or in part - of certain ethnic groups of the Darfur region because of their racial and/or tribal backgrounds; and b). The appropriation of their land, the confiscation of their livestock and other material wealth and in some cases the extortion of money for protection by the Janjaweed and other government-sponsored militias. These atrocities were described by the ICID as international offences that may be “ ... *no less serious and heinous than genocide,*” and that they were widespread, sustained and systematically conducted through indiscriminate killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement. These are crimes abhorrent to all canons of civilized life and the persecution of their perpetrators should not be overlooked, denied or delayed by political or economic interests of some UN member states.

The most appropriate organ to treat individuals suspected of committing such crimes of international nature, deliver justice to the victims of the Darfur tragedy and eventually help regain peace and security in the region within reasonable period of time is the Hague-based ICC. Referral to the ICC by means of a UN Security Council resolution was one of the main recommendations of the ICID. With the exception of the US Administration who expressed unusual hostility to the ICC in addition to China and Algeria who opposed referral to the ICC for their own vested interests in Sudan, a majority of the UN Security Council members as well as the UN Secretary General and the High Commissioner for Human Rights have wielded their heavy moral weight behind this recommendation. Atrocities committed against civilians in Darfur left deep scars on the collective psyche and consciousness of their victims and that the desire and spirit of revenge are gaining momentum among the victims of atrocities in Darfur which threaten any prospect for future peace in the region. This should be a clear indication that there will be no peace in Darfur without effective justice.

DRDC applauds the ICID for its recommendation on the establishment of an International Compensation Commission to address the grievance of the victims of the Darfur crisis and repair the immeasurable damage done to them. This is an important measure as it attempts to treat the consequences of one of the main criminal aspects behind the crisis in Darfur which is centred around the perpetrators desire to stripe the victims of their land, steal their wealth and destroy all means of their subsistence. Such a Compensation Commission should be empowered to come up with inventive ideas to affect adequate and satisfactory reparations scheme to be introduced within an overall affirmative action programme protect by the power of the UN Security Council. As suggested in paragraph 599 of the ICID’s report, the reparations scheme should take the form of *restitutio in integrum*, monetary compensation, rehabilitation including medical and psychological care as well as legal and social services, satisfaction including public apology, acknowledgment of the facts, acceptance of responsibility and guarantees of non-repetition.

In addition to compensating the immediate victims of atrocities in Darfur the reparations scheme should also treat the damage done to victims of the Darfur crisis in other parts of Sudan including the long list of persons that originate from Darfur who have been summarily executed, forcefully disappeared, tortured, imprisoned, dismissed from public services, relived from the army and security forces, dismissed from institutions of high education as well as to all those persons who have their lives disturbed for no reason other than their blood tie

with the victims of the crisis in Darfur. Special attention should be accorded to monetary compensation to members of the flourishing merchant class from Darfur that was totally impoverished in Khartoum and other parts of the country either by confiscation of their vehicles and means of production or through aggressive and excessive administrative measures imposed upon them by the government since the beginning of the crisis in February 2004. A special affirmative action programme should be introduced for the benefit of women, girls and children victims of rape and other atrocities in Darfur.

In this respect DRDC fully supports the ICID's recommendation in paragraph 602 of its report that the Compensations Commission should pronounce upon claims to compensation made by all victims of crimes, that is (under the terms of the GA Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on 29 November 1995), persons that *"individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights as a result of international crimes in Darfur, committed by either Government authorities or any de facto organ acting on their behalf or by rebels, whether or not the perpetrator has been identified and brought to trial."* Indeed the Security Council has set a precedent in this regard with the establishment - by means of Resolutions 687 (1991) and 692 (1991) - of the United Nations Compensation Commission as a subsidiary organ of the Council to process claims and pay compensation to the victims of the Iraqi war against Kuwait in 1990-1991. To undermine the ICID recommendations, the government abruptly hand-picked its own national Compensation Commission. Instead of visiting one of the numerous IDP camps it was reported that since then the national Commission started its work in Al-Fasher capital of Northern Darfur State. The victims of atrocities in Darfur expressed fears that only the Janjaweed and their supporters would benefit from the work of this Commission as they are the only ones who can produce the documents, witnesses and other evidence required by the national Commission and that it was only the Janjaweed who could have unhindered physical access to this Commission in Al-Fasher.

As rightly stated by the ICID in its report, DRDC believes that the government of Sudan and its state apparatus including the judiciary and the law enforcement agencies are not capable or willing to try individuals and/or groups accused of the commission of atrocities in Darfur. Under the circumstances the Sudanese security forces cannot not be expected to apprehend and deliver such individuals for persecution by competent independent bodies. Enforcing the ICID recommendations and the possible arrest warrants issued by an independent international body such as the ICC require the deployment of a resourceful and strong special police force in Darfur to support these efforts, track down militiamen and oversee the apprehension of individuals and groups accused of committing international crimes in Darfur.

DRDC once again reiterates its belief that effective protection of the defenceless civilian populations in Darfur from indiscriminate aerial bombardment and the Janjaweed attacks is the most critical need that should be addressed urgently and without any further delay. DRDC calls for the deployment of a resourceful and strong military force in Darfur which should be composed of at least 50,000 troops in order to effectively protect the more than 2 million IDPs and refugees and ensure their speedy and safe return to their original villages. This force should also be clearly empowered to disarm the Janjaweed and apprehend their leaders and supporters in order to bring them to justice as recommended by the ICID's report. The composition of the proposed force should include 30,000 Sudanese soldiers to be evenly provided by the government of Sudan, the SPLA/M, and a joint force of the SLA/M and JEM. The AU and the UN should contribute 10,000 troops each. In addition to apprehending the suspected individuals such a force will also play a cardinal role in the implementations of other equally important recommendations of the ICID.

DRDC calls on the African Union (AU) to urgently convene an Extra-ordinary Summit of Heads of State and Government to review the situation in Darfur in light of the ICID findings and decides on the appropriate course of action that Africa needs to embark upon collectively in order to put a halt to the killing fields in Darfur. Such a Summit should take stock of the result of work of the African Mission in the Sudan (AMIS), the challenges they face and follow-up implementation of the provisions of Decision No. Assembly/AU/Dec.68 (IV) which was adopted by the 4th Summit of African Heads of State and Government held in Abuja (Nigeria) 30th – 31st January 2005. DRDC calls on the AU to fully support the ICID recommendations and rally behind the UN Secretary General in his efforts to end the crisis in Darfur. The AU should invite other international bodies to take more active role in ending the ongoing killings and protect the civilian victims of the conflict in Darfur.