

ICC Brings Evidence of War Crimes and Crimes Against Humanity in Darfur

On 27 February 2007 the International Criminal Court (ICC) submitted evidence to the Pre-Trial Chamber supporting charges against two suspects in relation to crimes committed in the Darfur conflict. The Prosecutor of the ICC is seeking summonses for the former Minister of State for the Interior, Mr Ahmed Muhammad Haroun (currently the Minister of State for Humanitarian Affairs) and Mr Ali Abd-Al-Rahman, (also known as Ali Kushayb), one of the Janjaweed militia leaders.

The evidence against both suspects relate to crimes committed in West Darfur between August 2003 and March 2004, specifically attacks on the villages of Kodoom, and the towns of Bindisi, Mukjar and Arawala. The suspects face 51 counts of war crimes and crimes against humanity including rape, murder, attacks against the civilian population, destruction of property, forcible transfer, persecution, inhumane acts, torture, imprisonment or severe deprivation of liberty, pillaging, and outrage upon personal dignity.

Although several sources have characterized the conflict in Darfur as genocide, the ICC has not submitted evidence supporting this crime. However the ICC does include charges of persecution of the primarily Fur population by acts of murder, rape, attacking the civilian population, inhuman acts, pillaging, destruction of property, imprisonment or severe deprivation of liberty, torture, and forcible transfer of the population.



Gender Based Crimes:

The Prosecutor has submitted evidence of the commission of rape as a war crime and a crime against humanity. Rape is also charged as other forms of violence including

persecution and outrages upon personal dignity. Although the charging of gender based crimes in Darfur could be considered relatively narrow as there were a wider range of gender based crimes committed for which there are no charges, nevertheless the charging of rape as a crime in itself **and** as other forms of violence reflects the multi-faceted character of the sexual violence committed against women in Darfur. It also reflects the context in which some of the incidents of rape occurred, the widespread and systematic nature of the commission of sexual violence, and is broadly *representative* of the types of crimes and types of victims in the Darfur conflict.

With the application for crimes in Darfur, the Prosecutor has for the first time brought evidence of criminal responsibility against a Government Official/Minister (charges in the Democratic Republic of the Congo (DRC) and Uganda relate to militia leaders and senior rebel commanders). Also for the first time the Prosecution had to investigate alleged crimes in a conflict without having direct access to the site of the conflict. The Prosecution has been unable to conduct investigations directly within Darfur due to lack of access to the region granted to the ICC by the Government of the Sudan. For the DRC and Uganda situations, the ICC was able to conduct missions directly in the Ituri region and northern Uganda as part of their investigations.

Background

On 31st March 2005, the United Nations Security Council referred the conflict in Darfur to the ICC for investigation.

After conducting its own fact-finding activities, the Prosecutor decided in June 2005 to open an investigation given there was reason to believe crimes within the jurisdiction of the Court had been committed, that there were no national proceedings underway into these crimes and that an investigation by the ICC would 'serve the interests of victims'.

The Prosecution has conducted 70 missions in 17 countries to interview victims and witnesses regarding the conflict and violence committed in Darfur. Since the referral the Prosecutor has provided regular 6-monthly reports to the Security Council on the progress of the investigations, the alleged crimes and the co-operation by the Government of the Sudan.

The Women's Initiatives for Gender Justice has monitored and reviewed each of the Prosecutor's reports to the Security Council since June 2005 to assess the identification by the ICC of gender based crimes within their investigations on Darfur.

In September 2005 the Women's Initiatives conducted a review of 20 reports on Darfur specifically assessing the documentation of rape and other forms of sexual violence committed against women in this conflict. The reports reviewed included the Report of the United Nations International Commission of Inquiry on Darfur and a number of other reports by United Nations agencies including UNIFEM, the UN High Commission for Human Rights and the UN Secretary General's reports, as well as reports by international human rights and humanitarian organisations and academic institutions including

Medecins Sans Frontier, Human Rights Watch, Amnesty International, Physicians for Human Rights and Harvard University.

Some of the key issues we observed in the review were:

- There is extensive reporting of rape and sexual violence as widespread and systematic, and the use of rape as a strategy in the conflict
- Raids on villages are most often accompanied by rape and other forms of sexual violence, public rapes and gang rapes are common. Women are regularly abducted during raids and around camps and sites for internally displaced people, and after capture women report having their arms and legs broken to prevent them escaping.
- Overwhelmingly the majority of crimes are committed by the Janjaweed militia and Sudanese military who are working in close collaboration.
- Although rape and sexual violence are noted in each of the 20 reports we reviewed, the extent and range of gender based violations, inclusive of and beyond rape and sexual violence, were not sufficiently addressed.
- The recognition and conceptualisation of gender based crimes in the reports overall is narrow and does not adequately reflect the multiple crimes committed against women or their impact on victims.
- There are aspects of the Commission of Inquiry and Report that are to be commended. The inclusion in the investigation team of investigators with gender expertise, the acknowledgement that rape is used strategically in war, and the length of the section regarding findings of violations of international law in relation to rape and other forms of sexual violence, indicate a serious attempt by the Commission to address these crimes. In addition, the characterisations of the abduction of women as enforced disappearance, and the impact of the threat of rape and sexual violence for women in IDP camps as deprivation of liberty, are creditable.