

INTERNATIONAL JUSTICE PROJECT
Legal Representatives for Darfur Victims Division



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VIA HAND DELIVERY and FACSIMILE

March 4, 2009

H.E. Mr. Ibrahim Dabbashi
Charge d'affaires of Libya
President, United Nations Security Council
309 East 48 Street
New York, NY, 10017, USA

Re: Opposition to Deferral of Indictment of
Omar Hassan Ahmad Al Bashir, President of the Sudan

Dear Ambassador Dabbashi:

The victims of atrocities in Darfur strongly welcome the International Criminal Court's issuance of an arrest warrant against Omar Hassan Ahmad Al Bashir. The victims urge the United Nations Security Council not to suspend the prosecution of Al Bashir before the ICC, which would be a profound setback for international justice and for the people of Darfur. It would be unacceptable for the Security Council to allow impunity to persist any longer in the face of genocide, crimes against humanity, and war crimes that Al Bashir has overseen for years against civilians in Darfur.

The ICC is the first and only international criminal tribunal to recognize the fundamental right of victims to participate in trial and other court proceedings. Several victims have therefore been authorized to participate in certain court proceedings under the representation of the undersigned legal counsel, Raymond M. Brown and Wanda M. Akin.

By the most conservative estimates, at least 200,000 civilians have been killed and over 2.7 million civilians have been displaced so far in Darfur since 2003. Civilians have been massacred, tortured, and raped. The extent of these atrocities is illustrated by the accounts of two of the victims who have been formally allowed to participate in the legal proceedings at the ICC, which have been partially redacted to protect the victims' identities:

"In August 2002, in [REDACTED], near [West Darfur], at about 4:00 pm, there was an attack by the Sudanese government soldiers along with the Janjaweed militia. They came in groups of 10 or 20, numbering almost 400 men. Some of the men arrived in trucks with guns mounted on the roof. The Janjaweed came on horseback. As the Sudanese soldiers and Janjaweed militia entered the village, they started shooting at the people of our village. The men on horseback carried torches and set the houses on fire. My parents had 7 houses in the town, and I owned 2 of them. All of the homes were burned to the ground. As people fled from their burning houses they would be shot at randomly. No one was safe. Over 100 people from our village were brutally murdered. Particularly gruesome was the attack on my aunt, [REDACTED]. She was late in her pregnancy and could not run away. A few of the attackers grabbed her and cut open her belly. They removed the fetus, stabbed it, and then stabbed my aunt, killing both of them. Their dead bodies were inhumanely tossed into a burning house. . . . My parents, my grandparents, and my brother along with some neighbors fled to the mountains on foot. A few days later they tried to walk to Khartoum on foot. Along the way, they were again attacked by a group of Janjaweed and Sudanese government forces. Of the group of 25, 10 were killed and 6 were mutilated. My brother [REDACTED] lost his leg, my grandmother [REDACTED] lost her right arm and grandfather [REDACTED] was murdered. One week later, my father [REDACTED] died of a heart attack."

Redacted account of victim # a/0024/07, recognized as a victim by Pre-Trial Chamber I on 6 December 2007 and allowed to participate.

"In August, 2002, in the village of [REDACTED], near the city of [REDACTED], at approximately 4:00 pm, over 200 Sudanese government soldiers and Janjaweed militia attacked us. . . . As the Sudanese soldiers and Janjaweed militia entered our village they started shooting at the people of our village. The men on horseback carried torches and set the houses on fire. My house was burned to the ground. As people fled from their burning houses and ran for their lives they would be shot at randomly. No one was safe, not men, women or even children. Over 50 people from our village were brutally murdered. I was grabbed by 4 men. They viciously beat me with wooden sticks all over my body, until I was unconscious. I was 7 months pregnant at the time. Three days later I lost my baby. . . . My grandmother [REDACTED] was brutally murdered, grandfather [REDACTED] was brutally murdered and my uncle [REDACTED] was brutally murdered."

Redacted account of victim # a/0026/07, recognized as a victim by Pre-Trial Chamber I on 6 December 2007 and allowed to participate.

The U.N. Security Council took an important step by referring the Darfur situation to the ICC. The ICC Prosecutor has since then uncovered substantial evidence of widespread atrocities. On January 5, 2007, the ICC issued arrest warrants against Ahmad Harun and Ali

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Kushayb for their major roles in these crimes. After nearly two years, Al Bashir has obstinately refused to extradite Harun and Kushayb, which should have been anticipated since Al Bashir is himself responsible for overseeing the acts of aggression against the civilian population in Darfur, as determined by the ICC Prosecutor's investigation.

The ICC is expected to soon issue an arrest warrant against Al Bashir for genocide, crimes against humanity, and war crimes. The Security Council should resist pressures to suspend the prosecution of Al Bashir. This measure would severely damage the credibility of both the Security Council and the ICC, and suggest to Bashir that the atrocities committed by his regime are tolerated by the international community. Having referred the Darfur situation to the ICC, the Security Council must respect the Court's judicial independence, and must not halt its proceedings by misusing Article 16 of the Rome Statute in a way contrary to its intended purpose.¹

Suspending the prosecution of Al Bashir would also seriously undermine the mission of the ICC. Until the Rome Statute of the Court entered into force on July 1, 2002, there was absolutely no permanent international institution with the power to prosecute and deter genocide, war crimes, and crimes against humanity. Some observers nonetheless support suspending the prosecution of Bashir by claiming that the ICC's work harms the prospects for peace and stability in Darfur. However, there is absolutely no evidence to support this argument. Bashir and his regime have no credibility and should not be granted impunity by making yet another empty promise to stop the atrocities in Darfur after making numerous similar promises for many years. The example of the Lord's Resistance Army in Uganda demonstrates that the international community should not take seriously empty promises of a peace treaty made in an attempt to avoid prosecution at the ICC.²

The victims of Darfur have the fundamental right to see that their abusers are judged and held accountable for their crimes. All of the victims from Darfur are Muslim and African, which demonstrates that the prosecution of Al Bashir is not a politically motivated act against Muslims or Africans, as Al Bashir contends.

¹ David Scheffer, a participant at the negotiations of the Rome Statute as the American Ambassador at Large for War Crimes under the Clinton administration, emphasized that the delegations of countries negotiating the Statute did not intend for Article 16 to become a means for the Security Council to halt an investigation on a matter that it had itself referred to the Court. David Scheffer, *The Security Council's Struggle Over Darfur and International Justice*, JURIST, August 20, 2008, at <http://jurist.law.pitt.edu/forumy/2008/08/security-councils-struggle-over-darfur.php>.

² In July 2005, the ICC issued arrest warrants for Joseph Kony and three other warlords of the Lord's Resistance Army in Uganda for wide-scale atrocities against civilians. Thus far, the warlords have successfully managed to avoid their extradition by promising to stop their atrocities and sign a peace agreement, a promise that they had already made for many years before the ICC got involved. Recently, in 2009, the Lord's Resistance Army has already killed approximately 900 civilians in the Democratic Republic of Congo, as part of another campaign of violence, rape, and mutilation, thereby showing its complete lack of credibility. *U.N. Envoy Visits Scene of Congo Massacre*, WASHINGTON POST, February 9, 2009.

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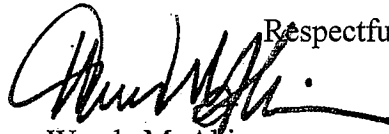
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Al Bashir is not the victim he claims to be. Even though Al Bashir has committed unspeakable atrocities against the people of Darfur, the ICC would provide him with a fair and impartial trial, as it should under the Rome Statute and the ICC Rules of Procedure and Evidence. In particular, Al Bashir would be afforded significant due process guarantees, including the presumption of innocence, public hearings, confidential lawyer communications, adequate time and facilities to prepare a defense, the right to remain silent, and freedom from coercive, inhuman or degrading treatment or punishment.³ The prosecution of Al Bashir before the ICC would therefore be as just as it would be necessary. However, suspending the prosecution of Al Bashir would violate the rights of victims to have access to international justice.

The Security Council should not undermine the ICC's mandate, as the ICC's role in the international community is also to help deter future atrocities from occurring in Darfur, as well as other regions of the world in a state of crisis, by vowing to hold accountable those responsible for widespread human rights abuses. The Security Council should allow Al Bashir's prosecution to go forward, and thereby send a strong message to Al Bashir and his regime that impunity cannot be tolerated and that justice must prevail for the victims of Darfur.

Respectfully submitted,


Wanda M. Akin


Raymond M. Brown

Encl.

WMA/RMB:mj

Cc: Honorable Members of the Security Council (via facsimile and hand delivery)
Honorable Members of the General Assembly (via facsimile)

³ See Rome Statute of the International Criminal Court, Articles 55, 56 and 67.