

**INTERNATIONAL REFUGEE RIGHTS INITIATIVE and the INSAF CENTRE
FOR JUSTICE AND PEACE (SUDAN)**

Draft

Comments to the Sixth Session of the Assembly of States Parties

Statement on the Darfur situation and State cooperation with the ICC

Mr. President
Excellences and Distinguish delegate
Ladies and Gentlemen:

The referral of the situation in Darfur to the ICC by the UN Security Council was a historic moment, a recognition that justice is essential to the creation of sustainable peace and security.

At the end of April this year the decision by the pre-trial chamber to issue two arrest warrants in the case was welcomed by many in Darfur and Sudan as culmination of the first phase of a long and difficult investigation.

Over seven months later, however, the lack of movement on the enforcement of the warrants is deeply disappointing.

We regret both the lack of cooperation by the Government of Sudan with the Court and the reticence of member States in the face of this inaction.

Both of the accused persons are, or have been, clearly within the control of the Government of Sudan—the first a State Minister who has continued actively in his post, and the second, a militia leader until recently in police custody.

The situation with the former is particularly discomfoting. Mr Harun has been permitted to pursue a high profile media presence and retain responsibility for a humanitarian portfolio. Compounding the situation, in September, the government confirmed that he would be among those responsible for conducting a national investigation of an attack on civilians in Darfur in December 2006—an incident that had been the subject of a United Nations report implicating the government of Sudan.

Although Mr. Harun has not yet been tried and found guilty of the charges preferred, his continued tenure in a role which embodies the State's responsibility for their protection, is a continuing affront to Darfur victim communities.

The Government of Sudan has clearly stated that it does not intend to render Mr. Harun or Mr. Kosheyb to the Hague – neither have they posited any alternative jurisdiction that would permit them to have their guilt – or innocence – fairly ascertained.

The duty of the Government of Sudan is clear.

- First, the Chapter VII decision of the UN Security Council, from which the referral drew its initial authority, enjoined Sudan and all other parties to the Darfur conflict to “cooperate fully with, and provide any necessary assistance to, the Court and the Prosecutor pursuant to the resolution” (UN Security Council Resolution 1593).
- Second, as a signatory to the Rome Statute, Sudan is obliged not to undermine the treaty it has signed.

Certainly there is room for Sudan to challenge the admissibility of the cases and have any objections to the referral and investigation, or to proposals for the seizing of alternative jurisdictions, to be thoroughly heard.

Without the cooperation of the Government of Sudan, the ICC Prosecutor is in the position of supplicant—utterly dependant on states and the international community to enforce the orders of the Court.

And this has been hard to secure.

We regret that the tendency of the international community, with some notable exceptions, has been to downplay the obligation on Sudan to cooperate with the Court.

The Darfur investigation, against the background of intense international scrutiny, and efforts to secure the cooperation around the deployment of a joint UN/AU peacekeeping force, is viewed as politically delicate.

Although the UN Secretary General, Ban Ki Moon did raise the issue of the outstanding arrest warrants privately with President Bashir on his first visit in September, he refrained from any public statement on the matter. We appreciate whoever yesterday Ki Moon statement in which he argue all countries to do every things in their powers to ensure the enforcement of arrest warrants

The African Union has also been mute in recent months despite its affirmation of the vital importance of the role of international justice in a series of Peace and Security Council decisions on the Darfur crisis.

It is time for action.

We were pleased that on Friday the Prosecutor announced that his office will start investigation into a second and a third case in Darfur in 2008. the commitments of the prosecutors to the investigation must be matched by states

- We urge Sudan to cooperate with the Court by enforcing the arrest warrants issued.

- Member States must enjoin Sudan to fulfill its obligations to cooperate with the Court and consider how they can directly contribute to the fair and safe conduct of trials particularly through the offer of witness travel, protection and relocation support.
- We call on states to which the accused travel to fulfill their obligations to arrest and render, whether stemming from the Rome Statute or other international treaties, as appropriate.
- We ask the members of the UN Security Council to consider their responsibilities to ensure that the legal determinations flowing from their decision to refer Darfur to the Court are enforced, in parallel with the other essential elements of Resolution 1593, as part of a comprehensive program of transitional justice for Sudan.
- Finally, the African Union as an institution has identified combating impunity as one of its core principles and objectives. We call on African Union member States to consider the Union's constitutional obligations to ensure that the charges against the two accused in the Darfur case are heard

Thank you Mr. President