

The Darfur Consortium, the UN Security Council and the International Criminal Court (ICC): Taking First Steps Towards Justice in Darfur

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Summary

As violence unfolds and conflict intensifies in Darfur, Sudan, the international community’s response remains ambivalent. Many political and societal problems are causing this international and regional stasis. Against this backdrop, Abdelmonim Elgak analyses the creation and development of the Darfur Consortium, an institutional response to the multilateral climate. This consortium, a group of Africa-focused and Africa based NGOs, works at shaping solutions to the Darfur humanitarian and human rights crisis.

The author, who is a member of the Darfur Consortium identifies prevalent features of the Darfur case: a lack of objective and comprehensive analysis of Darfur, an inadequate assessment of the violence taking place as well as a lack of mobilization of political and social actors of the region. With that in mind, the Darfur Consortium, as a civil society coalition, goes forward with advocating actions and initiatives. One of its founding missions has been to see the Darfur case referred to the International Criminal Court based on the assumption that the acts perpetrated consist of crimes against humanity and genocide. This endeavor required negotiations with government and multilateral representatives. The two-targeted institutions by the Consortium were the United Nations and the African Union via the African Commission on Human and Peoples Rights.

Drawing from this experience, the case study exposes the trajectory of the Darfur Consortium in the multilateral and international sphere and shares the lessons it has thus far gathered.

Introduction

It has been estimated that since the conflict in Darfur in Western Sudan escalated in April 2003, over 400,000 people have died and over two million have been forced out and uprooted from their homes. Deliberate targeting of civilians and the wholesale destruction of settlements has been a hallmark of the violence, which some have identified as amounting to the crime of genocide. In February 2005 an independent United Nations (UN) Commission of Enquiry found that, “[g]overnment forces and militias conducted indiscriminate attacks, including killing of civilians, torture, enforced disappearances, destruction of villages, rape and other forms of sexual violence, pillaging and forced displacement, throughout Darfur. These acts were conducted on a widespread and systematic basis, and therefore may amount to crimes

against humanity”¹. Since the beginning of the conflict international engagement has been fragmented, characterised by polarised regional positions, a complex and interlinked palette of conflict and transition within Sudan itself, and an international response that has often been deeply politicised and analytically reductionist.

Over the last fifteen months a group of Africa-focused and Africa based non-governmental organisations (NGOs), academics, independent legal experts and parliamentarians have been working together to explore whether collaborative work on the continent of Africa can contribute to finding a solution to the human rights and humanitarian crisis in Darfur². The Darfur Consortium was born out of a deep conviction that crimes against humanity were unfolding in Darfur, that the international response had been utterly inadequate in the face of the scale and context of the human suffering, and that a coalition of Africa-focussed organisations might be able to make some contribution to shifting the terms of the debate³.

Since its emergence in September 2004, the Consortium has positioned itself to speak with credibility on the international stage, galvanized a unique advocacy effort across three continents, and impacted action by the international community around questions of accountability and protection in Darfur. One of the most significant achievements of the Consortium during 2005 was the part it played in helping to secure the historic first referral by the UN Security Council of the situation in Darfur to the International Criminal Court (ICC) in the last week of March 2005 (United Nations Security Council Resolution No. 1593).

This case study will reflect on the evolving experience of the Darfur Consortium, with particular reference to its work around achieving a referral of the situation in Darfur to the ICC, in order to identify what lessons might be drawn for enhancing civil society engagement within the multi-lateral sphere.

Birth of the Consortium: a direct response to a polarised multilateral climate

The way in which the Consortium took shape in late 2004 was deeply influenced by an exploration of the context within which the “question of Darfur” was being discussed in international fora. Assumptions about the political motivation of the voices most loudly heard in the debate coupled with the controversial currency of the term ‘genocide’ were among the factors jeopardizing the analysis and obscuring the reality of the huge suffering on the ground. Commemoration of the 10th anniversary of the Rwanda genocide during 1994 particularly heightened awareness of the dangers of international inaction. Further, with the conflict in Darfur widely characterised as one pitting ‘Africans’ against ‘Arabs,’ employment of the term ‘genocide’ in discussing the unfolding events in Darfur took on a highly political resonance.

¹ Report of the International Commission of Inquiry on Darfur to the UN Secretary-General, January 25, 2005.

² For further information on the work of the Darfur Consortium see www.darfurconsortium.org.

³ The Consortium took its first steps in September 2004, when twenty representatives of Africa-focused and Africa-based NGOs came together in Pretoria with members of Darfur civil society to identify a way forward for an effective NGO contribution to resolving the crisis. The group had gathered on the fringes of the 3rd Extraordinary Session of the African Commission on Human and Peoples’ Rights (ACHPR), a session specifically convened to examine the human rights situation in Darfur and, in particular, to consider the findings of a mission by Commissioners to the region.

Perceptions of, and responses to, the crisis among different key actors were greatly infused with the post 9-11 geo-politics surrounding the ‘Arab world’. Depending on the political allegiance of the messenger, the various assessments and calls for action in Darfur were being interpreted as lacking an objective basis. In late 2004, for example, when the United States accused the Government of Sudan of responsibility for genocide against communities of “African origin” in Darfur, regional organisations in Africa and the Middle East explicitly rejected the charge. This, of course, only served to reinforce the view that the assessment had been politically motivated. The African Union [AU] Peace and Security Council, for example, clearly stated that it did not consider that the crimes committed could be qualified as genocide⁴. Neither did the League of Arab States find “any proof of allegations that ethnic cleansing or the eradication of communities had been perpetrated⁵.” Other actors termed it as an internal matter; an escalation of ‘traditional’, endemic ethnic tensions. In fact, reductionist portrayals were employed often by all ‘sides’ in the conflict, whether with the intent to stressing the importance of internationalising the response, or confining responsibility for tackling the crisis at the local level. The result was not only dangerous stasis in the international response but also escalating violence on the ground.

The establishment of the Consortium was a strategic response to this context, to the fact that a highly polarised global advocacy climate was preventing a unified international response to Darfur. The incipient members of the Consortium recognised that there was a “gap” in the spectrum of voices which needed to be heard—and heeded—in the debate on Darfur. It was suggested that African civil society had a particular responsibility to get involved and could make a vital contribution. First, the African Union (AU) was taking the lead role in the international response to the crisis, brokering the political negotiations and deploying ceasefire monitoring troops on the ground. Second, the AU provided a unique forum for Arab/North African and sub-Saharan African voices to come together, united by adherence to common goals, including a collective responsibility for the protection of human rights on the continent. The question was posed as to whether an independent assessment of, and advocacy around, Darfur by a pan-African group might help mitigate the effect which skilful exploitation of fissures in international society had been having on finding a solution to the conflict.

In agreeing to the first steps in the Consortium’s advocacy platform, four main themes were identified: accountability and justice; security and protection of civilians; telling the story for African audiences; and solidarity and capacity building. It was also agreed that generating long term support and solidarity for the people of Darfur would be a paramount concern. Over the last year, activities of the Consortium in pursuit of these aims have included:

⁴ E]ven though the crisis in Darfur is grave, with the attendant loss of lives, human suffering and destructions of homes and infrastructure, the situation cannot be defined as a genocide,” Part A, paragraph 2 Communiqué of the Twelfth Meeting of the Peace and Security Council PSC/MIN/Comm. (XII).

⁵ See Report Abstract, League of Arab States Mission to Sudan, 29 April to 15 May 2004: informal English translation, available from the Darfur Consortium.

- A mission of African human rights experts to Chad and Darfur
- Conduct of parallel meetings and contributions to proceedings at sessions of the African Commission on Human and Peoples Rights
- Publication of statements and reports
- Submission of views and analysis to international actors, from key states in the region to the ICC
- Conduct of expert consultations
- Thematic meetings and press conferences in target national jurisdictions
- Training and needs assessment
- Video and website development
- Advocacy before UN and AU institutions
- Analysis of developments in Sudanese law
- Engagement with the AU political process

Creating a common framework: acknowledging complexity and using human rights

From the outset, members of the Consortium were united in acknowledging the egregious nature of the violence and suffering unfolding in Darfur. The challenge was, however, how to develop an analysis and pragmatic set of proposals which could contribute to the debate, while avoiding antagonistic, overly politicised and simplistic positions. The very first publication of the Consortium (a background note on the origin of the crisis) acknowledged and emphasised the complexity of the story of Darfur, situating the conflict in a comprehensive historical context, affected by multiple cultural, political and ecological factors. The Consortium pointed out that it was misleading, for example, both to describe the conflict as pitting ‘Arabs’ against ‘Black Africans’ or as simply arising from tension between pastoralists and farmers. Direct engagement on the ground in Chad and Darfur later allowed the Consortium to gain foundational insight into the political complexity and deep-rooted discrimination and marginalization at the heart of the crisis, and, most importantly, to hear the voices of those directly affected by, and engaged in, the conflict.

It was agreed that the goal to protect the people of Darfur in accordance with international humanitarian and human rights law would be the corner stone of the Consortium’s common advocacy framework. This approach could help cut through criticism of political allegiance and develop an objective assessment. In particular, it was noted that the regional organisation in which all the key State players had a common membership—the AU—had been recently reconstituted as an organisation with the protection of human rights as both a core principle and objective, and enshrining a right of intervention for the Union in cases of “grave circumstances, namely war crimes, genocide and crimes against humanity”⁶. This guiding international human rights and humanitarian law framework was the context in which the Consortium decided to embark on exploration of whether advocacy for a referral of the situation in Darfur to the ICC could contribute to halting the violence.

Although the Consortium ultimately did decide to prioritize advocacy around an ICC referral, the referral was viewed as only part of a continuum of necessary steps for the achievement of justice in Darfur. The broad human rights approach embraced by the Consortium, with an emphasis on participation and the honouring of local

⁶ African Union Constitutive Act, Article 4 (h)

remedies, facilitated the taking of a tiered, yet parallel, approach to accountability. This included the exploration of compensation programs, the regeneration of local tribal mechanisms and advocacy for the establishment of a truth and reconciliation process. This comprehensive approach was ultimately adopted by the UN Security Council.

Generating an ‘insider’ consensus and positioning the Consortium authoritatively

The Consortium recognised early on that it needed to root itself in a first hand assessment of the situation in Darfur. Intensive briefing sessions from Darfurian and Sudanese activists created an atmosphere within which groups from across the continent could begin to locate themselves as part of a coalition for Darfur. An assessment mission by members to Chad and Sudan later in February 2005 was the foundation stone of the development of the Consortium’s advocacy platform.

Engagement on the ground, and directly with Darfurian colleagues, was essential, not only for establishing a credible basis upon which the Consortium could speak. It also provided a process for building consensus within the Consortium itself around contested issues—particularly so with respect to the proposal to seek a referral of the situation in Darfur to the ICC. Prior to the mission to Chad and Darfur, for example, there were some concerns among members of the Consortium that triggering the involvement of the ICC in the midst of an ongoing conflict might inflame the violence. Others worried about the stance of North African and Arab states. Further to the mission, and to consultation with Darfur activists, the Consortium was able to argue the opposite: that a referral would not be inimical to the peace process; that an internationally supported effort to combat impunity was essential to the return of refugees; and that many believed firmly that it would have a protective effect.

Mapping and asserting credibility before the ‘outsiders’

The Consortium initially focused on the AU as the cohering frame for its work, introducing itself as a civil society effort in support of the major multilateral actor leading the international response to Darfur. It then reached out to other major multilateral actors with overlapping membership e.g. the UN Security Council. Targets of the Consortium’s advocacy over the last year have been a range of multilateral institutions, from the African Union (in particular the African Commission on Human and Peoples Rights (ACHPR) to the League of Arab States, with respect to a series of goals, from increasing the representation of women in the political negotiations to improving the local courts system in Darfur.

From the outset, the Consortium recognised that finding a solution to the crisis in Darfur would require a) engagement with a broad range of actors in the multilateral sphere, and b) an understanding of the diversity of political and economic interests and historical entanglements in Darfur. Negotiating support for the ICC referral, for example, epitomised how multifaceted and nimble the Consortium had to be in presenting and arguing its message. At one point in the run up to the final UN Security Council vote on the referral there were signs that some African states were retreating from their earlier support and were circulating a proposal for an alternative “African Panel for Criminal Justice and Reconciliation.” At the same time, diplomats on the UN Security Council were considering how to square their various interests and relationships with the Government of Sudan, from investment in oil and military

equipment to cultural and Pan-Arabism ties, with the implications of voting for a referral of Darfur to the ICC.

Maintaining suppleness of identity, roles and strategies

The founding members of the Consortium included sub-Saharan African NGOs, NGOs from the North Africa/ Arab region, Africa-focused international NGOs, and Sudanese NGOs and civil society organisations. Against the background of a complex advocacy context, much strength lay in this diversity, both in terms of expertise and the capacity to present the Consortium's message through a variety of lenses. A couple of aspects can be highlighted:

- *The primary 'African' identity of the coalition opened doors.* During the ICC referral campaign when alternative 'African solutions' were being touted, it was the Consortium's identity as encompassing Arab, African, Christian and Muslim voices coupled with its authoritative connection to Darfur and Sudan which allowed it to argue credibly that the ICC was at once an international *and* an African court—and that the people of Darfur deserved to see justice on the basis of their common humanity, rather than as 'Africans'⁷.
- *Access to a variety of audiences:* The Consortium was made up of both Africa based and Africa-focused organisations, including international organisations. This not only enriched the variety of strategic perspectives but opened doors to a range of audiences. While sub-Saharan African NGOs in the Consortium were generally, for example, more knowledgeable about AU structures and politics, international NGOs tended to be familiar with the UN mechanisms. In the final weeks of March 2005, the Consortium was able to simultaneously conduct a sustained outreach to Security Council member states and other Permanent Missions in New York, monitor the shifting African Union position from Abuja and Addis Ababa, press the position of the Consortium with the Arab League summit opening in Algiers and advocate before influential governments and missions Abuja, Geneva, London and Khartoum and Cairo.
- *Strategic use of lead organisations:* A series of meetings and advocacy activities undertaken by the Consortium under the leadership of the one of the Egyptian members around the ICC referral in late February in Cairo, for example, had an extremely powerful effect on the discussion of the referral in the North Africa/Arab States context.
- *No requirement for rigid consensus/offer of protective umbrella:* Positions have been adopted on occasion by groups of Consortium members which could not be shared, or publicly embraced, by all, whether because of political, legal or security reasons. Sudanese organisations have been able to closely participate and make central contributions to the work of the Consortium, while remaining sheltered when necessary.

⁷ The Consortium was able to point out, for example, that forty-four African countries—including Sudan—had signed the ICC Statute and twenty-six were full parties. Further, universal ratification of the Statute had been identified by the African Union as an objective of its strategic plan and four African States had referred questions to the Court.

- *Flexibility in planning and activities.* Just a day before the Consortium's mission to Sudan planned to depart in February 2005, the Government of Sudan decided to revoke the Consortium delegation's permission to enter the country. When the news came that the UN Commission of Inquiry Report on Darfur had also just been published, a plan was drawn up adapt to the obstacles and build upon the convergence of events. It was agreed that a "task force" would remain in Kampala to generate a detailed analysis of the implications of the UN Commission report while the mission team and agenda were reconfigured to focus on Chad. Arrangements were also made for a team of Darfurian activists and lawyers to come out of Sudan to confer with the task force.

Building capacity and will for committed collaborative engagement

The Consortium has grown in strength and effectiveness over the last year through anchoring the development of its advocacy platform to direct engagement with Sudanese activists, using a multilateral institution (the African Commission on Human and Peoples Rights) as a cohering framework for the Consortium's program of activities, and seeding strong bonds of solidarity and commitment through the organisation of an intensive mission and meetings, fuelled by meetings of sub-groups of the Consortium, regular communication and information sharing.

Internally, the challenges facing the Consortium are: how to maintain its momentum, expand and more deeply engage its membership, deliver on the detailed program developed and explore how the solidarity generated might be built to generate effective advocacy around other African crises in the future. For Darfur, a renewed effort is required to support civil society in Sudan in order to grapple with the changing political and humanitarian context in Darfur, particularly in the areas of civilian protection and the return of the displaced. In early 2006, discussions around the possibility of transitioning the AU force on the ground into a UN led peacekeeping mission sparked the same extreme characterisations of international "foreign intervention" which had hampered response to the crisis in the initial period and discussion of the ICC referral.

As tensions intensify in the region between the Muslim/Arab and non-Muslim/Arab world an important task facing the Consortium is how to fully engage Arab and North African human rights and civil society NGOs with the situation in Darfur. In fact, one of the inspirations for the foundation of the Consortium was a statement by thirty-one NGOs from the North Africa/Middle East region in mid 2004 calling attention to the severity of the crisis in Darfur. Since that time however the Consortium has not been able build as vigorously as it would like on these efforts. For some North African NGOs, the AU has not been considered a natural forum and the high profile engagement of the AU in Darfur may have tended to marginalize the role and responsibilities of North African and Arab states in the crisis. Change in the political atmosphere post the ICC referral has also forced the Government of Sudan to turn to Arab/North African allies to seek support for a challenge to the creation of ICC jurisdiction. One of the most difficult aspects has been an insistence on labelling the Darfur conflict as one of 'Arabs' vs. 'Black Africans', a characterisation that distanced, and perhaps informed the silence of, North African/Arab actors in the face of the escalating violence. There are some echoes in this experience of the climate of response to Southern Sudan, Western Sahara and Somali. These reactions require further exploration and analysis with likeminded NGOs from the North Africa/ Arab region. As a first step, one of the founding members of the Consortium, the Cairo Institute for

Human Rights Studies facilitated a panel presentation of the work of the Darfur Consortium at civil society forum held parallel to the Arab League summit which brought fifteen new organisations into the Consortium. It also opened up a discussion on the lessons learned from the Darfur experience for protection of the human rights of marginalised groups more broadly in the region.

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The Darfur Consortium



Abdel-Monim Elgak is a Sudanese National who has been working on human rights and democratization issues in Sudan and in the Arab region for the last eight years. Most recently, Monim was Human Rights Education and Sudan Program officer at the Cairo Institute for Human Rights (CIHRS), an organization focused on the promotion of human rights and democratization in the Arab region, where he held various positions over six years. He was previously Interim Director of the Salmamah Center for Women's Training and Documentation in Khartoum. Monim has also worked with youth groups in

Sudan and Egypt in promoting human rights issues and engaging in peace building and democratization. An anthropologist by training, with degrees from the University of Khartoum and the American University in Cairo, he is interested in identity, gender, urban anthropology and globalization issues.

During the last year, Monim worked with NGOs in the Arab region to raise awareness regarding the current situation in Darfur, Sudan. He participated in the foundation and development of the Darfur Consortium.

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