



## Darfur and the ICC

### U.S. Administration should:

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- Support the UN Commission of Inquiry, ensuring it is properly staffed and funded to complete a thorough and timely investigation
- Pressure the Sudanese Government to allow open, unhindered access to Darfur, Sudan for the commissioners to carry out their investigations
- Work with the UN Security Council to plan for the next steps upon the report of the UN Commission of Inquiry
- Dependent on the Commission's findings, consider a basis for referral to the International Criminal Court (ICC)
- If the case is referred to the ICC, the U.S. should cooperate with Prosecutors, exchanging intelligence data and other resources to aid in developing and supporting the cases.

### Situation in Darfur

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In response to attacks by rebel forces in the western province of Darfur, the Government of Sudan has mounted a campaign of ethnic cleansing that has killed more than 70,000 civilians, caused millions to flee their homes, and wrought untold devastation. The Government has launched aerial bombardment campaigns and helicopter gunship attacks. It also has sponsored and encouraged horseback attacks by nomadic Arab militias known as the *Janjaweed*. The *Janjaweed* routinely raid villages, executing adult males, raping adult women and girl children, nailing survivors to trees with iron spikes, burning homes and crops, stealing livestock, and kidnapping children into slavery. These horrendous acts have helped depopulate a region as large as Texas, with survivors fleeing to other parts of Sudan or to neighboring Chad. U.S. Secretary of State Colin Powell recently declared that the United States regards the events in Darfur as genocide. The United Nations Security Council instructed Secretary-General Kofi Annan to appoint a commission of inquiry to determine whether genocide has taken place, and has threatened sanctions should the Sudanese Government fail to stop the killing. The Commission has been appointed and given three months to carry out thorough investigations and report back January 2005.

### International Criminal Court (ICC)

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The ICC was created to deal with genocide, war crimes, and crimes against humanity – in other words, situations like that now unfolding in Darfur. The ICC was created not only to deter future violence, but to prosecute atrocities and provide aid and comfort to the victims. Sudan is not a state party to the ICC, as it has signed the Rome Statute but has not ratified it. The situation therefore cannot be referred to the ICC by any state party, nor can an investigation be initiated by the prosecutor under his own powers. However, the UN Security Council may use its authority under Chapter 7 of the UN Charter to refer Darfur to the ICC for investigation and potential prosecution. This referral would be subject to the veto of any of the permanent five members of the Security Council. As the Security Council has just initiated a Commission of Inquiry to investigate the reported abuses, an ICC referral could be the obvious next step.

### Specific Crimes

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The Rome Statute provides clear and precise definitions of what constitutes both genocide and crimes against humanity. Genocide, for the purpose of the Statute, means any acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, including killing members of the group, causing serious bodily or mental harm, or deliberately inflicting on the group conditions of life

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calculated to bring about its physical destruction. The systematic and large-scale violence in Darfur meets these high standards. In addition to the mass killings, examples of these crimes in Darfur include systematic, almost daily, attacks by the Sudanese government involving bombing of both civilians and the social infrastructure that supports them (hospitals and schools, for example), which have had a devastating impact on the population. Further, the accounts of rape and other forms of sexual slavery, including enforced prostitution, forced pregnancy, and any other form of sexual violence, constitute crimes against humanity and would also be punishable under the Statute.

## Accountability

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Under the statute's mandate, the ICC only prosecutes individuals who bear the greatest responsibility. Government and civilian leaders on both sides of the conflict – including the leaders of the *Janjaweed* – are among those the ICC could choose to indict. In addition, if leaders in the Sudanese armed forces knowingly let their subordinates commit atrocities without action to stop them, then they bear command responsibility for those actions and can be brought before the ICC.

## Collecting Evidence

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One of the key functions of the Commission of Inquiry will be gathering evidence. Doing so is important for three reasons. First, it collects and preserves victim and witness testimonies of what occurred. This will be vital for building cases against perpetrators. Second, gathering evidence now shows the Sudanese government that the world will not look away anymore. Third, it serves as a deterrent to future violence by showing that there will be consequences. If groups intent on violence see how rapidly the world community mobilizes to document crimes, they might think twice about their ability to get away with it.

## What the U.S. and International Community Can Do

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### U.S. Administration:

The Administration can take action to help stop the violence in Darfur by supporting the UN Commission of Inquiry. This includes ensuring that the Commission is properly staffed and funded to complete a thorough and timely investigation.

Once the investigation is completed, the Administration can support the Commission's findings as a basis for referral to the International Criminal Court. Regardless of the U.S. policy in joining the Court, the Administration can invoke Section 2015 of the Armed Service Member's Protection Act to render assistance to the international efforts to bring to justice foreign nationals accused of genocide and crimes against humanity. This would allow the U.S. to cooperate with Prosecutors, exchanging non-classified intelligence data and other resources to aid in developing and supporting the cases.

### International community:

The international community can support the UN Commission of Inquiry by making sure the investigation is adequately funded and staffed. They could also exert political pressure to allow the investigators access to any and all areas, documents and witnesses necessary in completing their inquiry.