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The Global Response to the Darfur Crisis

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The Global Response to the Darfur Crisis¹

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II. Introduction

a. Purpose and Organization of this Paper

The Present Situation: *Darfur as the Worst Humanitarian Crisis Today*

As it stands now, the international efforts to solve the current situation in Darfur have failed. The humanitarian crisis remains unabated claiming more lives, destroying livelihoods and shaking the very foundation of Sudan's survival as a country. International and regional peace initiatives are too slow, too little and ineffective. The Darfur crisis produced more than 2.6 million forced displacements of Darfurians and death of hundred thousands. According to the African Union Mission in Sudan (AMIS), the death toll by late 2005 has reached as high as 500,000 and 2.5 million displacement (IDP and refugee).³ Over 3/4th of the villages in Darfur have been destroyed. Immediate causes of the deaths of Darfur people are various, ranging from violence to displacement, malnutrition, epidemics and various diseases.⁴ Another figure made by the British Parliament concluded that the number of deaths in Darfur is 300,000.⁵

This paper examines the global response to the Darfur crisis. The term global refers to non-Sudanese actors in Darfur crisis including but not limited to: international and multilateral governance institutions such as United Nations and its family agencies (hereafter UN), International Criminal Court (hereafter ICC), African Union (hereafter AU), European Union (hereafter EU), North Atlantic Organization (hereafter NATO), and the Arab League; countries such as United States of America (hereafter USA), Peoples Republic of China, Chad, and Central African Republic; and international NGOs such as Amnesty International, Human Rights Watch, International Crisis Group and

many other relief and humanitarian organizations, countries. It has five parts. Part I provides brief history of Sudan, present situation of Darfur and the magnitude of the humanitarian crisis and its causes. Part II discusses the actors actively involved in the Darfur crisis. It also offers analysis of the interest of the main actors; and their role in the global response to Darfur crisis. This is vital input in the formulation of recommendation and a strategy as it considers ways for addressing the legitimate interests, provides ways to tackle those that are illegitimate, and means to remove the binding constraints. Part III looks at the Darfur Peace Processes and their shortcomings. The last part of the paper forwards recommendations on how to solve the Darfur crisis.

b. Brief History of Sudan and Darfur Crisis

Located in the Horn of Africa, Sudan is the largest African country with 2.5 million km sq. It is bordered by Chad, Democratic Republic of Congo, Kenya, Egypt, Eritrea, Ethiopia, Libya, the Red Sea and Uganda. Sudan is a federation of 26 states (Wilyaat).⁶ According to recent report of the United Nations Population Fund (UNFPA), Sudan's population is about 36.2 million. Of this black constitute 52%, Arab 39%, and Beja 6%. Religiously it is estimated that the Sunni Muslim inhabiting the north Sudan constitute 70%.

Sudan has been in one of the longest civil war since it independence in 1956 from British colonial administration. In 1972, the Addis Ababa Agreement was signed between the Government of Sudan (GoS) and rebel groups in the Southern Sudan. This agreement would stay in force only for 11 years; with the discovery of oil in the South in 1978 the conflict would escalate between GoS and the Sudan People's Liberation Movement

(SPLM) led by the late John Garang. The conflict would take a religious shape when the GoS imposed Sharia law as an official law on the whole Sudan including the Christian population of Southern Sudan. This civil war has claimed more than 2 million lives.⁷ In 2002, the GoS and SPLM/A signed the Comprehensive Peace Agreement (CPA). The CPA was a result of exhausting long dispute settlement efforts of the AU-Inter Governmental Development Authority (IGAD), UN, USA and EU. Under CPA, the South Sudan is granted autonomy and its own government—i.e., the Government of Southern Sudan (hereafter GoSS) under the leadership of SPLM. Southern Sudan will exercise its right for self-determination referendum in 2011. The same agreement provided equal share of revenue between the North and South. This agreement between SPLM and GoS encouraged the remaining South Western part of Sudan mainly Darfur to claim equal autonomy and serious attendance to their region by the GoS. While the immediate cause of the Darfur crisis was the CPA, the root cause was bad governance of the GoS and discrimination at the hands of the Arab dominated local governments.

c. Darfur Region and Cause(s) of the Conflicts

The word *Darfur* is a sum of two words: *Dar* and *Fur*. *Dar* means country, *Fur* is a name of the people residing in the southwestern Sudan. Combined, these words ‘Dar-fur’ means ‘the country of the furs’. Darfur is the size of France with more than 6 million people. It comprises three states: North, South, West. Land and space is central to both the nomadic and settled people of Darfur. The Darfur crisis started as a struggle for decentralization and autonomy equal to the one granted to the South Eastern Part of the Sudan.⁸ The movement for Darfur autonomy is a coalition of several groups of people. There are more than ten rebel groups. The two main are: the Sudan Liberation

Movement/Army (SLM/A) and the Justice and Equality Movement (JEM). Their members are mainly non-Arabic or “African” ethnic-cultural communities of the furs, Masaleit and the Zagawa.⁹ Following the initial attacks of the rebels in Darfur, the government forces responded by conducting ground as well as aerial attacks in rebel suspected strongholds.¹⁰ The Sudanese army responded in a counter insurgency offensive against the two rebel groups also using the Arab inhabitants of Darfur region and playing the propaganda that the rebel movement for Darfur autonomy as a threat to their dominant position in Sudan. Hence, the conflict is partly identity based: between the *Janjeewds*¹¹ who identify themselves as “Arab” and the blacks as “African”. Moreover, this ethnicization along African-Arab, cattle resource and exploitation of oil globalized this old local conflict over space and land in Darfur. In response to this, the GoS armed the *Janjaweds*. The Sudanese army itself engaged in a counter insurgency offensive against the two rebel group’s strongholds.¹² Even if several factors attribute to the Darfur crisis, the most single important factor is the civil war between the Christian Southerners and Muslim Northerners who has dominated the GoS.¹³ As opposed to the south, the conflict in Darfur does not have a religious dimension attached to it since Darfurians majority are Muslims as the Arabs, Janjeweeds and Northern Sudan. The conflict, nevertheless, to some extent bears similarity to the movement in southern Sudan as it is ethnic based—i.e., “Africans” and “Arabs”.

However, both conflicts in Darfur and Southern Sudan are a result of the same game: struggle between the centre nation-state and the periphery.¹⁴ The interest to control the periphery is not driven from benign interest to administer and civilize the people of the

peripheral land; it is rather fueled by the interest to exploit resource in agreement with transnational companies, the need to control space through forced displacement of populations of the periphery. It is a clash between the instinct of central government of a weak nation state to control and assimilate all people, and people of the peripheral lands to reclaim their destiny. Almost all nation states have been through similar atrocities to build nation state. But this has been done centuries ago and not in the age of human right, not in era of globalization and not in the reign of CNN. Now, more than ever, it is not only inhumane and universal crime to commit such atrocities but also impossible to justify and conceal them. At this era, nation-state building is only possible and permissible on accommodation not assimilation of the diverse and weak people of the periphery.

The Southern Sudan crisis was the first test for Sudan as Nation State. Darfur is nothing but additional test to the future of Sudan. Conflicts like Darfur are all around in Africa and elsewhere. They are calls for revision of governance in Africa. Seen from historical prism, these conflicts arose due to the interruption of state formation process by colonialism. As many African countries, Sudan is a county patched of different areas with different ethino-cultural communities by British colonial power in 1916.¹⁵ Nation-states faced serious legitimacy crisis due to incompatibility of the very foundation of nation-state building process—i.e., assimilation and adoption of one culture, value and language and self-determination of peoples and human rights. The cure is that ensure that human rights trump any other value or institutions such as unity and sovereignty. Unity and sovereignty sub-serves human beings and their human rights. That is the reason why

in the 21st century the principle of non-intervention and sovereignty could not serve as shield and last line of defense when it comes to human rights violations in massive scale. The principles of non-intervention and sovereignty should yield their pride of place for the principle of the responsibility to protect and take secondary place.



Source: Darfur Information Center 2007

II. Main Actors in the Darfur Crisis: *Interests, and Responses*

12. Main Peace Keeping Actors: *The African Union and the United Nations and Their Response to the Darfur Crisis*

UN Decision to establish an AU-UN Hybrid Peacekeeping Mission: *United Nations Mission in Sudan (UNMIS)*

The UN Security Council has adopted at least five resolutions on Darfur-Sudan since 2004: including Darfur International Inquiry Commission, arms embargo, and freezing of assets. UNMIS have already more than 10,000 military personnel, plus a civilian

component for the implementation of CPA in Southern Sudan.¹⁶ On early 2006, the AU Assembly of Head of States and Governments decided to solicit a UN support for AMIS, which has more than 7700 peacekeeping troops and civilian officers in Darfur. The UN Security Council decided to send peacekeeping mission that replaces the AU. With this decision, AU and UN agreed to create a hybrid AU-UN Peace Keeping Mission in Sudan-Darfur (UNMIS).¹⁷ UNMIS-Southern Sudan already has more than 10,000 military personnel, plus a civilian component for the implementation of CPA.¹⁸ On 31 August 2006, the UN Security Council passed Resolution 1706 (2006), which granted the jurisdictional and Chapter VII mandate (the power to engage and use lethal weapon if necessary) for UNMIS-Darfur and its quick deployment.

African Union Mission Sudan (AMIS) and Questions with regard its Replacement

Under article 4 of the AU Constitutive Act, the AU has a right to intervene in a Member State pursuant to a decision of the Assembly of Head of States in respect of grave circumstances, namely war crimes, the crime of genocide, and crimes against humanity. This is a new emerging power of the AU and has been implemented in the Darfur crisis where African Union Mission has deployed more than 7700 soldiers. This is a new emerging power of the AU could be seen as similar to peace and security threat intervention power of the UN Security Council. Apart from AMIS, AU has recently sent soldiers to Somalia. Like many other conflicts, the Darfur crisis was seen by African Union as an sad but an opportunity to clearly demonstrate the will and wish of Africans to control their own destiny, nonetheless, it has also brought another challenge for Africa:

—challenge of capacity to conduct large peace keeping missions like Darfur and competence to bring peace, and hence the ability to control ones own destiny.

In 2004 the African Union decided to intervene and sent about 400 personnel which now has grown to 7700 AU peacekeeping force. Two years later, in 2006, AU Peace and Security Council and AU Summit decided to terminate AMIS's mandate. The reasons were some how thin. The first reason given was that political considerations made staying in Darfur very difficult.¹⁹ This is indeed very bizarre reason as AMIS was comparatively well accepted by most of the actors in the Darfur crisis. UN gave the blessing. EU was funding almost all the mission albeit very inadequate. NATO was training and advising AMIS personnel. Then what then were the political considerations than made AMIS's stay very difficult in Darfur. Was it lack of leadership from African leaders and AU?

It is true that the Darfur crisis is very complicated and Darfur in its geographic size is very big. With the exception of the African Union Mission in Burundi (AMIB), AMIS is also largely the first mission within the AU leadership in its entirety. For AU only with relatively limited peace keeping experience, Darfur was and is a litmus test for African leaders and AU. And AU did its best with what it has. The second reason was that the AMIS lacks adequate resource to carry peacekeeping mission of this size and complication. Shortage of personnel and other resources due to financial constraints is vital problem of AMIS. At present the AMIS has about 7700 personnel. This is shortage of 15,000 personnel from the original plan. The existing mission is ill equipped and understaffed. The head of the AU's Darfur taskforce, Ki Doulay, said "lack of fuel in El-Fasher, the capital of North Darfur, had grounded AU planes meant to ferry troops across

the vast region."²⁰ Hence, with adequate financial and advisory support this difficulty could have been solved easily. In short if resource is the main constraint, then replacement of AU by UN is not necessary. As it has originally estimated, weak mandated, under-resourced 7,700 personnel would not be sufficient to keep peace in Darfur— an area the size of France. Actually in Darfur, still there is no ‘peace’ to ‘keep’. The mission should be peace making and then keeping. The third reason forwarded is that the AU lacks experience and expertise in peacekeeping. A closer study of the history of UN peace keeping should be conducted to make an empirical judgment, but as we have seen in the past 15 years since the UN mission Somalia, I tend to disagree that UN has an excellent record of success in peacekeeping. Peacekeeping is a difficult task and neither UN, NATO, US or AU have monopoly of expertise. Even we assume that UN has better record and experience, should not AU develop its capacity to deal with similar crisis like Darfur? If not now when? If not Darfur where? If not AU who for African crisis? These are indeed questions for all who want Africa to see standing on its own feet.

Replacement of AU by UN would be justifiable only as far as it solves the following two problems: 1) resource constraints of AMIS; 2) the narrow mandate of AMIS. Hence, the replacement is not justified, I argue, due to endogenous ineffectiveness of AMIS but rather for exogenous constraints related to funding. As the mandate issue could have been easily solved if there was adequate resource. Rwanda, one of the largest troop contributors to AMIS, has announced that its troops will use force to stop atrocities from happening in the areas of their patrol. At any rate the failure in Darfur is mainly political will deficit in the international community to provide AMIS with funding. Several

African countries such as Rwanda, Ghana, Nigeria and others had the political will to send their best troops to Darfur, some of them already did and could not send more due to failure of pledges made to the AU. After all other UN missions in Africa has been stuffed mainly troops form developing countries. Many African countries have military personnel that have been involved in previous peace keeping mission such as the most successful AMIB. These include: Ethiopia, Ghana, Nigeria, Uganda, South Africa etc. Neither is there any reasons that justify a UN mission would be politically more acceptable. Without these extended mandates and funding nothing warrants UN would do better than AU. Neither historical nor present contexts on the ground certainly justify this replacement. Here the assumption is that the reasons for such decision of replacement have more to do with under-funding and narrow mandate much less than its inherent effectiveness.

13. Government of Sudan: *Failure to Protect Its Citizens and Arming the*

Janjeweeds

The GoS rejected the UN Security Council decision to replace the AU for varied reasons but mainly two officially declared ones: US is trying to use the UN to carry out another “regime change” this time the GoS. Second, the UN decision and intervention violates the sovereignty of Sudan. Later on it has negotiated to for a hybrid AU-UN mission rather than an entirely UN. With the recent indictments and arrest warrants by International Criminal Court of some officials of the GoS, the GoS may complicate the hybrid AU-UN mission. Sudanese Defense forces are currently involved in the conflict in Darfur. The primary responsibility to protect Sudanese citizens falls on the GoS. In effect, the GoS is not unable but is unwilling to fulfill *the responsibility to protect* its

citizens from international crimes such as the Crimes against Humanity, War Crimes and the Crime of Genocide. The interest of GoS is to remain in power by sheer force. The Janjeweeds fear reprisal and the status of minority in a Darfur. In addition to the regular army of the Sudanese government, there are distinct militia groups that are engaged in the conflict, allegedly aiding the government of Sudan's forces. These militias are called the "Janjeweeds".

14. The Janjeweeds

Janjeweeds is a name given to nomadic militia from Darfur. *Janjeweeds* means "men on horseback". They identify themselves as 'Arab'. As any nomadic people in Africa, they are armed and roving from place to place. They have no central hierarchical command. They act based on tribal or clan loyalty and expanding their space and protecting their family and cattle. However, unlike other nomadic peoples of Africa, the Janjeweeds attack local inhabitants with the support of the GoS. In effect they are unique in that they are government supported nomadic people.

15. The Rebel Groups and Their Nature

In the Pre-DPA Darfur, there were only three main groups. At present there are more than ten rebel factions. Apart from the GoS buying members of the rebel group, the DPA has adversely contributed in exacerbating the existing divisions and spawned new differences among the rebel groups. Indeed the exponential fragmentation of the Darfurian rebel factions is mainly due to DPA. I call this "The DPA-Effect". The DPA-Effect is not limited to fragmentation but has also brought mobilization among Darfurians along ethnicity. This has caused conflicts among Darfurians and de-legitimized the rebel

factions. To the detriment of the Darfurian interest, fragmentation may continue to grow and would make future dispute settlement efforts more difficult.

16. The Southern Sudan Government

As noted on part I above, success in Southern Sudan will have a lot of spill-over effect on the Darfur crisis and vice-versa—i.e., autonomous Darfur brings comparative strength to GoSS against GoS. The SSG, SPLM and Darfurians are interested to see a CPA-like agreement to be implemented in Darfur, as this would mean a weak GoS in Khartoum for the SSG and autonomy for the Darfurians. The GoSS is a strong force in changing Sudan.

17. Republic of Chad and Central African Republic

Chad and Sudan have a 600 km common border inhabited by Darfur ethnic groups. Caught in Darfur crisis, millions were internally displaced and hundreds of thousands fleeing into neighboring Chad. It is a host for more than a million refugees. Chad's internal peace and stability is now threatened due to the influx of refugee from Darfur. Northwest Central African Republic troubled because of Darfur crisis due to attacks on its own towns and government forces by rebel groups armed by GoS. Reciprocally Chad and Central African Republic support of Darfur rebel groups. Chad has been actively participating in Darfur dispute settlement efforts as Darfur causes serious threats to its own security and stability.

18. The US Government Response and the Role of Advocacy Groups

The US government and the American people and international organizations have been and are major actor in using all diplomatic and economic pressures on the GoS to end all conflicts in the Sudan. US government has been and is playing a vital role, albeit, with

some fatal mistakes such as supporting Mini Minawi's faction of SPL/M which has no popular support in Darfur. The US position on Darfur is clear and right in its message but has to be also correct in its method. However, it noteworthy that the American people's position on Darfur Crisis is by far inline with international law and in support of multilateral approach. The American public seems more in support of the US interventions while the government is not. The reverse looks the case on Iraq issue: the government is strongly committed in the Iraq case where as not Darfur. It is perhaps because that Americans believe that intervention in Darfur is much more humanitarian than intervention in Iraq. These campaigns are essentially humanitarian initiatives for robust intervention and calls on the US government to put its money where its mouth is with regard to its characterization of the GoS as a "Genocidal Regime".

Norm diffusion in varied forms such as campaigns and advocacy has played role in the Darfur crisis. The US grass root advocacy campaigns for Darfur are stronger, clearer and intervention-oriented than the US government's position. The best examples are the grassroots Darfur movement such as the Genocide Olympics Campaign and Sudan Divestment Taskforce. Indeed these campaigns and advocacies have critically contributed to the globalization and characterization of the Darfur crisis as another case of Genocide in Africa. One of the recommendations of the UN Human Rights Council (UNHRC) to the UN General Assembly was the need for "compilation of a list of foreign companies that have an adverse impact on the situation of human rights in Darfur" and thereof to "call upon all UN institutions and offices to abstain from entering into business transactions with any of the identified companies."²¹ This is indeed inline with the recent

reports and works of Prof. John Ruggie, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.²² The Darfur Divestment and Genocide Olympic Campaigns, which are now well globalized, have already made difference. Similar to the Anti-apartheid economic pressure campaigns waged in the 1980s, these campaigns and advocacy aim to persuade huge companies that investing in Sudan is bad for their publicity. Sudan Divestment Task Force one of the leading groups for divestment has made a list of more than 50 companies mainly from the oil sector to be targeted for divestment campaign. As major source of revenue for GoS comes from oil, divestment could make the GoS to feel the pain. Since 1999, Sudan's oil revenue has increased four times in 2006 reaching 2.6 billion USD. Parallel to this revenue increase, its military expenditure has doubled reaching half billion USD.²³ Already the US Ford, UK Rolls-Royce PLC, French Schlumberger Ltd, 40 US universities including Harvard and other financial groups have or they are considering pulling their money from investments in Sudan.²⁴ These campaigns are limited to developed countries but also extend to companies in South Africa, Brazil and Malaysia.

19. Chinese Government's Oil Interest in the Sudan and Its Support to GoS

China is another actor that could have serious economic leverage in pressurizing the GoS. As in the Southern Sudan, potential oil exploration is complicating the conflict in Darfur. China is the spoiler in this case. Its petroleum companies are the major trading partners with Sudan. Two-third of oil is bought by China. Since 1999, Sudan's oil revenue has increased four times; in 2006 reaching 2.6 billion USD. Parallel to this revenue increase, its military expenditure mainly used in Darfur conflict has doubled reaching half billion

USD.²⁵ China has been objecting any sanction, and seems to be ready to veto any such measure by the UN Security Council.²⁶ The opposition and lack of cooperation from China emanates from its interest of oil imports from Sudan. Sudan was one of the African destinations of Chinese President Hu Jintao's visit in January 2007. China indeed could look at Darfur as a turf fight for oil resource territory. China will understand that Darfur crisis is obstacle to its long-term interest in Sudan and Africa. If China attach some conditionality of the conflicts to its oil import from, and investment in, Sudan, it could have huge impact on the behaviour of the GOS. Nonetheless, a cautionary note is in order here. It is reported that President Hu Jintao has implored the Sudanese President Al Bashir to accept deployment of an AU-UN Hybrid force in Darfur.²⁷ China may continue to resist but the recent slight changes of positions in pushing the GoS is very encouraging. China, also Russia, both members of the UN Security Council, have been accused of arming the GoS. However, at the same time both have been willing to send troops as part of the UNMIS-Darfur. China has already appointed an envoy to Darfur. This is a step in the right direction.²⁸

20. The European Union and NATO

The European Union (EU) response to the Darfur is slightly different from US and more cautious. It has focused on diplomatic and financial assistance to AMIS. In sum, it has granted close to \$ 1 Billion to the AU efforts in Darfur.²⁹ On the political front, it uses the AU and pressurizes the GoS using its member states. North Atlantic Treaty Organization (NATO) has been assisting AMIS in logistics and training of AMIS forces. More than 60% of the resources of AMIS come from EU. EU and NATO have been major economic, humanitarian and diplomatic power in pushing the global response to the Darfur crisis.

21. The Arab League and Other African Countries

The Arab League, as Sudan is its member and also the victims of the crisis are mainly Muslim, has been involved in the Darfur crisis. The Arab League is divided on Darfur and its members seem to be seized in fierce diplomatic race against each other on initiating their own peace process for Darfur and claiming success. Saudi Arabia, Libya, Eritrea, Egypt have initiated peace processes of their own, most often accusing each other for their role in Darfur.³⁰ Central Africa Republic is also involved in the Darfur crisis as they are affected by huge refugee population and cross border rebel incursions.

22. The International Criminal Court and the Darfur Crisis: *The ICC-Fear Factor*³¹

Another global response comes from a newly established international treaty body—International Criminal Court (ICC). This is the recent indictment, by the prosecutor of the ICC and arrest warrant issued by its Pre-Trial Chamber. On May 1, 2007, the International Criminal Court (ICC) issued an arrest warrant on two Sudanese who have been indicted for their involvement in crimes against humanity and war crimes in Darfur.³² Cases of crimes against humanity, war crimes and other massive violations of human rights in Darfur were referred to ICC in 2005 by the UN Security Council 1593.³³ The ICC Pre-Trial chamber has ruled to that the evidence of the ICC Prosecutor is indeed admissible and has “reasonable grounds” that the suspects have been involved in crimes under the ICC Rome Statute. Even if Sudan is not state member, it however is legally bound to respect the ruling of the court as the prosecution is based on the request of the UN Security Council.³⁴ Failure to hand over the suspects could lead to further measure by

the UN Security Council.³⁵ The Pre-Trial Chamber ordered the Registrar to inform of its decisions and arrest warrant to all State Parties and also specifically Egypt, Eritrea, Ethiopia and Libya. These four countries are not state members to ICC Rome Statute.³⁶ However it is not clear if there is any other consideration taken when to inform these countries specifically. Clearly the UN Security Council could instruct these countries to cooperate with the ICC.

The hope is that ICC indictment would deter other people from committing similar acts of international crime by inducing what I call “*The ICC-Fear Factor*”. Arguably, the ICC indictment would consolidate the AU-UN efforts in Sudan.³⁷ Renowned experts such as Eric Reeves strongly doubts if there will be any “deterrent effect” from ICC’s indictments and arrest warrants. He said:

“Certainly there is no evidence whatsoever to support Human Rights Watch’s “deterrence” theory, even as there is very considerable evidence of the dramatic deterioration in security for aid operations throughout Darfur over the past year and a half. Today the BBC reports that humanitarian groups are bracing for possible reprisals, a very real fear given the ongoing war of attrition against these groups.”³⁸

This assertion by Reeves has to answer questions that need empirical answer. However I believe that Reeves makes three mistaken assumptions with regard to “deterrence effect” of arrest warrants. The first one is that deterrence is futuristic in perspective, “deterrence effect” is not “immediate effect”. Secondly, deterrence effect is not necessarily on those who are already bathed by the blood of Darfurians and other Sudanese victims of massive

violations of human rights; on those people rather retribution will be more effective. Deterrence has better effect on those people who might be predisposed to involve in such activities. Thirdly, Reeves' argument is agnostic to the facts in Khartoum. There was some measure of panic within the Ministry of Foreign Affairs when the ICC issued the warrant. Within the GoS, high officials at Cabinet level had discussion on how to respond to the ICC warrant. These officials had strong disagreements whether to accept the ICC ruling and hand over the suspects.³⁹ One could not rule out the discussion within the politicians on consequences of defying ICC warrant are clear and open. It is also worthy to note that the GoS is diverse in view and interest, animosity, power struggle and inter-group and personal conspiracy is all over as it is in any other government in crisis. Hence, to assume all officials of the GoS will be against extradition of the indicted officials is simply simplistic and not supported by the facts on the ground. In Darfur case, I see the *ICC-Fear Factor* working. Hence, deterrence may work on those who are not implicated in violation of human rights.

In similar fashion, Eric Reeves argues that “there is no sign that the International Criminal Court is any more able to halt the continuing genocide by attrition than other international actors of consequence”. However, no student of international law or international relations expects ICC to stop the Darfur crisis. A court is like traffic light, it stipulates prohibition of an act or omission and impose penalty when one violates, but they do not themselves catch the suspect or the violator or stop the violation. That is the function of enforcement forces. ICC like any other global governance institutions does not have its own enforcement power. That is well known nature of international

organizations and law, and is not peculiar to ICC. Multilateral cooperation is vital for the enforcement of ICC rulings and judgments. Its hands and powers are long and strong enough to issue rulings of arrest warrant, to make judgments and render sentences. The rest is left to the international community.

Rather the major question in this regard is the role of the sole super power—i.e., USA. USA again faced with serious test to its will of putting its political will where it's verbal declaration on ending the Darfur crisis. USA is not state member to ICC and is opposed to the ICC. Indeed it has entered bilateral agreements with several countries that aims to exempt its officials from being prosecuted under ICC. For this very reason, it has been very difficult for the USA to formally assist ICC in its Darfur indictments. Darfur puts USA in hotspot of dilemma: formally opposed to ICC but also desires that all people responsible for the massive violations of human rights in Darfur to be accountable for their deeds. Even if the Former Secretary State of the US Collin Powell has officially announced that it has evidence showing that the GoS has committed Genocide as a matter of policy, the US is might not be willing to cooperate with ICC for the above reason. This is a serious constraint to the growth of international criminal accountability and particularly to the establishment of an enforcement mechanism that ensure the international community's responsibility to protect in the 21st century. This is a serious binding constraint to the sustainable peace in Darfur and in general to the construction of atrocity regime and emergence of ICC as a new global authority as both Rudolph and Leonard indicated.⁴⁰ USA could be the main obstacle to almost global effort.

Impact of ICC Indictment: *Delayed Peace or Delayed Justice: Whose Priority Should Matter Most?*

A more serious and legitimate concern is that whether the ICC arrest warrant may aggravate the situation in Sudan.⁴¹ As pointed out above in the quote, this is indeed one of the points Reeves makes. There are two arguments with regard to the involvement of ICC in on-going conflicts such as Darfur. Much of these arguments are rather made with regard to the ICC's investigation in the conflict in Northern Uganda. Will ICC indictment and arrest warrants fuel the conflict, and hence should peace be the priority? The main point in this argument is that peace is the most urgent need of the local people and to be more specific the victims of these conflicts.⁴² They argue that ICC should stay out of the conflicts: as local priority is peace not justice. This argument requires justice be sacrificed for the sake of peace, or at least justice should be delayed for peace to reign first. One would be forced to think if ICC should intervene only once peace is restored. On the contrary, there is a strong counter argument that such priority is inherently short-sighted as it is wrong to assume that peace is really sustainable without justice. This is mostly opposed by the international community; human rights organizations such as Amnesty International and Human Rights Watch. They strongly oppose any trade-off between peace and justice. Clearly the first argument—i.e., peace as priority seems compatible with the “Do no harm” principle of international humanitarian actors. In such a policy decision requiring setting priority, I strongly believe that the famous often aptly cited saying “justice delayed is justice denied” should be taken less seriously. Justice delayed for sake of peace is not justice denied. Rather the main question is that: could sustainable peace be achieved by either denying or delaying justice? If the answer to this

either of the denying or delaying is yes, then local priority for peace should trump over preference of international organization. I am of the opinion that delaying justice is a matter of priority, denying justice altogether is serious human right violation, as access to justice is on if the fundamental human rights. Hence, unless there is empirical evidence that delayed justice could be anti-peace, I would accept “peace today and justice tomorrow”. It seems the local people choice is indeed peace now. And unless we took the local priority for peace as short-sighted choice and needing guidance from enlightened people or organizations, I think such priority is meaningful for the people living with wars and conflicts like in Darfur. I again strongly believe that delaying justice is a worthy sacrifice for peace. Denying justice, however, could lead to destruction of peace. The role of justice for sustainable peace may not needs empirical evidence as it is clear that in the presence of serious and widespread grievance, then peace is impossible to attain. But the assertion that justice should not be delayed for peace should be supported by empirical evidence that such delay in justice will be anti-peace. In the Darfur case the local priority is both peace and justice, and in some cases it could be even more of justice.⁴³

III. Peace Processes in Darfur and Shortcomings

Even if there are several sporadic and uncoordinated peace processes, so far the major peace agreement reached is DPA. DPA has failed to bring peace even for short time since its signature in May 2006 and seems dead. It needs another peace agreement. What are then the reasons for its failure?

1. **Lack of Ownership of the Dispute Settlement by the Darfur People:**

Exclusion of Traditional and Religious Leaders and local Civil Society Organizations:

Apart from the GoS, DPA was only signed by a splinter group led by Mini Minawi of the SLA/M. The other two rebel groups—Abdul Wahid of SLA/M and Khalil Ibrahim of JEM did not sign the DPA. Both are more popular within the common Darfurians and the rebel commanders. DPA was signed away from Darfur, in Nigeria. The dispute settlement process of DPA was not inclusive. It was produced without the participation of traditional chiefs, religious leaders, Darfurians in Diaspora and local civil society organizations. For this reason, it was clear from the being that DPA will fail as it was meaningless for the local Darfurians. It was not owned by expected beneficiaries of peace agreement. Its ideas emanated within few parties and end the same place without reaching the population in Sudan. The unintended consequence of the DPA is that it created schism and antagonism among the rebel groups to the advantage of the GoS. In effect DPA is against the united interest of the Darfur people.

2. **Fragmentation of Darfur Political Forces**

In 2005 *Hasskaneita* Conference the SLA/M split into two groups one led by Mini Acour Minawi and another one led by Abdulwahid El Nuur.⁴⁴ Mini Minawi's move was to remove Abdulwahid through an internal conspiracy within the SLM/A. This is all similar to rebel and political parties in Africa. After the conclusion of the *Hasskaneita* Conference and election of Mini Minawi as leader of new "SLM/A", Mr. Mini Minawi said:

“Mr. Abdulwahid El Nur had made substantive contributions within the SLM/A and to the struggle in Darfur. However, he had been removed from office by the conference held in Haaskaneita and was now an ordinary “common” member of the SLM/A.”⁴⁵

The AU was clear from the beginning that Hasskaneita effect would affect the whole peace process negatively by fragmenting the rebel groups. Abdurahman Gadura and other well known commander of the SLA either sided with Abulwahid Nuur’s wing or formed their group. While Mini Minawi is from Zaghawa community and is supported by Libya, Abdulwahid’s group is mainly from Fur, constituting 1/4th of the Darfurians. *Hasskaneita* Conference was the official beginning fragmentation within the rebel groups. Now there are ten rebel groups in Darfur. DPA exacerbated this existing divisions and created new differences among the rebel groups. Lack of common negotiation ground by the Darfurians was smartly manipulated by the GoS who signed the DPA immediately. The adverse effect of external pressure to sign DPA is “*The DPA-Effect*” on the Darfurian struggle for justice and equality: spawning new divisions and fragmentation of the rebel groups, and thereof its limited *delegitimization* consequence on the Darfurian rebel groups. Indeed, for the GoS, DPA was ‘manna from heaven’.⁴⁶ It weakened the unity of rebel groups and actually led to shifting in alliance of forces. For example, now the Mini Minawi is senior aid to the President of GoS and his group is working against the remaining rebel groups SLA/M and JEM. This served as an incentive for the GoS to disregard DPA. Negotiations to bring the rebel groups has been attempted several times since July 2005 but failed. US initiated unification of rebel groups in November 2005 led by US Deputy Secretary of State Robert Zoellick, AU Special Envoy Salim Ahmed

Salim, Darfur Mediator Baba Gana (African Union Commission Chairperson 2005:3) and World Bank initiation on Wealth-Sharing, held from 11-16 November 2005, failed to converge the rebel groups. Clearly imposed unity of the rebel group will never work and could in fact have similar to the DPA-Effect to the Darfurian cause. As far as the rebel groups have deficit of organizational democracy they will continue to fragment.⁴⁷

IV. Conclusion and Recommendations: *The Way Forward*

Darfur is one of, if not *the*, worst humanitarian disaster in our time. It is also clear that it demands serious concerted international intervention. The DPA was the main product of diverse dispute settlement efforts of the international community. Now, it has successfully failed to bring stability to Darfur. The main cause of its failure is its inability to bring all stakeholders, particularly the Darfurians, on board. DPA can serve as building blocks towards better understanding of the crisis, the actors and thus lessons could be learned for better future results of dispute settlement efforts. The international community has to come up with a more effective dispute settlement. In this regard, I have the following suggestions:

- 1. Reframing the Darfur issues is necessary to treat Sudan as nearly failed state, and the need for state building.**

Resolving the crisis in Darfur and Southern Sudan necessarily calls for re-visioning governance in Sudan. The international community should recognize that the fates of Darfur, Southern Sudan and even Sudan as a whole are intertwined. Darfur crisis is a symptom of the bad governance in whole Sudan. The Darfur issue has to be reframed

from focusing only on the current Darfur crisis to encompass the Southern Sudan and Sudan as whole. Efforts focusing solely on Darfur will not solve the problem in Darfur.

2. *Ensure Darfurian Ownership of peace process by bring all segments of Darfurians to the Peace Process*

This can be done by bringing together representatives of all stakeholders on the ground. These include the traditional and religious leaders, local CSOs and associations, Darfurian in Diaspora, representatives of all rebel groups and commanders in the field. The rebel groups as member of the Darfurian and Sudanese political forces should be consulted. However, the Darfur peace process should not heavily rely on the rebel groups, in which their fragmentation will continue unabated for long time to come and their legitimacy of the rebel groups may shrink as they exponentially fragment. Forced unity among the rebel groups will not stop such fragmentation. Fragmentation within rebel groups and political parties in Africa has been a result of external pressure and their undemocratic nature of internal life. The solution is to depend on broad and inclusive consultations. In nutshell, since the previous Dispute Resolution efforts were *for Darfurians, but not by Darfurians and of Darfurians*. The international community should ensure that next peace process is entirely owned *by the Darfurians, is of the Darfurians and for the Darfurians*.

3. *Bring the Darfur Peace Process to Darfur*

Previous peace deals were made in far away places such as Abuja and Addis Ababa. Bring the Darfur Peace Process to Darfur, people will be able to participate and follow it. In Africa proximity determines relevance due to infrastructural constraints. A measure of

security is vital for peace process to be held in Darfur. This requires speedy deployment of more peace keeping force to Darfur. RAND—internationally renowned security analysis firm, has estimated that in crisis like that of Darfur the ratio is 3.5 troops for 1000 people. Based on this troop per population formula— $(6,000,000/1000 * 3.5 = 21000 \text{ troops})$ ⁴⁸ UNMIS in Darfur has to have at least 21,000 troops which is necessary for effective Peacekeeping Missions in Darfur.

4. Guarantee security to the Arab population of Darfur and Sudan

Inclusive consultation is vital for inclusive security. For any peace processes to be successful it is very important to remove security dilemma ethnic communities in Darfur such as the Arab-Sudanese might have. Many in the Janjeweeds consider themselves as victims of conspiracy of the GoS and other forces like Libya in being dragged to this conflict.⁴⁹ Regardless of the truth of such claim of victimization of the Janjeweeds, it is necessary to reach out the Afro-Arab Darfurians so as they could feel secure in future peace settlements. Inclusive security for all ethnic communities would help creating a popular support base for sustainable peace. Real or perceived ethnic insecurity in Darfur or to that matter in Sudan could disrupt meaningful and sustainable peace in the region.

5. Keep the African Union in the Driver's Seat: *AU increases legitimacy, gives popular acceptance and enhances local expertise*

AU and AMIS should remain in the driver's seat in the Darfur. This is not by any means to say that AMIS is doing excellent work, but given the resources at its disposal, it is doing a decent work. Furthermore, the negative implication of the replacement has on AU in terms of enriching and building regional capability for similar cases in the future is another concern. Would such AU replacement by UN lead to more chaos and volatility of

situations by attracting terrorist elements to the region? Keeping the AU at the driver's seat offers some sort of legitimacy. Since the ineffectiveness of the AMIS as it stands now is attributable to inadequate funding, mission and narrow mandate, which could be easily solved with political will of the AU and international community. A total withdrawal or disengagement of AU from its leading role would have a long term effect of disempowering and de-legitimizing AU and other regional organizations. If AU stays in Darfur it would accumulate experience and enhance its competence in dealing with similar kinds of local and regional conflicts. Moreover, its stay on the driver's seat would not only boost the legitimacy of hybrid forces but also the popular acceptance of the hybrid force. It would re-assert the credo of *African Solutions for African Problems*. Strengthening the AU to fulfill the same mission UN could have done is wise in short-term and strategic in long-term. Harm-benefit calculation would be comparing the harm due to lack of experience and harm due implications of replacement of AU totally. I strongly believe that the latter is greater than the former.

With the support of UN, EU and US, the AU can build its capacity and experience in dispute settlement from this large humanitarian crisis. It is also in line with the international law of complementarity (transposed from national) to regional mechanisms of dispute settlement and peace keeping mission. However, with hybrid mission composed of AMIS and UN, UN will fill what AMIS lacks in terms of resource. With regard to expertise in peacekeeping, both AU and UN could learn from each other. The presence of too many US personnel in Sudan could attract terrorist and the GoS would also use this to mobilize anti-American forces, which could neutralize the popular

support for intervention by international community particularly the AU. UNMIS has to ensure that its troops are mainly composed of non-US and UK army. However, consensus has to be built among major international actors such as AU, EU, US, Arab League, China, and other African countries. Unless the UNMIS is quickly deployed could lead the region to disaster. If the GoS continues to resist, threat of sanctions, no fly zones and military interventions could options. Such option is the last resort as they could destabilize the Horn of Africa and the central African countries.

V. Appendix

Annex 1: End Notes

1 Most of the remarks made here are drawn from my own personal notes and reflections on my work as Legal Expert at African Union Commission and some of the meetings I participated on the Darfur Peace Process and the Darfur Ceasefire Commission.

2 The writer is a Mason Fellow at Harvard University He has served as Legal Expert at African Union Commission. He was also the Director for University Reform at Addis Ababa University. He holds MPA from Harvard University, M.Sc. from University of Oxford and LLB from Addis Ababa University and was a fellow of Ethno-political Conflict Studies at University of Pennsylvania. He can be reached at mehari_maru@ksg07.harvard.edu

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11 The nature of Janjeweeds is explained on page 7.

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13 For more see Report of the International Commission of Inquiry on Darfur to the UN Secretary- General, 25 January 2005, Geneva. Submitted pursuant to the UN Security Council Resolution 1564 (2004) paras 78-97

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17 UN HUMAN RIGHTS COUNCIL (2006) IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL" Report of the High-Level Mission on the situation of human rights in Darfur pursuant to Human Rights Council decision S-4/101: pp 21

18 Ibid pp18-19

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- 30 ICG Darfur: Revitalizing The Peace Process (African Report No 125, 30 April 2007)
- 31 The concept with this term comes from the "Hague Fear" which Samanta Power uses to explain the fear of some of the Janjeweeds of being arrested by international community.
- 32 ICC www.icc-cpi.int/home.htm: Ahhammed Haroun, former minister in charge of Darfur and Ali Kushayb who is leader of the Janjeweeds
- 33 The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Al Abd-Al-Rahman ("Ali Kushayb") <http://www.icc-cpi.int/press/pressreleases/241.html>
- 34 Ibid
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- 48 William O'Neill and Violette Cassis, *Protecting 2 Million Internally Displaced: The Success and Shortcomings of the African Union in Darfur* (Brookings Institution, University of Bern Project on Internal Displacement, 2005): 69
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Annex 2: Abbreviations and Acronym

AMIS	The African Union Mission in Sudan
AU	African Union
CPA	Comprehensive Peace Agreement
DPA	Darfur Peace Agreement
EU	European Union
GoS	Government of Sudan
GoSS	The Government of Southern Sudan
JEM	Justice and Equality Movement
ICC	International Criminal Court
NATO	North Atlantic Treaty Organization
SPLA/M	Southern Sudan Liberation Army / Movement

SLA/M	Sudan Liberation Army/Movement
UNMIS	United Nations Mission in Sudan
US	The government of United State of America

Annex 4: Map of Sudan

