

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

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## **Abstract**

This case study will reflect on the experience of the Darfur Consortium—with particular reference to the Consortium’s 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 multilateral sphere.

## **Introduction**

Since the conflict in Darfur in Western Sudan escalated in April 2003 it is estimated that over 400,000 people have died and over two million have been forced and uprooted from their homes. The deliberate targeting of civilians and the wholesale destruction of settlements has been a hallmark of the violence which many have called genocide. In February 2005 a UN Commission of Enquiry found that, “Government 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”.

Over the last fifteen months a group of Africa focussed and Africa based NGOs, academics, independent legal experts and parliamentarians has been working, dedicated to finding a solution to this human rights and humanitarian crisis—the Darfur Consortium (see [www.darfurconsortium.org](http://www.darfurconsortium.org)). The Consortium was born out of a deep conviction that crimes against humanity were unfolding in Darfur and that the international response to the crisis had been utterly inadequate. At the end of 2004 when the Consortium first began to emerge, reflection on the 10<sup>th</sup> anniversary of the 1994 Rwanda genocide only heightened the concern about international inaction.

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 has 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 (Resolution 1593).

This case study will reflect on the experience of the Darfur Consortium—with particular reference to the Consortium’s 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**

The way in which the Consortium took shape was deeply influenced by an exploration of the context within which the “question of Darfur” was being discussed in late 2004 in international fora. The establishment of the Consortium itself was in many ways a strategic reaction to the recognition that a highly polarised global advocacy climate jeopardised an effective response to Darfur.

With the conflict in Darfur widely and reductively characterised as one pitting ‘Africans’ against ‘Arabs’, perceptions were hostage to ideology and mistrust and exacerbated by post 9-11 geo-politics. Statements and calls for action were viewed as lacking an objective basis, depending on the political allegiance of the messenger. That the United States, for example, had accused the Government of Sudan of genocide was often conveniently juxtaposed against the explicit rejection of the charge by regional actors. The result was not only stasis in the international response but also one of escalating violence on the ground.

There was clearly a “gap” in the spectrum of voices which needed to be heard and heeded in the debate on Darfur. First, it was suggested that as the African Union (AU) was playing a leading role in the crisis, brokering the political negotiations and deploying ceasefire monitoring troops on the ground, African civil society could make a vital contribution. Second, it was recognised that 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 (Article 3 (h) of the AU Constitutive Act). Independent assessment of, and advocacy around, Darfur by a pan-African group could, *inter alia*, help mitigate the skilful exploitation of fissures in international society around the approach to Darfur and make a unique contribution to helping to understand the crisis and positing solutions.

## **Creating a Common Framework**

### Power in information: positioning the Consortium authoritatively

The Consortium recognised that it needed to root itself in a first hand assessment of the situation in Darfur early on. Intensive briefing sessions from Darfurian and Sudanese activists at each of the Consortium meetings created an atmosphere within which NGOs from across the continent began to locate themselves as part of a coalition for Darfur. Further, an assessment mission by African human rights activists to Chad and Sudan was conceived as 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 around contested issues—and particularly so with respect to the ICC referral. There were concerns by some, for example, that triggering the involvement of the ICC in the midst of an ongoing conflict might in fact 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: a referral would not be inimical to the peace process; an internationally supported effort to combat impunity was essential to the return of



refugees; and it might even have a protective effect. Support for and solidarity with Sudanese and Darfurian activists, civil society groups and NGOs (including those in the diaspora) was at the heart of the approach.

### Mapping the ‘outsiders’

The Consortium initially focused on the AU as the cohering frame for its work, introducing itself as an NGO effort in support of the major multilateral actor leading the international response to Darfur. It built upon this to reach 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 whole range of multilateral institutions, from the African Union (in particular the African Commission on Human and Peoples Rights (ACHPR) to the Arab League, 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 it was 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 the ICC referral 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 votes on the series of Sudan resolutions, for example, there were signs that African states were retreating from their earlier support for the ICC referral and were circulating a proposal for an “African Alternative”, and an “African Panel for Criminal Justice and Reconciliation.” The AU for its part was uneasy about the ambiguity which might be created around the status of its mission in the event of a UN deployment. At the same time, at the level of the UN Security Council itself, the member States had to square their relationships with the Government of Sudan, from investment in oil and military equipment to cultural and Pan-Arabism ties.

### Creating an ‘insider’ consensus: Acknowledging complexity/ambiguity and using human rights

The very first publication of the Consortium (a background note on the origin of the crisis) acknowledged and emphasised the complexity of the Darfur conflict. It situated the crisis in a comprehensive historical context, and in its multiple cultural, political and ecological factors: it was misleading, for example, to describe the conflict as pitting ‘Arabs’ against ‘Black Africans’ or as simply arising from tension between pastoralists and farmers. Members of the Consortium were one in acknowledging the egregious nature of the violence and suffering unfolding in Darfur. The challenge, however, was how to develop an analysis and pragmatic set of proposals which could help contribute to finding solutions in the midst of such complexity, while avoiding antagonistic, overly politicised and simplistic positions.

It was agreed that protection of the people of Darfur in accordance with international humanitarian and human rights law would be the key foundation stone of a common advocacy framework. This would cut through ideologies and political allegiances and provide a way to think about the development of a just and peaceful solution to the conflict. The AU, in which all the key State players had a common membership, had been recently reconstituted as an organisation where the protection of human rights was an organisational objective and a right of intervention for the Union in cases of “grave circumstances, namely war crimes, genocide and crimes against humanity” (Article 4 (h) AU Constitutive Act). This guiding international human rights and humanitarian law framework was the context in which the decision to embark on advocacy for a referral of the situation in Darfur to the ICC could emerge as a key focus.



Although the Consortium decided to prioritize advocacy around an urgent ICC referral, it was viewed as only part of a continuum of necessary steps for the achievement of justice in Darfur. It was agreed that the Consortium would pursue a tiered, yet parallel, approach to justice and accountability, including the exploration of possible compensation programs, the regeneration of local tribal mechanisms and advocating for the establishment of a truth and reconciliation process. Advocacy for the referral as a necessary part of a broader package also turned out to be politically more palatable to some audiences. This comprehensive approach was ultimately adopted by the UN Security Council.

## **Strategies for Dancing in the Multilateral Sphere**

### Suppleness of identity and roles

The initial gathering of NGOs at the founding meeting in Pretoria in September 2004 included sub-Sahara African NGOs, Africa-focused international NGOs, and Sudanese NGOs and civil society organisations in addition to one human rights NGO from the North Africa/ Arab region. 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 could argue credibly that the ICC was at once an international *and* an African court, reflecting African policy and practice—and that the people of Darfur deserved to see justice on the basis of their common humanity.
- *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 for discussion but also opened doors to a range of audiences. While sub-Sahara African NGOs in the Consortium were, for example, generally more knowledgeable about AU structures and politics, the Africa-focused international NGOs were familiar with the UN human rights 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 advocacy before influential governments and missions Abuja, Geneva, London and Khartoum and Cairo.
- *Strategic use of lead organisations:* The 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 had an extremely powerful effect on the discussion of the referral in the North Africa requirement.
- *No requirement for rigid consensus:* On some occasions positions were adopted by groups of Consortium members which could not be shared, or publicly embraced, by all, whether because of political, legal or security reasons.



- *A protective umbrella:* Sudanese and Darfurian organisations have been able to closely participate and make central contributions to the work of the Consortium, while remaining sheltered when necessary.

The identity of the Consortium is an ongoing process of exploration. As more and more organisations have joined and introduced new perspectives and fora to the discussion, there has been an effort to remain flexible and recognise the multiplier effects of different activities. At the same time, there is a recognition that the flexible identity construction and organisation of the Consortium may have to be rethought.

### Adaptive strategies and methodologies

Flexibility has also been the hallmark of the Consortium in its planning and activities. For example, just a day before two major parallel missions to Sudan and Chad had planned to depart, the Government of Sudan decided to revoke the Consortium's delegation permission to enter Sudan. When the news came that the UN Commission of Inquiry Report on Darfur had also been published that same day, a new plan was drawn up to build on 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 report while the Chad mission team and agenda were reconfigured. With sufficient international law expertise delegated to the task force, the mission team determined to focus on eliciting views from the ground on the possible impact of an ICC referral. Furthermore, as the Consortium could not travel to Sudan to meet with colleagues in Darfur, arrangements were made for a team of Darfurian activists and lawyers to come to Kampala to confer with the task force and join in the post-mission meeting where leading policy makers and thematic experts would help develop an advocacy platform.

### 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 Darfurian activists, using a multilateral institution (the ACHPR) 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 in February, fuelled by meetings of sub-groups of the Consortium, regular communication and information sharing...and dancing. Finally, and critically, the Consortium was lucky enough to be able to secure the active support of funders, and particularly operational funders, early on in the process: this allowed us to build immediately on the momentum created by the first deliberations of the Consortium.

### **The Continuing story**

The Consortium has struggled successfully to understand and negotiate the shifting pressures felt by the multilateral groupings essential to influencing the final decision of the UN Security Council on the ICC referral.

One challenge which is facing the Consortium, and particularly since the referral, has been how to fully engage Arab and North African human rights and civil society NGOs with the situation in Darfur. For some North African NGOs, the AU is not a natural forum and the high profile engagement of the AU in Darfur has 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 ICC jurisdiction. One of the most distancing aspects also continues to be the insistence by some on labelling the Darfur conflict as one of 'Arabs' vs. 'Black Africans' which has been coupled with the silence of North African/Arab actors in the face of the escalating violence. These reactions require further exploration and analysis with likeminded NGOs from the North Africa/ Arab region. This outreach will be an important focus of the Consortiums work in its next phase.

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During the last year Monim has worked with NGOs in the Arab region to raise awareness of the current situation in Darfur, Sudan, particularly contributing to the activities of the Darfur Consortium, a new and growing coalition of African and Africa based NGOs dedicated to finding a solution to the humanitarian and human rights crisis in Darfur. Indeed, he participated in the foundation and the development of the Darfur Consortium and participated in most meetings and missions of the consortium.

