

## The International Criminal Court and the Indictment of President Omar al-Bashir

### Implications for Sudan and Africa

Korwa Gombe Adar

This policy brief provides a synopsis of the Darfur crisis; analyses the implications of the indictment of Sudanese President Omar Hassan Ahmad al-Bashir on peace, security and stability in Sudan, and Darfur in particular; and addresses the impact of the indictment of Bashir on Africa's continental and regional interests. It concludes by offering broad-based recommendations on the future role of the International Criminal Court (ICC).

#### Introduction

Pursuant to the directive of the United Nations Security Council (UNSC) resolution 1593 (2005) and the UN General Assembly (UNGA) resolution 60/251 of March 2006, which established the Human Rights Council (HRC), a High-Level Mission (HLM) was dispatched to Sudan to carry out investigations on the situation in Darfur. Paragraph 1 of resolution 1593 explicitly provided that the UNSC should "refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court" for investigation. The President of the HRC appointed a five-member team of experts, comprising Prof. Jody Williams (Head of the Mission), Prof. Bertrand Ramcharan, Hon. Mart Nutt, H. E. Ambassador Makarim Wibisono, H. E. Ambassador Patrice Tonda, and Dr. Sima Samar (Special Rapporteur), to conduct

its work in and out of Sudan between 5 February and 15 March 2007.<sup>1</sup>

The HLM was preceded by a UNSC Commission of Inquiry led by Antonio Cassese to investigate reports of crimes against humanity committed by the belligerent parties in Darfur. The Commission of Inquiry, or the Cassese Commission as it is also known, concluded in the report that "the Government of Sudan and the *Jarjaweed* are responsible for serious violations of international human rights and humanitarian law."<sup>2</sup> The report of the HLM was presented by the ICC Prosecutor, Luis Moreno Ocampo, to the Court's Pre-Trial Chamber on 14 July 2008, in which he indicated that Bashir was responsible for, directly or otherwise, war crimes in Darfur.

The ICC, through its Pre-Trial Chamber, on 4 March 2009, indicted Bashir for his failure to exercise his sovereign responsibility to protect the

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**Table 1** Dates of Signature and Ratification of Rome Statute by African Countries at the end of 18 July 2008\*

Country	Date of Signature	Ratification/Accession
Algeria	28 December 2000	Has not ratified the statute
Angola	7 October 1998	Has not ratified the statute
Benin	24 September 1999	22 January 2002
Botswana	8 September 2000	8 September 2000
Burkina Faso	30 November 1998	16 April 2004
Burundi	13 January 1999	21 September 2004
Cameroon	17 July 1998	Has not ratified the statute
Cape Verde	28 December 2000	Has not ratified the statute
Central African Republic	7 December 1999	3 October 2001
Chad	20 October 1999	1 November 2006
Comoros	22 September 2000	18 August 2006
Congo (Brazzaville)	17 July 1998	3 May 2004
Cote d'Ivoire	30 November 1998	Has not ratified the statute
Democratic Republic of Congo	8 September 2000	11 April 2002
Djibouti	7 October 1998	5 November 2002
Egypt	26 December 2000	Has not ratified the statute
Eritrea	7 October 1998	Has not ratified the statute
Gabon	22 December 1998	20 September 2000
Gambia	4 December 1998	28 June 2002
Ghana	18 July 1998	20 December 1999
Guinea	NA	14 July 2003
Guinea Bissau	NA	12 September 2000
Kenya	11 August 1999	5 March 2005
Lesotho	30 November 1998	6 September 2000
Liberia	17 July 1998	22 September 2004
Madagascar	18 July 1998	14 March 2008
Malawi	2 March 1999	19 September 2002
Mali	17 July 1998	16 August 2000
Mauritius	11 November 1998	5 March 2002
Morocco	8 September 2000	Has not ratified the statute
Mozambique	28 December 2000	Has not ratified the statute
Namibia	27 October 1998	25 June 2002
Niger	17 July 1998	11 April 2002
Nigeria	1 June 2000	27 September 2001
Sao Tome & Principe	28 December 2000	Has not ratified the statute
Senegal	18 July 1998	2 February 1999
Seychelles	28 Dec 2000	Has not ratified the statute
Sierra Leone	17 October 1998	15 September 2000
South Africa	17 July 1998	27 November 2000
Sudan	8 September 1998	Has not ratified the statute
Tanzania	29 December 2000	20 August 2002
Uganda	17 March 1999	14 June 2002
Zambia	17 July 1998	13 November 2002
Zimbabwe	17 July 1998	Has not ratified the statute
<b>Total ratification by Africa</b>		<b>30</b>

\* The African countries not listed in the table have neither signed nor ratified the Rome Statute.

Sources: <http://www.iccnw.org> (accessed 18 March 2009) and <http://www.mindfully.org/WTO/2003/Rome-Statute-ICC-Ratifications7jun03.htm> (accessed 10 March 2009).

people of Darfur and, more specifically, for war crimes and crimes against humanity committed in the Darfur region of the Sudan. In making its decision, the ICC invoked Article 5 of the Rome Statute, which gives it jurisdiction over crime of genocide, war crimes, crime of aggression, and crimes against humanity.

Sudan is among the African countries that have not ratified the Rome Statute. Despite this, the UNSC, acting under Chapter VII of the Charter, reiterated in resolution 1593 that “the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution...”<sup>4</sup> As the following table indicates, other than Sudan, the 12 African countries that have signed but not ratified the Rome Statute are Algeria, Angola, Cameroon, Cape Verde, Cote d'Ivoire, Egypt, Eritrea, Morocco, Mozambique, Sao Tome and Principe, Seychelles, and Zimbabwe. Of the five permanent members of the UNSC, only France and the UK have ratified the Rome Statute.

Does the ICC have authority over member states that have not ratified the Rome Statute? Sudan, like any other UN member state, is bound by the decisions of the organisation. More specifically, the indictment of Bashir was a precursor to the 31 March 2005 UNSC resolution 1593 (2005), adopted under Chapter VII of the UN Charter, which is mandatory to the member states, including Sudan. By July 2008, the Rome Statute had been signed and ratified by 139 and 90 countries respectively. As the table indicates, Africa accounts for nearly 30% of the countries that have ratified the statute.

Of the 108 states party to the Rome Statute, 30, 14, 16, 23, and 25 are from Africa, Asian States, Eastern Europe, Latin America and the Caribbean States, and Western Europe and other states respectively. Except for Jordan, which ratified the statute on 11 April 2002, the other countries from the Middle East, including Israel, have not ratified the Rome Statute.

The resolution considered, among other things, that the situation in Darfur constituted a threat to international peace and security. Apart from Bashir, the ICC Chief Prosecutor, Luis Moreno-Ocampo, had also issued warrants of arrests for Ahmad Harun, the State Minister of the Interior and the militia commander, and Minister of State for Humanitarian Affairs, Ali Muhammad Ali Abd-al-Rahman, also called Ali Kushayb.

Article 27 of the Rome Statute provides for equality of individuals before the law, irrespective of their status and official capacity in society. It states:

This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or Parliament, an elected representative or a Government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.<sup>5</sup>

## Conflict in Darfur: A Synopsis

Conflict in Darfur has historically been based on disputes over resources, particularly land, water and livestock, as well as on what the Darfurians consider to be deliberate and consistent policies of marginalisation and discrimination imposed on them by the successive governments in Khartoum. The current conflict which led to the indictment of Bashir began in 2002 and escalated in 2003, following the attacks on police and military installations by the Sudan Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM) in Darfur, mainly in Gulu, El Fashir and Mellit, and which, since then, has spread to other areas.<sup>6</sup> The demands of the rebel movements, SLM/A and JEM include, among others, greater autonomy and socio-economic and political rights for the people of Darfur. The government of Sudan responded by deploying the Popular Defence Force (PDF), the Sudan Armed Forces (SAF) and the *Janjaweed* (meaning, an armed man on horse or camel), a militia group trained and equipped by Sudan.

Since it began in 2002, the conflict has claimed the lives of over 400 000 people, caused nearly 3 million internally displaced persons (IDPs), and over 200 000 refugees, with both sides of the conflict divide, particularly some high ranking Sudan officials - Bashir included - accused of masterminding and implementing war crimes and crimes against humanity.<sup>7</sup> The IDPs are concentrated in southern (Nyala, Kass, Shareia, Ed Daein, Adilla, Edd Al Fursan, Buran, Rehed Al Berdi and Tulus), western (Jebel Marra, Zalingei, Mukjar, Wadi Salih, Habila, El Geneina and Kulbus), and northern (in Kutum and Mellit) areas of Darfur which, by 2008, accounted for over 1.5 million, 800 000, and 500 000 IDPs respectively. The crimes have mainly been targeted against the Fur, Massaleit and Zaghawa, the ethnic groups that support the SLM/A and JEM.<sup>8</sup>

As in the case of similar situations in civil war-prone areas in the world, a number of conflict resolution initiatives have been put in place, with the

objective of finding short- and long term solutions to the crisis in Darfur. How has the Government of Sudan (GoS) played its role in these mediation efforts over time, and how has it reacted to the indictment issued by the ICC? More specifically, what are the implications, potential or otherwise, of the indictment of Bashir on the crisis in Darfur and in Sudan in general?

## Indictment of Bashir and its Impact on Sudan

Before analysing the implications of the indictment of Bashir on Sudan, it is necessary to provide a general assessment of the level of involvement and commitment in conflict resolution initiatives in Darfur by the GoS. More specifically, I regard the involvement by the GoS in external and internal peace initiatives as tactical strategies put in place by the Bashir administration to brush aside and delay what is inevitable, that is, being held accountable through due process of the law for the actions taken by him, directly or indirectly, in Darfur.

### A: External Initiatives

The first mediation effort involving the GoS and the SLM/A was held in September 2003, in Abeche, Chad, following the diplomatic initiative of the President of Chad, Idriss Deby. His mediation culminated in the Ceasefire Agreement, which provided for the following:<sup>9</sup>

- A 45 day cessation of hostilities;
- Control of irregular groups, such as the *Janjaweed*;
- Division of the SLM/A forces at specific locations to be determined by the parties; and
- Recognition and adherence to long lasting and comprehensive peace in Darfur.

Secondly, negotiations were held in December 2003 in Ndjamen, Chad, between the GoS and the rebel movements, the SLM/A and JEM, but collapsed without any tangible outcome. The escalation of military efforts by the GoS and *Janjaweed* stalled the negotiation, with rebel movements and the GoS blaming each other for lack of commitment to the peace process. Thirdly, President Deby and the African Union (AU) negotiated another agreement, which led to the signing of N'Djamena Humanitarian Ceasefire Agreement (HFCA) of 8 April 2004 in Ndjamen, Chad, between the GoS, the SLM/A and JEM.<sup>10</sup> Fourthly, the Ndjamen round was followed by the Addis Ababa and Abuja, Nigeria, round of negotiations in 2005

between the belligerent parties. However, due to the intra-SLM/A factional split, the unwillingness of the GoS to compromise on the *Janjaweed* issue, and JEM's dissatisfaction with the negotiations in general, only the SLM/A faction, led by Minni Arkon Minnawi (or SLM/MM), signed the Darfur Peace Agreement (DPA) in May 2006.

The DPA incorporated a number of human rights provisions akin to the Comprehensive Peace Agreement (CPA) signed in Nairobi, Kenya, in 2005 between the GoS and the SPLM/A, which established the Government of Southern Sudan (GoS) in Juba, Southern Sudan, and the Government of National Unity (GNU) in Khartoum, Sudan. By the time the DPA was signed in 2006, the UNSC had already authorised the ICC to investigate the war crimes and crimes against humanity committed in Darfur. Lastly, the GoS and JEM engaged in direct talks in Doha, Qatar, in February 2009, with the aim of finding a solution to the crisis in Darfur. These negotiations are yet to yield tangible benefits in the ongoing peace process.

### B: Internal Initiatives

With the failure of the external diplomatic initiatives to resolve the Darfur crisis, and the pressure of indictment hanging on his head, in July 2008 Bashir launched what he called the 'People of Sudan Initiative' (PSI). The objective of the strategy was to demonstrate the level of commitment of his administration on the issues that addressed, among other things, broad based development in the marginalised areas in Sudan, and the resolution of the Darfur crisis in particular. However, due to the unwillingness of the SLM/A and JEM to join the initiative, Bashir's strategy had limited impact in the country. In addition, the GoS assured the Sudanese and the world that Ali Mohammed Ali Abdel-Rahman, the militia leader indicted by the ICC, had been put in custody and was waiting trial by the government. Further, between 2004 and 2006, the GoS established the National Commission of Inquiry (NCI) and what it called the Special Criminal Court on the Events in Darfur (SCCED), and opened offices in El Fasher, Nyala and El Genaina to deal with, *inter alia*, human rights abuses in Darfur.<sup>11</sup> The SCCED was established after a decree was issued by the Chief Justice of Sudan. The other institutional structures established under the SCCED included the Committees Against Rape (CAR) and the Unit for Combating Violence against Women and Children (UCVAWC). The SCCED had jurisdictional powers over crimes provided for in the Sudanese Penal Code. However, the external and internal conflict resolution initiatives have not yielded any tangible

dividends for the people of Darfur, with the lives of millions of IDP still clouded with uncertainty.

The indictment of Bashir has many complex and interrelated implications, perceived or otherwise, on Sudan. As the first sitting sovereign Head of State to be indicted, the situation sparked debate between the advocates of absolute theory of sovereign immunity *vis-a-vis* restrictive theory of sovereign immunity. This policy brief is not concerned with the latter issue, but instead focuses on the implications of the warrant of arrest of Bashir on Sudan.

First, the Bashir administration reacted to the indictment by expelling a number of humanitarian aid agencies operating in Darfur, such as *Action Conre la Faim* (ACF), AECOM International Development, Care International, CHF International, International Rescue Committee (IRC), *Medicins Sans Frontieres*-France (MSF-France), *Medicins Sans Frontieres*-Holland (MSF-Holland), Mercy Corps, Norwegian Refugee Council (NRC), Oxfam, Save the Children-UK, Save the Children-US, and Solidarities. Suffice to say, the departure of the agencies is going to have negative implications on the IDP, the main recipients of humanitarian aid. For example, the IRC, Care International, ACF, Oxfam, Mercy Corps, MSF, and Save the Children provide humanitarian services to 1.75 million, 1.5 million, 1.2 million, 600 000, 200 000, 200 000, and 50 000 IDP in the marginalised areas in Sudan (including Darfur) respectively.<sup>12</sup>

Secondly, the indictment risks plunged the country into an unstable politico-military situation, particularly between the rebel movements in Darfur and the GoS on the one hand, and the National Congress Party (NCP), led by Bashir, and the SPLM/A, led by First Vice-President of the GNU and President of the GoS, Salva Kiir Mayardit, on the other. However, it should be noted that, prior to the indictment of Bashir, Salva Kiir, through the SPLM/A, had expressed the view that Sudan, that is, Bashir, should co-operate fully with the decision of the ICC.<sup>13</sup>

Thirdly, the Darfur rebel movements may seize the opportunity to escalate their war efforts in the region.<sup>14</sup> Fourthly, the indictment of Bashir is an explicit recognition that extrajudicial acts were committed in Darfur. In fact, even the AU's request for the deferral of the ICC decision (Article 16 of the Rome Statute) is, in itself, an admission that crimes were committed in Darfur. Fifthly, the indictment may set in motion the process of establishing institutions amenable for democracy, human rights and the rule of law, as well as provide opportunities for the people of Sudan to elect transformative leaders.

Sixthly, the arrest warrant on Bashir has exposed and put into question the policies of marginalisation, assimilation, oppression and discrimination against the people of the marginalised areas in Sudan by the successive governments in Khartoum. Sudan has been at war with its own citizens since its independence in 1956. Seventhly, the indictment is likely to persuade the Bashir administration to ensure that stability in Sudan, particularly between the NCP and the SPLM, is maintained. Lastly, the indictment is likely to lead to sympathetic support within Sudan for Bashir. For example, the Umma Party, one of the old and main political parties in Sudan and led by Sadiq al-Mahdi, has expressed its support for Bashir, arguing against the violation of sovereign immunity. This can be interpreted to mean that the Umma Party values stability over the lives of Darfurians which, in many respects, is in contravention of the protocol of the Responsibility to Protect.<sup>15</sup>

### Indictment of Bashir and its Impact on Africa

This section provides a brief analysis of the involvement of the international community in Sudan, with a special focus on the AU's role in the Darfur crisis, and concludes by assessing the impact of the indictment of Bashir on Africa. The current AU Chairman, Maumar Gaddafi, has castigated the ICC for issuing an arrest warrant for a sitting president, terming it a biased Western agenda, an institution that takes no cognisance of the age old sovereign immunity. The AU's proactive participation in the Darfur crisis began with its conflict resolution initiatives in 2004. This was followed with the deployment of 600 peacekeeping personnel, mainly from Nigeria and Rwanda, as part of its AU Mission in Sudan I (AMIS I), and expanded in 2005 to AMIS II, with a larger force of 7 000 troops and more mandated under Chapter VII, following the adoption of the UNSC resolution 1590. However, it was after the adoption of the UNSC resolutions 1706 and 1769, co-sponsored by Argentina, Denmark, France, Ghana, Greece, Slovakia, Tanzania, the UK and the USA, which authorised the deployment of over 17 300 troops and 3 300 civilian police (CIVILPOL) in Darfur, that the UN commitment in Sudan gained momentum and robust credibility.<sup>16</sup> The decision by China and Russia to abstain - two permanent members of the UNSC with economic interests in Sudan, particularly China - undermined the credibility of AMIS II. AMIS II continued to face daunting challenges due

to lack of adequate material and human resources, as well as the unwillingness of the GoS to support its mandate.

The UNSC 1769 of 31 July 2007 transformed AMIS II into the United Nations-African Union Mission in Darfur (UNAMID) hybrid force, and authorised the deployment of over 26 000 peacekeeping personnel, comprising 19 555 military personnel, 3 772 CIVILPOL, 2 660 officers, 360 military observers, and 19 special police units. For the first time, the UNSC members, including the host country, Sudan, unanimously approved the deployment of the peacekeeping mission, giving the hybrid force greater authority under Chapter VII of the Charter. However, Sudan's intransigence and inconsistency, as well as lack of commitment on the part of the UN member states to contribute peacekeeping personnel, remained the main challenge for the hybrid force. By 2008, only 40% of the personnel, mainly from the AU member states, namely Egypt, Ethiopia, Gambia, Kenya, Nigeria, Rwanda, Senegal and South Africa, authorised under the UNSC resolution 1769, had been deployed in Darfur.<sup>17</sup> The other UN member states that contributed peacekeeping personnel included Bangladesh, China and Indonesia. The operational challenges for the UNAMID were made more complex and delicate with the decision by the UNSC to authorise an investigation of the war crimes in Sudan, a decision which was not welcomed by a number of the UN member states, including African countries.

The AU, the Arab League and the Organisation of Islamic States (OIS), of which Sudan is a member, are some of the International Governmental Organisations (IGOs) that are opposed to the indictment of Bashir. The AU, in particular, calls for the deferral of the indictment on the grounds that the ICC decision has the potential of destabilising and creating a leadership vacuum in the country, which would undermine the peace process in Darfur and the volatile CPA. Article 16 of the Rome Statute provides:<sup>18</sup>

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.

A number of potential scenarios, perceived or otherwise, associated with the ICC indictment of Bashir and its potential impact on Africa, are worth appraisal.

## Potential Positive and Negative Scenarios

- The leaders in Sudan and Africa in general are likely to tread with caution on human rights issues in future. The Rwanda genocide trials and the trial of the former Liberian President, Charles Taylor, serve as good examples. The African countries are replete with cases of human rights violations, genocide and war crimes, which may warrant investigations by the ICC.
- The request by Central African Republic (CAR), the Democratic Republic of Congo (DRC), and Uganda for the ICC to investigate human rights violations and war crimes in their own countries also serve as a positive step towards the recognition of the legitimacy and authority of the legal regime established by the Rome Statute, as well as the moralistic values and legal prescriptions enshrined in the responsibility to protect the document.
- The indictment of Bashir by the ICC is likely to force Sudan, and Bashir in particular, to ensure that the CPA and peace process in Darfur are consolidated. Bashir may realise that confrontation with the ICC would not serve his long term interests, both at home and abroad.
- President Bashir's support by the AU and the Arab League is likely to strengthen his resolve not to yield to the decision by the ICC, viewed by his administration as a neo-imperialist institution.
- The role and operational functions of UNAMID are likely to be affected due to the potential disagreements between the AU, the Arab League and the OIS *vis-à-vis* the UNSC's endorsement of Bashir's indictment question.
- The ICC indictment is likely to harden the resolve of the hardliners within the ranks of, among others, the AU, Arab League and the OIS. More specifically, it is likely to unify the position of the member states over issues considered to be driven largely by the West against the weaker states. In its press release issued at the end of the 21<sup>st</sup> Summit in Qatar, 30 March 2009, the Arab League not only supported Bashir against the ICC indictment, but also rejected the view that international principles and norms can be invoked and implemented without due recognition of the sanctity of the immunity of sovereign heads of state.
- The indictment is likely to marginalise Bashir at home and abroad in the long run, thus undermining his political credibility and potential removal from power.

- Due to the volatility of the situation caused by Bashir's negative reaction to the indictment, the humanitarian agencies which are still in Sudan, and Darfur in particular, may be forced to reduce their operations in Darfur for security reasons, a decision which may have adverse effects on the IDP, the main beneficiaries of the support given by the agencies.

## Recommendations

The authority and legitimacy of the international legal regime being established by the ICC require adherence and recognition by the UN member states, irrespective of their global status or whether or not they have ratified the Rome Statute.<sup>19</sup> China, Russia and the USA are among the permanent members of the UNSC that have not ratified the Rome statute. The international community is watching keenly whether President Barack Obama will reverse the decision by George W. Bush not to ratify the Statute. For the ICC to consolidate its global legal standing, as well as operational and structural functions, it needs to take cognisance of the following:

- Its decisions should be employed equally without due regard to the global status of an individual, as enshrined in Article 27 of the Rome Statute.
- Taking cognisance of Article 24 (1) of the Rome Statute, which exonerates individuals from being criminally responsible for acts committed prior to entry into force of the Statute, the military operations of the so-called *coalition of the willing* in Iraq, the Israeli military involvement in Gaza, Palestine, in February 2009, and the concomitant killings of civilians and destruction of properties thereof, as well as the post 27 December 2007 elections violence in Kenya, for example, require investigations by the ICC, according the suspects opportunities to exercise their individual rights in the courts of law. In fact, the ICC should have investigated the US military imbroglio and *déjà vu* against Iraq and its people prior to instituting investigations in Darfur.

## Notes and References

- 1 See, UN, UNGA, HRC, *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,' Human Rights Council, Doc. A/HRC/4/80, 7 March 2007. The High-Level Mission

- (HLM) enjoyed the privileges and immunities under the 1946 Convention on the Privileges and Immunities, the UN Charter and the other relevant agreements. The HLM interviewed many stakeholders in Europe, the AU Headquarters in Addis Ababa, Chad, Sudan and Darfur, and refugees and IDP in Darfur. H. E. Ambassador Makarim Wibisono withdrew from the mission and did not participate in the development of the report. The mission interviewed many stakeholders in Europe, Addis Ababa, Ethiopia, Chad, Sudan and Darfur, and refugees in Chad and IDP in Darfur.
- 2 See, UN, *Report of the International Commission of Inquiry on Darfur to the UN Secretary General*, Doc. S/2005/60, 25 January 2005, p 3.
  - 3 The Rome Statute of the ICC was signed by state parties in 1998 and came into force in 2002 after its ratification/ accession by the required number of state parties.
  - 4 See, UN, UNSC, UNSCR 1593 (2005). The other African countries that have not ratified the Rome Statute include Algeria, Angola, Cameroon, Cape Verde, Cote d'Ivoire, Egypt, Eritrea, Morocco, Mozambique, Sao Tome & Principe, Seychelles and Zimbabwe. There are other AU member states that have neither signed nor ratified the Rome Statute.
  - 5 UN, *Rome Statute of the International Criminal Court*, Doc. A/CONF.183/9, 2002, <http://www.un.org/Docs/sc> (accessed 10 March 2009).
  - 6 For details see, Office of the United Nations High Commissioner for Human Rights, *Report of the UNHCHR (2004)*, W O'Neil & V Cassis, 2005, *Protecting Two Million Internally Displaced: The Successes and Shortcomings of the African Union in Darfur* (Washington, DC: Brookings Institution) and International Crisis Group (2004), *Darfur Rising: Sudan's New Crisis* (London: ICG), and S Appiah-Mensah (2006), 'The African Mission in Sudan: Darfur Dilemmas,' *African Security Review* 15(1), pp 2–20.
  - 7 For the reports on the atrocities committed in Darfur, particularly by the Janjaweed, the PDF and the SAF see, for example, OHCHR, *Report of the Commission on Human Rights on the Situation of Human Rights in Darfur Region of Sudan*, E/CN.4/2005/3, May 2004, United Nations, *Report of the Special Rapporteur on the Human Rights Situation in the Sudan*, E/CN.4/2006/111, January 2006, and United Nations, *Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General*, S/2005/662, January 2005.
  - 8 The SLM/A and JEM have been weakened by internal differences and have split into various factions. The new factions which have emerged out of the SLM/A include the Zaghawa, dominated SLA and led by Minni Arkou Minnawi; the Fur controlled SLA and led by Abdel Wahid Mohamed el-Nur; and the SLA-Unity faction, led by Suleiman Jamus and Sherif Harir and composed mainly of Zaghawas. The United Resistance Movement (URM), led by Bahr Idriss Abu Garda, split from JEM in 2008 allied itself with SLA-Unity.
  - 9 Addis Ababa, African Union, Peace and Security Council, *Report of the Chairperson of the Commission on the Situation in the Sudan (Crisis in Darfur)*, 2004, Peace and Security Council, 5<sup>th</sup> Session, Doc. PSC/PR/2 (v), p 2.
  - 10 *Ibid.*, pp 8–9.
  - 11 See, UN, UNGA, HRC, '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*, Human Rights Council, Doc. A/HRC/4/80, 7 March 2007, p. 17.
  - 12 <http://humanitarianrelief.chang.org/blog/view/breaking-10-aid-agencies-expelled> (accessed 06 March 2009).
  - 13 SPLA/M, General Headquarters, Secretary General's Office, statement of Cde Salva Kiir Mayardit to the Sudanese Nation on the eve of the announcement of ICC decision regarding accountability made by the Chief Prosecutor of the ICC against President Omar Hassan Ahmed Al Bashir, Juba, 3 March 2009, Juba, Southern Sudan.
  - 14 Economist Intelligence Unit, 'Sudan: Country Report,' February 2009, Economist Intelligence Unit, p 10.
  - 15 International Commission on Intervention and State Sovereignty, *The Responsibility to Protect, Report of the International Commission on Intervention and State Sovereignty* (Ottawa, Canada: International Development Research Centre, 2001).
  - 16 Sarah E Kreps (2006), 'The United Nations-African Union Mission in Darfur: Implications and Prospects for Success,' *African Security Review*, 16 (4), pp 66–79.
  - 17 See, UN, *United Nations Security Council Expands Mandate of UN Mission in Sudan to Include Darfur*, press release, 5519<sup>th</sup> meeting of Security Council, SC/8821, 31 August 2008, Department of Public Information, News and Media Division.
  - 18 UN, *Rome Statute of the International Criminal Court*, Doc. A/CONF.183/9, 2002, <http://www.un.org/Docs/sc> (accessed 10 March 2009).
  - 19 For an interesting analysis on the legal obligation of the UNSC decisions on countries that have not ratified the Rome Statute, see Condorelli, Luigi & Ciampi, Annalisa (2005), 'Comments on the Security Council Referral of the Situation in Darfur to the ICC,' *Journal of International Criminal Justice* 3(2), pp 590–599.



### Africa Fast Facts

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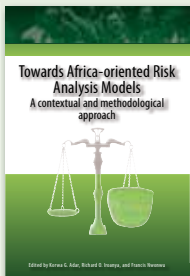
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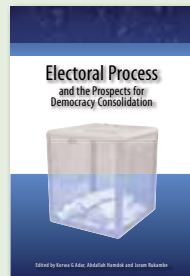
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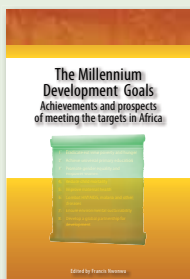
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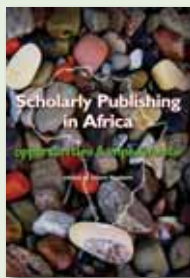
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