

## **Chad joins the ICC: Analysis and Implications for the Darfur Crisis**

### **Chad Joins ICC**

On November 1, 2006, the country of Chad ratified an international treaty that will significantly impact the future of impunity in Africa, and in particular, the plight of Darfur's ravaged refugees on the Sudan-Chad border: it became the newest member of the International Criminal Court (ICC). Established in 2002, four short years after 160 delegates, including the U.S., met in Rome, Italy, to draft a statute creating it, the ICC now boasts 104 member states, 5 investigations, and the first trial set for a Congolese rebel leader suspected of committing widespread and systematic war crimes and crimes against humanity.

A Muslim African country, Chad is the 19th member of the Organization of the Islamic Conference and the 29th African nation to join the ICC. As such, Chad's ratification is a double endorsement, and demonstrates both the country and the continent's recognition of the ICC as the most viable, unbiased venue to secure justice and accountability for Africa's victims of war crimes, crimes against humanity, and genocide.

### **Timing of Chad's Ratification:**

Chad's ratification of the Rome Statute is a critical and laudable step forward for the country and a very positive development on the international stage. The ratification's timing, however, is even more crucial in light of the Darfur crisis in neighboring Sudan. The much-needed access to Darfurian refugees that Chad provides to the ICC's Office of the Prosecutor (OTP), coupled with Janjaweed atrocities committed in recent months on Chadian soil, make Chad's ratification particularly timely.

### **OTP: Access to Darfur Victims through Chad**

Sudan is not an ICC member state and has been (at the very least) complicit in the atrocities committed in Darfur at the hands of the Janjaweed. In response to this potential impunity, the U.N. Security Council invoked Article 13(b) of the Rome Statute of the ICC and Chapter VII of the U.N. Charter, and referred the crisis in Darfur to the ICC in UNSC Resolution 1593. Since then, the OTP has conducted over 40 field missions to neighboring Chad to gather evidence and interview Darfurian victims who are now refugees on Chadian soil. Chad shares its eastern border with Sudan's Darfur province, and since the crisis began in January 2003, has experienced a high influx of Darfurian refugees in its border villages. Because Sudan has adamantly denied the OTP missions any access to Darfur, these investigations along the border in Chad have been integral to the legal case that Chief Prosecutor Luis Moreno Ocampo must build against key Janjaweed rebels and the senior Sudanese government officials who are supporting them.

### **Heightened Violence on the Chad-Sudan Border**

Since late 2005 however, OTP missions to Chad became even more crucial given the almost daily attacks by Janjaweed against Darfurian refugees and ethnic black Chadians on Chadian territory. Key news agencies and human rights groups have confirmed that Janjaweed militias have repeatedly attacked countless Chadian villages on the Chad-Sudan border since December 2005 (map courtesy of the CIA World Factbook, 2006).

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## Chad's legal obligations as a "State Party" to the ICC

While Chad has consistently cooperated with the OTP's investigation and evidence gathering missions, it was not legally bound to do so prior to its ratification. Now, as an ICC member state, Chad is bound to international legal obligations, all of which can potentially empower the OTP's investigation of the Darfur case and shield Chad from further Sudanese incursions:



- Article 4: Grants the ICC the right to “exercise its functions and powers, as provided in [the Rome] Statute, on the territory of any State Party.”
- Article 86: State Parties are under a general obligation to cooperate fully with the ICC “in [the Court’s] investigation and prosecution of crimes within the jurisdiction of the Court.”
- Article 87: The Court can make specific requests for cooperation from a State Party.
- Article 93: Specific methods of cooperation include:
  - “The identification and whereabouts of persons or the location of items (Art. 93(1)(a));
  - The taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court (Art. 93(1)(b));
  - The execution of searches and seizures (Art. 93(1)(h)); and
  - The protection of victims and witnesses and the preservation of evidence (Art. 93(1)(j)).”

## Chad's Ratification: Impact and Implications

While each country's ratification of the Rome Statute and membership in the ICC is a significant and positive development for the international community and the advancement of international criminal law, the latest ratification by Chad is particularly significant for Chad itself, the ICC, and above all, the victims of Darfur.

By ratifying the Rome Statute, Chad undertakes numerous legal obligations, but as a highly diverse, land-locked state that is both politically and economically fragile, it can draw on the Court's protection as well. As a State Party, Chad can call on international support by referring atrocities committed on its territory to the ICC. This is particularly beneficial to Chad in the context of the Darfur crisis: Chad's new referral power as an ICC member state will send a stern message to Khartoum that a spillover effect from the Darfur crisis will not be tolerated.

In addition to the impact of ratification for Chad itself, the African country's ratification also benefits the ICC in two concrete ways. First, Chad's addition as an African and Muslim country sends a message to those countries considering ratification, as well as the handful of ICC opponents that this Court is not only a viable option for ending impunity in Africa, but, for the worst cases of civil strife and conflict in this region and others, it is often the only viable option. Darfur is a case in point: the Sudanese government is complicit, if not actively engineering the atrocities committed in Darfur. Therefore, Khartoum is not an honest broker between the Janjaweed militia and civilian victims, and the “Special Courts” it attempted to set up earlier this year were widely criticized and dismissed by the international

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community and the OTP. This is precisely the kind of scenario that the ICC was created to address: In Article 1, the Rome Statute expressly states that the Court's jurisdiction is secondary to national legal systems so long as the country is not "unwilling or unable genuinely" to undertake a good faith investigation of individuals suspected of committing war crimes, crimes against humanity, and genocide. However, Article 17 makes clear that "shielding the accused from justice" would satisfy the "unwilling" requirement and thereby allow the ICC to exert its jurisdiction (Art. 17(2) (a)). Therefore, when officials of countries such as Sudan are themselves the perpetrators, the ICC is able to exercise jurisdiction and provide legal recourse to the otherwise silenced victims.

A second benefit of the Chad ratification for the ICC is the increased support and cooperation that the Court will receive from Chad as a State Party. While the Rome Statute stipulates requests for cooperation by the Court to non-State Parties, there is no doubt that a bona fide member of the Court will be more consistent and diligent in its efforts to advance the mandate and progress of the Court. This will very likely be the case with Chad and the ICC in general, and the office of the OTP and its Darfur investigation in particular.

Notwithstanding the benefits and increased cooperation that both Chad and the ICC will enjoy as a result of the former's ratification, the most important benefactors of this latest development will be victims of the violence in Darfur. Whether on Sudanese soil or Chadian territory, Chad's membership in the ICC will at the very least draw attention to the unimaginable plight of Darfurians inside and outside of Darfur. Hopefully, however, Chad's ratification will go one step further and empower the OTP to tackle charges of genocide and issue arrest warrants for key Sudanese officials and rebels in the first half of 2007. Given Chad's proximity to Darfur and its search and seizure obligations under the Rome Statute, there is strong potential for the swift execution of future arrest warrants by Chadian forces.

## Next Steps

While ratification itself is a very significant step in the right direction, the Chadian government has a long road ahead if it is to ensure the maximum effect and protection of the ICC. To that end, Chad must:

- Promulgate, ratify, and implement domestic legislation that incorporates the Rome Statute into Chadian law.
- Continue to consistently and diligently cooperate with all organs of the ICC and in particular assist in any way possible the OTP's ongoing Darfur investigation.
- Collaborate with the ICC, the African Union (AU), and the African Mission in Sudan (AMIS) to tackle the atrocities committed in Darfur in a comprehensive and sustainable manner. This is predicated on the realization that the ICC is a legal institution with judicial constraints and limited resources. Therefore, any comprehensive solution to the Darfur crisis in particular, and the issue of impunity in Africa as a whole, requires a multi-faceted approach.

## Conclusion

The Darfur crisis, now entering its fourth year and claiming 500 lives every day, was referred to the Court in March 2005, and the window for swift action is quickly closing. Chad's ratification of the Rome Statute, however, might provide the additional legal and political cooperation the Court needs to push toward issuing arrest warrants and vindicating Darfur's victims on both sides of the border.

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