

Letter to State Parties to the Rome Statute of the International Criminal Court

From Sudanese Civil Society Organizations

Call on State Parties to Refer the Situation in Sudan to the ICC for Investigation and Prosecutions of Crimes

July 31, 2023

Ms. Silvia Fernández de Gurmendia
President of the Assembly of States Parties
To the International Criminal Court
Oude Waalsdorperweg 10
2597 AK The Hague, The Netherlands

Dear Madam President,

On 25 June 2023, Sudanese Civil Society Organization wrote a letter to the Prosecutor of the International Criminal Court (ICC) requesting the Office of the Prosecutor to initiate investigation into the situation in the Republic of Sudan under the prosecutor's '*proprio motu*' power. Under Article 15 of the Rome Statute the ICC prosecutor must secure the approval of the Pre-Trial Chamber before initiating criminal investigations on his own motion. However, a referral by State Parties removes the procedural condition of Pre-Trial Chamber's approval.

Answering our appeal and the appeal of many others, the ICC Prosecutor announced on 13 July 2023 the opening of investigation on the current situation in Darfur, under the same mandate of Security Council referral in 2005 pursuant to Resolution 1593.

What we are asking today is a mandate to open investigations covering the whole of Sudan , all of the states of Sudan.

In our appeal today we ask your good office to initiate the effort for State Parties referral of the situation in Sudan. On 2 March 2022, 43 State Parties to the Rome Statute jointly referred the situation in Ukraine to the ICC Prosecutor. Neither Ukraine nor Russia are State Parties to the Rome Statute. Even though Ukraine accepted the jurisdiction of the ICC for atrocities committed in its territory since 2014, Ukraine is not listed as a States Party to the Rome Statute. The collective referral of State Parties offered a hope for Ukrainian victims to get justice. Similarly, in 2018 six ICC States Parties referred the situation in Venezuela.

On 19 December 2018 the Sudanese people took to the streets demanding the end of the Dictatorial Regime of the Government of Omer Hassan Al-Bahsir, the regime that lasted for 30 years with brutal totalitarian rule of the country. The Military staged a coup d'état overtaking the country under a newly established Transitional Military Council along with the Rapid Support Forces (RSF), a militia paramilitary forces known previously as Janjaweed. During this time the Military and the RSF committed widespread and systematic attacks on the civilian population throughout the country, including murder, torture, rape, and forced-disappearance.

Particularly, on June 3rd, 2019, the RSF and the Military planned and perpetrated the **June 3rd Massacre**. It was a widespread, systemic, and planned killing of protesters and the civilian population. Atrocities that were well documented and admitted by the Military Council itself on National Television. Over two-thousand people were killed, several others went missing up-to-date.

On 15 April 2023 war broke between RSF and the Sudan Armed Forces (SAF), Thus far the war claimed over 3000 lives, more than 3.5 million displaced and refugees. During this current war the RSF/Janjaweed militia have committed heinous crimes, including terrorizing civilian population, displacing them out of their homes, kidnapping and killing civilians, taking over hospitals and schools, raping women and girls.

The U.N. refugee agency, UNHCR, reported that as of 4 July 2023, a total of 192,473 refugees have been counted among the reported arrival to Eastern Chad, More than 250,000 Sudanese have crossed into Egypt, an estimated number of 15,335 persons have arrived in Central African Republic, in all these countries 95 per cent of the refugees are women and children.

As we write to you today, there is a silent war going on in Blue Nile and South Kordofan States launched by the Sudan People's Liberation Movement-North (SPLM-N). Given the presence of a number of armed movements in Sudan, it is likely that these movements will slip into similar wars under various pretexts,

which may result in dire consequences for the country, the people of Sudan, and the region. We are raising the alarm that a 'Sudan Situation' warrants intervention by the Court for prosecution and deterrence of crimes.

The ICC jurisdictional trigger mechanisms include; State Party referral, UN Security Council referral, the ICC Prosecutor's 'proprio motu' investigation, and in addition, collective State Parties referral which proven effective in Ukraine and in Venezuela .

Moreover, in Sudan, atrocity crimes are committed by nationals of State Parties who fighting along with the RSF, particularly nationals from Chad, Niger, Mali, and the Central African Republic (all of which are members of the Court).

Therefore, the involvement of nationals of State Parties gives the legal justification for referring the situation in Sudan to the International Criminal Court for investigation and prosecution.

Madam President,

allow us to provide you with some case law; in 2019, the ICC Pre-Trial Chamber III authorized an investigation on crimes against humanity committed against Rohingya population by the government of Myanmar. Even though Myanmar is not a State Party, the Chamber reasoned that the Court may exercise jurisdiction over crimes when part of the criminal conduct takes place on the territory of a State Party. In other words, the influx of Rohingya refugees into Bangladeshi territory allowed the court to exercise jurisdiction because Bangladesh is a member of the court. The situation in Ukraine added another legal precedent.

In both cases, Ukraine/Russia case and Bangladesh/Myanmar case the court found jurisdiction to investigate and prosecute atrocity crimes. Sudan is no difference, influx of Sudanese victims into State Parties to the Rome Statute; Chad and Central African Republic makes the situation in Sudan eligible for ICC jurisdiction. Furthermore, State Parties collective referral created a precedent that can be applied to the 'Situation in Sudan', and offers opportunity for victims of mass atrocity to access justice and attain redress.

Given all the above we believe the Sudanese victims deserve access to justice at the ICC as a necessary and deserved measure.

The ICC is the only international institution mandated to hold accountable perpetrators of the most serious crimes that shock the conscience of humanity and delivers justice to those who denied access to it. Achieving justice for those who have been denied access is an issue that cannot be delayed or waived.

Madam President,

Sudan has been at war with itself for the last 34 years, ignoring the past atrocities and spread of impunity led to the brutality against Sudanese civilians that we are witnessing today. Let history not repeat itself. Action is needed.

Madam President,

Finally, we thank you for your role in the Office of the Presidency of the Assembly of State Parties to the ICC and your constructive engagement with State Parties and collaboration with Civil Society Organizations for the interests of justice. Especially when the ICC is the only remaining option for ending impunity and delivering justice to those who need it the most, victims of atrocity crimes in Sudan.

We call upon you to engage State Parties to refer the situation in Sudan to the ICC Prosecutor for investigation and prosecution. We believe that the referral of the situation in Sudan will send a clear message to the Janjaweed militia/RSF violators and Sudan Armed Forces that no one is and should be above the law.

We remain concerned and stand ready to help ending impunity in Sudan.

We wish you the best in all that you do for the interest of justice.

Sincerely,

Sudanese Civil Society Organizations

Khartoum, Sudan

Copies to:

- The Office of Prosecutor**
- The Pre-Trial Chamber**

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