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Sudan: Security Council must oppose efforts to ensure impunity for Darfur

Amnesty International today called on the United Nations Security Council to reject initiatives to defer the investigation and prosecution of crimes in Darfur by the International Criminal Court for 12 months, which could then be renewed, possibly indefinitely each year.

In response to announcement by the International Criminal Court's Prosecutor two weeks ago that he intended to seek an arrest warrant for Sudanese President Omar al Bashir, the Organization of Islamic Conference, the League of Arab States and the African Union have all made political calls for the Security Council to make a deferral under Article 16 of the Rome Statute of the International Criminal Court (Rome Statute). The requests for a deferral could focus on the specific case against President al Bashir or extend to all cases and investigations conducted by the International Criminal Court in Darfur.

Amnesty International opposed the inclusion of Article 16 in the Rome Statute on the basis that it allowed for political interference by the Security Council in the important work of the Court to ensure justice, truth and reparations for the worst possible human rights violations – genocide, crimes against humanity and war crimes. Accordingly, it calls on the Security Council in all cases not to obstruct justice by exercising the deferral power in any situation.

Other options exist for the government of Sudan to challenge the admissibility or jurisdiction of the International Criminal Court, without providing for impunity. Under Article 19 of the Rome Statute, the defendants or the government may seek to challenge the Court's jurisdiction on the basis that those charged will be prosecuted before national courts. Indeed, reports from the League of Arab States indicate that the Sudanese government agreed to their proposal to establish national courts under regional supervision, to address crimes that were committed in Darfur. However, because there are serious flaws in the existing national justice system and other special courts established nationally – including non-independence of the judiciary, immunity for high level and government-affiliated perpetrators, failure to investigate and prosecute serious human rights violations, lack of fair trials and poor treatment of victims - it is unlikely that such an application would succeed.

Disturbingly, despite the fact that the Pre-Trial Chamber has yet to consider the Prosecutor's application for an arrest warrant for President al Bashir, proposals to apply Article 16 have already been brought before the Security Council in the context of the renewal of mandate of the African Union- United Nations Hybrid operation in Darfur (UNAMID), which expires on 31 July.

Such a deferral would have potentially disastrous effects on the Court and would risk becoming a precedent in every situation being investigated by its Prosecutor. It would also leave the Security Council open to permanent blackmail by the government of Sudan that might threaten a broad range of retaliatory measures, including the resumption of hostilities, if the Security Council were to end the deferral and the Court were to resume consideration of the request for an arrest warrant.

Shamefully, almost half the members of the Council – including states parties to the Rome Statute - which purport to support resolving the crisis in Darfur have threatened to oppose the renewal of UNAMID unless a deferral is included in the resolutions granting impunity for at least 12 months, but possibly much longer if the deferral is renewed.

These efforts in the Security Council undermine international efforts to deploy UNAMID at full strength, which is vital to ensure the protection of civilians.

In the last year, Amnesty International has repeatedly expressed concern about the failure of the international community to ensure that UNAMID receive the full complement of peacekeepers and all the resources necessary to ensure the protection of civilians. The Security Council must also take steps to ensure Sudan's full cooperation in setting up the mission and its operation.

Amnesty International believes that justice is essential to ensuring meaningful and lasting peace and implementing the rights of victims in situations where serious human rights violations have been committed. The Security Council discussion undermines efforts to ensure justice, truth and reparations for the horrific crimes which have been committed and continue to be committed today.

The organization urges the Security Council to commit to working for an end to the serious human rights violations in Darfur, in particular through the effective operation of UNAMID and to ensuring justice through supporting the work of the International Criminal Court and demanding Sudan's full cooperation.

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