



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/Sub.2/2004/NGO/24
13 July 2004

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion
and Protection of Human Rights
Fifty-sixth session
Item 2, 3 and 5 (b), (c) of the provisional agenda

**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND
SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO
COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES:
REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS
RESOLUTION 8 (XXIII)**

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

**PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS
PEOPLES**

PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

**Written statement* submitted by the Association for World Education, a non-
governmental organization on Roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[9th July 2004]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Darfur, Sudan : Non-impunity and Prosecutions for Genocide

I. Below is our 13 May 2004 'Urgent Appeal' to UN Secretary-General Kofi Annan:

URGENT APPEAL to United Nations Secretary-General Kofi Annan to seize immediately the United Nations Security Council regarding a Grave Threat:
Ongoing Genocide and Flow of Sudanese Refugees from Darfur to Chad

Mr Secretary-General,

In a statement on 13 April to the UN Commission on Human Rights, the Association for World Education welcomed your historic address of 7 April [2004] to the UNCHR when you presented new ways of dealing with serious accusations of genocide. We echoed your concern with the fast deteriorating situation in the Darfur area of the Sudan, quoting your words of sincere contrition for past negligence of crimes against humanity: "We must never forget our collective failure to protect at least 800,000 defenceless men, women and children who perished in Rwanda ten years ago...we must all acknowledge our responsibility for not having done more to prevent or stop the genocide." You also proposed a radical preventive remedy.

Our appeal stressed the systematic nature of the violence against the Fur, Massaleit, Zayhawa and related peoples, which merited close examination under the 1948 Prevention of Genocide Convention. Now there is the revealing "Report of a UN Inter-Agency fact-finding and humanitarian needs assessment mission, Kaileh, South Darfur, 24 April 2004," which outlined the humanitarian catastrophe in the area, the high child mortality, acute malnutrition, water shortages as well as the dangers to peoples' lives due to the fighting.

The human rights situation has been analysed in the Report of the High Commissioner for Human Rights, released on 7 May, on the Situation of Human Rights in the Darfur region of the Sudan (E/CN.4/2005/3). From other sources of information, we are in agreement with this analysis: "It is clear to the mission that a resolution to the crisis in Darfur will be unlikely as long as the basic demands of its people for justice, equality, and development are not met. The Government of the Sudan has a legal responsibility to uphold the rule of law in Darfur and to protect all its citizens in that part of the country."

In presenting the Mission's report Acting High Commissioner for Human Rights Dr Bertrand Ramcharan stressed the situation in its harshest light: "First, there is a reign of terror in this area; second, there is a scorched-earth policy; third, there is repeated war crimes and crimes against humanity; and fourth, this is taking place before our very eyes." (Associated Press, 8 May).

In light of the many factors involved and the size of the area we support the recommendation of the Mission: "An international commission of inquiry is required, given the gravity of the allegations of human rights in Darfur and the failure of the national legal system to address the problem. To be credible, such a commission must be, and must be seen to be, independent. The Government of the Sudan should co-operate with this Commission."

Under VI. Recommendation 101, it is also stated:

The Government of the Sudan should put in place measures to ensure that human rights abuses, war crimes and crimes against humanity are not repeated in the future and that the rule of law is restored in Darfur in conformity with internationally agreed standards.

In this context, we wish to cite:

Article II of the 1948 Convention and Punishment of the Crime of Genocide:

“In the present Convention, Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.

Manifestly, the seriousness of the situation within the Sudan has so far overshadowed the regional, inter-State dimension. Our appeal to you, therefore, also concerns the regional threat to peace, and the responsibility of the Security Council to deal actively with this dire threat arising from the refugee flow, especially to Chad.

You will recall how the flow of refugees from the conflict in Liberia had grave consequences in Sierra Leone, an important factor in plunging that country into civil war. The Mission report underlines the danger of this regional instability. “It is clear to the mission that the influx of so many refugees into Chad constituted a source of concern for peace and stability in the region. The composition of the Chadian population in the border region with the Sudan, coupled with the tribal mix of refugees crossing the border into Chad, constitutes a potentially destabilising factor, as does the practice of the Janjaweed (militias) of pursuing Sudanese refugees into Chad.”

You know the history of the instability of Chad – its civil wars, coups, internal displacement of populations. Thus, the danger of renewed instability in Chad needs to be taken very seriously and closely analyzed.

Therefore, we urgently appeal to you to bring this highly dangerous regional impact of the genocidal violence in Darfur to the immediate attention of the Security Council. Now is the time, to quote your own words on 7 April at the Palais des Nations, to do “more to prevent or stop the genocide” – spreading to Chad.

Yours respectively,

René Wadlow
Main Representative

David G. Littman
Representative

(Association for World Education to the United Nations Office, Geneva)

II.

1. There are four aspects of the Darfur, Sudan situation which demand prompt and concerted Action: by the United Nations system, the African Union, the Organization of the Islamic Conference (OIC), the Arab League, and the Non-Governmental Organization community:

- a) disarmament and disbanding of the Janjaweed militias who are prime agents of the genocidal violence;
- b) unhindered relief, the return of refugees and internally displaced persons to their homes;
- c) a start of ecologically-sound development for the area based on the complementary relations between agriculturalists and pastoralists;
- d) an end to impunity and a structuring of prosecution for crimes against humanity and genocide.

2. As the Sub-Commission for the Protection and Promotion of Human Rights is primarily a body dealing with the law of human rights, it is the fourth aspect — an end to impunity and a structuring of prosecution for crimes against humanity and genocide — which is the main focus of this written statement.

3. The Darfur area of Sudan – the size of France – on the frontier with Chad, is the scene of an ongoing, systematic policy of genocide, in particular against the Fur, Messalite, Zaghawa, and Birgit ethnic/tribal societies. These societies are targeted by an armed militia, the Janjaweed, with the consent and military aid of the Government of Sudan.

4. Numerous UN staff, including the Secretary-General, have called attention to the situation, among those are: Jan Egeland, Undersecretary for Humanitarian Affairs; Carol Bellamy, Director of UNICEF; Asma Jahangir, the Commission on Human Rights Special Rapporteur on extra-judicial, summary, or arbitrary executions; Tom Vraalsan, UN special envoy for humanitarian affairs in Sudan; and Mukesh Kapila, former Resident Coordinator in Sudan. A dossier of all official UN statements and reports on Darfur should be prepared for consultation by the Sub-Commission.

5. National government representatives, non-governmental human rights and relief organizations and scholars have also analysed the situation and have called for speedy action. Among those are the following:

a) In a statement to the US Senate Committee on Foreign Relations Subcommittee on Africa on 15 June 2004, US Assistant Secretary of State for African Affairs Charles Snyder said “As a major part of its (counterinsurgency war) effort, the government armed and supported Arab-based ‘jingaweit’ militias have attacked and displaced civilians. These attacks are co-ordinated and supported by government security forces. African villages have been systematically attacked in a scorched-earth type approach. Villages are burned to the ground, water points destroyed, crops burned, and the people are forced from their land. The African population has been brutalized by the jingaweit through widespread atrocities including mass rape, branding of raped women, summary killings, amputations, and other atrocities. Estimates of civilians killed range between 15-30,000. As many as one million people have been displaced, and tens of thousands have sought refuge across the border in Chad. All of this amounts to ‘ethnic cleansing’ on a large scale.”

b) The International Crisis Group in its 23 May 2004 report “Sudan: Now or Never in Darfur” wrote “A month after the international community solemnly marked the tenth anniversary of the

Rwandan genocide in April 2004 with promises of ‘never again’, it faces a man-made humanitarian catastrophe in western Sudan (Darfur) that can easily become nearly as deadly. It is too late to prevent substantial ethnic cleansing, but if the UN Security Council acts decisively – including by preparing to authorise the use of force as a last resort – there is just enough time to save hundreds of thousands of lives directly threatened by Sudanese troops and militias and by looming famine.¹

c) The NGO Africa Action stated that “the term ‘genocide’ not only captures the fundamental characteristics of the Khartoum government’s intent and actions in western Sudan, it also invokes clear international obligations. Africa Action notes that all permanent members of the United Nations Security Council – including the US – are parties to the 1948 Convention on Genocide, and are bound to prevent and punish this crime under international law.”²

d) Human Rights Watch has presented a full-length report on Darfur, “Darfur Destroyed; Ethnic Cleansing by Government and Militia Forces in Western Sudan” (May 2004)³

e) Justice Richard Goldstone, former Chief Prosecutor for the International Tribunals for former Yugoslavia and Rwanda, after reviewing the findings of a 23 June 2004 assessment report from Physicians for Human Rights wrote “After all that we know and have learned from the last decade’s genocides and mass atrocities, it is unconscionable for the world to witness these crimes and fail to take steps to protect and save the lives of tens of thousands of innocent men, women, and children. We owe it to the victims of Darfur and potential victims to do everything we can to prevent and account for what the PHR report establishes is genocide and reverse the intolerable acts of forcing entire populations from their land, destroying their livelihood and making it virtually impossible to return.”⁴

f) Professor Eric Reeves of Smith College in Massachusetts, USA , writes “We know full well that genocide is underway. We know at the very least that ethnic cleansing — a ‘euphemistic halfway house’ for genocide, in the words of Samantha Power — in Darfur entails the deliberate destruction of the African tribal peoples because of who they are, ‘as such’. The means of destruction are the continuing, targeted obstruction of humanitarian aid; the continuing military deployment of the savage Janjaweed militias to destroy all African agricultural production; the ongoing use of concentration camps, most with no humanitarian access, in which people are exterminated through the denial of food, water, and all sanitary facilities; and the deliberate mass executions of African peoples, especially men and boys.”

6. The inflow of refugees to Chad can have a destabilizing impact upon the Chadian government and society; thus the Darfur situation can be rightly considered a threat to regional peace and security.

7. The AWE has for some years stressed that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide is a landmark in efforts to develop a system of universally-accepted standards which promote an equitable world order for all to live in dignity.⁵

8. As no Contracting Party to date has called for any action under article VIII of the Convention, the AWE has underlined the need for a clear mechanism within the UN System for investigating accusations of genocide building upon earlier studies of the Sub-Commission by Mr Nicodime Ruhashyankiko (E/CN.4/Sub.2/1978/416) and the updated report by Mr Benjamin Whitaker (E/CN.4/SUB.2/1985/6 and Corr. 1). One possibility for speedy action is the urgent procedures mechanisms of the Committee for the Elimination of Racial Discrimination.⁶

9. Thus AWE welcomed in an oral presentation to the Commission on Human Rights the UN Secretary-General's decision to create a new post of Special Advisor on the Prevention of Genocide to work closely with the High Commissioner on Human Rights to collect information on potential or existing situations or threats of genocide and their links to international peace and security, to act as an early-warning mechanism to the Security Council and other parts of the UN system and to make recommendations to the Security Council on actions to be taken to prevent or halt genocide.

10. In his 7 April 2004 address marking the tenth anniversary of the 1994 Rwanda genocide, Secretary-General Kofi Annan stressed the need to end impunity, to build upon the decisions of the International Criminal Tribunal for Former Yugoslavia and Rwanda and for wide ratification of the "Rome Statute, so that the new International Criminal Court can deal effectively with crimes against humanity, whenever national courts are unable or unwilling to do so."

11. On 25 June 2004, the Secretary-General repeated at a news conference at UN headquarters in New York before leaving for Sudan: "The people of Darfur are suffering a catastrophe," in a campaign which "is bordering on ethnic cleansing...The perpetrators ought to be put on notice that they will be held accountable, and not just the field commanders, but some of those who are giving the orders." A recent editorial in The New York Times referred to "genocide" in Darfur.⁷

12. On 6 July, in Addis Ababa, Ethiopia – at the meeting of the 53 Member States of the African Union – the Secretary-General told three dozen national leaders, including Sudanese President Omar el-Bashir, that the humanitarian crisis in Sudan could destabilize Africa unless other nations act now: "The ruined villages, the camps overflowing with sick and hungry women and children, and the fear in the eyes of the people should be a clear warning to all of us."⁸ We now await action – as he said in his 7 April address to the UNCHR – to do "more to prevent or stop the genocide!"

13. Thus, the Sub-Commission, building upon earlier studies on non-impunity, has the task of preparing the legal groundwork so that those who ordered and those who are carrying out genocide in Darfur may be brought to trial and punished.

14. Surely, the time has come to invoke the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, and for States – under its article VIII – "to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide or any of the other acts enumerated in article III." Darfur is a blatant case of genocide that can no longer be obfuscated and should be called by its exact name.

Notes

1. International Crisis Group: www.crisisweb.org/home/index
2. Africa Action Press Release, Washington D.C., 15 June 2004
3. Human Rights Watch: <http://hrw.org/reports/2004/sudan/0504>
4. "Physicians for Human Rights Calls for Intervention to Save Lives in Sudan: Field Team Compiles Indicators of Genocide," 3 June 2004 www.phrusa/research/sudan/
5. For an extensive analysis of the 1948 Genocide Convention see William A. Schabas "Genocide in International Law" (Cambridge University Press, 2000, 624pp.)

6. See E/CN.4/1999/NGO/4

7. Warren Hoge “UN and U.S. put pressure on Sudan to end killings,” in International Herald Tribune, 26-27 June 2004; and “More pressure on Sudan,” IHT, 3-4 July 2004.

8. “Alarm rises over Sudan. Crisis could destabilize Africa, Annan warns,” (news reports), IHT, 7 July 2004