

Curbing women activists in Darfur in the wake of the international criminal court



In 2009, the international criminal court (ICC) warranted the arrest of Sudan's sitting President indicting him for systematic and widespread sexual violence in Darfur. In the wake of the ICC, the Sudanese regime has curbed civil society through surveillance and the constant threat of being shut down. NGOs working within the area of sexual violence have been hit particularly hard. Accused of being collaborators with the ICC, women activists are branded enemies of the state.

Liv Tønnessen

Senior researcher at Chr. Michelsen Institutt (CMI)¹

CMI CHR. MICHELSEN INSTITUTE

The International Criminal Court: Systematic and Widespread Sexual Violence in Darfur

The United Nations Security Council referred the armed conflict in Darfur to the international criminal court in 2005 after the passage of resolution 1593, leading to the indictment of Sudan's sitting president Omar al-Bashir.² In 2003, the governments started to arm and provide military leadership to local Arab militias, which came to be known as *Janjaweed* or "devils on horseback". The attacks were directed at the region's African ethnic groups: the Fur, Tunjur, Masalit, and Zaghawa. The great majority of massacres were committed between July 2003 and April 2004. The period of intense conflict lasted

until January 2005. According to the UN, the armed conflict in Darfur has claimed about 300,000 lives and displaced over 2,500,000 people although both numbers and causes of death remain disputed.

An arrest warrant for Bashir was issued by the ICC on 4 March 2009 indicting him on five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (pillaging and intentionally directing attacks against civilians). A second arrest warrant was issued in July 2010 that also includes three counts of genocide.³ This was the first time the ICC indicted a head of state. According to the indictment, Bashir bears individual criminal responsibility for systematic and widespread sexual violence in Darfur.

Since the outset of the armed conflict in 2003, international humanitarian NGOs published reports documenting widespread and systematic violations of international human rights law and international humanitarian law in Darfur. The use of sexual violence and rape as a ‘weapon of war’ received particular attention.⁴ Among others, Médecins Sans Frontières (MSF)⁵ published *The Crushing Burden of Rape*, a report on sexual violence in Darfur.⁶ MSF reported treating nearly 500 rape victims from October 2004 to early February 2005. Already in 2005, the UN published a report on sexual violence in Darfur concluding that the Government of the Sudan and the *Janjaweed* were responsible for widespread and systematic sexual violence.⁷

The majority of the victims were women and girls who live in camps for internally displaced people. Much of the war rapes took place when victims went to collect firewood or grass or were travelling on the roads between major towns in Darfur. Gang rapes were common. The victims were usually humiliated with derogative epithets such as ‘slaves’ (*abid*) and ‘blacks’ (*zurja*) or other insults related to race, tribe and ethnicity. This speaks to the ethnic dimension of the conflict, claims the ICC. Women and girls from the Fur, Tunjur, Masalit, and Zaghaw were specifically targeted. In the summary of the ICC prosecutor’s application for warrant of arrest of al-Bashir, it is stated that the language used by perpetrators of rape made clear the genocidal intent underlying their actions; “After they abused us, they told us now we would have Arab babies”, a rape victim explains.⁸ Children born as a result of rape have been termed ‘Janjaweed babies’. Aspects of the underlying strategic rationale for war rapes in Darfur is ethnic cleansing through ‘pollution’ of the blood line.

According to the ICC “rape is an integral part of the pattern of destruction that the Government of the Sudan is inflicting upon the target groups in Darfur”. And Sudan’s sitting president is the alleged mastermind behind what is described by a Darfuri politician and journalist interviewed for this study as a “policy of raping (...) designed by the government to destroy Darfuri women and children of certain ethnic tribes; to make them feel like nothing.”⁹

Government denial

The ICC charged Omar al-Bashir i for crimes in the region dating back to 2003. Al-Bashir refuses to recognize the authority of the court in The Hague. While indicted, al-Bashir has avoided arrest by traveling only to countries that will not extradite him to the ICC. The president insists that all the allegations are political fabrications. The official stance of the regime is that widespread and systematic sexual violence has not taken place. Al-Bashir has personally denied it insisting, “It is not in the Sudanese culture or people of Darfur to rape. It doesn’t exist. We don’t have it”.¹⁰

Restricting civil society: Why work on rape is met with hostility

The ICC indictment holding president al- Bashir individually responsible for widespread and systematic sexual violence is regarded as particularly embarrassing for an Islamist government that have projected an image of a state based on principles of high moral and religious standards. As a way of differentiating an Islamic state from secular western states, gender and moral politics have assumed a central place in what the Islamists have termed the civilization project (*al-Mashru al-Hadari*). An important part of that project was criminalizing extramarital sexual relations (*zina*) and imposing strict Islamic codes for women’s behavior and dress. The pious and modest Muslim woman became the very symbol of the new Islamic nation. The pious and modest Muslim woman marks a contrast to what is seen as the promiscuous Western women living in societies with no morality and where sexual chaos (*fitna*) prevails. In an Islamic state guided by true religious morals, sexual violence is therefore unheard of. If such crimes do occur, the blame is put on Muslim men who have betrayed their religion. Instead of admitting government responsibility for the atrocities in Darfur, the leaders of the Violence against Women Unit place the blame for sexual violence on Muslim men who have shunned religious principles. For the president to admit to masterminding a policy of sexual violence against Muslim women in Darfur, is equivalent to acknowledging that the core principle of the Islamic state in Sudan is false. A Sudanese woman activist says it in the following way:

“The issue of violence against women has been politicized because this government believes that the Islamist project has created a good Muslim society. Obviously, it has not. There is rape and other types of violence against women and this shows the failure of their project. By acknowledging these problems, they are simultaneously defeating their own Islamist project”.¹¹

In the wake of the ICC process, sexual violence in Darfur (and in general) has been politicized against the backdrop of an Islamic state.

Humanitarian Aid Commission: Expulsions of INGOs working on sexual violence

Already a year after the ICC started its investigation in Darfur in 2005, the regime took the opportunity to curb work on sexual violence.

The Voluntary and Humanitarian Work Act (VHWA) from February 2006 imposed severe restrictions on NGOs, both international and national, and gave the government excessive discretionary and regulatory powers over their work.¹²

The law required new registration of all NGOs under the humanitarian aid commission (HAC), including already registered NGOs. However, the mandatory registration is not made easy and is not just a bureaucratic formality. HAC has the authority to expel or stop activities of any organization, national and international. Appointed by the President, most commissioners of HAC have had a security background, rather than civil society background signaling the intent with the establishment of HAC as a control and surveillance institution to curb what is perceived as any international or national threat to the current regime.

After the ICC arrest warrant against president al-Bashir in 2009, the Sudanese government expelled 13¹³ of the main international humanitarian NGOs operating in Darfur.¹⁴ The HAC accused the international humanitarian NGOs of partiality and intervention in the domestic affairs of the state and thus violating article 5 of the VHWA which states that humanitarian work should be governed by “non-interference of foreign voluntary organizations in the internal affairs of Sudan in any such way, as it may affect the sovereignty of the country”.¹⁵ Reports from humanitarian NGOs brought the Security Council’s attention to widespread and systematic violations in Darfur. Relying on much of the evidence brought forward by these NGOs, the ICC started its investigation and prepared its indictment. When the arrest order was announced, the Sudanese government immediately accused the international humanitarian NGOs for disrespecting the principle of non-interference and neutrality in the humanitarian mandate.¹⁶ In the words of Sudan’s vice-President s

“Whenever an organization takes humanitarian aid as a cover to achieve a political agenda that affects the security of the county and its stability, measures are to be taken by law to protect the country and its interests.”¹⁷

Figuring high on the protection agenda of many of the expelled organizations, among them MSF, was sexual violence. They were providing (among other things) medical treatment to rape victims including rape kits, psychosocial support, legal aid, and support to women’s centers. It became clear that work on sexual violence was unwelcomed by the Bashir regime. “After the expulsions in 2009, the message was clear: work on gender based violence, and you’ll be kicked out.”¹⁸

The threat of expulsion seems to have been a successful strategy vis-à-vis those international NGOs that have been allowed to continue humanitarian work in Darfur. To a large extent, these NGOs have removed protection of civilians from their program strategies and are now focusing, at least officially, on basic non-violent relief.

”Protection is now rarely if ever referred to in the program strategies and has been stripped from any UN and NGO information materials or websites, presumably because of the need to sanitize assistance programs and remove all associations with human rights advocacy of the type that might be associated with information of relevance to the ICC.”¹⁹

The government has thus successfully curtailed efforts to monitor and report on cases of sexual violence. In the wake of the ICC arrest warrant and the subsequent expulsions, human rights reports and documentation of sexual violence in the armed conflict in Darfur has basically stopped. The last report *Nowhere to Turn: Failure to Protect, Support and Assure Justice for Darfuri Women* was published six years ago.²⁰ According to a protection officer from UNICEF;

“(…)data (on sexual violence) has become very difficult to obtain. International NGOs and national NGOs cannot officially join forces in these reporting mechanisms any longer (...) because they are scared of the government (...)”.²¹

Women activists: Enemies of the state

The VHWA law has greatly affected the work of local and national women’s NGOs both *indirectly* through the expulsions of the international NGOs and *directly* by HAC’s surveillance and constant threat of being shut down.

The expulsions of the international humanitarian NGOs have affected the work of local and national women’s groups. By removing protection and sexual violence from the project portfolios of international humanitarian NGOs, local women groups have lost vital funding for their work on rape. Many of the Darfuri women activists have been forced to re-direct their activities away from sexual violence.²² In the words of a woman activist: “(...) there is an absence of organizations working on violence against women in Darfur now.”²³

Local and national women’s NGOs operate under the constant surveillance and threat of being shut down by HAC. The VHWA law gives HAC the authority to shut down NGOs if they “insult people of the state, beliefs, culture, or dignity” and if they “give false information or violate the law”. Accused of defamation and publication of false news, three Sudanese NGOs were shut down at the same time as the international humanitarian NGOs were expelled from Sudan. These were the Amal Centre for Rehabilitation of Victims of Violence; the Khartoum Centre for Human Rights Development and Environment; the Sudan Social Development Organization (SUDO). According to a woman activist from one of the Sudanese NGOs that were shut down “ (...) Our organization was accused of spying on the government for the ICC”. As such, these NGOs were

regarded as a threat to national security and thus an enemy of the state.

All three NGOs have been active in work on sexual violence in terms of psycho-social support to rape victims, legal aid and advocacy. The records on rape cases collected by these NGOs were subsequently ceased by HAC. Women and human right activists working on rape in these three NGOs, but also other NGOs, were branded collaborators of the ICC. In the words of an activist from Darfur:

“The arrest warrant of Bashir has affected our work in Darfur. The word protection of civilians became very sensitive. If we use that term then the government thinks that we are collecting rape cases and reporting them to the ICC”.²⁴

Although the political environment in Darfur is particularly difficult, women activists in Khartoum were also curbed.²⁵ “ (...) Gender based violence as a concept is stigmatizing and people involved in it are labeled as anti-government”, says a woman activist.²⁶ In 2014, Salmmah Women’s Resource Centre was shut down after its leader, Fahima Hashim, appeared as a speaker at the Global Summit to End Sexual Violence in Conflict in London. The center has had a special focus on violence against women. In 2007, Salmmah initiated work to advocate for reform of Sudan’s rape laws. In 2009, the resulting “Alliance of 149” announced the launch of a campaign to reform Sudan’s rape laws as part of a UN initiative for 16 days of activism against gender based violence. The next year, in 2010, the 16 days of activism initiative focused specifically on the intersection between militarism and violence against women with reference to UN resolution 1325.

You have to be brave to continue

While al-Bashir remains unaffected by the arrest order from the ICC, Sudanese women activists have been greatly affected by the authoritarian path taken by the president. Not only did he ‘win’ the last presidential election with intensified anti-Western rhetoric, he has taken the opportunity to curb any political opposition to his reign. Women’s activists are branded ‘anti-government’. Women activists active within the field of sexual violence have been affected *indirectly* through the expulsions of the international NGOs and *directly* by HAC’s surveillance and constant threat of being shut down. This is the (unintended) consequence of indicting a sitting President.

Despite an increasingly restraining political climate, women activists are still raising their voices at great personal risks. “You have to be brave in order to continue”.²⁷ They are brave. This time they are not working through the gateway of international humanitarian NGOs, but in their own right.

Endnotes

¹ The research behind this policy brief has been funded by the Norwegian Research Council project “Protection of Civilians: From Principle to Practice”. Some of the field visits have been funded by the project “Assisting Regional Universities in Sudan and South Sudan (ARUSS)” funded by the Norwegian Embassy in Khartoum. It builds on fieldwork carried out in Khartoum in 2011, 2012 and 2013. I have conducted interviews with international as well as national NGOs, UN agencies, women activists; both local and national, government representatives and political parties. All interviewees have been anonymized for their own protection against the backdrop of a highly difficult and violent political climate.

² The International Criminal Court only has jurisdiction to investigate alleged crimes which have taken place in states or by the nationals of states that are party to the Rome Statute or that have accepted the Court’s jurisdiction. Sudan is not a party to the Rome Statute and does not accept the court’s jurisdiction. But a case can, as the example of Darfur shows, be referred to the ICC’s Chief Prosecutor by the UN Security Council.

³ The Prosecutor v. Omar Hassan Ahmad Al Bashir, International Criminal Court, [online], Available at: www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/related%20cases/icc02050109/Pages/icc02050109.aspx

⁴ Among these reports are Five Years On: No Justice for Sexual Violence in Darfur, Human Rights Watch (2008) [online], Available at: www.hrw.org/reports/2008/04/06/five-years; Sudan, Darfur: Rape as a Weapon of War, Amnesty International (2004) [online], Available at: www.amnestyusa.org/node/55614; The Use of Rape as a Weapon of War in Darfur, Sudan, Physicians for Human Rights (2004) [online], Available at: s3.amazonaws.com/PHR_Reports/darfur-rape-as-a-weapon-2004.pdf; Sexual violence and its consequences among displaced persons in Darfur and Chad, Human Rights Watch (2004) [online], Available at: reliefweb.int/report/sudan/sexual-violence-and-its-consequences-among-displaced-persons-darfur-and-chad

⁵ MSF is placed within the humanitarian tradition to ‘bear witness and speak out about the casuses of human suffering’.

⁶ The Crushing Burden of Rape: Sexual Violence in Darfur, Médecins Sans Frontières (2005) [online], Available at: www.doctorswithoutborders.org/publications/reports/2005/sudan03.pdf

⁷ UN office of the High Commissioner for Human Rights, “Access to Justice for Victims of Sexual Violence”, Report of the United Nations High Commissioner for Human Rights”, [online], Available at: www.unhcr.org/refworld/publisher,OHCHR,,,46cc4a650,0.html

⁸ Prosecutor’s Application for Warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR www.icc-cpi.int/NR/rdonlyres/64FA6B33-05C3-4E9C-A672-3FA2B58CB2C9/277758/ICCOTPSummary20081704ENG.pdf

⁹ Interview with Darfuri politician and journalist March 5, 2013

¹⁰ Prosecutor’s Application for Warrant of Arrest under Article 58 Against Omar Hassan Ahmad AL BASHIR www.icc-cpi.int/NR/rdonlyres/64FA6B33-05C3-4E9C-A672-3FA2B58CB2C9/277758/ICCOTPSummary20081704ENG.pdf

¹¹ The interview with a woman activists, May 19, 2011

¹² The Voluntary and Humanitarian Work Act 2006, [online], Available at: www.ifrc.org/docs/idrl/858EN.pdf

¹³ The following international humanitarian NGOs were expelled: Action Contre la Faim (ACF), CARE International, Cooperative Housing Foundation (CHF), International Rescue Committee (IRC), Médecins Sans Frontières

Holland (MSF-H) and Médecins Sans Frontières France (MSF-F), Mercy Corps, the Norwegian Refugee Council (NRC), Oxfam GB, the Planning and Development Collaborative International (PADCO) (PADCO technically describes itself as a development firm and not an NGO), Save the Children UK and Save the Children US and Solidarités.

¹⁴ In March 2012, 7 international NGOs were expelled from eastern Sudan

¹⁵ Sudan Tribune (2013) "Civil society organisations closed in renewed clamp down on freedom of association in Sudan" [online], Available at: www.sudantribune.com/spip.php?article45127

¹⁶ Interview with a high ranking government official, March 6, 2013.

¹⁷ Sudan Tribune (2009) "Sudan expels 10 aid NGOs and dissolves 2 local groups" [online], Available at: www.sudantribune.com/spip.php?article30382

¹⁸ Sudan Tribune, "Why aid for Darfur's rape survivors has all but disappeared", [online], Available at: www.sudantribune.com/Whyaid-for-Darfur-s-rape,32836

¹⁹ Feinstein International, 2011, Navigating Without a Compass: The Erosion of Humanitarianism in Darfur. [online], Available at: www.google.no/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCIQFjAAahUKEwjVrcj3pZnIAhWI7nIKHcljCAU&url=http%3A%2F%2Fdl.tufts.edu%2Ffile_asets%2Ftufts%3AUA197.005.005.00009&usq=AFQjCNGLwiSwo8pTTvSFvxr2o8G-molg-w

²⁰ Nowhere to Turn: Failure to Protect, Support and Assure Justice for Darfuri Women, Physicians for Human Rights in partnership with the Harvard Humanitarian Initiative (2009) [online], Available at: s3.amazonaws.com/PHR_Reports/nowhere-to-turn.pdf

²¹ Interview with an international humanitarian actor, June 18, 2013

²² Interview with Darfuri activist and university professor, October 16, 2014.

²³ Interview with woman activist, October 18, 2012

²⁴ Interview with a woman activist from Darfur, October 14, 2012

²⁵ In January 2013 four civil society organizations were closed by the HAC and a literary forum was closed by the Ministry of Culture and Media. These were Beit al Finoon, the Sudanese Studies Center (SSC), Arry Organization, the Narrative and Criticism Forum (NCF), and the Khatim Adlan Centre for Enlightenment and Human Development.

²⁶ Interview with woman activist, May 15, 2011.

²⁷ Interview with woman activist, May 15, 2011.

CMI (Chr. Michelsen Institute)

Bergen - Norway
Phone: +47 47 93 80 00
E-mail: cmi@cmi.no
www.cmi.no

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