Testimony

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"From Nuremberg to Darfur: Accountability for Crimes Against Humanity"

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Senator Durbin, Senator Coburn and members of the Committee, I am honored to testify here today and thank you for your continued efforts to stand for justice for the victims of genocide and crimes against humanity. I am testifying here in my capacity as a Senior Fellow at the Center for American Progress and as co-founder of ENOUGH, the project to end genocide and crimes against humanity.

In this country, arson is a crime. In this country, child abuse is a crime. And in this country, rape is a crime.

A crime against humanity is one that takes these violations and amplifies them, targeting not just individuals, but entire communities and peoples. A crime against humanity is one that offends our common dignity because it is driven by the deliberate decision to deny people their fundamental rights and abuse their basic dignity. A crime against humanity is an act committed not by a bad apple, or an individual criminal, or reckless undirected youth – it is one that is committed by groups or governments with the power to inflict widespread and systematic abuses that defy our collective imagination.

But a crime against humanity is not an abstraction. In our world, today, as we gather for this hearing, it is the forced displacement of and armed attacks upon hundreds of thousands of men, women and children in Darfur at the hands of armed militia directed and sustained by Sudan's government. It is the widespread abuse of thousands of children in northern Uganda, forced by a raging warlord to kill their relatives and then, having passed the point of no return, to join hands with their oppressors. It is the epidemic of rape – most of it deliberate, much of it orchestrated - in the eastern reaches of the Democratic Republic of the Congo.

It is my sincere hope that this Committee will, as it has done in the case of the Durbin-Coburn Genocide Accountability Act of 2007, propose legislation that will make

crimes against humanity a violation of U.S. law, for two reasons. First, in so doing we can send a clear signal to the world that we recognize these crimes as violations of our common humanity. Second, by taking this step we can reinforce the importance and impact of accountability.

We have seen some but insufficient progress in worldwide efforts to hold the perpetrators of genocide and crimes against humanity to account. More and more countries, among them emerging democracies in Africa, are dispatching the perpetrators of Rwanda's genocide to the tribunal in Arusha. We have seen the prosecution of the perpetrators of crimes against humanity in the former Yugoslavia. The American prosecutor David Crane took the unprecedented if too little noticed step of indicting a sitting head of state, former President Charles Taylor of Liberia, for his crimes in Sierra Leone, thus holding accountable one of the worst of the world's perpetrators of crimes against humanity.

Referrals by the United Nations Security Council to and actions by the International Criminal Court have seen the indictments of perpetrators in Sudan, Uganda and the Democratic Republic of the Congo. And just last week, the Security Council issued a statement, significant for the fact that it reflected the unanimous support of the Council, that demanded that the Government of Sudan turn over to the Court the indictees that not only remain free, but have been given positions of prominence in that government.

To be truly effective, the international community must fashion an unbreakable chain of accountability – one that ensures that the perpetrators of genocide and crimes against humanity can neither seek nor secure safe haven in any country on earth. To be truly effective, the international community must also ensure that its stated support for accountability is backed by meaningful pressure on those who attempt to evade it.

The tragic reality of today's world is that though we have made progress towards these ends, we are still witnessing but not halting ongoing crimes against humanity, in part because the international community has failed to send a strong and unanimous signal that those who commit crimes against humanity will be held to account.

Mr. Chairman and members of the Committee, one of the reasons we are today discussing the crisis in Darfur – one that began over five years ago and has been defined as genocide by both the U.S. Congress and the President of the United States, but one which continues to escalate – is because the perpetrators are not being held accountable for their actions. In the absence of any evidence to the contrary, the perpetrators of genocide and crimes against humanity in Darfur believe that they will pay no price for their actions. In the absence of any evidence to the contrary, their victims believe, and rightly so, that the world's most powerful countries have abandoned them.

Ending genocide and crimes against humanity in Darfur requires that we attack on multiple fronts. First, we desperately need a sustained peace process, backed by robust and persistent diplomacy and reinforced by the pressures and incentives that can motivate

the parties to act. Second, we need to protect the civilians that still, five years in, are awaiting a viable and effective peacekeeping mission that can keep their attackers at bay.

Third, and for today and for tomorrow, we need to hold the perpetrators of genocide and crimes against humanity to account - to inform their calculations, to make clear that their actions have consequences, and also to send a clear and unambiguous signal that the international community will hold to account those who violate our common humanity.

The United States should do everything in its power to ensure that accountability is both pursued and achieved when crimes against humanity occur, and for several reasons. First, it is the right thing to do. By championing the cause of accountability, we send a signal to the international community that the United States stands for justice and reinforce the moral foundations from which we lead.

Second, our full and unwavering support for and pursuit of accountability strengthens both the architecture for and potency of the rule of law on the world stage, and enhances our ability to close the net on those who seek refuge from justice.

Third, it is in our national interests. If unchallenged, the violence that defines crimes against humanity feeds on itself: conflicts spread, institutions crumble, economies decline and young people are taught the dangerous lesson that violence is a more potent tool for change than is hope.

Consider Darfur, a crisis that was contained in western Sudan when it first erupted but has now spread to Chad and has also undermined the fragile peace in Southern Sudan. Look at the Democratic Republic of the Congo, where the echoes of the Rwandan genocide still resonate, and where the unchecked cycle of impunity has contributed to an environment where rape is both rampant and tolerated. The United States can afford neither the instability that arises nor the human and economic losses that occur when crimes against humanity go untended.

Fourth, accountability is the sledgehammer with which we can shatter the vicious cycle of impunity. It is a tool that enhances our ability to bring crimes against humanity to an end and to prevent their recurrence in the future. Though we are focusing on Darfur today, we should recall that Sudan is a country that has been at war throughout the 19-year tenure of the current government. It is a country ridden by a pattern of crimes against humanity – first in the South, and now in Darfur. A peace process might end the conflict in Darfur, and a viable peacekeeping mission might afford Darfur's people the protection they need and deserve. But only the comprehensive application of accountability will break the pattern of violence and abuse that has dominated Sudan for decades.

Enacting legislation that would make crimes against humanity a violation of U.S. law will not end the genocide in Darfur. It will, however, add another link to the chain of accountability. Ensuring that those who commit crimes against humanity are in violation

of U.S. law is in our national interests, and clearly in the interests of the victims who have few if any protectors or defenders.

There are those who argue that accountability is important, but sometimes inconvenient. Prominent analysts of Sudan have, for example, suggested that the recent suggestion by the ICC's Chief Prosecutor Luis Moreno Ocampo that the Sudanese state may be complicit in crimes against humanity is both political and dangerous. As to the politics, it is my strong belief that these critics are wrong. Though the role of the ICC remains a matter of debate in the United States, we would be well-served to follow the Court's example and ensure, as the Special Prosecutor has done, that the prosecution of crimes against humanity is driven strictly by the evidence and consistent with clear legal definitions of these crimes.

Proponents of the "dangerous" argument posit that suggesting that the Sudanese state is in some manner responsible for crimes against humanity risks fueling the regime's intransigence, thus undermining the peace process and making resolution of the Darfur crisis more difficult.

To those critics I would say this. For over five years, the international community has given the Government of Sudan a free pass, and while we have secured indictments and demanded Khartoum's compliance, we have exacted no cost for that Government's steadfast refusal to take responsibility – to be accountable – for its actions. The government in Khartoum continues to unleash its wrath on civilians, to obstruct the will of the International Criminal Court and the UN Security Council, and to hold the rule of law in contempt.

The men who lead that government may be ruthless, but they are also intelligent and calculating. And the evidence is in – they have altered their behavior only when they have faced meaningful pressure wielded by a united international community, whether in the case of their effort to get out from under multilateral sanctions imposed by the Security Council in the 1990s or to prevent being on the wrong side of America's "war on terror," or the resolution of the devastating war in Southern Sudan. This is a government that has proven itself capable of change only when its direct interests are challenged and they are afforded no alternative.

Today, they have an alternative. They have refused to facilitate or allow the full deployment of the UNAMID peacekeeping force. They have refused to hand over to the ICC those who have been indicted for war crimes or crimes against humanity. They have obstructed humanitarian operations. They have refused to restrain the *janjaweed* militia. They have attacked the civilians they claim to represent with a devastating impunity. And for as long as they know that they will not be held accountable, they will continue.

In closing, I would like to thank you, Mr. Chairman, and members of this Committee, for the leadership you have demonstrated. In the short lifetime of this Subcommittee, you have shed light on the world's most egregious violations of our

common humanity, and taken measures to ensure that the rule of law trumps genocide and that those who perpetrate it are held to account.

It is my hope that you will continue on this path, and make crimes against humanity a violation of our laws here in the United States. In so doing, you will earn the strong support of a growing number of Americans who believe, as you do, that crimes against humanity violate not only their immediate victims, but also violate all who champion the cause of human dignity and believe in our common humanity. You will also, and perhaps most importantly, earn the unspoken but unwavering gratitude of those many millions of victims of crimes against humanity who look to the United States to champion the cause of justice.