

## **Press Conference**

Mr. Juan Mendez, the Special Advisor of the Secretary-General  
on the Prevention of Genocide  
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UNMIS HQ, Khartoum

**The following is a near-verbatim transcript of the press conference held by Mr. Juan Mendez, the Special Advisor of the Secretary-General on the Prevention of Genocide.**

**UNMIS Spokesperson:** Good afternoon everybody and welcome to this press conference with Mr. Juan Mendez, the Special Advisor of the United Nations Secretary-General on the Prevention of Genocide.

This is not his first encounter with you in Sudan. Some of you would remember that you attended his first press conference together with the High Commissioner for Human Rights. This is his second trip and this is his second encounter with you.

Before I give him the floor, I would like to inform you that we would like to wrap up this press conference at around a quarter to three. So we have around forty to forty-five minutes to go. Mr. Mendez, has other commitments to attend to so without further ado, I am going to give him the floor so he will brief you and my invitation to you is to be as brief as possible in your questions so that we can wrap up within that time-line I just indicated.

Mr. Mendez ...

**Mr. Juan Mendez:** Thank you very much, Radhia. I thank you all for being here. I am going to give a very initial presentation and then, of course, I will be available for your questions.

I came to Sudan to follow up on the visit I conducted a year ago with the High Commissioner for Human Rights. My intention was to compare the current situation with that prevailing in September 2004 and to analyze the relative effectiveness of the measures we had proposed in October 2004 during our briefing to the Security Council. After carefully reviewing the information gathered during this visit, I intend to report to the Secretary-General with recommendations to protect civilians and prevent human rights abuses; to promote conditions for the safe return of IDPs and refugees and to offer some contributions towards the resolution of the crisis.

My mandate is to follow situations of conflict with an ethnic, religious, racial or national dimension that, if left to fester, could degenerate into a situation of genocide. By mandate, I am not in a position to determine whether genocide has occurred or is occurring. The intention is to act as an instrument of early warning and provide recommendations for preventive measures on how the situation may be improved.

I received the cooperation of the Sudanese Government in both the capital and Darfur, for which I am thankful. My delegation was able to move freely throughout the region, within the security constraints imposed by the situation. We were able to visit several IDP camps and meet with Government authorities.

Before my visit, and drawing on information from a number of reports, I was ready to view a situation that had become more stable. Unfortunately, the situation continues to be of concern. I perceived a significant disconnect between the account of the Government about actions it has taken to address the problems of Darfur as well as their evaluation of the conditions there, and the accounts of Darfuris with whom we met during the course of my visit.

Undoubtedly there have been some encouraging developments over the last year:

- Clashes among the parties seem to have decreased, despite an apparent resurgence in the last few weeks. The destruction of villages of “African tribes” has decreased and all but disappeared. Some killings of civilians continue in the course of attacks, but their number is undoubtedly smaller than at the peak of the conflict.
- The AU is present in larger numbers and throughout a larger portion of the territory of Darfur. Many of those I spoke to confirmed that the AMIS contingents provide a level of protection where they are present. AMIS is making an effort to establish a civilian police in IDP camps, and has established joint patrols with the Sudanese police accompanying IDP women during firewood collection. This seems to have brought a measure of protection, but is at an early stage and not applied in all camps. There was, however, a deep level of mistrust of the Sudanese police among the IDP population, which will not be overcome easily.
- The presence of humanitarian workers has been key in avoiding a major loss of life. Not only has it led to an improvement in assistance for IDPs and others in the wider population (in terms of food, education and health) but has also contributed in some measure to a sense of security.
- The enlarged presence of the UN through the deployment of UNMIS personnel (particularly Human Rights Officers and Civil Affairs Officers) is also helping better to document and address some of the problems of the region.

Still, there are elements of major concern that must be addressed urgently:

- Many of those we spoke to were worried about a possible resumption of violence in the region, particularly in North and South Darfur. There has been an increase in rebel activity. Clashes between the armed parties should cease and must not lead to a downward spiral of violence.
- As the Secretary-General has stated consistently in his monthly reports on the situation in Darfur, the Janjaweed have not been disarmed.
- In West Darfur, there appears to be a situation of lawlessness affecting the humanitarian relief activities being conducted. Looting of humanitarian aid has led to the interruption of aid delivery to a number of areas. Although the authorities in the region are taking steps to address the situation, there is fear among some in the population that the situation could deteriorate.

- I mentioned earlier that the decrease in attacks involving the wholesale expulsion of populations and the burning of villages seems to have decreased. Nonetheless, some instances of displacement and killings continue and have taken place during the course of my visit. Furthermore, many of those we spoke to voiced concern that there are few villages of “African tribes” to be destroyed (given that almost two million persons are living in IDP camps).
- IDPs living in camps still are subjected to attacks. A new development seems to be the incursion of armed elements into IDP camps. Insecurity, particularly along the perimeter of the camps, is of particular concern, with little discernible effort to correct the situation on the part of the authorities. The rape of women who leave the camp to collect firewood continues to be much too prevalent. In this respect, the full deployment of AMIS, and positioning of civilian police around camps is an urgent need.
- Although we received assurances from the authorities that they soon would take important steps with regard to accountability, there is a strong sense in Darfur that impunity continues to prevail. This situation has fed a deep sense of mistrust by IDPs and vulnerable groups in the justice system. We also were disappointed to learn that the cases that have been considered by the Special Court for Crimes Committed in Darfur did not deal with the major crimes committed during the conflict and involve, for the most part, cases that could have been tried in the ordinary justice system.
- Much of the agricultural land of Darfur is not being cultivated, disrupting the traditional economy and lifestyle of the region. Together with displacement, and the dislocation it creates, the entire social structure of the region is affected.
- While the delivery of humanitarian aid, as I mentioned, has provided life-saving assistance, it may also be contributing at the same time to expectations among the IDP population with regard to basic services that they never had access to in their original communities. This will have an impact upon the conditions of eventual return.

To conclude, these are my preliminary observations on the way forward, if you wish:

- It is important to create the conditions of security that will allow for a safe and voluntary return.
- A political solution reached in the Abuja talks therefore is a priority to help bring peace to the region. At the same time, it will also be necessary for an inclusive and credible process of inter-communal dialogue in Darfur to re-establish peaceful inter-communal relations and re-weave the social fabric of the region.
- Even before returns take place, there is a need for improved security in and around IDP camps since current conditions are not acceptable or adequate. A full deployment of AMIS would be indispensable in this effort and many of our interlocutors expressed the need for an increase in the authorized level of deployment.
- IDPs overwhelmingly expressed that disarmament of the Janjaweed is a necessary condition for their return to their villages. Similarly, there will also be a need to determine the usage of lands that may have been occupied after the displacement.
- Many of our interlocutors expressed the need for reconciliation to be accompanied by the establishment of accountability. I welcome the Government’s assurance that it will soon take further steps with regard to accountability.

In this regard, it is important to recall the Government's obligation to cooperate fully with the Prosecutor of the International Criminal Court, as demanded in Security Council Resolution 1593. It is in the self-interest of the Government to cooperate with the ICC prosecutions as a way of creating an atmosphere conducive to reconciliation. Under the principle of complementarity, the ICC will concentrate only on the perpetrators bearing the highest responsibility for war crimes and crimes against humanity, thereby supporting and not interfering with efforts of the Sudanese judiciary to bring justice to those crimes under domestic jurisdiction.

**Spokesperson:** Thank you Mr. Mendez.

The floor is open now for questions.

### **Questions & Answers**

**Q:** Considering what you said that a few African villages have been destroyed, do you feel that the United Nations has failed Darfur in the last two years?

And could you give a little more detail on what you mean by the significant disconnect between the government's views and what it's done and what Darfuris say?

**A:** With respect to the first question, I think that the international community including the United Nations, in an ideal world, should have taken an active stance on Darfur earlier on. Nonetheless, I don't mean to say that the worst had already happened by the time the international community took the measures that it took. I believe that the ceasefire, the provision of humanitarian aid, the deployment of an African Union military observer mission earlier on saved a lot of lives. Of course I would have wished that all of that happened earlier because many more lives could have been saved. But I don't feel in any way that we are coming in late into the game and we not being able to protect people who still need a lot of protection.

Of course, I don't expect matters to get back to the levels of 2003, 2004 or worse, but because it is still a possibility, we all need to continue to make efforts to prevent further deterioration of the situation.

With respect to the question about the disconnect, what I meant is that several different governmental authorities in Khartoum and in Darfur have assured me: one; that they have conducted investigations and, two; that they are increasing their efforts and taking new measures to make those investigations effective. I still have to look at documents that I received and I haven't been able to assess. But what I can say from this perspective is that if those investigations are there and if they are effective, they really have not filtered down to the population in Darfur that seem to be completely ignorant of them and of the result and that they seem to think that nothing has been done.

So, in my conversations with the government, I have urged the government not only to conduct investigations and do them credibly but also to disclose them to the population. This is very necessary if some kind of trust between the population of Darfur and the authorities of Darfur can be rebuilt, and that is very important to the resolution of the conflict.

**Q:** In your capacity as the Special Advisor of the United Nations Secretary-General, to what extent do you agree with the United States view on the occurrence of genocide in Darfur?

You have advised the government to cooperate with the chief prosecutor of the ICC. What, in your view, is required of government to do for such cooperation?

My third and last question is that you said that the IDPs lack trust in the judicial system in Darfur. Have you taken into consideration that the situation in Darfur is subjected to politicization by the rebel movements and the government?

**A:** Thank you. I think those were three questions and if I miss any one of them then please remind me.

On the first one, I do not make an assessment of whether genocide has occurred in Darfur. First of all it is outside my mandate. My mandate as spelt out in documents that the United Nations has produced, specifically asks me to act in a preventive fashion and not to qualify conflicts in the perspective of whether they are genocide or not. The reason for it is not a political nicety. It is just a very practical one. If I wait until all the elements of genocide are in place according to international law, then by definition I have not prevented it. From the start I have said I am not in a position to ‘certify’ or not certify that genocide has happened. As you also know that in that particular case of Darfur, that task was assigned by the Security Council to another organ – to the international commission of inquiry. And the international commission of inquiry came out with its assessment which is now in the hands of the prosecutor to the ICC to decide to charge individuals with genocide or with some other crimes under the jurisdiction of the ICC, and for the ICC eventually to decide whether it can find genocidal intent in some of these crimes or not. I also want to say that for me the matter of deciding whether it was genocide or not has been a distraction not only for me but I think for the international community. We have spent too much time trying to decide whether genocide happened or not when in fact we should have acted on these crimes that are undoubtedly war crimes and crimes against humanity and, as I said to the Security Council last year, they have an undeniable ethnic dimension to them. Quite frankly, I think whether they are genocide or not should be left to a court of law. The international community should not wait to act to prevent and eventually to punish war crimes and crimes against humanity until it is determined that they constitute genocide.

The second question was about cooperation with the ICC. I want to state very clearly that the ICC has jurisdiction because of the referral to it by the Security Council under Chapter VII and under the Statute of Rome. In that regard, a decision by the Security Council is binding on all States of the United Nations and it is not only Sudan, but every State in the community of nations, that is obligated to cooperate with the ICC. What kind of cooperation? I mean, well, I think the investigators for the prosecutor should be given full access to the territory, to speaking with witnesses, to documents in possession of the government or in any other place and, I have to say, that that does not constitute any kind of substitution for the sovereign powers of the State to conduct its own investigations and its own prosecution and eventual punishment of similar crimes. On the contrary; because the jurisdiction of the ICC is limited to only those persons bearing the highest responsibility, there should be, under the principles of complementarity, full cooperation and neutral support between the efforts of the judiciary and the efforts of the ICC.

I can't remember what the third question was ..

**Q:** The question was on what you said of lack of trust from the IDPs on the prevailing judicial system. Does this view take into consideration that the situation in Darfur has been politicized by both rebel and government?

**A:** I think you are absolutely right that the situation has been politicized by all parties to the conflict but that is not unusual, it happens in every conflict and it doesn't diminish the responsibility of the rebels to try to make an effort to re-establish trust. We took into consideration when we talked to many Darfuris including IDPs but also other than IDPs, the extent to which their statements might reflect some bias. I don't deny that we considered the possibility of bias and where there was very extensive bias, we don't even take the statement into account. The general perception that we get is of a very pervasive distrust and the distrust, certainly in some measure, may have been generated by political manipulation. But in a large measure, whether political manipulation is present or not, it is also a function of the distance that now exists between the authorities, and particular the police, and the population that they are supposed to protect. The distance is there and it is subjective and it does not reflect only a political bias but also reflect the situation on the ground that needs to be corrected.

**Q:** Why have the *Janjaweed* not been disarmed? You think the government has the capability to do more on the *Janjaweed*?

Secondly; could you expand on your views and what your reactions is in terms of the Sudanese special courts to try *Janjaweed* suspects?

Finally; could you just give us a bit of an appraisal of this year compared to what you saw last year – what is disappointing to you and what have you seen improvement in?

**A:** On the question of disarmament, I think it is an objective fact that if there has been disarmament, we don't know who has been disarmed and where. The most we know is that some weapons have been produced but it is not clear that an organized fighting force is no longer active. On the contrary, we heard credible reports that not only are they still very highly organized – although not fighting, certainly – but that they may be able to obtain cards assimilating them to the security forces so that they will be treated as security forces and thereby escape serious investigations and the like. We also expect that if there is a serious disarmament process as the Security Council has required, that the different elements of the disarmament process should be much more transparent, should be made more clear to the population so that the population can clearly understand that the people who perpetrated those violations against them are no longer in a position to perpetrate them again. I also don't want to say that it is easy – I mean I heard some people say that it is easy: the government turned the *Janjaweed* on, they can turn them off. From my experience in other conflicts, I know that that is a simplification. I think it is easy to turn paramilitary groups on but it is a lot harder to turn them off. So I am not minimizing the difficulties. At the same time, difficulties or no, we don't see a serious good-faith effort from the part of the government to disarm. They may have all kinds of reasons for it including some expectations that the peace process may allow for a more orderly disarmament of both sides. Nevertheless, one; the Security Council resolution is there and it has to be complied with and, two; from my observations, disarmament of the *Janjaweed* is essential to a sense of security and a sense of confidence by the affected

population that will allow eventually that population to return from the camps and resume normal lives. If that doesn't happen and it is more than a legal obligation here – I am talking of the self-interest of the government in obtaining a peaceful and final resolution of the conflict without disarmament – this is not going to happen any time soon.

Your other question was about the special courts. The disappointments on what we have seen so far about the special courts are: one it is not clear to me what is the jurisdictional premise under which some cases go to the special court and some stay within the regular jurisdiction of Darfuriian courts. So there is an element of discretion there that isn't clear to me. More important than that, the cases so far tried had nothing to do with the events of 2003-2004 – in fact they are much more recent than that. They are serious crimes, certainly, but the perpetrators who have been tried don't seem to occupy any particular position of influence in the commission of crimes of that sort. So in that sense, the special court, at least up to now – but of course that may change in the next few weeks or months and we will be observing it – but up to now it doesn't seem to make a dent on the general pervasive sense of impunity that prevailed for the crimes of 2003 – 2004.

Your question about comparing last year with this, in part, some of these things that I just said are comparisons. But let me say that the High Commissioner and I found a year ago that rape was a very serious problem and unfortunately I can not say that it has diminished in any significant way. There may be fewer cases reported in certain periods but then it comes up again. We heard cases of a week ago. In that regard there is some measure of protection by the African Union, especially the civilian police part of the African Union, but that presence is still not wide and broad enough to be able to make an important difference. It is beginning to change things in some of the major camps but certainly not in all of them. Something that we may have missed last year but this year worries me is that in the camps – although the camps are much better established and their living conditions are better than a year ago – the reports of incursions by armed elements through the camps and in the camps at night and by day at full daylight were something that we did not see a year ago and we are hearing about this year and that is a matter of concern. On the good side of course is the expansion of the African Union presence, of the Human Rights Monitors of UNMIS and the humanitarian aid. Last year there were about 180 international humanitarian workers. This year I understand there is like 1,000. That undoubtedly has a favorable impact. At the same time, I would have wished that a year later, the work of the relief agencies would be able to be performed without interference. In some places, especially in West Darfur, in the last two months there have been I think 12 hijacking or attacks on international relief operations in the countryside. Of course I am not talking about attacks by the government but attacks by unknown groups – maybe banditry, maybe common crime. But the fact is that the delivery of humanitarian aid is not as safe and as smooth as one would have expected it to be a year after our visit.

**Q:** You mentioned in your report that you can not describe what happened in Darfur as genocide but you did talk of increased banditry, attacks and rape. How do you read that?

**A:** I think rape in a situation of armed conflict is a very serious crime and definitely a war crime or a crime against humanity, depending on the situation in which it happened. It can also be an element of genocide. And of course the destruction of villages, forced displacements, killing of unarmed civilians, all of them constitute either war crimes or

crimes against humanity depending on whether they happen in the course of combat or directly targeting the civilian population.

Why all of those things can not be genocide? They certainly can be. What I am saying is that the element that would be necessary to qualify it as genocide under the accepted international definition in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide is the criminal intent to destroy in whole or in part a population designated by its ethnic, racial or religious origin. Criminal intent is not easy to determine in the case of Darfur. There are many people of good faith that do find that criminal intent. In my capacity as Special Advisor, as I said, not only I don't have to, but I am not allowed to make that determination. But quite frankly as a human rights monitor, in order to determine that criminal intent I will have to do a much more profound investigation, inquiry into motivations, into decisions by individuals, and I am really not in a position to do that. I want to stress that I am not saying that it was or it wasn't genocide. I am saying that I am not in a position to make that decision. But fortunately we now have an institution like the ICC that can eventually make that determination in regard to certain individuals as to whether they had that intention or not, on the basis of evidence gathered rigorously and submitted to the ultimate fact-finding and truth-seeking processes that constitute fair-trial guarantees and that the ICC is able to guarantee that to all defendants. I think whether or not what happened here was genocide will be determined eventually and there is really no reason why we have to continue debating the issue between ourselves, especially among those of us who have a role to play in bringing the violations to a halt and then, eventually, to punishment of those violations whether they constitute genocide or not.

**Q:** Obviously there is a new government of national unity being sworn in. Does that government still bear responsibility for what happened in the past or do they have a clean cheque - what is your take? Should they still be held responsible for what happened three years ago?

**A:** The international community has placed high hopes on the creation of the government of national unity and I, of course, hope that a new day has started and a new government may be in a better position to address all these very serious problems. As a matter of law, the state is still the same state then so the government is 'responsible' for what happened in the past – at least in the sense that it has the duty to investigate, prosecute and punish the crimes and to bring them to an end if they are still being committed. That is no different between for example when military dictatorships are substituted by genuinely elected democratic governments. The genuinely elected democratic governments can not simply say, "that was then and this is now". They have a due to address ... and may be in a better position to address them precisely because their political actors were not directly responsible for them. That is what I hope that the advent of a new government of national unity will produce in Sudan and in Darfur. But as a matter of responsibility, of course, the responsibility is still much there.

**Q:** It is the same people, basically.

**A:** Some of them are the same people but that is not the question. The responsibility to address the problems of the past would be there even if we had a completely new government. In that sense, we should, as I said, just hope that the new government is in a better position to address and a better position to gain the trust and the confidence that is



needed to address the problem. But in another respect, new government or not, you just can not escape the responsibility to address those problems.

**Spokesperson:** I don't see anybody asking for the floor for the time being. I think that wraps up our press conference for today.

I would like to thank Mr. Mendez. Thank you all. I would like to announce that SRSG Jan Pronk will be holding a press conference on Wednesday. Among other things, he will be briefing you about his latest activities including his trips to New York and to Washington where he attended a meeting on Sudan on the consortium to be established for Sudan.

And we have a couple of documents that we sent you. One of them is a newborn document issued by OCHA and that is on the humanitarian situation in Sudan. It is also available on web. But we have hard copies for you.

Thank you very much.