



FOURTEENTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UN SECURITY COUNCIL PURSUANT TO UNSCR 1593 (2005)

INTRODUCTION

1. The present report is submitted by the Prosecutor of the International Criminal Court (ICC) pursuant to paragraph 8 of UN Security Council Resolution (UNSCR) 1593 of 31 March 2005. It outlines the ongoing investigation, judicial activities undertaken since the last report on 8 June 2011 and anticipated next judicial activities, and cooperation received or lack thereof from the Sudan and other Parties.
2. On 31 March 2005, in UNSCR 1593 (2005), the Security Council determined that the situation in Sudan continued to constitute a threat to international peace and security and, acting under Chapter VII of the Charter, decided to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC. UNSCR 1593 provided jurisdiction to the Court.
3. On 29 July 2011, the Security Council adopted Resolution 2003 (2011), *“Determining that the situation in the Sudan constitutes a threat to international peace and security,” “Reaffirming all its previous resolutions and presidential statements concerning the situation in Sudan and underlining the importance of full compliance with these” and “Recalling its resolutions reaffirming that there can be no peace without justice, and recalling the importance that the Council attaches to ending impunity and to ensuring justice for crimes committed in Darfur.”*

1. THE ONGOING INVESTIGATION

1.1. The Prosecutor v. Abdel Raheem Muhammad Hussein

4. As a final review of the evidence collected about the crimes allegedly committed in the first period of the Darfur conflict, the Office of the Prosecutor (“Office”) has concluded that there are reasonable grounds to believe that Abdel Raheem Muhammad Hussein (“Hussein”), who appointed and supervised Ahmad Harun, bears criminal responsibility for crimes against humanity pursuant to a State policy of the Government of the Sudan (GoS), and war crimes committed in Darfur from August 2003 to

March 2004. The Prosecutor therefore has requested under Article 58 of the Rome Statute that Pre-Trial Chamber I (PTCI) issue an arrest warrant for Hussein.

5. After careful consideration the Office has decided to publicly announce its request for a warrant against Hussein to promote a public discussion that may prompt the GoS to review its policy and to arrest Hussein and cooperate with the ICC, in accordance with UN Security Council Resolution 1593.
6. The evidence collected shows that there are reasonable grounds to believe that Hussein is among those who bear the greatest responsibility for the same crimes and incidents that are more fully recited in the Arrest Warrant Application against *Harun* and *Kushayb* and that were perpetrated during attacks upon the towns and villages of Kodoom, Bindisi, Mukjar and Arawala in the Wadi Salih and Mukjar Localities of West Darfur. Accordingly, the Office has presented new evidence demonstrating the individual responsibility of Hussein for the commission of these crimes and has also relied upon the evidence submitted to PTCI in support of its previous Application, describing the commission of crimes and Harun and Kushayb's participation in them.
7. Hussein was the Minister of Interior during the time relevant to the Prosecution's Application and further was appointed as Special Representative of the President in Darfur with all of the powers and responsibilities of the President. This meant that he could take action on behalf of the president in Darfur. Hussein delegated some of his responsibilities to Ahmad Harun ("*Harun*") whom he appointed to head the "*Darfur Security desk*."
8. In the "*Prosecution v. Harun & Kushayb*" case, PTCI has already found reasonable grounds to believe that by reason of his position on the Darfur Security Desk, and through his overall coordination of and participation in key activities of the Security Committees, Harun was criminally responsible for the commission of these crimes.
9. As the Special Representative of the President in Darfur and as the Minister of the Interior, Hussein's authority extended to coordinating the efforts of the Police, Armed Forces, National Security Service and the Militia/Janjaweed incorporated into the Security and Armed forces as reservists. The State and Locality Security Committees were the mechanisms adopted to ensure such coordination.
10. State and Locality Security Committees in Darfur were comprised of representatives of the Sudanese Armed Forces, Police and Intelligence agencies. They coordinated the

activities of the State apparatus, defining the targets and identifying resource requirements, including on matters relating to the staffing, funding and arming of the Militia/Janjaweed. The State and Locality Security Committees reported to Harun, who in turn reported to Hussein.

11. Hussein made an essential contribution to the common plan by being involved in the formulation and implementation of the common plan agreed at the highest level of the GoS. Additionally, he was involved in the recruiting, mobilising, funding, arming, training, inciting and deploying of the Militia/Janjaweed as part of the Government of the Sudan forces with the knowledge that these forces would commit crimes against humanity and war crimes, including murder, rape, torture, inhumane acts, pillaging and the forcible transfer of civilian populations.
12. Hussein currently serves as the Minister of Defence since September 2005, at a time when the Sudanese Armed Forces are engaged in armed conflict in different regions of the country, including in Southern Kordofan where Ahmad Harun has served as the Governor since September 2007.
13. The crimes charged in the Prosecution's Application arise out of the same criminal episodes described in the Prosecutor's Application for the arrest warrants issued against Harun and Kushayb. Accordingly, in the interests of justice and judicial efficacy, if the Pre-Trial Chamber issues an arrest warrant against Hussein, the Prosecution will request that both cases be joined after the initial appearance should any of these three be arrested or surrender to the Court.

1.2. The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus

14. In relation to the September 2007 attack on the AU base at Haskanita (the Haskanita case), the Office has continued its preparations for trial, following the 7 March 2011 confirmation of charges against Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, as well as its work on witness protection in relation to the Haskanita case.

1.3. Monitoring of current crimes

15. The Office continues to monitor: (a) alleged attacks either targeting or indiscriminately affecting civilians by the Ministry of Defence and other government agencies or officials that could be part of the ongoing acts of genocide, crimes against humanity and war

crimes, as well as alleged attacks on civilians by rebel movements; (b) alleged acts affecting the persons displaced, in particular by the Humanitarian Aid Commission (HAC) that could be part of ongoing acts of genocide and crimes against humanity; (c) the use of child soldiers by all parties including rebel movements constituting war crimes; and (d) alleged abductions of and attacks on humanitarian aid workers and peacekeepers.

16. Similarly, the Office notes the UN Security Council's 29 July adoption of Resolution 2003, *"Reiterating its condemnation of all violations of international human rights and humanitarian law in Darfur and in relation to Darfur, calling on all parties to comply with their obligations under international human rights and humanitarian law, emphasizing the need to bring to justice the perpetrators of such crimes, and urging the Government of Sudan to comply with its obligations in this respect."* The Office further notes where the Resolution *"Condemns human rights violations in, and relating to, Darfur, including arbitrary arrests and detentions, expresses deep concern about the situation of all those so detained, including civil society members and IDPs, and emphasizes the importance of ensuring UNAMID, within its current mandate, and other relevant organisations' ability to monitor such cases; calls on the Government of Sudan fully to respect its obligations, including by fulfilling its commitment to lift the state of emergency in Darfur, releasing all political prisoners, allowing free expression and undertaking effective efforts to ensure accountability for serious violations of international human rights and humanitarian law, by whomsoever perpetrated, and emphasizes the importance of UNAMID acting to promote human rights, bring abuses to the attention of the authorities, and to report gross violations to the Security Council."*
17. Against the backdrop of continued fighting in Darfur and new conflicts in other Sudanese states, the Prosecution is aware of reports of the ongoing deliberate repression of information by the Government of Sudan (GoS).
18. The Prosecution continues to be concerned as well about the lack of access to various parts of Darfur, where the conflict has entered its eighth year. According to a report by the UN Office for the Coordination of Humanitarian Affairs (UN OCHA) covering the second quarter of 2011, humanitarian organizations *"continue to experience difficulties with movement due to restrictions imposed by government authorities."* For instance, over the summer of 2011, in the Dar al Salam area in North Darfur, government authorities reportedly *"imposed restrictions on the delivery of medical supplies, fuel and other assistance to people displaced from Shangil Tobaya earlier in the year."* These restrictions prevent UNAMID not only from fulfilling its mandate to protect civilians but from effectively monitoring the situation.

19. The Prosecution notes that continued fighting between the GoS and rebel movements has reportedly caused large numbers of people to be displaced. According to the report of the Secretary-General of 8 July 2011 referring to *"figures agreed to by the Government and the humanitarian country team, between 60,000 and 70,000 persons have been displaced by fighting from Shangil Tobaya and East Jebel Marra since the beginning of 2011."* In West Jebel Marra, close to 400,000 people were reported to be displaced as of August 2011 with *"very limited assistance during the last few years and [...] in urgent need of humanitarian aid,"* according to the UNAMID Humanitarian Protection Strategy Representative.

1.4. Alleged bombing attacks indiscriminately affecting civilians

20. The Chamber considered in its decision on *"Harun and Kushayb"* that there were reasonable grounds to believe that, on several occasions, ground attacks on civilians were preceded by aerial bombardments by the Sudanese Air Force. The UN and others have found that air strikes against targets in close proximity to civilians with non-precision-guided munitions, delivered for example by Antonovs, constitute indiscriminate attacks against civilians. In this context, the Office notes the 22 August report of the independent expert on the situation of human rights in the Sudan that UNAMID had *"not received any information that orders were given to the armed forces and militias under Government's control to prohibit attacks against civilians and civilian objects. On the contrary, civilians have, and continue to be attacked by SAF and militias allegedly supported by Government."*

1.5. Alleged ground attacks targeting civilians

21. The Office is concerned about reports of ongoing targeting of civilians, as with the report that 17 civilians from Abu Zereiga were executed by a local militia on 1 June in North Darfur. According to witness accounts, the group of civilians had been kidnapped one week earlier in an alleged attack by government forces with two military helicopters and backed by local militias in Land Cruisers. According to witnesses, government forces had handed the civilians over to the militia group as hostages, before a firing squad executed them.
22. On 18 June, eleven to twelve people were reportedly killed in an attack in Shangil Tobaya allegedly launched by perpetrators on horses and in cars. Another 30 people were reportedly wounded, while 15-100 houses were burnt and property looted. According to local witnesses referred to by various news media, the attack was attributed to the armed movement SLA-MM. SLA-MM reportedly denied any responsibility.

23. During the reporting period, several attacks within IDP camps were reported. In August, Radio Dabanga reported on allegedly indiscriminate shootings in North Darfur IDP camps allegedly by the Central Reserve Forces, causing widespread panic among residents. In addition, a sheikh of Hamidiya IDP camp in Zalingei, West Darfur, was killed on 20 August. The sheikh, who was reportedly shot twice in the chest, had been a member of the committee of food distribution of the camp and a political activist. Random shooting attacks on IDP camps committed by armed groups were also reported from West and North Darfur in October.

1.6. Allegedly widespread occurrence of sexual and gender-based violence

24. The Prosecution continues to be concerned about reports of widespread sexual and gender-based violence (SGBV). According to the 22 August report of the UN Human Rights Committee's independent expert on the situation of human rights in the Sudan, Mohamed Chande Othman, in *"some cases,"* victims' accounts have described *"perpetrators either as armed men dressed in military uniforms or as police/military officers from the regular security forces, men in CRP uniform, men in green/camouflage uniform."* However, affiliation with any party of the conflict, if any, remains most often unconfirmed.

25. In this context, the Prosecution takes note of the widely cited phenomenon of underreporting of SGBV. While underreporting of SGBV is due to a variety of reasons, the GoS has reportedly actively suppressed public reporting on sexual violence. In the case of several journalists reporting on the rape of a Darfuri female activist allegedly by three members of the SAF, a Khartoum Court sentenced the editor-in-chief of one newspaper to a fine of 5,000 pounds and the reporting journalists to either one month of imprisonment or a fine of 2,000 pounds in July 2011. The verdicts were condemned by the Special Representative to the Secretary-General for Sexual Violence in Conflict, Margot Wahlström, who called on GoS authorities to prosecute rapists, not journalists.

26. Overall, it appears that female IDPs and refugees continue to be frequently victimized.

1.7. Alleged crimes against human rights defenders, civil society members and community leaders

27. The Prosecution takes note of continued reports of alleged crimes against human rights defenders and civil society members. According to the report of the UN independent expert on the situation of human rights in the Sudan, the vast majority of cases of arbitrary arrest and detention between May 2010 and June 2011 were attributed to GoS

28. Furthermore, the NISS has reportedly detained UNAMID staff members on several occasions. In light of frequent allegations of torture and/or ill treatment in NISS detention, it is particularly concerning that UNAMID human rights monitors do not have unfettered access to detention centers in Darfur, in particular regarding individuals who are held under emergency and national security laws.

1.8. Alleged abductions of and attacks on humanitarian aid workers and peacekeepers

29. The Prosecution continues to be concerned about crimes against UN peacekeepers in Darfur. According to the 7 September annual report of UNDSS, Darfur was one of the three most dangerous regions in 2010 for UN personnel, after Afghanistan and Somalia.

30. The Prosecution takes note of six new deaths since its last report to the UNSC in June 2011, bringing the total of peacekeeper deaths since the deployment of UNAMID to 34. On 30 June, an Ethiopian UNAMID soldier was reportedly killed in an attack by unknown gunmen while on regular patrol near El Geneina in West Darfur. On 5 August, a peacekeeper from Sierra Leone was killed by unknown gunmen while on patrol northeast of Nyala in South Darfur. On 10 October, two UN soldiers and one police advisor were killed by unknown gunmen while on patrol in North Darfur. On 6 November, one peacekeeper was killed by unknown gunmen in an attack near Nyala in South Darfur.

31. Furthermore, several attacks targeting humanitarian aid workers have been reported. On 14 August, an Italian aid worker was reportedly kidnapped by unidentified armed men in Nyala and later released. On 23 September, three national staff of the State Ministry of Health were reportedly abducted by unknown perpetrators. In addition, on 31 July, unidentified gunmen reportedly broke into the residence of and killed a staff member of a national NGO in West Darfur. On 10 August, a staff member of WFP was killed by an armed group. On 9 September, five international and four Sudanese staff members of unknown affiliation who had been travelling in a convoy carrying drilling machines were reported kidnapped in North Darfur by unknown perpetrators, according to a UN source.

1.9. Alleged recruitment and use of child soldiers

32. According to the 5 July report of the Secretary-General on children and armed conflict in the Sudan, there has been a *“continued presence of children”* in various forces including the SAF, its associated forces, Sudanese police forces and various armed movements in Darfur. More specifically, between February 2009 and February 2011, 1,041 former child soldiers were registered in Darfur. The Prosecution will continue to monitor the alleged use of child soldiers by both governmental forces and armed movements.

1.10. Allegedly deliberate inflicting of conditions of life calculated to bring about physical destruction

33. There have been repeated reports about a deterioration of the humanitarian situation in various IDP camps due to severe food shortages. According to the USAID Sudan Food Security Outlook, as of October, the majority of all IDPs have been classified as being in a *“crisis”* phase, while approximately 300,000-400,000 resident/host communities in the drought-affected areas of Darfur were classified as being in a *“stressed”* food insecurity phase. Radio Dabanga reported in June that in Kalma camp, deaths of children of less than three years would have increased due to food shortages.

34. Various Sudanese news media reported on a survey on the health situation of Sudanese families released on 24 August by the Sudanese Ministry of Health, according to which North Darfur faced a food shortage with less than 5% food security and an increase in malnutrition rates. In addition, there has been a reported decrease in the percentage of safe drinking water in West Darfur.

35. It is therefore particularly concerning that restrictions imposed by the GoS and, to some extent by armed movements, on aid delivery continue to exist. On 16 August, the Sudanese Humanitarian Aid Commission reportedly *“issued a directive stopping the activities of Peace Platform,”* a national NGO and *“implementing partner of WFP, and accusing it of engaging in activities inconsistent with its mandate.”* In addition, some areas in North Darfur reportedly faced restrictions from government security authorities regarding fuel and medicine, and the presence of armed movements in some villages was limiting the freedom of movement of displaced people.

36. Due to lack of supplies, medical health and humanitarian assistance, health conditions in the different refugee camps have deteriorated, as reported in Zamzam and Abushok camps in North Darfur, Kalma in South Darfur, and Zalingei in West Darfur. There

were also reports about health issues due to water shortages following restrictions by local authorities on fuel needed to run water-pumping generators.

37. According to the United Nations Office for the Coordination of Humanitarian Affairs, as of 27 October, there were an estimated 1.9 million IDPs in Darfur. Zamzam camp, Darfur's largest IDP camp located near El Fasher in North Darfur, has been particularly affected by waves of displacement. Following fighting between SAF and armed movements in late 2010 and early 2011, *"some 50,000 newly and secondary displaced people" have reportedly arrived at the camp, leading to an estimated total of 130,000 IDPs at Zamzam camp. According to UN OCHA, the "influx of new arrivals has put enormous pressure on existing services in the camp [...]."* In this context, it should be noted that researchers found in a 2007 study recently included in a review published in *The Lancet* that 75% of 331 children in IDP camps in southern Darfur *"met diagnostic criteria for post-traumatic stress disorder, and 38% had depression."*

1.11. Allegedly forcible transfer of population

38. The Prosecution will continue to monitor allegedly forcible returns of IDPs. According to news media accounts, residents of ten refugee camps in West Darfur issued a 72-hour ultimatum to UNAMID Joint Special Representative (JSR), Ibrahim Gambari, on 27 September in response to references made during a press conference that approximately 1.5 million refugees from Darfur had volunteered to return home. Camp leaders have claimed that the number given was incorrect and asked the JSR *"to submit in writing the names of the refugees who have returned to their villages and the sheikhs in the areas."*

2. JUDICIAL ACTIVITIES UNDERTAKEN SINCE THE LAST REPORT ON 8 JUNE 2011 AND ANTICIPATED NEXT JUDICIAL ACTIVITIES

39. The Office has decided to proceed with a fourth case in the Darfur situation. The case addresses the individual criminal responsibility of the current Minister of Defense, Abdelrahim Hussein, formerly the Minister of Interior when Ahmad Harun was the Minister of State for the Interior.
40. The case has been submitted to the Pre-Trial Chamber on 1 December for its consideration, and the Office expects a response from the Judges in due course.

41. In relation to the Haskanita case, on 16 May 2011, the Prosecution and the Defence in a joint filing to the Trial Chamber indicated that certain facts have been agreed by both parties, and the Defence will contest only 3 specific issues at their trial: i. Whether the attack on the MGS Haskanita on 29 September 2007 was unlawful; ii. If the attack is deemed unlawful, whether the accused persons were aware of the factual circumstances that established the unlawful nature of the attack; and iii. Whether AMIS was a peacekeeping mission in accordance with the Charter of the United Nations. Banda and Jerbo are not disputing their actual participation in the attack and both have committed to surrender voluntarily to the International Criminal Court for trial.
42. These agreements narrow the issues in dispute between the parties and will facilitate the fair and expeditious conduct of proceedings as required by Article 64(2) of the Rome Statute. If the Chamber determines that AMIS was a peacekeeping mission established in accordance with the Charter of the United Nations, that the attack itself was unlawful and that the accused persons were aware of the factual circumstances that established the unlawful nature of the attack, the accused persons will plead guilty to the charges presented against them without prejudice to their right to appeal the Chamber's decision on the issues detailed in paragraph 3 pursuant to Article 81 of the Statute.
43. On 28 September 2011 Trial Chamber IV issued its Decision on the Joint Submission regarding the contested issues and the agreed facts. The Chamber concluded that the procedures proposed in the Joint Submission will facilitate the fair and expeditious conduct of the proceedings. The Chamber held that, at this stage, a more complete presentation of the alleged facts in the case is not required in the interests of justice. The Chamber took note of the Agreement as to the facts and evidence and decided that: 1) the trial will proceed only on the basis of the contested issues, and 2) the parties shall not present evidence or make submissions other than on the issues that are contested.
44. The Office expects that the Haskanita trial will commence in the first half of 2012, dependent on finalization of translation of the key documents from English and Arabic into Zaghawa, a process slowed by the fact that Zaghawa is not a written language.

3. COOPERATION RECEIVED OR LACK THEREOF FROM THE SUDAN AND OTHER PARTIES

45. Under UNSCR 1593, the Security Council decided that the *“Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully and provide any necessary assistance to the Court and the Prosecutor.”* Pursuant to such decision and to the Judges’ orders, the Court’s arrest warrants have been transmitted to the GoS.
46. The GoS, as the territorial State, has the primary responsibility and is fully able to implement the warrants, consistent with its sovereign authority. It has not done so.
47. There are arrest warrants outstanding in the Darfur situation against three individuals, for Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb), and for Omar Hassan Al Bashir. These warrants must be enforced.
48. The individuals subject to arrest warrants are not travelling outside the Sudan, with the exception of limited and hurried visits by President Bashir, whose ability to travel freely has been substantially restricted by the fact of the warrants against him. Since the time of the last report, President Bashir has been absent from key international gatherings, including the Second Tripartite Summit of the Common Market for East and Southern Africa (COMESA), East African Community (EAC) and the Southern Africa Development Community (SADC), a meeting of 26 States, many at Head of State and Government level, held in Johannesburg, South Africa in June.
49. After reports that he had been invited and was scheduled to attend a meeting involving various Heads of State in Malaysia in June, there was public Ministerial opposition to the invitation, and no visit took place. In June 2011, he travelled to Iran and to China, but in the latter case his visit was delayed and curtailed, reportedly after proposed changes in flight plans raised concerns that his flight path to China might put him at risk of arrest.
50. Since the time of the last report, he has however traveled twice to States Parties to the Rome Statute, first in early August to Chad to attend the inauguration of Chadian President Deby, and in mid October to Malawi to attend a COMESA Heads of State and Government meeting. Prior to both visits, the Registry of the Court reminded both States of their legal obligations under the Statute and sought cooperation for the arrest and surrender of Omar Hassan Al Bashir in the event he would enter their respective territories.

51. On 18 August, Pre-Trial Chamber I sought observations from the Chadian authorities and on 29 September, the Chadian Ministry of Foreign Affairs responded, citing the position taken by the African Union on the warrant issued against Omar Al-Bashir, and arguing that, since Chad is a member of the AU, *"the Prosecutor's request (sic) cannot be taken forward in Chad."* They asked to be given the opportunity to be heard in accordance with Court Regulations 109(3) and concluded that Art 87(7) could not meanwhile be engaged in order to make a finding of non-cooperation.
52. On 19 October, Pre-Trial Chamber I noted media reports of President Bashir's visit to Malawi and invited the Malawian authorities to submit observations.
53. On 28 November, the High Court in Kenya issued two warrants of arrest for President Bashir, on the basis of the ICC's warrants. The court ruled that Bashir's arrest *"should be effected by the Attorney General and the Minister for Internal Security should he ever set foot in Kenya."* Kenyan Foreign Minister Moses Wetangula has reportedly subsequently stated that the Government of Kenya is considering appealing the ruling.

4. CONCLUSION

54. The Office of the Prosecutor reiterates the responsibility of all States Parties to cooperate with the Court in line with their obligations under the Rome Statute, and with the Government of the Sudan to cooperate with the ICC in line with its obligations under UNSCR 1593.
55. The Office of the Prosecutor calls on the Security Council to ensure the Sudan's compliance with UNSCR 1593.