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*Statement to the United Nations Security Council on the situation in
Darfur, the Sudan, pursuant to UNSCR 1593 (2005)*

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Mr President,

1. I am briefing you as the second Prosecutor of the International Criminal Court to address the situation of Darfur, in the Sudan, which this Council referred to my Office through Resolution 1593 in 2005. This is my Office's sixteenth briefing to the Security Council on the subject of Darfur.
2. The situation in Darfur continues to be of serious concern to me and my Office. In my report, I have indicated specific incidents of concern and which seem to represent an ongoing pattern of crimes committed pursuant to the Government-avowed goal of stopping the rebellion in Darfur. I must reiterate that these alleged ongoing crimes, similar to those already considered by the Judges of the International Criminal Court on five separate applications, may constitute war crimes, crimes against humanity, and genocide. My Office will consider whether further investigations and additional applications for arrest warrants are necessary to address ongoing crimes, including those undertaken with the aim of thwarting delivery of humanitarian aid, attacks on UNAMID peacekeepers, as well as bombardments and other direct attacks on civilian populations. The words of the Government of the Sudan representatives, promising further peace initiatives, are undermined by actions on the ground that show an ongoing commitment to crimes against civilians as a solution to the Government's problems in Darfur.
3. This Council should be even more concerned about the situation in Darfur, given that crimes continue to be committed, including by those already indicted by the Court. This Council referred the situation in Darfur because of its firm belief that the justice process is an essential component of any strategy aimed at truly stopping ongoing crimes and achieving peace in Darfur. We have always believed the referral to be a joint endeavour by this Council and the Court to contribute to lasting peace in Darfur through investigations and prosecutions of those who bear the greatest responsibility for the most serious crimes. Indeed, in this context and in other contexts, this Council has reaffirmed the vital importance of promoting justice and the rule of law, including respect for human rights, as an indispensable element for lasting peace. My Office and the Court as a whole have done their part in executing the mandate given by this Council in accordance with the Rome Statute. The question that remains to be answered is how many more civilians must be killed, injured and displaced for this Council to be spurred into doing its part?
4. There are no words to properly express the frustration of Darfur's victims, which we share, about the lack of any meaningful progress towards arresting those indicted by the Court. The failure of the Government of the Sudan to implement the five arrest warrants seems

symbolic of its ongoing commitment to a military solution in Darfur, which has translated into a strategy aimed at attacking civilian populations over the last ten years, with tragic results. Victims of Darfur crimes can hardly wait for the day that fragmentation and indecision will be replaced by decisive, concrete and tangible actions they expect from this Council.

5. Investigating the Darfur situation was an enormous challenge for the Office and a huge sacrifice for the witnesses and victims whose lives remain at risk as a result of their interaction with the Court. The question they ask is: were their sacrifices in vain?

Mr President,

6. In its Resolution 2063, this Council expressed concerns about ongoing impunity and the lack of any progress on national proceedings to date, after nearly eight years of reported efforts on the part of the Government of the Sudan authorities. It should be clear to this Council that the Government of the Sudan is neither prepared to hand over the suspects nor to prosecute them for their crimes.
7. Despite the challenges we faced, including non-cooperation by the Government of the Sudan, the Office conducted independent and impartial investigations and submitted its evidence to the Judges. Contrary to the often-repeated allegations of bias and politicization of the Office's investigative activities, the Judges of the Pre-Trial Chamber independently evaluated the evidence to determine whether there are reasonable grounds to believe that particular individuals bore individual criminal responsibility for these crimes. Having considered all the evidence, the Judges concluded that Government of the Sudan forces committed war crimes, crimes against humanity and genocide in Darfur, following a strategy adopted at the highest echelons of the State apparatus. The findings on genocide, moreover, were entered following a ruling by the five-member bench of the Appeals Chamber. The Pre-Trial Chamber identified the individuals that must face justice and issued arrest warrants for a Militia/Janjaweed leader, Ali Kushayb, who reported to the then Minister of State for the Interior, Ahmad Harun, who in turn reported to the then Minister of the Interior Abdel Raheem Muhammad Hussein, who reported to President Al Bashir. Their responsibility is not a mere consequence of their official roles. In all of these cases there are witnesses that describe in detail their active participation in the strategy to commit crimes as well as in the execution of that strategy.

Mr President,

8. The Judges of the ICC have formally communicated six times to the Council without any response. This includes a 25 May 2010 decision of the Pre-Trial Chamber, informing this Council about the lack of cooperation by the Republic of Sudan, in particular in the Harun and Kushayb case; two 27 August 2010 decisions of the Pre-Trial Chamber informing this Council and the Rome Statute Assembly of States Parties about President Al Bashir's visit to Chad and of his presence in the territory of the Republic of Kenya; the 12 May 2011 decision of the Pre-Trial Chamber informing this Council and the Rome Statute Assembly of States Parties about his visit to Djibouti; the 12 December 2011 decision of the Pre-Trial Chamber pursuant to Article 87(7) of the Rome Statute on the failure of the Republic of Malawi to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of President Al Bashir; and the 13 December 2011 decision of the Pre-Trial Chamber pursuant to Article 87(7) of the Rome Statute on the failure by the Republic of Chad to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of President Al Bashir.

Mr President,

9. My Office and I personally remain committed to working with regional organizations endeavouring to contribute to a comprehensive solution, including the League of Arab States and the African Union. The recommendations of the African Union High-Level Panel on Darfur will be one among other points for discussion that I intend to raise in my interactions with former President Mbeki and the African Union Commission Chairperson, Madame Nkosazana Dlamini-Zuma. The recommendations of the African Union High-Level Panel on justice, if implemented, would go a long way toward addressing the challenge of the deliberate imposition and tolerance of impunity not only in Darfur, but in the Sudan as a whole. My Office undertakes this interaction with the African Union on its justice recommendations pursuant to its policy of positive complementarity.

Mr President,

10. Investigating the Darfur situation remains an enormous challenge for my Office. Despite these challenges, we managed to conduct full investigations that have led to five arrest warrants (two against the same individual) and three summonses to appear. Good progress has been made towards the start of the trial for two of the three individuals accused of war crimes in the rebel attack on the African Union peacekeeping base at Haskanita, North Darfur. I expect the trial to begin in 2013, although the defence has asked

for its postponement until 2014. The investigations and preparations for this trial have involved unique challenges, including the translation of all materials for the defence into Zaghawa, a tribal language with no written form. This work demonstrates the commitment of the Office and the Court to a fair trial.

11. I look forward to the opportunity to present to the Judges the substantial and voluminous evidence gathered in the other four cases, following the arrest and surrender of the four individuals sought by the Court. This is an essential step towards delivering justice for Darfur's victims. I believe it will also shed light on the obstacles facing other international processes, such as those endeavouring to bring relief to the victims through delivery of humanitarian aid or the conduct of a peace process that aims to be principled and substantive. The justice process is an essential component of any strategy aimed at truly stopping ongoing crimes, by publicly exposing to the highest independent judicial standards the reasons why and how these crimes have been committed; who has been responsible for them; and how they must be stopped.

Mr President,

12. I have been encouraged of late by my participation in discussions with Rome Statute States Parties and others aimed at galvanizing action to ensure greater cooperation in the Darfur and other Council-referred situations, including through implementation of outstanding arrest warrants. I am committed to working with both States Parties and Non-States Parties, inside and outside of the Security Council, to push these processes forward.

Thank you.