

ICC-02/05-01/20

PUBLIC REDACTED VERSION OF

ANNEX II

to the Defence's Final Brief

Summary of Sudan (Non-)Cooperation with the Court

Date of Document	Name / Description of Document	Summary of Document / Key Extracts
Phase 1:		
2005 – announcement of the first warrants of arrest (27 February 2007)		
[REDACTED]	[REDACTED] ¹	[REDACTED]
[REDACTED]	[REDACTED] ²	[REDACTED]
Phase 2:		
First warrants of arrest – resumption of diplomatic relations (early 2021)		
26 August 2008	Sudan's "2008 Declaration" ³	Declaration deposited with the United Nations Secretariat, according to which "Sudan has no legal obligation arising from its signature" of the Rome Statute. [REDACTED] ⁴
	Public Redacted Version of "Corrected Version of 'Prosecution's request to postpone the confirmation hearing'" ⁵	"Since 2007, limited investigative activities have been carried out in relation to this case within the constraints of the Prosecution's restricted resources and the total lack of cooperation with the Government of Sudan ("GoS"). The Prosecution is now in the early stages of building a relationship with the GoS to allow for vital investigative activities in the territory of Sudan for the first time since 2007." ⁶ "[The Abd-Al-Rahman case] has been largely dormant since 2007 – the longest period of inactivity of any case before the Court to date." ⁷
9 November 2020	Defence Request for Judicial Assistance ⁸	

¹ [REDACTED]

² [REDACTED]

³ [United Nations Treaty Collection](#), Chapter XVIII – Penal Matters, 10. Rome Statute of the International Criminal Court, under Sudan.

⁴ [REDACTED]

⁵ [ICC-02/05-01/20-157-Corr-Red.](#)

⁶ [ICC-02/05-01/20-157-Corr-Red.](#), para. 4.

⁷ [ICC-02/05-01/20-157-Corr-Red.](#), para. 21.

⁸ [ICC-02/05-01/20-263-Red2](#)

9 December 2020	Defence Request for Judicial Assistance ⁹	Defence request for <i>inter alia</i> , copy of Mr Abd-Al-Rahman's civil and criminal records, and of his military file. These documents have never been received
Phase 3: Peace Agreement (31 August 2020) – outbreak of civil war in Sudan (15 April 2023)		
Over this Phase, the Registry reported receiving very good cooperation from the GoS, hampered by some lack of organisation and institutional slowness.¹⁰ No permanent field presence in Sudan was established. Victims and Witnesses Unit were unable to set up protection programmes. [REDACTED].¹¹		
14 February 2021	First OTP-Sudan Memorandum of Understanding	This MoU is not on the record. The Defence's request for its disclosure was denied. ¹²
10 May 2021	"Agreement on Cooperation between the International Criminal Court and Sudan" ¹³	Cooperation Agreement signed by the ICC Registrar. This Agreement does not amount to a special agreement under Article 4(2) of the Statute
17 January 2022	34 th Report of the Prosecutor to the UNSC ¹⁴	"At the same time, it must be stated that during this reporting period, the Office has made a number of formal Requests for Assistance that, as of the date of this report, have still not been executed."¹⁵ "Progress has only been made in relation to two out of the seven Requests for Assistance, despite numerous follow-up requests by the Office. From the previous reporting period, out of four Requests for Assistance, one was executed, one is partially executed and two remain to be executed. Notwithstanding the challenging events in Sudan during this reporting period, it must still be emphasised that the timely and full execution of

⁹ [ICC-02/05-01/20-263-Red2](#)

¹⁰ See eg. [ICC-02/05-01/20-496](#), paras. 22-23; ICC-02/05-01/20-569-Conf-Red, para. 18; ICC-02/05-01/20-619-Conf-Red, paras 24-26; ICC-02/05-01/20-687-Conf-Red, para. 9.

¹¹ [REDACTED]

¹² [ICC-02/05-01/20-289](#) (Application); [ICC-02/05-01/20-323](#) (Application denied); [ICC-02/05-01/20-372](#) (Leave to appeal denied).

¹³ [ICC-02/05-01/20-481-Red.](#)

¹⁴ [34th Report of the Prosecutor to the UNSC, 17 January 2022](#), paras. 34-41.

¹⁵ [34th Report of the Prosecutor to the UNSC, 17 January 2022](#), para. 38.

		these Requests for Assistance remains essential. In short, the state of cooperation must improve.” ¹⁶
12 August 2023	Second OTP-Sudan Memorandum of Understanding	This MoU is not on the record.
16 August 2023	35 th Report of the Prosecutor to the UNSC ¹⁷	“Over the last six months the Office has been able to conduct limited field-based enquiries in Khartoum, allowing it to engage with some Government Ministries and visit locations relevant to investigations. Out of a total of seventeen new formal requests for assistance transmitted to the Government of Sudan since the last briefing of the Council by the Prosecutor, two have been executed and one partially executed. In addition, ten outstanding requests from the previous reporting period remain to be progressed or executed. The Office has followed up repeatedly on these requests for assistance with the Sudanese authorities on various occasions, including during in-person meetings.”¹⁸ “In contrast with the previous reporting period marked by commendable support by the Government of Sudan in the provision of visas in a timely manner, the Office noted increased difficulties in the issuance of visas.”¹⁹ “In recent times however a number of challenges have impacted attempts to continue to accelerate investigative activities on the territory of Sudan. Political developments have required the Office to continually adapt and enhance its efforts to engage with the Sudanese authorities. During the period of anticipated political transition the Office sought to maintain engagement with all relevant actors so as to strengthen the basis for cooperation. However in the aftermath of the events of last year, the Office has

¹⁶ [34th Report of the Prosecutor to the UNSC, 17 January 2022](#), para. 39.

¹⁷ [35th Report of the Prosecutor to the UNSC](#), 16 August 2022, paras 24-38.

¹⁸ [35th Report of the Prosecutor to the UNSC](#), 16 August 2022, para. 25.

¹⁹ [35th Report of the Prosecutor to the UNSC](#), 16 August 2022, para. 26.

		seen a decrease in cooperation from the Sudanese authorities.”²⁰ “As referenced above, the Office also notes the lack of execution of a number of formal requests for assistance, including with respect to access to government and military officials, documents and detainees. Through his visit to Sudan in August 2022 the Prosecutor intends to address a number of the issues that have negatively impacted investigations.”²¹
25 January 2023	36 th Report of the Prosecutor to the UNSC ²²	“Despite the clearest commitments made by the most senior members of the Government of Sudan during the visit of the Prosecutor in August 2022, the Office has received limited cooperation from Sudanese authorities in these priority areas in this reporting period.”²³ “In this respect, 9 new requests for assistance were submitted to the Government of Sudan since the last report to the Council. At the time of drafting this report, a total of 34 requests of assistance submitted since June 2020 have not been responded to.”²⁴ “During a mission to Sudan in early December 2022, members of the OTP delegation met with the Office of the Attorney General in order to follow-up on the above referenced requests. The Office of the Attorney General indicated it was still awaiting responses from other governmental entities and no further response could be provided at that point. No update has been provided by the Government of Sudan since this meeting.”²⁵ “As a consequence, the Office was not able to secure physical access to document collections in Sudan

²⁰ [35th Report of the Prosecutor to the UNSC](#), 16 August 2022, para. 32.

²¹ [35th Report of the Prosecutor to the UNSC](#), 16 August 2022, para. 34.

²² [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, paras. 36-53.

²³ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 37.

²⁴ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 40.

²⁵ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 41.

		relevant to its investigations during the reporting period.”²⁶ “The commitment made by Sudanese authorities to establish an interdepartmental committee to streamline the execution of the requests for assistance has also not been fulfilled.”²⁷ “As noted in the Thirty-fifth Report, the Registrar of the Court had undertaken significant steps to advance discussions with the Government of Sudan on the establishment of a country office of the Court in Khartoum. These initiatives have not received any further support from Sudanese authorities in the reporting period.”²⁸ “A number of commitments and promises were made by the leadership of the Government of Sudan to the Prosecutor during his visit in August 2022 to ensure that necessary steps are taken for a field presence that would enable the Court and its organs as well as participants in the proceedings relating to Mr Abd-Al-Rahman to be continuously present in Khartoum and carry out their activities. Attempts by the Court to make tangible progress and see those promises kept, have not been successful.”²⁹ “The leadership of the Government of Sudan, the Chairman and Deputy Chairman of the Sovereignty Council made a further commitment to the Prosecutor in August 2022: to ensure that ongoing challenges in the issuance of visas were addressed. This commitment has not led to demonstrable action in the reporting period. To the contrary, the Office has faced increased hurdles to the issuance of visas in order to facilitate its work on the ground in Sudan. While some single-entry visas have been granted after significant engagement with Sudanese authorities, no multiple-entry visas have been issued in this period. Rather, additional and seemingly
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²⁶ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 42.

²⁷ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 43.

²⁸ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 45.

²⁹ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 46.

		unnecessary administrative requirements have been put in place that have hampered the work of the Office. Changes in institutional focal points by the Government of Sudan have also negatively impacted communication and operational support including for the execution of requests for assistance. Repeated efforts to improve these lines of communication have not been successful.”³⁰ “In light of the challenges faced in cooperation in recent months, the Office has not considered the present status of cooperation to be conducive to more detailed discussions on the possibility of complementarity efforts under the domestic legal framework in Sudan. The Office however remains open to engaging in such dialogue with Sudanese authorities if the Government of Sudan demonstrates a willingness to change its current stance with respect to cooperation.”³¹
Phase 4: Outbreak of civil war in Sudan – present		
Collapse in the functioning of the GoS and, until recently, a halt to field missions in Sudan. Darfur remains inaccessible. The only accessible part of the country is Port Sudan where the rump GoS holds on to control.		
22 October 2024	<i>Note verbale</i> with subject: Request number REG-Jcss-2024-103 ³²	[REDACTED]

³⁰ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 47.

³¹ [36th Report of the Prosecutor to the UNSC](#), 25 January 2023, para. 48.

³² DAR-D31-00000353 (Arabic), DAR-D31-00000354 (English translation).