

ANNEXE II.

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

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INTRODUCTION

1. The Prosecutor of the International Criminal Court (ICC or the Court) submits the twentieth report pursuant to paragraph 8 of UN Security Council Resolution (UNSCR) 1593 of 31 March 2005. This report outlines the judicial activities undertaken since the last report to the Security Council on 23 June 2014, on-going Office activities including the results of crime monitoring, and the cooperation received or lack thereof from the Republic of the Sudan and others. It is worth noting that as of 31 March 2015, in approximately three months, it will have been ten years since the UN Security Council referred the situation of Darfur to the ICC. I am deeply troubled that the four main suspects (Omar Al Bashir, Abdel Raheem Hussein, Ahmad Harun and Ali Kushayb) with outstanding arrest warrants against them issued by the Pre-Trial Chamber remain at large in the Sudan, still in high positions within the Government of the Sudan (GoS). More recently, a warrant of arrest has also been issued against Mr Abdallah Banda Abakaer Nourain. The GoS is under an obligation to immediately surrender all suspects to the Court so that justice can be served.
2. In UNSCR 1593, 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 UN Charter, decided to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC. The Court exercised its jurisdiction in relation to the situation in Darfur in accordance with Article 13(b) of the Rome Statute pursuant to UNSCR 1593.
3. In UNSCR 2173, adopted on 27 August 2014, the Security Council expressed its deep concern at the serious deterioration in the security situation overall so far in 2014, and the profound negative impact on civilians, in particular women and children. It further expressed deep concern at the significant increase in population displacements this year and the consequent increase in humanitarian assistance and protection needs, with an estimated 359,000 newly displaced between January and the end of August. Around

260,000 of these displaced people have been unable to return to their homes, alongside more than two million long-term internally displaced persons.

4. The resolution further condemns increased human rights violations and abuses in, and relating to, Darfur, including those involving extrajudicial killings, the excessive use of force, abduction of civilians, acts of sexual- and gender-based violence, violations and abuses against children, and arbitrary arrests and detentions, and demands that the parties to the conflict immediately cease all acts of sexual and gender-based violence, and make and implement specific and time-bound commitments to combat sexual violence.
5. In its June 2014 report, the Office called on the UN Secretary-General (UNSG) to undertake a thorough, independent and public inquiry into the allegations of manipulation of UNAMID reporting. The Office welcomes the quick response of the UNSG to the Office's call for action and takes note that the internal Review Team established by the UNSG submitted its report in October 2014. An executive summary of the Review Team's report has been shared with the Office, for which the Office is thankful.
6. The Office notes UNAMID's subsequent investigation and Report on the alleged mass rape in Tabit, North Darfur. It is indeed a matter of concern that UNAMID has been denied full access to the area to conduct full and transparent investigations of these allegations. The Office joins the UNSG and this Council in calling upon the GoS to grant UNAMID unfettered access to Tabit to conduct thorough independent investigations.

1. RECENT JUDICIAL ACTIVITIES

7. The Office's judicial activities are ongoing. However, the trial date of Mr Abdallah Banda Abakaer Nourain has been vacated since the Trial Chamber found that there are no guarantees that, in the current circumstances, Mr Banda will be in an objective position to appear voluntarily. In May 2014, the Office submitted that Mr Banda is under an obligation to appear for trial on any date ordered by the Trial Chamber and his appearance at trial is non-negotiable under his summons to appear issued pursuant to Article 58 of the Rome Statute. Further, the Office argued that any failure of Mr Banda to abide by the Trial Chamber's order for the commencement of trial should lead to the immediate issuance of an arrest warrant against him. The Prosecution submitted that a start trial date of 1 October 2014 would be appropriate and fair.

8. On 14 July 2014, Trial Chamber IV ordered that the trial would commence on 18 November 2014, and that Mr Banda's summons to appear continued to be binding. The Chamber ordered the Registrar to notify the GoS of the summons and to request its cooperation to facilitate his presence at trial. On 15 August 2014, the Registry confirmed that the envelope containing the written cooperation request has been returned to the Court unopened by the GoS.

9. On 9 September 2014, the Office submitted that Mr Banda had asserted only a conditional willingness to attend trial, and it appeared his conditions would not be met. Therefore, the Office requested confirmation from Mr Banda that he would appear as necessary. On 11 September 2014, the Chamber concluded that a warrant of arrest was now necessary to ensure Mr Banda's presence at trial. The Chamber suspended trial preparatory measures and vacated the 18 November 2014 trial date until Mr Banda's arrest or voluntary appearance. The Prosecution proposed that the Trial Chamber revisit the Decision issuing an arrest warrant by ordering Mr Banda to state, unequivocally and without conditions or caveats that he will appear for trial on the date set by the Chamber. The Prosecution submitted that if Mr Banda confirmed his attendance, an arrest warrant should not be issued. However, if there was no such unequivocal confirmation, then a warrant would be appropriate. The Defence has made it clear that Mr Banda will not attend the trial. A decision on this matter is currently pending.

10. In the case of Mr Omar Al Bashir, my Office and the Chambers have continued to track his travels and have interacted extensively with States about meeting their obligations to arrest and surrender him to the Court. On 7 July 2014, Pre-Trial Chamber II issued a decision on Mr Al Bashir's travel to Qatar on 8 July 2014. The Chamber recognised that Qatar as a non-State Party is not under any obligation to cooperate, but noted the language of UNSCR 1593, which "*urge[d] all States and concerned regional and other international organizations to cooperate fully*" with the Court. The Chamber therefore renewed its invitation to the competent Qatari authorities to arrest Mr Al Bashir and surrender him to the ICC, and ordered the Registrar to prepare and transmit a new request. On 1 October 2014, Pre-Trial Chamber II issued a decision on Mr Al Bashir's travel to the Kingdom of Saudi Arabia on 30 September. As with Qatar, the Pre-Trial Chamber renewed its invitation to the competent Saudi authorities to arrest and surrender him to the Court. On 14 October 2014, the Pre-Trial Chamber issued a decision on Mr Al Bashir's travel to Egypt on 18 and 19 October. The Chamber likewise invited Egypt to arrest and surrender Mr Al Bashir to the Court. On 4 November 2014, Pre-Trial Chamber II issued a decision on Mr Al Bashir's travel to Ethiopia on 5 November and invited the competent Ethiopian authorities to arrest and surrender him to the Court.

2. ON-GOING OFFICE ACTIVITIES

11. The Office has continued to prepare the case against Mr Banda.
12. The overview of allegations of crimes reflected in this section points to the need to consider new investigations in the Darfur situation. The lack of arrests and cooperation from the GoS has presented an on-going challenge for the Office. Additionally, the collection of evidence continues to be significantly slowed down by lack of resources.
13. The Office continues to monitor relevant crimes allegedly committed in Darfur.

2.1 Monitoring of current crimes

14. The Office continues to monitor a number of trends that could constitute Rome Statute crimes, including: alleged attacks by the Ministry of Defence, either targeting or indiscriminately affecting civilians and other persons, as well as alleged attacks on civilians by rebel movements; alleged acts affecting the persons displaced and alleged abductions of, and attacks on, humanitarian aid workers and peacekeepers, among others.
15. During the reporting period, the Office recorded fewer incidents related to bombardments, and fighting between GoS forces and rebels. The Office recorded at least 900 violent deaths in the reporting period as the result of aerial bombardments, ground attacks and tribal clashes.

2.2 Alleged aerial bombardments affecting civilians

16. In the reporting period, the GoS has continued with aerial bombardments, with ten reported air raids (compared with twenty-four in the previous reporting period). Air raids reportedly resulted in twenty-nine deaths, the destruction of livestock, crops and water points. Seven of the ten alleged bombardments took place in East Jebel Marra, an area known to be under the control of rebel forces. The last three took place in North Darfur.

2.3 Alleged ground attacks affecting civilians

17. The Office has taken note of the continued role of the Rapid Support Forces (RSF) in operations in Darfur. The RSF are mobile and can operate anywhere in the Sudan, and are administered by the National Intelligence Security Service (NISS), although they are commanded by the Sudanese Armed Forces (SAF) during military operations. As NISS

members, they carry formal immunity for their actions. It has been suggested that a climate of impunity is created by this blanket protection. Those who attempt to draw attention to RSF human rights abuses have faced prosecution in retaliation. Since May 2014, the RSF's ranks have increased from 6,000 to at least 10,000 troops, 3,300 of whom are stationed in Khartoum. The majority of recruits are from Darfur but those based in South Kordofan are recruited from the region. Some concerns have been raised about the recruitment of minors in the RSF. Reports consistently point to SAF Major General Abdual-Aziz and Mohamed Hamdan Dagolo, known as Hemiti, as RSF commanders, with General Ali al-Nasih al-Galla, a senior NISS official, retaining overall control.

18. During the reporting period, civilians have suffered from an increase in tribal violence over land and natural resources, in particular between Arab tribes: the Ma'aliya and the Hamar on the border of East Darfur and West Kordofan; the Northern Rizeigat and the Beni Hussein in North Darfur; and the Salamat and the Misseriya in Central Darfur. As noted previously, as a side effect of the reported inability of the GoS to fulfil its financial obligations with various allies that formed the militia/Janjaweed, such groups are reportedly seeking alternative sources of revenue, including heavy inter-communal fighting over natural resources. To this end, units are allegedly using weaponry initially supplied by the GoS to support other activities as well.

2.4 Alleged widespread occurrence of sexual and gender-based crimes

19. The Office has received reports of forty-two incidents of rape resulting in some 340 alleged victims, all of them women. GoS and/or affiliated paramilitary forces were allegedly responsible for 300 of them. On 31 October, GoS military forces were reportedly responsible for the rape of 200 women and girls from Tabit, North Darfur. The soldiers reportedly accused the villagers in the disappearance of a soldier, who was later found in the Tawila locality; the rapes were in retaliation for the alleged disappearance of the soldier. At least eighty victims were reportedly minors; men were beaten and chased out of the village. The commander of the soldiers allegedly admitted that his men committed the mass rape. UNAMID was refused access to the village to investigate for a week, and thereafter, although granted access, sources inside the UN have expressed concern that the overwhelming presence of GoS military in the interviews with alleged victims created an intimidating environment and prevented UNAMID from being able to corroborate the allegations. On 19 November 2014, the UN Security Council called on the GoS to conduct a thorough investigation into these allegations, and called on the GoS to allow UNAMID full and unrestricted freedom of movement without delay throughout Darfur to enable UNAMID, *inter alia*, to conduct a full and transparent investigation without interference and verify whether these

incidents have occurred. The Council further called on the GoS to ensure accountability, if the allegations are verified. The Office of the Prosecutor is concerned about whether the allegations can be substantiated under any circumstances, given the atmosphere of intimidation that GoS has created; even if UNAMID is able to interview the alleged victims without GoS military presence, any publicity about findings thereafter may result in retributive action that could prevent victims from speaking out.

20. During the reporting period, women were attacked as they carried out daily activities such as collecting firewood or working in farmlands, or during attacks on villages. Fourteen of the forty-two incidents reported allegedly took place when women were going, returning or working in farmlands. Three incidents reportedly took place during attacks on villages. The vast majority of women were reportedly gang-raped. There continues to be reluctance amongst victims to formally report incidents of sexual and gender-based violence for fear of stigma or reprisals. In his 22 July 2014 report, the UNSG stated, “[s]exual and gender-based violence remained a pervasive feature of the conflict in Darfur.” Aside from Tabit, another series of incidents included forty-five women, including twelve minors, who were allegedly gang-raped by militia/Janjaweed in East Jebel Marra, North Darfur, between 1 July and 15 August 2014, as well as eleven women allegedly raped by GoS military and RSF during the attack on two villages in Jebel Marra, Central Darfur, on 14 July 2014.

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

21. During the reporting period, arbitrary arrests and detention continued despite Mr Al Bashir’s promise in April 2014 to release all political detainees. Two opposition leaders, Sadiq Al-Mahdi (leader of the National Umma Party) and Ibrahim Al-Sheikh (leader of the Sudanese Congress Party) were arrested for accusing the RSF of committing war crimes and abuses against civilians in Darfur and elsewhere. Mr Al-Mahdi was released without charge, but Mr Al-Sheikh and other members of his party are still being held. Other allegedly arbitrary detentions include three students in El Fasher, North Darfur on 9 October and one secondary school student of Kalma IDP camp, South Darfur, on 10 September. According to the UN Independent Expert, Mashood A. Baderin, in his 4 September 2014 report, the “fear of arbitrary arrests and detention by the NISS continues to be a major cause of intimidation of political opponents and other civil activists in the Sudan.”

2.6 Alleged abductions of and attacks on humanitarian aid workers and peacekeepers

22. In the reporting period, specifically in September and October 2014, four UNAMID peacekeepers were killed, raising the total number to sixty-one since UNAMID started operating in December 2007. One was reportedly killed by a colleague. An additional four were allegedly abducted by unidentified armed men. UNAMID also reported eleven carjackings, sixty-five house break-ins or robberies and twenty-three abductions against UN and humanitarian organisation personnel from April until July 2014. All abducted staff were released by July. While my Office has no information as to the identity of the alleged perpetrators, I call upon the GoS to take the necessary steps to maintain security for UNAMID personnel. Four individuals who attacked the private residence of a female UNAMID personnel in April 2014 were convicted; one of the victims had been raped. This is the first case in which an attack against UNAMID personnel has led to a trial and sentencing.
23. The UN Independent Expert on human rights in Sudan, Mashood A. Baderin, reported in his 4 September 2014 report that “humanitarian access to Jebel Marra areas (North Darfur) remains problematic, and that Adillah and Abu Karina localities (East Darfur) have not been reached since August 2013.” Despite the deteriorating humanitarian situation, the number of aid workers in Darfur has decreased. Following the expulsion of international aid organisations from Darfur in mid-2009, the number of aid workers in the region, excluding those working for national organisations, fell from 17,700 to roughly 6,850.

2.7 Displacement

24. The escalation of the armed conflict in 2014 resulted in a significant increase in population displacement. More than 380,000 people have reportedly fled violence in Darfur since the beginning of 2014, of whom 247,600 remained displaced. In the last two years, there has been a resurgence of displacement. In 2013, an estimated 400,000 fled their homes. So far in 2014 another 380,000 people have been displaced due to armed clashes between the GoS and armed forces and tribal clashes, alongside more than two million internally displaced persons (IDPs). Most displaced people remain in camps for the majority of the year. People return temporarily to their village mainly for fear of losing their land and/or to cultivate it. Inadequate access to food forces many to take significant risks to feed their families. Darfurians face “taxes” imposed by militia/Janjaweed, exploitation, intimidation and abuse, including women being raped on their farms.

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

25. 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 this resolution and the orders of the Court’s judges, the pending warrants of arrest have been transmitted to the GoS for execution.
26. The Sudan, as the territorial State, has the primary responsibility and is fully able to implement the warrants, consistent with its sovereign authority. It has consistently failed to do so. At the same time, it has also failed to provide any meaningful measure of justice at the national level.
27. Due to the repeated failures by the Sudan to execute the outstanding arrest warrants against Mr Omar Al Bashir and Mr Abdel Raheem Hussein, the Office will soon file a motion with the Pre-Trial Chamber requesting a formal finding of non-cooperation. If the Pre-Trial Chamber issues a finding of non-cooperation, the Court will communicate the decision to the UN Security Council.
28. The Office takes this opportunity to recall the eight communications from the Court informing the Security Council about non-cooperation in the Darfur situation, either by the GoS or by other States, in relation to all four suspects. The Office appreciates and encourages the sustained efforts that States Parties to the Rome Statute in the Security Council have made and continue to make to ensure that the Council produces a substantive response to these communications.

4. CONCLUSION

29. The catastrophic humanitarian situation in the Sudan, the continued non-cooperation of the Sudan in not surrendering the suspects and the continuing perpetration of serious crimes against civilians are simply unacceptable.
30. The Office calls on the Security Council to ensure Sudan’s compliance with UNSCR 1593, and equally calls on States Parties to the Rome Statute to promote cooperation and affect the arrest of individuals wanted by the ICC in the Darfur situation. This is not simply a challenge for those States Parties he may visit. The Office notes in this regard that in addition to the obligations of States Parties to the Rome Statute, all Member States of the UN are urged by the Security Council to cooperate with the Court’s investigations and prosecutions in Darfur. The Office will continue to monitor the Darfur situation.

31. Without stronger action by the Security Council and State Parties, the situation in Sudan is unlikely to improve and the alleged perpetrators of serious crimes against the civilian population will not be brought to justice. | OTP