



## **THIRTEENTH 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 judicial activities undertaken since the last report on 10 December 2010, 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.

### **II. Judicial Proceedings**

3. Following the UNSC referral, the Prosecution conducted a preliminary examination in order to determine whether the Darfur situation met the legal criteria established by Article 53(1)(a)-(c) of the Rome Statute. On 1 June 2005, the Office of the Prosecutor opened an investigation into crimes committed in Darfur.
4. The Office of the Prosecutor has presented three cases to the Judges of the Pre-Trial Chamber: The case of Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman (Ali Kushayb), the case of Omar Hassan Al Bashir, and the case of Bahar Idriss Abu Garda, and Abdallah Banda Abakaer Nourain / Saleh Mohammed Jerbo Jamus.

#### *The Prosecutor v. Ahmad Harun and Ali Kushayb*

5. The Prosecution presented the case to the Pre-Trial Chamber on 27 February 2007, with evidence that Harun, then Minister of State for the Interior and Head of the Darfur security desk, joined with Kushayb, a leader of the Militia/*Janjaweed*, to persecute the civilians in Darfur. The evidence unveiled a system of attacks against the civilian population. It showed that Ahmad Harun, coordinated the activities of the Sudanese army and Militia/*Janjaweed* integrated as its reserve forces to attack civilians in their villages, looting, killing, raping and torturing civilians who were not participants to any conflict, causing massive displacement. The Government of the Sudan (GoS) at that time abused the international community, pretending that its army was only targeting rebel positions and responding to their provocations, and that any civilian casualties were the result of inter-tribal conflict. The investigation revealed that the massive military

campaign against the civilian population, and its cover-up, were in fact carefully planned. On 27 April 2007, Pre-Trial Chamber I issued an arrest warrant for 51 counts of crimes against humanity and war crimes against the two individuals. In the warrant, the Court cited *“reasonable grounds to believe that the attacks perpetrated by the Sudanese Armed Forces and/or the Militia/Janjaweed were of a systematic or widespread nature and were directed against civilians primarily from the Fur, Zaghawa and Masalit populations pursuant to or in furtherance of a State or organizational policy consisting in attacking the civilian population.”*

6. The Court further noted that *“due to his position at the Darfur Security desk and through his overall coordination and personal participation in key activities of the Security Committees, namely the recruiting, arming and funding of the Militia/Janjaweed in Darfur, Ahmad Harun intentionally contributed to the commission of [war crimes and crimes against humanity].”*
7. Harun and Kushayb were not arrested by the Government of the Sudan and on 25 May 2010, the Pre-Trial Chamber adopted a decision informing the Security Council about the lack of cooperation by the Republic of the Sudan, *“considering that after taking all possible measures to ensure the cooperation of the Republic of the Sudan, the Chamber concludes that the Republic of the Sudan is failing to comply with its cooperation obligations stemming from Resolution 1593 (2005) in relation to the enforcement of the warrants of arrest issued by the Chamber against Ahmad Harun and Ali Kushayb.”* The Chamber ordered the Registrar to transmit the decision to the Security Council *“in order for the Security Council to take any action it may deem appropriate”*.
8. The Chamber’s decision on Ahmad Harun confirms that joint attacks by the Government forces and the militia targeting the civilians were planned and executed, under the guise of military operations against rebels or so-called *“inter-tribal conflicts.”* As described below (see III), there is nothing to indicate that this modus operandi has varied.

#### *The Prosecutor v. Omar Al Bashir*

9. In its June 2007 and December 2007 reports to the Council, the Prosecution stated that it was investigating an ongoing pattern of crimes committed with the mobilization of the whole state apparatus and that *“Harun’s presence in the Ministry of Humanitarian Affairs and the other high profile responsibilities he is being given by the GoS signals official tolerance or even active support for his crimes.”* The Prosecution announced that the second case, focusing on the person(s) protecting Harun and ordering continuing attacks aimed at the Fur, Masalit and Zaghawa, would be presented to the Judges by July 2008.
10. On 14 July 2008, the Prosecution presented its evidence to Pre-Trial Chamber I, requesting an arrest warrant against President Omar Al Bashir for 10 counts of genocide, crimes against humanity and war crimes.
11. The evidence showed that President Al Bashir ordered the Sudanese armed forces (SAF), with the Militia/Janjaweed acting as reserve forces, to attack hundreds of villages predominantly inhabited by the Fur, Masalit and Zaghawa. As a consequence 2.5 million people were forced to live in camps for internally displaced people and then subjected to

“bodily and mental harm” that constitute genocide in accordance with article 6(b) of the Rome Statute and to “conditions of life calculated to bring about their physical destruction” that constitute genocide in accordance with article 6(c) of the Rome Statute.

12. On 4 March 2009, Pre-Trial Chamber I issued an arrest warrant for President Al Bashir for 5 counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and 2 counts of war crimes (intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities, and pillaging).
13. The Court found *“reasonable grounds to believe that, as part of the GoS’s unlawful attack (...) and with knowledge of such attack, GoS forces subjected, throughout the Darfur region, thousands of civilians, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of murder and extermination.”*
14. The Court found *“reasonable grounds to believe that... GoS forces subjected, throughout the Darfur region, (i) hundreds of thousands of civilians, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of forcible transfer; (ii) thousands of civilian women, belonging primarily to these groups, to acts of rape; and (iii) civilians, belonging primarily to the same groups, to acts of torture.”*
15. The Court found *“reasonable grounds to believe that, from soon after the April 2003 attack on El Fasher airport until 14 July 2008, GoS forces, including the Sudanese Armed Forces and their allied Janjaweed Militia, the Sudanese Police Force, the NISS and the HAC, committed crimes against humanity consisting of murder, extermination, forcible transfer, torture and rape, within the meaning of articles 7(1)(a), (b), (d), (f) and (g) respectively of the Statute, throughout the Darfur region.”*
16. By a majority vote, the Pre-Trial Chamber declined to issue an arrest warrant in relation to the genocide charges. On 6 July 2009, the Prosecution appealed the decision of the Majority, arguing that the Pre-Trial Chamber erroneously applied a higher standard of proof than that required at the arrest warrant stage in relation to the genocide charges.
17. On 3 February 2010, the Appeals Chamber ruled in favour of the Prosecution and held that *“the Pre-Trial Chamber applied an erroneous standard of proof when evaluating the evidence submitted by the Prosecutor and, consequently, rejected his application for a warrant of arrest in respect of the crime of genocide. Therefore, the decision by the Pre-Trial Chamber not to issue a warrant of arrest in respect of that crime was materially affected by an error of law.”* As relief, the Appeals Chamber decided to remand the matter to the Pre-Trial Chamber for a new decision, using the correct standard of proof.
18. As a consequence, the Pre-Trial Chamber reassessed the evidence and on 12 July 2010, issued a second arrest warrant for President Al Bashir for three counts of genocide (genocide by killing, genocide by causing serious bodily or mental harm, and genocide by deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part).

19. The Chamber found reasonable grounds to believe *“that villages and towns targeted as part of the GoS’s counter-insurgency campaign were selected on the basis of their ethnic composition and that towns and villages inhabited by other tribes, as well as rebel locations, were bypassed in order to attack towns and villages known to be inhabited by civilians belonging to the Fur, Masalit and Zaghawa ethnic groups.”*
20. The Chamber’s decision describes how the genocide was executed; attacking civilians in their villages, causing their displacement in camps and subjecting them to serious bodily or mental harm, subjecting the displaced to rapes and keeping them in a constant state of fear. As described below (see III), there is nothing to indicate that the modus operandi has changed.

*The Haskanita case*

21. On 20 November 2008, the Prosecution presented its application for summonses to appear to the Judges against three rebel commanders – Bahr Idriss Abu Garda, Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus – for 3 counts of war crimes (violence to life, intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission, and pillaging under Art. 8(2) of the Rome Statute).
22. The application focused on an unlawful attack carried out on 29 September 2007 against African Union Mission in Sudan (AMIS) peacekeeping personnel, installations, material, units and vehicles, stationed at the Military Group Site Haskanita, North Darfur. The attackers killed twelve peacekeepers and severely wounded eight others. They destroyed the communications installations, dormitories, vehicles and other AMIS materials. After the attack, the commanders personally participated in pillaging the camp.
23. A summons to appear was issued under seal for Abu Garda on 7 May 2009 and unsealed on 17 May 2009. Abu Garda voluntarily made his initial appearance before the Court on 18 May 2009, and his confirmation of charges hearing was held on 19-29 October 2009.
24. On 8 February 2010, the Pre-Trial Chamber I declined to confirm the charges against Abu Garda, stating that the evidence was insufficient to warrant committing him for trial. The Prosecution is committed to presenting new evidence against him.
25. Summonses to appear for Banda and Jerbo were issued under seal on 27 August 2009 and unsealed on 15 June 2010. On 17 June 2010, they both appeared voluntarily before the Court.
26. On 19 October 2010, the Prosecution and Defence in a joint filing informed the Pre-Trial Chamber that they had agreed the facts alleged by the Prosecution in its Document Containing the Charges. The confirmation of charges hearing took place on 8 December 2010.

27. On 7 March 2011, the Pre-Trial Chamber confirmed the charges against Banda and Jerbo and on 16 March 2011, the Presidency constituted Trial Chamber IV and referred to it the case of The Prosecutor v Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus.
28. On 16 May 2011, the OTP 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.

### III. Monitoring of Crimes

29. The Prosecution continues to monitor crimes falling within its jurisdiction in Darfur and the allegations of ongoing crimes represent the continuation to the present of the genocide, crimes against humanity and war crimes that the Judges have already adjudicated.
30. Information collected points in particular to: the responsibility of the Ministry of Defence as well as other security bodies and the responsibility of the members of the Humanitarian Aid Commission (HAC) in the commission of ongoing acts of genocide, crimes against humanity and war crimes. The Office will also further investigate the use of child soldiers by the parties including rebel movements constituting war crimes, as well as one particular instance of a rebel attack that targeted civilians.
31. Since April 2002, there has been an armed conflict in Darfur. While different reporting periods have witnessed diverse levels of fighting between the GoS and rebel movements, the pattern of targeting civilians has never abated nor varied. The Office recalls that in the context of such an armed conflict, it is the targeting of civilians or other protected persons as an objective which is illegal and constitutes a crime under the Statute. Individuals allegedly responsible for ordering these attacks or failing to prevent them from being committed will be held responsible.
32. In its decision to issue an arrest warrant for genocide against President al Bashir, the Chamber found that *"a core component of the GoS counter-insurgency campaign was the unlawful attack on that part of the civilian population of Darfur - belonging largely to the Fur, Masalit and Zaghawa groups - perceived by the GoS as being close to the SLM/A, the JEM and the other armed groups opposing the GoS in the ongoing armed conflict in Darfur..."* This pattern of unlawful attacks is continuing in the various forms already presented to the Court.

*Continuation of bombing attacks targeting or indiscriminately affecting civilians*

33. Conducting offensive military flights is prohibited by Security Council resolution 1591 (2005). However, the GoS, which is the only party to the conflict to have possession of aerial means, has pursued its air attacks and has specifically targeted villages in the absence of any rebel presence.
34. Alleged bombing attacks by the GoS over the last six months have followed previous practice as occurred on 10 December 2010 where the GoS began large-scale attacks on Khor Abeche and surrounding villages in South Darfur. While such villages were reputed to be “supporting SLA”, no combatants were present at the scene at the time of the attacks, and the United Nations was denied access.
35. In addition, bombing attacks by the GoS on rebel positions – in violation of resolution 1591 - have indiscriminately affected the civilians as the GoS is using “ill-equipped” Antonov aircraft, which has been found to be an imprecise weapon system. As a consequence, even bombing attacks on rebel positions have caused deaths and injuries among civilians not taking part in the hostilities, and have destroyed civilian infrastructures such as water places and protected objects such as schools. The GoS was put on notice that such acts were indiscriminately affecting civilians by numerous public statements of the UN Secretary-General and UN agencies, as well as by the UN Security Council in its resolutions.
36. On 25 January 2011, the GoS reportedly used Antonov aircraft in and around the town of Tabit in North Darfur, destroying eight villages and causing the displacement of thousands of civilians. In addition, a large number of livestock were killed and water sources destroyed. Between 29 March and 2 April 2011, heavy airstrikes in North and West Darfur caused a school, a water pump and a market to be destroyed.

*Continuation of ground attacks targeting civilians*

37. In the decision issuing the arrest warrant for President Bashir, the Chamber found “reasonable grounds to believe that... GoS forces subjected, throughout the Darfur region, (i) hundreds of thousands of civilians, belonging primarily to the Fur, Masalit and Zaghawa groups, to acts of forcible transfer; (ii) thousands of civilian women, belonging primarily to these groups, to acts of rape; and (iii) civilians, belonging primarily to the same groups, to acts of torture.” The forcible transfer, in particular, was reflective of the words of Ahmad Harun, then Head of the Darfur Security Desk who stated that since the rebels were moving among the civilians like fish in the water, then to get to the fish, the GoS had to drain the water.
38. This practice continues. Following the aerial attacks on civilian villages in December 2010, government soldiers beat civilians including women and old men, and looted property in Khor Abeche. Homes were also burned. The attacks killed civilians, injured dozens, and caused massive damage to civilian property, particularly that of ethnic Zaghawa. Reports confirm looting and destruction of personal property, as well as of public facilities in several villages of North and South Darfur.

39. Again, in early February 2011, a government force consisting of 20 vehicles backed by Militia/*Janjaweed* launched ground attacks against civilian villages in the Dar es Salaam locality in North Darfur including Eid Al Beid, Hilat Agaba, Hila Bein, Hila Wadi and Hilat Arab. According to witnesses, approximately five people were killed. In addition, the forces carried out searches, beatings, torture, pillage, looting and destruction. Approximately 3000 people are said to have fled the area to the city of El Fasher.
40. There are also reports about attacks allegedly carried out by SLA forces on civilians. In December 2010, SLA forces reportedly attacked ethnic Birgid communities whose members are seen as pro-government, in Jaghara and Nigaa and surrounding villages in South Darfur. According to witnesses, the attacks caused numerous civilian casualties.

*Continuation of widespread sexual and gender-based violence that constitutes crimes against humanity in accordance with article 7 (g) and genocide in accordance with article 6(b)*

41. Sexual and gender-based violence (SGBV) have been charged as war crimes and crimes against humanity in the arrest warrant issued for Ahmed Harun. The Judges of the International Criminal Court have held in the arrest warrant for President Bashir that the large scale commission of rape constitutes the *“crime of genocide by causing serious bodily or mental harm, as provided for in article 6(b) of the Statute.”*
42. Gender crimes remain the weapon of choice of the Sudanese Armed Forces and its reserve force, the Militia/*Janjaweed*: consistent with the findings of the Court, the 8 March 2011 Report of the UN Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005), stated that *“Sexual and gender-based violence has been one of the most persistent human rights violations in the context of the Darfur conflict.”*
43. The Panel of Experts found that SGBV occurred in all three states of Darfur and particularly targeted internally displaced women. The prevalent modus operandi remains as described in the arrest warrants: physical assault, sexual assault and rape occur most often while women were carrying out livelihood activities including collecting firewood. Some women were also beaten and shot during the incidents. Others were captured and subsequently raped or gang-raped. The alleged perpetrators are said to have *“included armed uniformed personnel, such as the Border Guards and CRP (Central Reserve Police), armed men in civilian clothes, unarmed men in civilian clothes and unknown armed Arab militiamen.”*
44. Genocide and crimes against humanity by rape continue, but the GoS has ensured that it is no longer reported or discussed. As noted by the Panel, the alleged decrease in reported cases of SGBV as indicated by the GoS and other actors is misleading due to the restricted reporting on incidents. The Panel emphasized that underreporting of SGBV is significant. The actual number of cases of SGBV is much higher than the ones reported.

45. Victims of SGBV have always under-reported attacks for fear of social stigma within their communities. But during the last 2 years they are reporting SGBV cases less frequently as they know they will suffer retaliation for doing so, and they no longer have access to treatment, psychosocial support, referral services and non-food items as previously provided by international NGOs, which were expelled from Darfur by the GoS in March 2009.

*Continued crimes against human rights defenders, civil society members and community leaders*

46. As part of the GoS strategy to cover up the crimes and deny their commission, human rights defenders, civil society members and community leaders in Darfur have consistently been targeted. The UN Panel of Experts in its most recent report of March 2011 pointed out that *"continuing reports of arbitrary arrest and detention of Darfurian community leaders, members of civil society and human rights activists indicate that the practice remains widespread in Darfur."* The Panel further pointed out that victims have been detained by either National Intelligence and Security Service (NISS) or SAF Military Intelligence (MI), and held between a few days and several months.

47. There are consistent allegations of ill-treatment and torture of individuals in State detention. Individuals in custody of security agents were at times reportedly tortured by interrogators and jailers to extort confessions or to humiliate them. In addition, some Darfurians were reportedly arrested and detained under the State of Emergency Law (1997).

48. The UN SG report of January 2011 reports that arbitrary arrest and detention have increased from 32 in the previous reporting period to 43. The most recent UN SG report does not contain updated figures.

49. In the case of the two IDPs from Abu Shouk camp, who were allegedly arrested by NISS agents in El Fasher on 8 October 2010 after a visit by UN Security Council members, NISS officials reportedly stated that the arrests were not associated with the visit of the Security Council delegation. However, no alternative explanation was provided. On 26 October, one of the detainees was released, but was rearrested on 2 November, allegedly due to the fact that the investigation *"was not complete."*

50. The African Centre for Justice and Peace Studies reports that on 23 January 2011, Zam Zam IDP camp in North Darfur was raided by joint forces of the SAF, the NISS and the Central Reserve Forces. As has been the pattern since 2003, more than 80 IDPs were reportedly arrested including three women. In addition, two people were killed. According to the UN SG report of 14 April 2011, government security agencies conducted additional search operations in Shangel Tobaya and Tawilla IDP camps, respectively. All three IDP camps are mainly inhabited by Zaghawa. While the search operations in Shangel Tobaya and Zam Zam IDP camps reportedly uncovered *"some evidence of illegal activity"* such as weapons and ammunition, UNAMID received allegations by community members and IDPs about alleged physical assaults and

arbitrary detention, among others, in the context of the search operations in Zam Zam IDP camp.

*Deliberately inflicting of conditions of life calculated to bring about physical destruction*

51. In its decision issuing the genocide arrest warrant for President Al Bashir, the Chamber notes that *“The Prosecution alleges that methods of destruction other than direct killings and the causing of serious bodily and mental harm were an integral and prominent part of Al Bashir’s genocidal plan. These methods of destruction included: (i) subjecting the group to destruction of their means of survival in their homeland; (ii) systematic displacement from their homes into inhospitable terrain where some died as a result of thirst, starvation and disease; (iii) usurpation of the land; and (iv) denial and hindrance of medical and other humanitarian assistance needed to sustain life in IDP camps.”*
52. After analyzing the evidence, the Chamber considered that *“one of the reasonable conclusions that can be drawn is that the acts of contamination of water pumps and forcible transfer coupled by resettlement by member of other tribes, were committed in furtherance of the genocidal policy, and that the conditions of life inflicted on the Fur, Masalit and Zaghawa groups were calculated to bring about the physical destruction of a part of those ethnic groups.”*
53. As of today, the GoS continues to undertake steps to deliberately inflict conditions of life calculated to bring about physical destruction of the target groups. This includes hindering operations of UNAMID and international non-governmental organizations, thereby depriving civilians from access to humanitarian aid and relief, and preventing the international community from receiving in-depth information on the situation on the ground. According to the UN SG report of 14 April 2011, during January and March 2011, UNAMID patrols were impeded on 19 occasions by GoS authorities and on one by SLA-AW. In addition, SAF and other GoS officials reportedly refused 76 flight clearance requests submitted by UNAMID.
54. In March 2009, after the issuance of the arrest warrant against him, President Al Bashir expelled the very humanitarian organizations whose determined action alleviated the impact of his crimes on the civilians. By doing so he confirmed his genocidal intent. Until today, there has been no independent, publicly available and comprehensive impact assessment of such NGO expulsions.
55. There have been two new cases of alleged expulsions or suspensions of international NGOs by the GoS during the first three months of 2011, a practice that has been a pattern since 2003 against NGOs who are reporting “negatively” and which is directly affecting the civilians.
56. On 28 February 2011, arguing that the Humanitarian Aid Commission (HAC) had accused the CRS of “distributing bibles”, the Wali of Western Darfur suspended the activities of “Catholic Relief Services” (CRS), an NGO partnering with the World Food Programme.

57. On 11 February 2011, at least twelve staff workers from another NGO working in central Darfur were reportedly arrested in Nyala. According to a police source, they were accused of “collaborating with the rebel leader of the Sudan Liberation Movement (SLM), Abdel Wahid al Nur”. On 14 February 2011, Sudanese authorities reportedly expelled the NGO altogether from Darfur. As at 31 March 2011, two national staff remained in NISS detention. According to the UN SG report of April 2011, the NGO had been a “key implementing partner of UNICEF in its child immunization programmes” and one of the few international NGOs providing primary health care and nutrition services to approximately 100,000 beneficiaries in several clinics in eastern Jebel Marra. The report states that the expulsion “had a negative impact on the provision of humanitarian services to communities.”
58. In February 2011, workers from four humanitarian organisations, who asked not to be named, said that there had been “a recent increase [in] travel restrictions and worsening security conditions.”
59. On 14 April, the Sudanese daily Al-Ahram al-Yawm reported that the governor of South Darfur, Abd-al-Hamid Musa Kasha, had threatened to expel an unnamed international NGO shortly, and also threatened to expel UNAMID staff members due to the refusal of some staff to submit to search procedures.
60. The situation for IDPs did not improve since the Chamber found acts against the internally displaced to constitute crimes against humanity and genocide. In March 2011, UNOCHA warned that a shortage of adequate sanitation facilities may increase the risk of disease outbreaks with regard to the newly displaced 66,000 IDPs who had reportedly arrived in camps in North and South Darfur since January 2011.
61. According to UNICEF, the GoS has impeded the release of nutrition surveys. The regular occurrence of emergency levels of global acute malnutrition on a seasonal basis, are thus ignored.

*Forcible transfer of population*

62. Approximately 40,000 people were reportedly displaced alone in North and South Darfur in late 2010. According to the UN Resident and Humanitarian Coordinator for the Sudan, more than 70,000 people were displaced between January and March 2011 alone, the majority of which appeared to have been already living in IDP camps and were subsequently displaced again.
63. Allegedly forcible returns of IDPs remain of concern. IOM stated on 24 February that it “was no longer able to fulfil its obligations in regard to returns in Darfur in accordance with the 2004 memorandum of understanding with the Government, owing to the rejection of visas and stay permits for its staff members based in Darfur.” UN and other humanitarian agencies have been working to determine whether incidents of return in Darfur are in accordance with international principles and standards regarding the return or resettlement of IDPs and refugees.

### *Recruitment and use of child soldiers*

64. The UN Panel of Experts stated in its latest report of March 2011 that it has received credible information indicating that the practice of recruiting child soldiers in Darfur “*continues unabated.*” The Prosecution will continue to monitor this allegation with regard to both pro-governmental forces and rebel movements.
65. In this context, the Prosecution has taken note of an action plan on child protection having reportedly been signed by JEM Peace Wing and transmitted on 8 March 2011. In addition, the Prosecution notes that SLA-Free Will and SLA-Mother in January 2011 jointly registered 84 children recently released from the movements in cooperation with the Northern Sudan Disarmament, Demobilization and Reintegration Commission, bringing the total number of children released in Darfur since 2009 to 1,041.

### *Concealing information on crimes*

66. President Al Bashir has not stopped the commission of genocide against the displaced, but he aims to block the dissemination of information about their fate. As noted above, GoS restrictions on UNAMID, UN operations and agencies on the ground remain pervasive. Obstructing access and movement prevents timely monitoring of the humanitarian situation and reporting on alleged crimes.
67. UNAMID Joint Special Representative (JSR) Ibrahim Gambari in January 2011 noted that humanitarian access to Dar al-Salam in North Darfur had not yet materialized. In fact, on 23 January 2011, GoS military personnel hindered a UNAMID verification patrol from accessing the village. The JSR has made attempts at ensuring better reporting on human rights and protection needs in February 2011 and announced a “*new approach on movement and access*”. He expressed the intention to “*adopt a more robust posture and no longer create the impression of seeking permission for movement within our area of responsibility*” against the backdrop of GoS restrictions.

### **V. National and other efforts to promote accountability**

68. To date, there is no information to suggest that any judicial proceedings are conducted into the massive crimes committed in Darfur, in spite of recurring announcements to this effect by the GoS. Such announcements of national efforts to investigate as well as the frequent creation of new investigative bodies have even proven to be part of the policy to cover up the crimes and avoid international scrutiny.
69. On 30 September 2007, despite repeated promises to investigate and prosecute Ali Kushayb, then Foreign Affairs Minister Lam Akol stated that Ali Kushayb was no longer under investigation or in custody, and had returned to active duty. He was reportedly present during a meeting organized by the Humanitarian Aid Commission for local leaders and international actors in November 2007 in Darfur. He was more recently said to move between West and South Darfur and was reportedly present in a rally for President Al Bashir in South Kordofan in April 2011.

70. As for Ahmad Harun, the Government of the Sudan did not investigate him, on the contrary it promoted him. He is currently the Governor of South Kordofan, and he resides in Kadugli, the capital of South Kordofan. He is regularly seen; has been interviewed; and even has contacts with the international community. He was flown on two UN flights on 11 January and 7 March 2011 as this was said to be essential to allow him to ensure that violence was avoided given his authority over the local tribes.
71. In January 2011, former Sudanese minister of state for justice Bol Lul Wang confirmed the GoS's unwillingness to investigate Ali Kushayb and Ahmad Harun. According to Wang, the GoS's inactivity has been due to their holding senior political posts.
72. More generally, the successive Special Prosecutors for Darfur have produced no investigation against those responsible for crimes committed in Darfur. The Sudanese Ministry of Justice reportedly issued a statement in April 2011 stating that its Special Prosecutor for Darfur had asked the Government to accept his resignation.
73. Still another Commission of Inquiry was established by the GoS Minister of Justice to investigate the grave attacks of Tabra in North Darfur on 2 September 2010 where armed groups killed at least 37 civilians. The Commission reportedly conducted two visits to Tawilla and Tabra in October 2010, but has refused to give any conclusion. No one has been charged in relation to the attack.
74. The pattern remains identical to the one described by all observers since 2005: the establishment of new bodies to reportedly investigate but no action. The pattern is consistent with the findings of the AU High-Level Panel on Darfur, which wrote in its 29 October 2009 report: *"As a result of the failings of the State in dealing with the grave situation in Darfur, faith in the criminal justice system has been severely eroded. To restore confidence and prevent impunity, a root-and-branch change will be required. In particular, it will be necessary to establish an integrated system of accountability consisting of various measures and institutions working together to deal with the full range of abuses and violations that have been committed during the conflict."* Immunities granted to officials of the regime have been deemed a major obstacle to any prosecution. In spite of recommendations by the AU in this regard, as when the AU High-Level Panel noted that *"There are...other impediments to the effective functioning of the criminal justice system. For example, Sudan still retains legislation giving immunity to members of the police and armed forces for crimes committed in the course of their duties...These obstacles to justice will need to be removed."* The 2010 National Security Act gives the NISS immunity from prosecution, thus preventing crimes allegedly committed by its agents are not being investigated, prosecuted and punished.
75. Such widespread impunity is further evidence that the extermination of the Fur, Massalit and Zaghawa and any tribe deemed disloyal to the regime is a policy defined by the top leadership of the Sudan. It is calculated to ensure that the armed forces, its associated militia and other security bodies will continue committing new crimes, with the same modus operandi, wherever and whenever they are instructed to do so.

## V. Cooperation including for the enforcement of arrest warrant

76. 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.
77. The GoS, as the territorial State, has the primary responsibility and is fully able to implement the warrants, with no external interference and consistent with its sovereign authority. It has not done so.
78. The UNSC Presidential statement of 16 June 2008 which *“takes note of the efforts made by the Prosecutor...to bring to justice the perpetrators of war crimes and crimes against humanity in Darfur and in particular notes the...transmittal by the Registry...of arrest warrants.. [and] in this respect urges the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court,”* has remained unheeded by the Government of the Sudan.
79. On 12 May 2011, the Pre-Trial Chamber issued its *“Decision informing the United Nations Security Council and the Assembly of the States Parties to the Rome Statute about Omar Al-Bashir's recent visit to Djibouti.”* On 31 May 2011, the President of the Assembly of States Parties met the President of the UN Security Council to address this issue.

## VI. Conclusion

80. As stated in the report of the Secretary-General on the rule of law and transitional justice in post conflict societies (S/2004/616): *“prevention is the first imperative of criminal justice”*. The Prosecutor’s mandate is to end impunity to contribute to the prevention of future crimes. The United Nations 2020 Guidelines of Prevention of Crimes adopted by the UN establish that the main axiom is to *“integrate efforts of stakeholders”* with a view to *“well-planned crimes and victimization prevention strategies”*, which require first of all *“A systematic analysis of crime problems, their causes, risk factors and consequences, in particular at the local level.”* This calls for three observations in the context of the Darfur situation.
81. First, UNSC Resolution 1593 (2005) triggered an effort to address *“crimes problems and their causes.”* Those were described in the arrest warrants issued by the Court, which unveiled and documented war crimes, crimes against humanity and a genocidal policy of extermination of three ethnic groups, implemented since 2003. As reported, crimes against humanity and genocide continue unabated. Air attacks on civilians and direct killings of members of the Fur Massalit and Zaghawa ethnic groups continue. Direct targeting of villages continues, causing still further displacements. Most of the Fur, Zaghawa and Massalit now live in IDP camps. These millions of victims displaced are subjected to rapes, terror and conditions of life aimed at the destruction of their communities, constituting genocide. The International Criminal Court has documented the crimes and the criminal behavior of those who ordered the crimes. Since 2007, such information has been at the disposal of other actors to draw up comprehensive strategies to stop and prevent crimes in Darfur, based on the knowledge that the crimes in Darfur

are the consequence of a strategic decision taken by the highest authorities of the Government of the Sudan and not the by-product of a conflict.

82. Second, when the crimes have been exposed in the Court's decisions, the reaction of President Al Bashir and the Sudanese leadership, in order to prevent concerted efforts of the international community to ensure implementation of UNSC Resolution 1593 and other resolutions, has been to deny the crimes entirely, attribute them to other factors (such as inter-tribal feud), divert attention by publicizing in the context of political negotiations ceasefire agreements that are violated as soon as announced and threaten the international community with retaliation and yet more crimes. Again, this is the documented reaction of most massive criminals: denial, cover-up and threat of repetition. President Al Bashir has successfully transformed public knowledge of his criminal responsibility as a negotiating tool. Expelling the humanitarian organizations in March of 2009 was the epitome of such a strategy. It allows for concealing the continuation of crimes, diverting attention and threatening with continuing crimes in the absence of any scrutiny.
83. Third, the *"risk factors and consequences at the local level"* of not integrating knowledge on crimes and solution to crimes have also been identified. Non-compliance with UNSCR 1593 (2005) increases the risk that those who are the object of ICC arrest warrants will commit more crimes. The record of Ahmad Harun provides a clear demonstration. During the 1990s, he used local militias to attack civilians in the Nuba Mountains; between 2003 and September 2005 he coordinated the attacks against civilians in their villages as Minister of State for the Interior and Head of the "Darfur Security Desk"; in September 2005 he was appointed by President Al Bashir Minister of State for Humanitarian Affairs in charge of the same millions of people that he forcibly displaced. On 20 April 2008, he was dispatched to Abyei to *"address disputes"* between the Masiriya and the SPLM/A. As a consequence of his intervention, militias attacked civilians in Abyei and more than 60,000 persons were displaced. Since May 2009, he has been the Governor of South Kordofan. He has often been dubbed by the international community an efficient operator, the man to see to get things done. The judicial investigation said that he is the organizer of crimes against humanity and war crimes.
84. It is the challenging task of the UN Security Council to harmonize the information exposed by the International Criminal Court intervention and the enforcement of the warrants of arrest, with the negotiations, the peacekeepers operation and the humanitarian assistance.
85. As for the Office of the Prosecutor, in the face of continuing crimes, as per its mandate, and as reported in December, consideration is being given to presenting a fourth case to the Judges. The investigation should be completed by October 2011.