



**TWENTY-FIRST REPORT OF THE PROSECUTOR OF THE INTERNATIONAL
CRIMINAL COURT TO THE UN SECURITY COUNCIL PURSUANT TO UNSCR
1593 (2005)**

INTRODUCTION

1. The Prosecutor of the International Criminal Court (ICC or the Court) submits this twenty-first 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 15 December 2014, on-going Office activities including the results of crime monitoring, and the cooperation received or lack thereof from the Republic of Sudan and others. The four main suspects (Omar Al Bashir, Abdel Raheem Hussein, Ahmad Harun and Ali Kushayb) remain at large in Sudan and continue to occupy high-ranking positions within the Government of Sudan (GoS), despite the issuance by the Pre-Trial Chamber of five warrants for their arrest. Additionally, the accused, Mr Abdallah Banda Abakaer Nourain against whom an ICC warrant of arrest has also been issued, remains at large in Sudan. The GoS is under an obligation to immediately arrest and surrender all of these individuals to the Court.
2. 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 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 2200, adopted on 12 February 2015, the Security Council once again expressed its deep concern at the increased violence and insecurity in Darfur in recent months, including fighting between the GoS and armed groups and inter-communal fighting, stressing that such violence has had an adverse effect on the security situation, has contributed to the significant increase in the number of internally displaced persons (IDPs) observed in 2014, and continues to restrict humanitarian access to conflict areas where vulnerable civilian populations reside.

4. UNSCR 2200 (2015) also calls on armed actors to refrain from all acts of violence against civilians, in particular members of vulnerable groups such as women and children, and to end all violations and abuses of human rights and violations of international humanitarian law, further emphasising that some of these acts may amount to war crimes or crimes against humanity. The resolution calls for facilitating safe, timely and unhindered access to all areas by humanitarian agencies and personnel.

1. RECENT JUDICIAL ACTIVITIES

5. On 13 June 2015, Mr Omar Al Bashir travelled to Republic of South Africa to participate in the African Union Summit, scheduled from 7 to 15 June 2015. As a State Party to the Rome Statute, South Africa was obliged by its treaty obligations to immediately arrest Al Bashir upon his arrival in South Africa. There is no doubt whatsoever as to this obligation. Indeed, following consultations pursuant to article 97 of the Rome Statute with South African representatives on 12 June 2015, the Presiding Judge of Pre-Trial Chamber II issued a decision the following day which made absolutely clear that South Africa was under the obligation to immediately arrest and surrender Al Bashir. The decision stated in its first paragraph that “there exists no ambiguity or uncertainty with respect to the obligation of the Republic of South Africa to immediately arrest and surrender Omar Al Bashir to the Court, and that the competent authorities of the Republic of South Africa are already aware of this obligation.” The decision also made clear in its paragraph 8 that “the consultation between the Court and the Republic of South Africa under article 97 (or any further discussion on the point at any later stage) do not trigger any suspension or stay of this standing obligation.”
6. The High Court of Justice in Pretoria issued an order on 14 June 2015, requiring the authorities of South Africa to prevent Al Bashir from leaving the country until a final determination of its obligations could be made by the domestic court. The High Court held a public hearing on 15 June 2015, at which it ruled that “the conduct of the Respondents [the Government of South Africa], to the extent that they have failed to take steps to arrest and/or detain the President of the Republic of Sudan Omar Hassan Ahmad Al Bashir (“President Bashir”), is inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid; [and] that the Respondents are forthwith compelled to take all reasonable steps to prepare to arrest President Bashir without a warrant in terms of section 40(1)(k) of the Criminal Procedure Act, 51 of 1977 and detain him, pending a formal request for his surrender from the International Criminal Court.” Following that ruling, the South African government representative acknowledged that

Al Bashir had departed South Africa and that an investigation on his departure would be conducted.

7. In relation to the Al Bashir case specifically and to its ongoing judicial activities in the Darfur situation generally, the Office of the Prosecutor seeks to clarify that it has not fully suspended investigations into the alleged crimes committed in Darfur. On the contrary, the Prosecutor has always underscored the need to ensure that justice is brought to the victims of such crimes in Darfur. To that end, and currently with little prospect of arrests of the suspects and accused still at large, last December the Prosecutor appealed to the Security Council to do all it can to effect the arrest and surrender of the individuals sought. The Prosecutor further conveyed to the Council that with its finite resources and heavy case-load, it is difficult for the Office to fully commit to active investigations of the crimes in Darfur when there are other cases against accused persons – with respect to other situations before the Court – who are now in ICC custody and whose cases are rapidly advancing in the judicial proceedings. This does not mean that cases on Darfur have been terminated, but rather other advanced cases have had to be prioritised. There is still an investigation and prosecution team working to the extent possible on the Darfur cases. This team also monitors allegations of on-going crimes in Darfur.
8. It bears stressing that this investigative status should in no way be construed as the Office abandoning the cases in the Darfur situation. The warrants of arrests issued by the Court remain in place and must be executed. The Office of the Prosecutor continues to call for the arrest of all fugitives from justice and continues to do what it can in order to obtain the necessary assistance from States to effect the outstanding arrest warrants. The victims of the alleged crimes in Darfur have not and will not be forgotten.
9. The Prosecutor's decision regarding the Darfur investigation means that the Office will not be, for the time being, conducting fully active investigations as it simply must prioritise its cases and shift resources accordingly. The Office has continued to receive additional information and evidence on the Darfur situation. Should the current circumstances change, the Prosecutor will not hesitate to re-prioritise the resources she has to meet the accompanying exigencies of the Office's work on Darfur. Once any of the individuals sought is arrested and surrendered to the Court, the Prosecution will prosecute the case. It will, however, be necessary to continue investigations prior to trial under such circumstances.

10. In terms of judicial activities in relation to Abdallah Banda, the defence failed in seeking reconsideration, and subsequently, failed in its appeal contesting the issuance of the arrest warrant. In its 19 December 2014 decision denying the defence's reconsideration request, the Trial Chamber found that it cannot allow preparations for a trial to continue indefinitely where there is no concrete prospect that it will start in the near future. On 16 January 2015, the Registry sent a request to Rome Statute States Parties, to various non-States Parties as well, and to the GoS, for the arrest and surrender of Abdallah Banda. On 3 March 2015, the Appeals Chamber confirmed the replacement of Abdallah Banda's summons to appear with a warrant of arrest, but left open the possibility to revisit the conditions of the Accused's stay in the Netherlands during trial in the case of his voluntary appearance after the issuance of the warrant of arrest.
11. On 19 December 2014, the Office of the Prosecutor requested a finding of non-compliance against Sudan in regard to the Bashir case, pursuant to article 87(7) of the Rome Statute. The Prosecution further requested the Chamber to notify its decision to the Security Council. On 9 March 2015, the Pre-Trial Chamber found that Sudan had failed to cooperate with the ICC by not arresting and surrendering Omar Al Bashir to the Court, and decided to inform the Security Council to take the necessary measures it deems appropriate. The Chamber added that if there is no follow-up action on the part of the Council, any referral by the Council to the ICC under Chapter VII of the UN Charter would never achieve its ultimate goal, namely, to put an end to impunity. The Chamber highlighted that, although Sudan is not a State Party to the Rome Statute, it has an obligation to cooperate with the Court, stemming from its membership of the UN since 12 November 1956 and from the adoption of UNSCR 1593 (2005). On 24 April 2015, the Registry informed the Pre-Trial Chamber on the implementation of this decision. The Registry submitted that on 13 March 2015, the UN focal point received the letter from the President of the Court with the decision, which was notified as well to the Bureau of the ICC Assembly of States Parties. On 10 March 2015, the Registry also sent the decision to the Embassy of the Republic of the Sudan to the Netherlands.
12. In the case of Omar Al Bashir, the Office of the Prosecutor and the Chambers have continued to track his frequent travels and have interacted extensively with States about meeting their obligations to arrest and surrender him to the Court. In the reporting period, Omar Al Bashir visited Egypt on 20 January, on 13 March and on 28-29 March 2015; Ethiopia on 29-31 January and 17 February 2015; Saudi Arabia on 25-26 March 2015; the United Arab Emirates on 21-24 February 2015, and the Republic of South Africa from 13 to 15 June 2015.

13. On 23 January 2015, the Chamber notified Ethiopia of Omar Al Bashir's potential travel to attend the 24th Summit of the African Union, which took place from 23 to 31 January 2015, and reminded Ethiopian authorities of the requests for the arrest and surrender of Omar Al Bashir to the ICC. On 16 April, the Chamber invited Indonesia to arrest and surrender Omar Al Bashir during his travel to attend the 60th anniversary of the 1955 Asian-African Conference from 19 to 24 April 2015. Omar Al Bashir ultimately did not travel to Indonesia, reportedly because his flight was denied permission to fly over one or more countries. On 19 March 2015, the Registry submitted its report on the Chamber's 24 February 2015 decision regarding Omar Al Bashir's travel to the United Arab Emirates (UAE) and his potential travel to the Kingdom of Saudi Arabia, the State of Kuwait and the Kingdom of Bahrain. It stated that as of the date of the filing, the Registry had not received a reply to its request from the UAE or other relevant authorities.
14. On 5 June 2015, the Office filed with the Pre-Trial Chamber a request for a finding of non-compliance of the GoS in the arrest of fugitive Abdel Raheem Mohammed Hussein. The decision is pending.

2. ON-GOING OFFICE ACTIVITIES

15. The Office continues to monitor relevant crimes allegedly committed in Darfur.

2.1 Monitoring of current crimes

16. The Office continues to monitor a number of trends that could constitute crimes under the Rome Statute, including alleged aerial bombardments, ground attacks, common crimes, killings, attacks on civilians, sexual violence, forced displacement, attacks on humanitarian aid workers and peacekeepers, and arbitrary detentions.
17. Since the Office's December 2014 report, 500 incidents of alleged crimes were reported, resulting in nearly 1200 violent deaths, with more than 50 percent of violent deaths registered as reportedly civilians, an increase from the 25 percent reported in the previous period. More than 50 percent of incidents recorded are attributed to GoS or affiliated pro-GoS forces.

2.2 Alleged aerial bombardments affecting civilians

18. In the reporting period, there was a significant increase in reported aerial bombardments by the Sudanese Air Forces, with approximately 40 incidents having taken place mostly in Jebel Marra and North Darfur, in areas known for being under rebel control and with

rebel military activity. At least 60 civilians were killed, and numerous villages, livestock, crops and water sources were destroyed. The UN Panel of Experts on Sudan reported on 19 January 2015 “the use of attack/close air support aircraft in air strikes on civilian targets”, which “violates paragraph 6 of the Security Council resolution 1591 (2005)”. In a number of incidents, the Rapid Support Forces (RSF) undertook destruction and looting of villages on camelback to accompany the aerial bombardments. Thousands of people were displaced as a result of airstrikes. To illustrate, an Antonov plane bombarded two villages in West Jebel Marra on 30 and 31 December 2014, killing two and displacing all the villagers to camps for IDPs. From 1-4 January 2015, the SAF bombarded the northwest of Shangli Tobay. Following this aerial attack, RSF militia riding camels destroyed villages, looted livestock and killed nine villagers who resisted the attacks. The rest of the inhabitants fled to camps for the internally displaced. After a campaign of aerial bombardments in East Jebel Marra, on 26 January 2015, RSF militia burned ten villages and 200 families fled to camps or to the Jebel Marra mountains. Antonov planes bombarded the villages of Dorey, Dirba and Gorong in North Darfur on 28 January 2015, burning them. Following the bombing, RSF militias attacked, forcing the inhabitants to flee to the Jebel Marra mountains.

2.3 Alleged ground attacks affecting civilians

19. The Office has taken note, as it did in December 2014, of the continued role of the RSF in operations in Darfur. The RSF are mobile and are able to operate anywhere in Sudan. They 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. 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. 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 command and control.

20. Since mid-November 2014, there has been an increase in ground attacks and armed violence between the GoS and rebels, especially in North Darfur and in the Jebel Marra area, straddling North and Central Darfur. This violence coincided with the resumption of Operation Decisive Summer to “crush the rebellion” in Darfur, South Kordofan and Blue Nile from December 2014 to March 2015. Operation Decisive Summer was announced in October 2014 by Omar Al Bashir, Defence Minister Hussein and Director of the National Intelligence and Security Service, Mohammed Atta. The number of violent deaths per month during this period was especially high, about 200 reported

violent deaths per month from December through February, with more than 300 in March alone. Such high numbers were reported only around ten times since April 2004, and never in consecutive months. This is in comparison to the peaks of between 800 and 1700 violent deaths a month reported in 2003 and 2004. In addition, civilians, in particular IDPs, were subject to continuous attacks during the reporting period.

21. Armed groups have targeted both civilians and IDPs. Raids by pro-GoS militias on villages and IDP communities were regularly reported. RSF militias reportedly destroyed areas after fighting with rebels or after aerial bombardments; and were said to have engaged in killing, raping and looting. By the start of January 2015, more than 100 villages were attacked, burned or abandoned in Darfur, with thousands displaced. According to the UN Panel of Experts on Sudan in their 19 January 2015 report, the SAF are still using “their strategy of fighting a proxy war, using the light armed RSF and Janjaweed.” “Further, the strategy of the Government appears to consist of: (a) collective punishment of villages and communities from which the armed opposition groups are believed to come or operate; (b) induced or forced displacement of those communities; and (c) direct engagement, including aerial bombardment, of the groups when their location can be identified.”

22. Tribal clashes continued but the intensity level has decreased. Significant tribal clashes involved the Ziyadiya and the Berti around Mellit, North Darfur, with around 150 people killed, burned villages and 8,000 people displaced; the Salamat and the Falatain in South Darfur, with about 30 people killed and 2,000 displaced; the Falata and Masalit in South Darfur, and the Rizeigat and the Ma'aliain in East Darfur. As noted in the Office's previous report, 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, resulting in heavy inter-communal fighting over natural resources. To this end, units are also allegedly using weaponry initially supplied by the GoS to support other violent activities.

2.4 Alleged widespread sexual and gender-based crimes

23. The Office has noted at least 50 reported incidents of sexual crimes against women, more than two-thirds involving gang rape, affecting some 130 victims. Pro-GoS militia members in particular were alleged to be the perpetrators. During the reporting period (December 2014 through May 2015), over half of the reported incidents occurred while women carried out everyday activities such as collecting firewood, water or tending their farms. Other incidents occurred during attacks on villages, and in some cases close to IDP camps one quarter of the alleged victims were IDPs. The large majority (85

percent) of attackers were armed. Since the start of the conflict, sexual violence in Darfur has been frequent but allegations of such massive incidents of rape were never previously received, even during the gravest period of 2003-2004.

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

24. During the reporting period, arbitrary arrests and detention continued despite Omar Al Bashir's April 2014-promise to release all political detainees. On 6 December 2014, Farouk Abu Issa, Head of the opposition alliance National Consensus Forces and Amin Mekki Medani, Chairman of the Sudanese Civil Society Organisations, were arrested after they signed the "Sudan Call" calling for a peaceful and popular democratic transformation. Farah Agar, a dissident member of the National Congress Party was arrested as he met Sudanese Revolutionary Front leaders in Addis Ababa. All have been released since the beginning of April 2015.

25. On 12 April 2015, Sandra Farouk Kadouda, an activist, was allegedly abducted by the NISS on her way to an opposition sit-in at the National Umma Party. She was found badly beaten three days later.

26. On 16 April, human rights defender Adil Bakheit was arrested by the NISS. The charges, including criminal conspiracy, publication of false news, and offence against the State, are reportedly based on a human rights workshop he conducted on 26 March 2015. He faces possible life imprisonment or death penalty.

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

27. In the reporting period, six incidents were recorded involving humanitarian aid workers and peacekeepers. The majority of incidents took place during patrols or convoys. On 20 December 2014, in Um Zahima, East Darfur, three UNAMID peacekeepers were wounded by "unidentified gunmen." On 6 January 2015, in Habilla, West Darfur, unidentified assailants attacked and looted a UNAMID patrol. On 10 March 2015, in Kutum, El Fasher, North Darfur, gunmen attacked a UNAMID/WFP convoy. On 7 April 2015, in Nyala, South Darfur, three militiamen attacked an International Organization for Migration compound and stole one vehicle. On 9 April 2015, in Nyala, South Darfur, three armed men hijacked and stole a UNDP vehicle, injuring the driver. The total number of UNAMID peacekeepers killed since the start of the operation in December 2007 remains at sixty-one.

2.7 Displacement

28. The escalation of the armed conflict in 2014 resulted in increased mass displacement, mainly in the Jebel Marra area, where approximately 121,000 people have been displaced since January 2015. 100,000 of these persons were displaced in January 2015 alone. More than two million people are displaced for the long-term. Displacement figures might be higher as many of those displaced are not included in UN official figures, as many never reach registered camps or obtain access to humanitarian assistance. For example, as of the beginning of January 2015, at least 20,000 people were hiding in the Jebel Marra mountains. No major new displacement occurred in East and West Darfur during the reporting period.

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

29. 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.

30. 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 refused to do so. At the same time, it has also failed to provide any meaningful measure of justice at the national level.

31. As stated above, due to the refusal by Sudan to execute the outstanding arrest warrants against Messrs Omar Al Bashir and Abdel Raheem Hussein, the Office filed a successful motion with the Pre-Trial Chamber requesting a formal finding of non-compliance in the Bashir case and has recently filed a similar motion in the Hussein case. The Pre-Trial Chamber’s finding of non-cooperation in the Bashir case has been communicated to the UN Security Council for appropriate action.

32. The Office takes this opportunity to recall the nine 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

33. The humanitarian situation in Sudan, the continued non-cooperation of Sudan in not surrendering the suspects and the continuing perpetration of serious crimes against civilians are simply unacceptable.
34. South Africa's failure to arrest Al Bashir earlier this month is a particularly disappointing blow to the fight against impunity. If referrals by the UN Security Council to the Court are to mean anything, UN Member States which are also State Parties to the Rome Statute, must face consequences for serious and inexcusable violations of their duties to cooperate with the Court and to honor the Council's resolutions. Should South Africa be found in non-compliance by the Court and referred to the Council accordingly, it will be up to this Council to give meaning to that finding by taking the appropriate measures.
35. The Office again 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 effect the arrest of individuals wanted by the ICC in the Darfur situation. This is not simply a challenge for those States Parties the suspects may visit. The Office notes in this regard that in addition to the obligations of States Parties to the Rome Statute, UNSCR 1593 urges all Member States of the UN to cooperate fully with the Court's investigations and prosecutions in Darfur. The Office will continue to monitor the Darfur situation.
36. Without stronger and committed 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