



## SEVENTEENTH 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) submits the seventeenth report pursuant to paragraph 8 of UN Security Council Resolution (UNSCR) 1593 of 31 March 2005. It outlines the judicial activities undertaken since the last report to the Security Council on 13 December 2012, the cooperation received or lack thereof from the Sudan and other Parties, the ongoing investigation, and anticipated judicial activities.
2. On 31 March 2005, by way of 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.
3. On 14 February 2013, the UN Security Council adopted Resolution 2091, determining that the situation in the Sudan continues to constitute a threat to international peace and security in the region, *“Demanding that the parties to the conflict exercise restraint and cease military action of all kind, including aerial bombardments,”* and *“Demanding an immediate and complete cessation by all parties to armed conflict of all acts of sexual violence against civilians in line with Resolutions 1325 (2000), 1820 (2008), 1888 (2009), and 1889 (2009); recruitment and use of children and other grave violations and abuses against children in line with resolutions 1612 (2005), 1882 (2009), 1998 (2011) and 2068 (2012); and indiscriminate attacks on civilians in line with resolution 1894 (2009).”*
4. In relation to aerial bombardments, the Office notes the Council’s reference to its *“concern that the direct or indirect supply, sale or transfer to Sudan of technical assistance and support could be used by the Government of Sudan to support military aircraft being used in violation of resolutions 1556 (2005) and 1591 (2005), including those aircraft identified by the panel.”*
5. The resolution highlights the *“urgent humanitarian crisis faced by the people of Darfur”* and calls on all armed actors *“to refrain from all acts of violence against civilians, in particular*

*vulnerable groups such as women and children, and from violations of human rights and humanitarian law.” It “deplor[es] the continued obstacles that have been imposed by the Government of Sudan on the work of the Panel of Experts during the course of its mandate” and “calls on the Government of Sudan to remove all restrictions, limitations and bureaucratic impediments imposed.”*

6. Finally, the resolution *“Regrets that some individuals affiliated with the Government of Sudan and armed groups in Darfur, continue to commit violence against civilians, impede the peace process, and disregard the demands of the Council.”* The resolution *“Call[s] on the Government of Sudan to fulfill all its commitments, including undertaking effective efforts to ensure accountability for serious violations of international human rights and humanitarian law, by whomsoever perpetrated.”*
7. The Office of the Prosecutor can only reiterate its shared concerns with respect to the current situation in Darfur, in particular regarding the ongoing impunity for Rome Statute crimes reflected in the failure to arrest the four individuals subject to five ICC separate arrest warrants: President Omar Al Bashir, Abdel Raheem Hussein, Ahmad Harun, and Ali Kushayb.
8. The Office also shares the concerns of the head of UN OCHA, Valerie Amos, that 300,000 people have been displaced in the first five months of 2013, more than were displaced in the last two years, and that the international community cannot let Darfur slip off the radar.

## **1. RECENT JUDICIAL ACTIVITIES**

9. The Office has continued to proceed with judicial activities, and in particular has focused on preparing for the trial of Abdallah Banda and Saleh Jerbo (“the Banda and Jerbo case”).
10. On 23 January 2013 Trial Chamber IV in the Banda and Jerbo case agreed with the Prosecution’s position and rejected a request from the Defence for disclosure of documents that were confidentially submitted by the Prosecution in support of its application for a warrant of arrest against Omar Hassan Ahmad Al Bashir. This decision is currently under appeal.
11. On 18 February 2013, the Trial Chamber issued its Decision on the Protocol on the handling of confidential information and contact between one party, such as the Office of the Prosecutor or the Defence, and witnesses of the opposing party. The Chamber determined that the Protocol would assist the Prosecution to discharge its disclosure

obligations under Article 67(2) of the Statute and Rule 77 of the Rules of Procedure and Evidence, without unduly exposing witnesses to security risks. The Protocol, as approved by the Chamber, offers a degree of protection whilst allowing for meaningful investigations.

12. On 6 March 2013, the Chamber issued the “Decision concerning the trial commencement date, the date for final prosecution disclosure, and summonses to appear for trial and further hearings.” The Chamber decided that the trial in the Banda and Jerbo case shall commence on 5 May 2014. The Chamber also decided that the accused persons' appearance at trial and further hearings shall continue to be on the basis of summonses to appear. The Chamber ordered that the Prosecution shall disclose its trial evidence, together with its final list of witnesses and evidence, no later than 2 May 2013.
13. On 23 April 2013 the Defence of Mr Saleh Mohammed Jerbo Jamus notified the Trial Chamber that it received news that Mr Jerbo died during an attack in North Darfur, Sudan on the afternoon of 19 April 2013, and was buried the same day. The Prosecution informed the Chamber that it was taking steps to assess the veracity of these reports and recommended that the case against Mr Jerbo should remain open until official confirmation of Mr Jerbo's death.
14. On 16 May 2013 the Trial Chamber formally put the parties on notice that, in light of the reported death of Mr Jerbo, it may direct that the case against Mr Jerbo should be severed from the case against his co-accused Mr Banda and sought the Prosecution's observations on the appropriateness of this step.

## **2. THE ONGOING INVESTIGATIVE ACTIVITIES**

The Office continues to monitor the situation in Darfur. No decision has yet been taken about whether additional cases will be pursued.

### **2.1 Monitoring of current crimes**

15. The Office of the Prosecutor continues to monitor: (a) alleged attacks by the Ministry of Defence, either targeting or indiscriminately affecting civilians and other persons, which could be part of the ongoing acts of genocide, crimes against humanity and war crimes, as well as alleged attacks on civilians by rebel movements; (b) alleged acts affecting the persons displaced, which could be part of ongoing acts of genocide and crimes against humanity; (c) the use of child soldiers by the parties, including rebel movements, constituting war crimes, and (d) alleged abductions of, and attacks on, humanitarian aid workers and peacekeepers.

16. The Office notes the 12 February 2013 Report of the Panel of Experts on the Sudan, established pursuant to resolution 1591, that states *“The conflict continued to significantly affect the lives of civilians in Darfur. While fighting between armed opposition groups and Government forces continued, access to areas of armed confrontations was restricted. UNAMID suffered from attacks against its troops, while civilians continued to be killed and forcibly displaced.”*
17. The report further states that *“The lack of capacity and will on the part of the judiciary to seriously prosecute perpetrators of international humanitarian law and human rights violations committed in relation to the conflict, and the resulting impunity, contribute to perpetuating a status quo where perpetrators are at large and civilians continue to bear the brunt of a protracted conflict.”* In this context, the Office wishes to reiterate the need to bring to justice alleged perpetrators of past and ongoing crimes in Darfur, as the ICC has been mandated to do, through Security Council Resolution 1593.

## **2.2 Alleged aerial bombardments targeting or indiscriminately affecting civilians**

18. The Office notes UNSC resolution 2091’s *“[Demand] that the parties to the conflict exercise restraint and cease military action of all kind, including aerial bombardments, [...]”*. Moreover, the Panel of Experts on the Sudan reported that *“ [...] the Government [of Sudan] has violated Security Council resolution 1591 (2005) and end user certificates, illustrated by the presence in Darfur of post -2005 procured platforms, by aerial bombardments and intimidating flights inside Darfur and the maintenance outside Darfur of Darfur-based aircraft.”*
19. The Office has collected reports of alleged aerial bombardments by Sudanese Armed Forces resulting in civilian casualties and destruction or damage of civilian property on the following dates and places: on 26 and 29 December 2012, in West Jebel Marra, Central Darfur, resulting in 4 civilian casualties; on 30 December 2012, in El Fasher, North Darfur, leaving 5 civilians dead; and on 11 January 2013, in Golo, Jebel Marra, Central Darfur, killing 10 civilians. Several were wounded during these attacks and civilian property destroyed. In Golo, Jebel Marra, sources claim that the Sudanese government closed off access to the area, preventing access of humanitarian assistance to civilians as well as any assessment of the situation and investigation of the allegations.
20. On the afternoon of 14 February 2013, an alleged aerial bombardment by the Sudanese Air Forces in the Gidu village, West Jebel Marra took place. Media sources reported that 12 civilians were killed and more than 20 others were injured. In addition, nine homes were allegedly destroyed and an unknown number of inhabitants displaced. On

22 March 2013, the Sudanese Air forces struck civilian areas, amongst them, a water source in Mellit, North Darfur, allegedly killing 12 civilians and destroying civilian property.

21. The Office notes reports of further attacks on 17 February 2013, in Narwa, South Jebel Marra, killing 5 civilians; on 21 February 2013, in Nyala, South Darfur, resulting at least in 4 civilian deaths; on 6 April 2013, in Muhajeriya, East Darfur, leaving 9 civilian casualties and; on 7 April 2013, in Khor Abeche, South Darfur, killing 4 civilians.

### **2.3 Alleged ground attacks targeting or indiscriminately affecting civilians**

22. The reporting period has been marked by tensions arising from clashes between the Sudanese Government and rebel movements, inter-communal clashes and conflict resulting from control over access to a gold mine. Such events resulted in substantial population displacement in need of humanitarian assistance and looting of civilian property.
23. The Prosecution notes Radio Dabanga reports stating that ICC-indictee Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) and the Sudanese Central Reserve forces were involved in clashes between the Misseriya and Salamat tribes in the Umm Dukhun area of Central Darfur, in April 2013.
24. Clashes between Government Forces and the Sudan’s Liberation Army-Abdul Wahid faction started in December 2012 and continued sporadically in January and February. It is reported that around 30,000 people were displaced as a result. On 13 March 2013, after a clash between the forces, it was reported that Government Security Forces looted the village of Kashalongo and the Al Salam camp in Nyala, South Darfur.
25. In January 2013, a dispute between Aballa and Beni Hussein tribes over control of a gold mine in Jebel Amir, North Darfur, resulted in several clashes and the spread of violence to nearby towns. It is reported that around 200 people were killed and several wounded. In some cases, sources report that the victims were civilians. It is also reported that 25 villages were burnt and an approximate 100,000 people displaced. Amnesty International cited reports stating that Sudanese Security Forces were involved in the attacks. Media sources reported that in the context of the clashes between the Aballa and Beni Hussein tribes, an attack on a group of displaced persons, on 23 February 2013 in El Sireaf, killed between 53 and 60 alleged civilians and wounded more than 80 others.

## **2.4 Alleged widespread occurrence of sexual and gender based violence**

26. The Office has collected reports from media sources of different incidents of sexual and gender based violence that might constitute crimes under the jurisdiction of the Court.
27. On 3 January 2013, in East Jebel Marra, North Darfur, 3 women were allegedly raped and their heads shaved by armed men. Radio Dabanga reports that on 14 January, in Kabkabiya, North Darfur, 4 women were raped by armed men. In West Darfur, alleged armed men raped 5 women from the Kirinding camp on 5 February 2013. In Gereyda, South Darfur, 9 rapes by alleged pro-Government militias were reported on 5 and 7 February.
28. The Office notes the continued underreporting of sexual violence in Darfur. The UN Secretary General stated in the section of his March 2013 report on sexual violence in conflict dealing with Darfur that *“Underreporting of cases may be attributed to the stigma associated with rape, shame and fear of reprisal, denial that rape occurs, intimidation by many Government officials and the inability to access some conflict-affected areas.”*
29. The Office stresses that impunity remains an obstacle in the fight against sexual violence. Insecurity and impunity aggravates the risk of sexual violence especially against vulnerable groups in Darfur, as stated in the Secretary General’s report, that *“[...] sexual violence is reported to have occurred mainly against internally displaced women and girls living in and around camps [...] The United Nations observed that, in general, whenever armed clashes occurred between two or more groups, incidents of sexual violence were reported within a week or two of such attacks.”* The Prosecution expresses its deep concern with regard to reports of minors as victims and perpetrators.

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

30. On 12 January 2013, in North Darfur, 4 civilians of Chinese origin and 11 Sudanese citizens were abducted. The victims worked in construction programs in Darfur. All the victims were released but the abductors have not yet been identified.
31. On 13 January a Sudanese worker of an international NGO was arrested in Zalingei, Central Darfur on charges that were later dropped.
32. Radio Dabanga reported that on 31 January 2013, three students of Nyala’s University in South Darfur were allegedly arrested by Sudanese Security Forces after requesting the release of one of their colleagues.

33. According to a media report, a Sudanese employee of the World Food Programme was killed on 8 February in Kutum, North Darfur.
34. On 24 March 2013, in Kass, South Darfur; 31 internally displaced persons, who were on their way to a conference in Nyala to address security and development needs in IDP camps, were abducted from a convoy escorted by UNAMID. It is reported that the Government prevented UNAMID from getting reinforcements and the Sudan Liberation Army-Abdul Wahid claimed responsibility for the attack. The International Committee for the Red Cross facilitated the liberation of the abductees.

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

35. The Office continues to be concerned about the crimes committed against aid workers and peacekeepers. The Office is continuously monitoring allegations concerning attacks by Government forces and rebel movements against those providing humanitarian assistance and security.
36. On 24 and 25 December 2012, three Sudanese nationals – staff members of the United Nations-African Union Mission (UNAMID) in Darfur – were detained by Government forces on the grounds of involvement in anti-government activities. On 20 January, national security forces allegedly arrested, without any charge, two Sudanese nationals, staff members of UNAMID in El Fasher. They were released after interrogation.
37. Following clashes between Sudanese Armed Forces and the Sudan's Liberation Army-Minni Minawi faction in Labado and Muhajeria, on 19 April 2013, a Nigerian peacekeeper of the UNAMID was killed and two others injured by unidentified attackers near Muhajeria, East Darfur.

## **2.7 Alleged deliberate infliction of conditions of life calculated to bring about physical destruction**

38. According to the Humanitarian Aid and Civil Protection Department of the European Commission, in 2013 over 3.55 million people require humanitarian assistance in Darfur. The restriction of humanitarian access remains of concern. Such constraints are often linked to conflict, insecurity and administrative impediments, reducing the humanitarian assistance on the ground. According to media reports, the Government of the Sudan continues to tamper with the work of aid groups through its Humanitarian Aid Commission, and has allegedly further tightened its control over local and international aid agencies.

39. The Office express its concern regarding the reports of alleged looting of food, medicine and other kinds of humanitarian assistance, as well as the tampering with water sources and prevention of transmission of basic items to civilians due to the intervention of the Sudanese Government or pro-Government militias.
40. On 13 February 2013, humanitarian organisations called for the opening of a key road to El Sireaf following the alleged tribal clashes. The Government reportedly restricted delivery of humanitarian aid, reportedly resulting in substantial displacement and restricted access that hampered life-saving assistance in North Darfur.
41. On 20 February 2013, UNAMID human rights personnel, trying to investigate alleged reports of sexual violence, were denied access in Kondobe, Western Darfur. On 21 February, UNAMID personnel were denied access to investigate an alleged aerial bombardment carried out by Sudanese Air Forces. Furthermore, on 13 April, the UNAMID chief requested access to Muhajeria and Labado to provide humanitarian assistance to people affected by the clashes that took place there and further affected by the constant denial of access to the affected areas.

### **3. COOPERATION RECEIVED OR LACK THEREOF FROM THE GOVERNMENT OF THE SUDAN AND OTHER PARTIES**

42. 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 to the Judges’ orders, the Court’s pending arrest warrants have been transmitted to the Government of the Sudan for execution.
43. Sudan, as the territorial State, has the primary responsibility and is fully able to implement the warrants, consistent with its sovereign authority. It has failed to do so.
44. Since the December 2012 report to the Security Council, the Office notes that President Omar Al-Bashir has travelled to a small number of regional states not Party to the Rome Statute, but has also made two visits to Chad, a State Party to the Rome Statute. From 15-17 February 2013, he attended a regional summit of CEN-SAD States, and from 10-11 May 2013 a further summit on desertification issues. On both occasions, the Office notified the Pre-Trial Chamber of his likely travel and the Chamber issued Orders reminding Chad of its obligations under the Rome Statute and seeking further information. Following the first visit, and taking into account the response from Chad, on 26 March the Chamber found that Chad had failed to comply with its obligations either to consult with the Chamber regarding any problems which might impede the

execution of requests for arrest and surrender, or to cooperate with the Court by deliberately refusing to arrest and surrender Omar Al-Bashir. This decision has been transmitted to the Security Council, and to the Assembly of States Parties to the Rome Statute.

45. Defence Minister Abdel Raheem Hussein, also the subject of an ICC warrant, also travelled to Chad on 25-26 April 2013, and attended a bilateral meeting evaluating the Joint Sudanese/Chadian border force. On 25 April, the OTP notified the Chamber of the anticipated visit, and on 26 April the Chamber issued an Order reminding Chad of its obligations under the Rome Statute. The Office is aware of a number of public and private expressions of concern to the Chadian authorities, for example the statement of the EU High Representative expressing concern at the non-implementation of the arrest warrant.
46. It is a matter of real import that States in both the Security Council and the Assembly of States Parties address the issue in a concerted and united fashion. Implementation of arrest warrants is vital to the realisation of the goals of the Court and international justice. Without arrests, no trials are possible, and the search of victims for justice remains unanswered.
47. On 8 April 2013, the UN Secretary General transmitted to the General Assembly and to the Security Council his guidance issued to the UN Secretariat on contact with those subject to ICC arrest warrants, setting out that contacts with those subject to such arrest warrants should be limited to those strictly required for carrying out essential UN mandated duties; that UN presence at ceremonial or similar occasions should be avoided, no standard courtesy calls be made, and that when contacts are absolutely necessary, an attempt should be made, where possible, to interact with individuals of the same group or a party not subject to an ICC warrant. The Office welcomes this clear public policy statement as a significant demonstration of broad international commitment to the process of international criminal justice. The Office of the Prosecutor has long called for comparable action by States in the context of implementation of ICC warrants and would hope that any States which may not have already considered these issues will act in line with the increasing international momentum behind this approach and act accordingly. Systematic and consistent implementation of the same rigorous assessment regarding any intended meetings either by UN or state officials with an ICC fugitive will be necessary to ensure the full and effective implementation of the Rome Statute system of international criminal justice.

48. The Office notes the 20-23 May visit of UN OCHA Head, Valerie Amos, to Khartoum, including a meeting with ICC indictees Omar Al Bashir, Abdel Raheem Hussein, and Ahmad Harun. The Office expresses its appreciation for the prior notification of the UN of the anticipated meeting, and the indication that the meeting was considered to be strictly required for carrying out essential UN mandated duties. The Office encourages the UN to conduct an ongoing critical analysis of such contacts, to assess whether they have indeed succeeded in contributing to the successful conduct of UN mandated duties.

#### **4. CONCLUSION**

49. The Office of the Prosecutor reiterates the responsibility of all States Parties to cooperate with the Court in line with their obligations under the Rome Statute, and for the Government of the Sudan to cooperate with the ICC in line with its obligations under UNSCR 1593. The Office further notes that all States are urged by the Security Council to cooperate with the Court's investigations and prosecutions in Darfur.

50. The Office of the Prosecutor calls on the Security Council to ensure Sudan's compliance with UNSCR 1593, and calls on Rome Statute States Parties to do whatever they can to promote cooperation and the arrest of individuals wanted by the ICC in the Darfur situation. The Office will continue to monitor the Darfur situation.