

Le Bureau du Procureur

The Office of the Prosecutor

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**Statement to the United Nations Security Council on the
Situation in Darfur, pursuant to UNSCR 1593 (2005)**

New York
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Thank you, Mr President, your Excellencies:

In my last briefing to this Council in June of this year, I expressed my Office's frustration and despair for this Council's inaction and paralysis regarding the situation in Darfur. This is my Office's eighteenth report to this Council since the adoption of Resolution 1593, by which the Council, acting under Chapter VII of the UN Charter, referred the situation in Darfur to the International Criminal Court.

Resolution 1593 represented hope for Darfur's victims: hope that there would be an end for their suffering; hope that there would be accountability for crimes and that justice would not only be done but would be seen to be done; and above all, hope that lasting peace and security would return to Darfur. That hope was strengthened even further when this Council mandated my Office to report on progress every six months to enable the Council to remain actively seized of their plight. Sadly, with each report provided by my Office to the Council, the hopes of the victims of Darfur have faded. With this eighteenth report, it would be an understatement to say that all hope is lost. Over the years and despite the Government of the Sudan's blatant disregard for this Council's resolutions and Presidential Statements, the situation in Darfur continues to deteriorate and the plight of Darfur victims continues to go from bad to worse.

Not only does the situation in Darfur continue to pose a threat to international peace and security, other situations such as in Abyei as well as the situation along the border between Sudan and South Sudan have also deteriorated. In ten years, the situation in Darfur alone has cost the United Nations and humanitarian aid organizations more than ten and a half billion dollars, and has cost the lives of 47 aid workers, with many more injured and abducted.

Attacks on peacekeepers appear to have become the norm with a record number of 57 killings. Just in this reporting period alone, peacekeepers from Tanzania, Rwanda, Zambia and Senegal have been killed. My Office salutes their sacrifices and recalls that intentional attacks against personnel involved in peacekeeping missions are crimes under the Rome Statute. Sadly, not enough seems to have been done to identify those responsible, despite the repeated insistence of the United Nations and the African Union that the Government of the Sudan must duly investigate. It is in the common interests of the United Nations, the African Union and the ICC to ensure that those responsible for attacking peacekeepers are swiftly brought to justice. I

encourage the United Nations and the African Union to share information from their own internal investigations with my Office, in the interests of justice.

This year alone, 460,000 people have been newly displaced in Darfur. The numbers of people killed, abducted and displaced continues to grow each year. All these are crimes that will not stop unless this Council and the Rome Statute States Parties show a determination to apprehend their authors.

Since 2004, this Council has adopted 52 resolutions, 17 Presidential Statements and 17 press statements on the Sudan situation as a whole. The Government of the Sudan's failure to cooperate with the ICC is but one of the many incidences of the Government of the Sudan's continuous failure and/or refusal to implement this Council's decisions. Inaction and paralysis within the Council has not only prolonged the suffering of Darfur's victims, but has bolstered Mr Al-Bashir's resolve to ignore this Council, prompting him to even publicly boast in a 13 October 2011 speech that Sudan does not implement Security Council resolutions. The same sadly holds true today. Without stronger action by this Council and States Parties, the situation in the Sudan is unlikely to improve.

Alleged perpetrators of serious crimes against the civilian population will continue to commit crimes unless they are brought to justice. My Office has done its part and it is now up to this Council and to the States Parties to heed the cries of the millions of victims of crimes which continue unabated in Darfur. The time has come for this Council and States Parties to seriously devise strategies for arresting those alleged to be responsible for these crimes. This is the only way to stop the seemingly endless suffering of the Darfur victims. It is a serious indictment on this Council and on States Parties that Mr Bashir and Mr Hussein have been able to travel to various countries without fear of arrest. This Council's silence even when notified of clear failures and/or violations by UN Member States of their obligations to comply with this Council's resolutions only serves to add insult to the plight of Darfur's victims.

The question that Darfur's victims are undoubtedly asking themselves is: has Resolution 1593 become meaningless? What is the point of the Office of the Prosecutor's briefings if there is no concrete follow-up action taken by the Council? Why none of the eight ICC Chamber communications transmitted to the Council by the Registrar have been acted upon?

At this point Mr President, we can do no more than recall the astute words of the Pre-Trial Chamber of the Court when it opined:

“When the Security Council, acting under Chapter VII of the UN Charter, refers a situation to the Court as constituting a threat to international peace and security, it is expected that the Council would respond by way of taking such measures which are considered appropriate, if there is an apparent failure on the part of the relevant State Party to the Statute to cooperate in fulfilling the Court's mandate entrusted to it by the Council. Otherwise, if there is no follow up action on the part of the Security Council, any referral by the Council to the ICC under Chapter VII would never achieve its ultimate goal, namely, to put an end to impunity. Accordingly, any such referral would become futile.”

Mr President,

In spite of the frustrations, challenges and obstacles, my Office's determination to carry out the mandate given to it by Resolution 1593 has not and will not waver. We owe it to Darfur's victims to show them that we have not abandoned them and that we may be their only hope for justice. To this end, our judicial activities are on-going: in particular, preparations for the trial of Mr Abdallah Banda are on track. My Office has focused on this case in particular, taking into account that the trial is scheduled to start on 5 May 2014. The willingness of Mr Banda to appear voluntarily is a clear sign of the confidence that he has in the system of justice provided at the ICC and his strong belief that he will receive fair, impartial treatment in accordance with the highest standards of procedural fairness and due process, including the right to be presumed innocent until proven guilty. A message to all other Darfur fugitives is: you have nothing to fear coming to ICC if you are innocent. To be sure, any person brought before the Court will be afforded all the requisite facilities, the right to legal assistance, and other necessary safeguards to ensure he undergoes a fair trial, which respects the due process guarantees stipulated in the Rome Statute.

Failure by the international community and this Council in particular to put pressure on the Government of the Sudan to arrest and surrender persons against whom arrest warrants have been issued continues to present an on-going challenge for my Office in moving forward with the other trials. Within my Office's limited resources, security challenges and lack of cooperation by the Government of the Sudan, my Office's activities in these other cases are limited to preservation of evidence and maintaining contacts with witnesses. This is the only way we can ensure a smooth kick-start of judicial proceedings in the event that the fugitives are arrested.

Mr President,

The report submitted to you for this briefing provides an overview of allegations of crimes which continue to be committed in Darfur and which cry out for full investigations. It is particularly noteworthy and indeed disturbing that persons against whom arrest warrants have already been issued are allegedly implicated in the commission of these crimes. If it has not been clear to this Council before, it should now be clear that lasting peace in Darfur will remain elusive for as long as those alleged to be responsible for the commission of the crimes remain at large. The alleged crimes include attacks by the Ministry of Defence, either targeting or indiscriminately affecting civilians and other persons, as well as alleged attacks by rebel movements; alleged criminal acts affecting displaced persons and alleged abductions of, and attacks on, humanitarian aid workers and peacekeepers, among others.

The plight of displaced persons is particularly worrying. Much as the precise numbers of the displaced persons may be doubtful, there is reason to believe that the crisis may even be worse than imagined and it is exacerbated by lack of access to humanitarian aid, such as food, water and the most rudimentary shelter in the form of plastic sheets. Allegations of the hijacking or stealing of humanitarian aid food deliveries by the Government of the Sudan's Humanitarian Aid Commission are also of concern to my Office, as they have reportedly left hundreds of thousands of Internally Displaced Persons suffering.

Alleged aerial bombardments affecting civilians also feature in our overview. There is no doubt that civilians continue to bear the brunt of all these armed attacks. My Office has taken note of a recent survey that identifies violence in Darfur as the major cause of death amongst refugees, and the apparent on-going pattern of incidents previously highlighted by my Office wherein thousands of militias enter targeted towns in Land Cruiser vehicles, on horseback and on camels and confront local tribe members. These attacks have allegedly resulted in civilians killed and injured, with tens of thousands displaced at a time. My Office has also noted increasing clashes between Arab tribes that have in the past supported the Government of the Sudan's militia/Janjaweed, including related concerns that the Government of the Sudan is increasingly willing to fan the flames of violence, even amongst its traditional allies, to deflect their demands for greater compensation for their involvement in the military campaign of the past ten years.

My Office notes the pervasive and corrosive effect of organized sexual and gender-based violence on women and girls, which is a key concern for my

Office, and the fact that it remains seriously under-reported. Sexual and gender-based violence is undoubtedly a threat to peace and security in Darfur. My Office notes attacks on human rights defenders, civil society members and community leaders that likewise have a corrosive effect on the ability of communities to speak up in search of justice, peace and security. These communities are also increasingly exposed to unliveable conditions by attacks on humanitarian aid workers and peacekeepers, which diminish the assistance they can receive, and which prevent the UN Mission in Darfur from being able to execute its mandate. The interference of the Sudan's National Intelligence and Security Services (NISS) in the work of humanitarian aid workers has caused substantial deterioration in the level of health coverage that they have provided as a stop-gap for the total lack of local services.

Mr President,

On the matter of non-cooperation, this Council is yet to respond to eight formal communications from the Pre-Trial Chamber, including the non-cooperation of the Government of the Sudan in the Harun and Kushayb case. The Council's silence and inaction contributes to the Sudan's continued determination to ignore this Council. The Office recalls the statement of the Chamber in these cases that "the ICC has no enforcement mechanism and thus relies on the States' cooperation, without which it cannot fulfil its mandate and contribute to ending impunity."

Mr President,

Let me conclude by noting the Assembly of States Parties' Omnibus Resolution from its recent 2013 session, resolution 8, and in particular its reference in paragraph 13 to UN Security Council Presidential Statement 2 of 12 February 2013. The Resolution encourages further strengthening of the Security Council's relationship with the Court, such as through support for international justice in peacekeeping mandates, holding of annual open debates on the Court and identifying other means to institutionalize cooperation. Rome Statute States Parties have an essential role to play in making this stronger relationship a reality. This is certainly essential if we dare hope to make progress towards ending impunity in Darfur. I still believe this is possible. I hope you do as well. I thank you for your attention.

Source: Office of the Prosecutor/otpnewsdesk@icc-cpi.int

Eighteenth Report of the Prosecutor of the International Criminal Court to the UN Security Council pursuant to UNSCR 1593 (2005): English, Français, عربي