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

Twenty-first Report

Checked against delivery

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Madame President, Your Excellencies,

1. We are meeting once again pursuant to UN Security Council Resolution 1593, as I present my Office's twenty-first report on Darfur, Sudan.
2. Today's briefing also takes place over six years after the issuance of the first warrant of arrest against Mr Omar al-Bashir. To those who choose to forget the events that have brought us here and in particular those who have chosen to deliberately distort facts by alleging that the International Criminal Court ("ICC" or the "Court") imposed itself on Sudan, I would like to briefly recall some crucial facts.
3. Lest we forget, on 29 October 2009, the African Union ("AU") endorsed the report and recommendations of the African Union High-Level Panel on Darfur ("AUPD"), led by the former President of South Africa, His Excellency, Mr Thabo Mbeki.
4. This comprehensive 125-page report, entitled: "Darfur: the Quest for Peace, Justice and Reconciliation," recommended a range of steps the Sudanese government ought to take to advance these objectives. These included: the creation of a hybrid court composed of Sudanese and non-Sudanese judges and other officials to investigate and prosecute serious crimes committed in Darfur in violation of international law, as well as broad reforms to the country's criminal justice system.
5. In particular, the Mbeki Panel opined, and I quote:

Should Sudan make genuine efforts to address the crimes in Darfur, the judges of the ICC would be required to evaluate those steps to consider whether they meet the requirements of Article 17 [of the Rome Statute, which gives preference to national courts unless the state in question cannot or will not prosecute]. The final determination of this issue, however, is for the judges of the ICC alone. – end of quote.

Madame President, Your Excellencies,

6. The role of the ICC in efforts to end the atrocities committed in Darfur and to hold those most responsible accountable is crucial and has a well-known history. Indeed, it is a role equally well recognised by the African Union at the genesis of the exercise of the Court's jurisdiction vis-à-vis Darfur, Sudan.

7. Notably, the Mbeki Panel went on to say:

Whilst the ICC action might be a catalyst for acts of accountability in Sudan, Darfurians deserve attention not because of the threat of international action, but principally because they have a right to justice, in their own country, on account of what they have suffered.

8. The question we need to ask of ourselves today is whether the people of Darfur, Sudan who continue to endure the suffering widely recognised by, amongst others, the Mbeki Panel and the African Union, will ever receive the justice they deserve? Will their plight be finally answered through independent and impartial justice, or will their cries continue to face silent inaction?

9. In my last briefing on Darfur, I stated that given the Council's failure to act decisively on numerous acts of defiance of its Resolutions by the Government of Sudan, and given the limited resources at my disposal, I was left with no choice but to limit *active* investigations.

10. My message was addressed to this Council to encourage the exercise of its powers to ensure justice for the long-suffering victims of atrocity crimes in Sudan. It was a clarion call to this august body that it is long overdue for you to heed the cries of the victims of rape and sexual abuse, torture, mass displacement and other inhumane suffering Darfurians continue to endure.

11. As always, detractors and their spin-doctors have deliberately distorted this call for Security Council action as a victory for Mr Bashir and other suspects in the Darfur situation.

12. Let me be clear: my Office's determination to bring independent and impartial justice to the people of Sudan remains unshaken. Efforts of detractors and naysayers only serve to strengthen our resolve and spur us to double our efforts in this regard.
13. Mr Bashir's recent rapid departure from South Africa proves that the warrants of arrest against him are as valid as they were when issued; that they remain in full force and effect, and that my Office is committed to ensure they are executed.
14. While Mr Bashir may have escaped the law in South Africa through an unanticipated and premature departure from the 24th AU Summit, the swift judicial action by South African courts we have witnessed is a shining precedent that must be emulated in other States.
15. More generally, the High Court's ruling in South Africa has also underlined a growing recognition by domestic courts of states' obligations to uphold their commitments under international law – in this case, the Rome Statute.
16. As the Court's own Presiding Judge of the Pre-Trial Chamber made clear on Saturday, 13 June, "there exist[ed] 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 [were] already aware of this obligation."
17. Mr Bashir's hasty retreats in Kenya, Nigeria and now South Africa are also largely due to the vigilance and tireless efforts of civil society. The courage and commitment of civil society are to be commended.
18. More importantly, such selfless efforts must humble us and remind us of the spirit of 1998, when the hopes and aspirations of humanity combined, in a rare historical moment, to create the International Criminal Court with the promise of "Never Again."
19. The international criminal justice project, with the ICC at its nucleus, demands sustained and robust support if it is to succeed and propel us forward towards a more just and peaceful world. We must not allow this virtuous undertaking of humanity to be chipped away or ultimately sacrificed at the altar of political expediency.

20. It is past time for this Council and States to join forces with the Court and civil society in devising concrete and effective strategies for the arrest of accused persons wanted by the Court, and to give the ICC the full support it requires and is entitled to, in order to implement the Rome Statute as intended.
21. My Office has encouraged States Parties to find innovative ways to support those amongst them who are most likely to receive visits from wanted individuals; to be proactive, and to make practical plans for the safe and effective arrest of persons against whom warrants of arrest have been issued by the Court.
22. I encourage States Parties to plan – ahead – for the arrest of each individual wanted by the Court in a targeted and efficient manner. The longer such persons remain at large, the greater the risk that further atrocities will be committed, contributing to instability and insecurity.

Madame President, Your Excellencies,

23. The deteriorating security situation in Darfur continues to be a matter of great concern, not only for my Office, but for the broader international community and undoubtedly, for this Council. Innocent civilians continue to bear the brunt of insecurity and instability, in particular as a result of what appears to be an on-going government campaign to target them.
24. The frequency and brutality of the targeting of civilians, women in particular, is especially troubling. The people alleged to be most responsible for these ongoing atrocities are the same people against whom warrants of arrest have already been issued. Needless to say, arresting them and bringing them to face justice is the only way to stop these crimes.
25. In this context, I must emphasise that my Office's investigations into the alleged crimes committed in Darfur are continuing, albeit not at the pace or intensity we would have liked. The fact remains that my Office has finite resources and a heavy caseload, and is therefore struggling to commit to full, active investigations of the on-going crimes in Darfur. This, however, should not in any way be misconstrued or interpreted to mean that the investigations have been closed or that we have abandoned the victims of mass atrocities in Darfur. In fact, far from it. A team of lawyers and investigators dedicated to the Darfur investigations in my Office continues to carry out its work, albeit with limited capacity given

resource constraints, lack of access to Sudan and inadequate support and follow-up from this Council. My Darfur Team's activities have had to be limited to monitoring and documenting incidents as they occur and to conducting witness interviews where possible and necessary.

26. I urge anyone with reliable information and potential evidence of on-going crimes in Darfur to contact my Office and to proactively support this on-going investigation.

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27. On 26 June 2015, the Pre-Trial Chamber of the Court found that the Government of Sudan is in non-compliance for its failure to arrest and surrender Abdel Raheem Mohammed Hussein to the ICC. This is in addition to the 9 March 2015 finding of the Pre-Trial Chamber that Sudan has failed to cooperate with the ICC by not arresting and surrendering Mr Omar Al Bashir. The Judges have communicated these findings to this Council for action.
28. These latest judicial findings bring the number of such non-compliance communications to the Council to *ten*.
29. I urge this Council to give urgent attention to these communications.
30. Following an independent assessment of whether to open an investigation pursuant to a referral by the Security Council, if the decision by the Court is affirmative, then the Rome Statute legal framework foresees a clear role for the Council in the case of non-compliance of States.
31. It is imperative for the Council to recognise this crucial role vis-à-vis those States that have been found to be in non-compliance by the Court, and to assume its responsibilities to advance the objectives of the Rome Statute.
32. Therefore, I once again call on this Council to ensure Sudan's compliance with UN Security Council Resolution 1593, and equally call on States Parties to the Rome Statute to promote cooperation and effect the arrest of individuals wanted by the ICC in the Darfur situation.

33. Similarly, I urge ICC States Parties to take the lead in assessing how best individuals for whom warrants have been issued by the Court can be arrested and surrendered to the ICC. That dialogue is past due and my Office encourages it to be given the urgency it deserves.
34. As the Judges of the Court have put it: “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 of the UN Charter would never achieve its ultimate goal, namely, to put an end to impunity. Accordingly, *any such referral would become futile.*”

Madame President, Your Excellencies,

35. My Office welcomes the ongoing dialogue with ICC States Parties, in particular through the caucus of States Parties in this Council. The caucus is an important step towards building institutional memory on justice issues within the Council and ensuring that justice remains an integral part of the Council’s discussions.
36. I encourage the leadership of the Assembly of States Parties (“ASP”) to the ICC and their esteemed offices to continue to consider how interaction between the caucus and the ASP may strengthen the justice community’s interactions at the UN.
37. In conclusion, let me restate that there is more that we can and must all do to achieve peace and justice in Darfur. I will continue to do my part in the exercise of my independent and impartial mandate. The support of partners including civil society from Sudan and elsewhere, States Parties in general and the United Nations remains crucial for my work. It must be stressed that this Council also has a vital role to play and must do its part.
38. I thank you, Madame President, Your Excellencies, for your attention. | отр