

**TWENTY-FIFTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL
CRIMINAL COURT TO THE UNITED NATIONS SECURITY COUNCIL
PURSUANT TO UNSCR 1593 (2005)**

1. INTRODUCTION

1. On 31 March 2005, the United Nations Security Council (“Council”) adopted Resolution 1593 (“UNSCR 1593”), referring the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court (“ICC” or the “Court”). This is the twenty-fifth report submitted to the Council by the Prosecutor of the ICC (“Prosecutor”) pursuant to paragraph 8 of UNSCR 1593.
2. This report provides an update to the Council on the key developments in the Darfur situation since the Office of the Prosecutor’s (“OTP” or “Office”) last report on 13 December 2016. Specifically, this report provides an overview of the Office’s on-going investigations and inquiries, and addresses recent judicial activities. These activities relate mostly to the failure by some ICC States Parties (“States Parties”) to arrest and surrender Mr Omar Hassan Ahmad Al Bashir (“Mr Al Bashir”) to the Court.
3. To date, all suspects in the Darfur situation remain at large. Mr Al Bashir, Mr Ahmad Muhammad Harun (“Mr Harun”), and Mr Abdel Raheem Muhammad Hussein (“Mr Hussein”) continue to hold senior positions in the Government of the Republic of Sudan (“GoS”). Mr Ali Muhammad Ali Abd-Al-Rahman (“Mr Ali Kushayb”) maintains his position in a GoS-aligned militia operating in Darfur. Mr Abdallah Banda Abakaer Nourain also remains at large.
4. The Council has yet to take steps to compel the GoS to fulfil its obligation to cooperate with the ICC and, in particular, to arrest and surrender these wanted individuals to the Court. Furthermore, to date, the Council has done nothing to ensure that States Parties are held accountable for their failure to arrest and surrender any of the suspects sought by the Court.

5. This inertia cannot continue. The Council has recalled in various resolutions based on Chapter VII of the Charter of the United Nations (“UN”) that the situation in Sudan continues to constitute a threat to international peace and security. The referral of the situation in Darfur to the Prosecutor has yet to bring justice to the thousands of victims. This report seeks to remind the Council that it remains “seized of the matter” in Darfur. As such, this Council bears the responsibility to provide the necessary support to enable the Court to carry out its mandate under the Rome Statute following its referral pursuant to UNSCR 1593, including by taking decisive steps in support of the arrest of ICC suspects.

2. RECENT JUDICIAL ACTIVITIES

Litigation related to South Africa

6. As the Council will recall, the Republic of South Africa (“South Africa”) did not arrest Mr Al Bashir during his visit to its territory in June 2015. Following the suspension of ICC proceedings pending the finalisation of related domestic litigation in South Africa, on 8 December 2016, Pre-Trial Chamber II (“PTC II”) scheduled a public hearing for 7 April 2017. The purpose of this hearing was to accord South Africa and the Prosecutor an opportunity to fully present their views on the events surrounding Mr Al Bashir’s attendance at the African Union Summit held in Johannesburg in June 2015 and the failure of the South African authorities to arrest and surrender him to the ICC.
7. Since the investigation into the Darfur situation was initiated pursuant to a resolution of this Council, PTC II deemed it appropriate to invite representatives of the UN to make written submissions, attend the hearing and be heard on the matter. Ultimately, in a letter dated 23 February 2017, the UN Under-Secretary-General for Legal Affairs and United Nations Legal Counsel informed PTC II that “further to internal consultations on the matter [...] the Secretariat will not be sending a representative to attend the hearing, and will not be making written submissions.” That the UN chose not to make submissions was a missed opportunity for the organisation to pronounce on the important issue of non-compliance in relation to a situation that the Council referred to the Prosecutor. PTC II also invited any interested State Party to the Rome Statute to make relevant written submissions.

8. Prior to the public hearing, South Africa, the Office and the Kingdom of Belgium as a State Party, filed written submissions. Furthermore, the Southern Africa Litigation Centre, as a party to the related domestic litigation in South Africa, filed an *amicus curiae* brief.
9. At the end of the hearing, PTC II indicated that it would render a decision in a public hearing prior to the July judicial recess.

Travel to States Parties

10. The Office continues to lament the Council's consistent failure to provide due consideration to the Court's decisions finding States Parties and Sudan in non-compliance with their obligation to arrest and surrender Mr Al Bashir and the other fugitives in the Darfur situation. The negative impact that this failure has on the Office and on the authority and credibility of the Council is clear.
11. During the reporting period, on 10 January 2017, the Registry was alerted to the potential visit of Mr Al Bashir to the Hashemite Kingdom of Jordan ("Jordan"), a State Party, in order to participate in the 28th Arab League Summit, scheduled to take place in Amman on 29 March 2017. The Registry sent a *note verbale* to Jordan on 21 February 2017 highlighting its obligations as a State Party to cooperate in the arrest and surrender of Mr Al Bashir to the Court if he entered its territory.
12. On 24 March 2017, the Registry received a *note verbale* from Jordan in which it confirmed that an invitation had been extended to Mr Al Bashir to attend the 28th Arab League Summit, but that no official confirmation from Sudan concerning Mr Al Bashir's attendance had yet been received. The day before the opening of the summit, Jordan sent another *note verbale* to the Court confirming that Mr Al Bashir would attend the Arab League Summit on 29 March 2017.
13. Mr Al Bashir duly attended the 28th Arab League Summit in Amman on 29 March 2017 and Jordan did not take any action to arrest and surrender him to the Court. On 26 April 2017, PTC II invited Jordan to provide further submissions by 26 May 2017 on its failure to arrest and surrender Mr Al Bashir before it makes a determination under article 87 of the Rome Statute. On 24 May 2017, the Registry communicated to PTC II a confidential *note verbale* from the Embassy of Jordan in The Hague.

14. The Office once again regrets that to date the Council has taken no action in relation to the 13 decisions finding non-compliance and/or requesting that appropriate action be taken against States Parties and Sudan for failing to arrest Mr Al Bashir and other fugitives in the Darfur situation. This impasse in the Council must be broken if justice is to be done.
15. Therefore, this Office once again appeals to the Council to address States Parties' non-compliance with firmness when these States invite and host suspects against whom warrants of arrest have been issued by the ICC on their territories. Concrete measures must be taken by the Council to prevail on States Parties to uphold their commitment to put an end to impunity for the alleged perpetrators of the most serious crimes of concern to the international community.
16. The Office recalls that the Council has the power under Chapter VII of the UN Charter to ensure that States cooperate with the Court by arresting and surrendering the Darfur suspects when they travel abroad.
17. In this regard, the Office welcomes the support from certain members of this Council provided in response to the Prosecutor's December 2016 briefing, for effective measures to be taken to ensure that instances of non-cooperation with the Court are taken seriously. In that vein, the representative of New Zealand asserted that the Council "should, at a minimum discuss any finding of non-cooperation with a view to determining which of the tools that it has at its disposal, if any, offers the most appropriate response. [...] [T]hose options include the adoption of a formal draft resolution or statement, the dispatch of a letter or a meeting with the country concerned." The Office remains hopeful of, and expects concrete follow up to these reasonable proposals.

Travel to Non-States Parties

18. Mr Al Bashir has also continued to travel to non-States Parties since December 2016: to the Kingdom of Saudi Arabia on 23 January 2017; to the Federal Democratic Republic of Ethiopia on 9 December 2016, 22 January and 4 April 2017; to the United Arab Emirates ("UAE") on 19 February 2017; to Kuwait on 10 April 2017; and to Bahrain on 12 April 2017. On 13 May 2017, Mr Al Bashir and fellow ICC fugitive Mr Harun, current Governor of North Kordofan State in Sudan, travelled to Doha, Qatar. On 16 February 2017, Mr Harun also travelled to Kuwait, as head of a GoS delegation.

19. On 31 May 2017, the Registry filed with PTC II a report on action taken in respect of travel by Mr Hussein to the UAE on 28 November 2016. The Registry indicated that on 27 November 2016 it transmitted a *note verbale* to the UAE inviting cooperation with the Court in the provisional arrest of Mr Hussein. The Registry also reported that on 27 December 2016 it transmitted to the UAE a request, dated 22 December 2016, for the arrest and surrender of Mr Hussein.

3. ON-GOING INVESTIGATIONS

Current investigations

20. The 2017 budget allocated to the Office for the conduct of the totality of its work in the Darfur situation inevitably limits the desired pace and progress of this work.
21. Since the Office's last report, additional investigators and analysts have joined the team working on the Darfur situation. This has allowed the Office to intensify its investigations and to strengthen its cases against the Darfur suspects. Furthermore, extensive analytical work has allowed the Darfur team to further refine its cases.
22. In sum, the team has maximised the limited resources available, to investigate with renewed vigour and has made progress in its collection of evidence.

Inquiry into allegations of current crimes

23. For the first time since the GoS' military offensive, "Operation Decisive Summer" in 2014, there has been a significant decrease in clashes between the GoS and rebel groups. No major clashes have been reported between the GoS and the Sudanese Liberation Army-Abdul Wahid. Fewer attacks against civilians were reported: between 53 and 60 civilians reportedly died in attacks allegedly perpetrated by GoS forces, including the border guards and the Rapid Support Forces ("RSF") and only two aerial bombardments were reported in April 2017 on Jebel Marra. However, according to recent reports, during May 2017, the Sudanese army supported by the RSF, clashed with the Sudan Liberation Movement-Minni Minnawi and the SLM-Transitional Council in North and East Darfur. This latest incident further demonstrates the necessity for the resolve of the international community to push for a cessation of armed hostilities in the region.

24. The Office welcomes the fact that, as reported by the African Union/United Nations Hybrid Operation in Darfur (“UNAMID”) on 4 April 2017, there has been a “significant improvement” in movement restrictions imposed by the GoS, including the ability for UNAMID teams to visit areas in Jebel Marra that were previously off-limits. This marks a positive departure from the situation described in UNSCR 2340 of 8th February 2017 (“UNSCR 2340”) where the Council had noted with great concern the lack of access to Jebel Marra. However, as encouraging as this recent access to certain areas may be, it will count for little if it is not maintained. To effectively protect civilians, unfettered access of the Panel of Experts, UNAMID and personnel of humanitarian agencies throughout Darfur, on a sustained basis, must be guaranteed by the GoS.
25. In fact, as reported to the Council by the Secretary-General on UNAMID on 23 March 2017, internally displaced persons (“IDPs”) continue to be targeted and to face various forms of violence, including attacks against their camps and sexual and gender-based violence. Locations with the highest number of reported incidents include Kutum, Sortony and Tawila in North Darfur, Zalingei and Nertiti in Central Darfur, Kalma and Otash in South Darfur, and El Geneina and Kereinik in West Darfur.
26. Although the number of reported rapes has declined - with 15 incidents resulting in 45 victims of rape in the last reporting period - all of these cases involved gang-rapes by armed men. Half of these rapes were allegedly carried out by GoS-allied troops and most of the victims were reportedly IDPs.
27. A number of UN reports stressed that incidents of rape are a serious concern in Darfur, especially for IDPs. Following his visit to Sortony IDP camp, North Darfur, the UN Independent Expert on the human rights situation in Sudan reported nine cases of rape but stressed that many other incidents of sexual violence were not reported.
28. The fate of IDPs was further highlighted by the Council in UNSCR 2340, in which it deplores “the violations of international humanitarian law and human rights violations and abuses committed by the Government of Sudan security forces, their proxies, and armed groups, including those opposing the Government of Sudan, against civilians, including IDPs, particularly in the Jebel Marra area.”

29. Unless the root causes of the conflict are addressed, the situation in Darfur will remain unstable and unpredictable. Regrettably, rather than addressing these root causes, the GoS organised a crackdown on political opponents and human rights activists during this reporting period. There has been an increase of arrests of Darfuri students and prolonged detentions of journalists, human rights activists and political opponents. Sources recently reported that GoS security forces, and the National Intelligence and Security Service in particular, beat and tortured persons in detention.

4. LACK OF COOPERATION

30. UNSCR 1593 stated 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.” Unfortunately, the GoS policy of complete non-cooperation towards the Court and the Prosecutor continues.

31. The Office appreciates the cooperation it receives consistently from certain States with regard to its Darfur related investigative missions on their territory. However, regrettably, a number of States, including States Parties, continue to invoke supposed conflicting obligations owed to other regional and international organisations as a bar to their cooperation in relation to the arrest and surrender of Darfur fugitives to the Court. As ICC Chambers have determined, based on the Rome Statute, the Court is the sole authoritative body competent to rule on its jurisdiction and adjudicate any matters arising from the relationship between the Court and States Parties.

32. Therefore, the Office urges States Parties that identify challenges that may impede or prevent the execution of their cooperation obligation to consult with the Court without delay. A unilateral decision of a State Party not to honour its cooperation obligations towards the Court prevents the Court from carrying out its mission as mandated by its founding treaty, the Rome Statute, and undermines its legitimacy.

33. The Office notes with concern that certain international and non-governmental organisations express difficulties assisting the Court with its investigations in the Darfur situation because they fear that their cooperation may impact on their activities on the ground in Sudan and on their relationship with the GoS.

34. The Office notes that UNSCR 2340 extends the mandate of the Panel of Experts, originally appointed pursuant to Resolution 1591 of 29 March 2005, until 12 March 2018. The Office welcomes the renewed call in UNSCR 2340 to all 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 including acts of sexual violence against civilians, the recruitment of children into armed groups and their use in hostilities, and violations of international humanitarian law.
35. The Office reiterates that the GoS and the parties to the conflict in Darfur are those who are primarily the focus of the cooperation obligation under UNSCR 1593. The GoS has the ability to arrest and surrender the five individuals sought by the Court but has consistently and expressly refused to do so. ICC Chambers have declared that Sudan, in addition to States Parties, bears a clear obligation under the Rome Statute and Chapter VII of the UN Charter upon which the situation referral is based, to arrest and surrender all suspects in the situation in Darfur to the Court.
36. The Office continues to urge the Council to support its efforts in the situation in Darfur, including by facilitating financial assistance by the UN for its ongoing investigations and by giving due consideration to non-cooperation decisions and related referrals by the Chambers of the Court.
37. To deliver justice to the countless victims in Darfur, the cooperation of States and the support of this Council for the Office's activities, including through the provision of adequate resources, are crucial.

5. CONCLUSION

38. Despite its limited resources, and cooperation deficits, the Office remains committed to pursuing its investigations and prosecutions into allegations of Rome Statute crimes committed in Darfur with diligence and dedication so that those most responsible for such crimes face justice.
39. The Office welcomes the Council's strong appeal in UNSCR 2340 for justice to be rendered in Sudan. Specifically, in this resolution the Council reiterates its grave concern already expressed in prior resolutions that "the situation in Sudan continues to constitute a threat to international peace and security in the region" and calls on the GoS to ensure "accountability for violations and abuses of human

rights and violations of international humanitarian law by whomsoever perpetrated.”

40. In line with these statements, what is required is concrete action by the Council in support of the Court’s efforts to investigate and prosecute Rome Statute crimes allegedly committed in Darfur. | 011