



**THIRTY-THIRD 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 (“UNSC” or “Council”) adopted Resolution 1593 (“UNSCR 1593”), and referred the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court (“ICC” or “Court”).
2. The Council invited the Prosecutor to address it every six months on actions taken pursuant to UNSCR 1593. This is the thirty-third report, and the final report of the incumbent Prosecutor, to the Council on the activities of the Office of the Prosecutor (“OTP” or “Office”) in the Darfur situation.

**2. RECENT DEVELOPMENTS IN SUDAN**

3. Since the Office’s last report to the Council on 10 December 2020, there have been further developments relating to interactions with the Republic of Sudan (“Sudan”), the Office’s activities in Sudan and in particular, the case against Mr Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb (“Mr Abd-Al-Rahman”).

*Status of suspects*

4. Four ICC arrest warrants remain outstanding in the Darfur situation, against Messrs Omar Hassan Ahmad Al Bashir, Ahmad Muhammad Harun, Abdel Raheem Muhammad Hussein, and Abdallah Banda Abakaer Nourain.

5. Since July 2020, Mr Al Bashir has been on trial in Sudan for charges relating to the 1989 military coup that brought him to power, including for allegedly undermining the constitutional order and the use of military force to commit crimes. Mr Hussein is also detained and tried on charges relating to the 1989 military coup.
6. Mr Harun remains in detention in Sudan.
7. Mr Banda remains a fugitive from the Court and his exact whereabouts are unknown.
8. As detailed in the section on cooperation below, with full respect for respective roles and the principle of complementarity, the Office has been in a productive ongoing dialogue with the Government of Sudan since 2020, aimed at ensuring accountability for the ICC suspects and justice for the victims in Darfur. The Office will continue to explore all options for accountability that are permissible under the Rome Statute. Notwithstanding these ongoing discussions, Sudan remains under an obligation, pursuant to UNSCR 1593 and the related orders of the ICC judges, to surrender the four remaining suspects in the Darfur situation to the Court.
9. Following the surrender of Mr Abd-Al-Rahman in June 2020, the Office has been preparing for the confirmation of charges hearing scheduled to take place between 24 and 27 May 2021. The next section of this report outlines some of the main judicial activities in relation to this case.

### **3. RECENT JUDICIAL ACTIVITIES**

10. On 18 December 2020, Pre-Trial Chamber II (“Chamber”) partially granted the Prosecution’s second request for an extension of time, postponing the start of the confirmation of charges hearing until 24 May 2021, and setting new deadlines in preparation for the hearing. In particular, the Chamber ordered the Prosecution to file the document containing the charges and to disclose all the evidence and to provide Arabic translations of witness statements that the Prosecution expects to rely on at the

confirmation hearing, by 29 March 2021. It also ordered the Prosecution to submit the list of evidence intended to be presented at the confirmation hearing and to file its pre-confirmation brief by 16 April 2021.

11. On 18 January 2021, the Single Judge issued a decision establishing the principles applicable to victims' participation and representation during the confirmation of charges hearing, which was supplemented on 5 February 2021.
12. On 5 February 2021, the Appeals Chamber confirmed the Chamber's decision of 11 December 2020 rejecting the Defence request for interim release and ordering that Mr Abd-Al-Rahman remain in detention.
13. On 22 March 2021, the Single Judge issued its decision regarding the Registry's first assessment report and transmission of victim applications for participation in pre-trial proceedings, the victims' legal representation, and their procedural position in the case against Mr Abd-Al-Rahman.
14. On 29 March 2021, the Prosecution submitted its document containing the charges, which describes the nature, cause and content of the charges against Mr Abd-Al-Rahman. These charges concern alleged war crimes and crimes against humanity committed in Kodoom, Bindisi and surrounding areas in August 2003 (Counts 1-11), Mukjar and surrounding areas in February-March 2004 (Counts 12-21), and Deleig and surrounding areas in March 2004 (Counts 22-31).
15. On 12 March 2021, the Chamber issued a decision on the review of detention, rejecting the Defence's request for a hearing to discuss the conditions for an immediate release and remanding Mr Abd-Al-Rahman in detention.
16. On 16 April 2021, pursuant to the Chamber's order, the Prosecution submitted its pre-confirmation brief and the list of evidence for the confirmation of charges hearing.

17. On 23 April 2021, the Defence for Mr Abd-Al-Rahman appealed the Chamber's earlier decision on the review of his detention. The litigation on this issue is ongoing.
18. On 5 May 2021, the Single Judge issued an order setting the schedule for the confirmation of charges hearing and convening an annual hearing on Mr Abd-Al-Rahman's ongoing detention.
19. On 20 May 2021, the Single Judge issued a decision authorising 151 applicant victims to participate in the confirmation proceedings and appointing their legal representatives.
20. On 24 May 2021, the hearing on the confirmation of charges in the case against Mr Abd-Al-Rahman commenced. The hearing concluded on 26 May 2021 after submission by the Prosecution, the Defence and Legal Representative of Victims. In accordance with regulation 53 of the Regulations of the Court, the Pre-Trial Chamber shall deliver its written decision within 60 days of the date on which the confirmation hearing ends.

#### **4. ONGOING INVESTIGATIONS AND ENQUIRIES INTO ALLEGATIONS OF CURRENT CRIMES**

##### *Ongoing investigations*

21. Since the last reporting period, the Office has carried out its first investigative activities in Sudan. Access to the territory of Sudan remains critical for the Prosecution to interact with the local communities affected by the crimes committed in Darfur. The COVID-19 pandemic continues to severely undermine this process.
22. During the reporting period, the Office has continued conducting its investigative activities and re-contacting its current witnesses. Despite the ongoing pandemic and

travel restrictions, the Office has carried out multiple investigative missions in African and European countries to further strengthen its case against Mr Abd-Al-Rahman.

23. On 14 February 2021, the Office and the Government of Sudan signed a Memorandum of Understanding (“Memorandum”) for cooperation in relation to investigation and prosecution of Mr Abd-Al-Rahman. In addition, the Office conducted an initial assessment of the security and logistical situation for future investigative missions. Based on the Memorandum and this initial assessment, the Office has deployed follow-up investigative missions to Sudan between March and May 2021, where its investigators met and interviewed witnesses. These missions, as well as other investigative enquiries, have provided valuable new information and evidence.
24. During one of these investigative missions to Sudan, the Government of Sudan provided the Office with materials further to a request for assistance. These materials were received as a result of the first execution of such a request since more than a decade.
25. The Office is currently engaged with various persons and groups with the aim to further its investigation of sexual and gender based crimes related to the outstanding cases.
26. Planning and conducting investigative activities and deploying missions during the COVID-19 pandemic has remained challenging, time-consuming, and resource-intensive. In addition to other restrictions, staff, contractors and witnesses remain subject to quarantine in the countries where missions take place, as well as upon their return to the places of residence. Although the Prosecution has taken steps to mitigate these challenges to the best of its ability, delays have proven to be unavoidable.

*Enquiries into allegations of ongoing crimes*

27. During the reporting period, the situation in Darfur has been characterised by a large-scale displacement of the civilian population. Hundreds of thousands of people were forced to flee tribal fighting, as well as armed clashes involving government forces and rebel groups. In this context, approximately 55 civilian deaths were recorded since 10 December 2020.
  
28. Major tribal fighting was reported in and around Al Geneina, West Darfur in mid-January and early April 2021. On or about 15 January, fighting allegedly involving Arab and Masalit tribes resulted in civilian deaths, including women, children and humanitarian aid workers, over 100,000 internally displaced persons (“IDPs”), and the destruction of property. According to the UN Office for the Coordination of Humanitarian Affairs (“OCHA”), fighting resumed on 3 April and led to the displacement of an additional 65,000 people, and the killing of women and children. According to the Spokesperson for the UN High Commissioner for Human Rights, a hospital and a UN compound were damaged or destroyed and at least one ambulance was attacked. The Office condemns any attacks against UN and humanitarian personnel and assets.
  
29. On 1 March 2021, the UN Secretary-General issued his periodic report on the situation in Sudan and the activities of the UN Integrated Transition Assistance Mission in the Sudan (“UNITAMS”). According to the report, fighting between opposing factions of the Sudan Liberation Army-Abdul Wahid (SLA-AW) in Jebel Marra area resulted in over 13,000 displaced, the complete destruction of at least four villages, and the killing of civilians. The UN Secretary-General also noted that armed clashes between the Sudanese Armed Forces and the SLA-AW in Sabanga, Jebel Marra area on 24 and 31 January led to the displacement of an estimated 22,000 people.
  
30. Incidents of sexual and gender-based violence against women and girls continue to take place in Darfur. In February 2021, the UN Population Fund (“UNFPA”) reported

that women and girls, who were displaced as a result of tribal violence in Al Geneina in January, experienced rape or attempted rape during and after the displacement. On 26 April, OCHA stated that more than 40% of assessed IDPs “gathering sites” in and around Al Geneina reported cases of gender-based violence.

31. The Office once again condemns any type of crimes committed against civilians, and reminds Sudan of its primary duty to investigate and prosecute such crimes.

## **5. COOPERATION**

32. During the reporting period, the Office has continued taking significant steps in its effort to engage in a constructive and sustained dialogue with the Government of Sudan. In February, March and May 2021, the Office carried out missions to advance cooperation with a view to securing the necessary assistance and support for the Office’s investigative and related activities.

33. Following the Prosecutor’s visit to Sudan in October 2020 and the Office’s submission of a draft memorandum on modalities of cooperation with Sudan, the Office initiated further contacts to discuss and finalise negotiations relating to its cooperation with the Sudanese authorities. As detailed above, a cooperation mission by the Office to Khartoum concluded with the signing of the Memorandum on 14 February 2021. The Memorandum contains an essential framework for cooperation, based on Part IX of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court, for the purpose of the OTP’s investigations.

34. This Memorandum is limited to the ongoing investigation and prosecution of the case against Mr Abd-Al-Rahman. It is without prejudice to the two parties entering into future agreements and arrangements with regard to the investigation and prosecution of the other suspects against whom the Court has already issued warrants of arrest.

35. The Court also negotiated a Court-wide agreement on cooperation with the Government

of Sudan, which entered into force on 10 May 2021. It is expected to facilitate the work in Sudan of all organs, parties and participants in the proceedings against Mr Abd-Al-Rahman.

36. In furtherance of the Memorandum, the Office conducted another cooperation mission to Sudan in March 2021 to identify and secure focal points at strategic and operational levels within the Government of Sudan. The purpose of this mission was to facilitate the implementation of cooperation requests and to provide for the necessary mechanisms that would allow for a secure and safe conduct of the Office's investigative activities in Sudan. These discussions focused on, *inter alia*, the facilitation of investigative activities through the provision of long-term and multiple entry visas and the expeditious handling of OTP requests for assistance. In this regard, the Government of Sudan has made a substantial progress to facilitate and execute some of the OTP requests. Further consultations are taking place to ensure the execution of pending requests for assistance.
37. Following this mission, as mentioned above, the OTP deployed investigators to Sudan to collect evidence. This is the first time since 2007 that the OTP was able to conduct investigative activities, including the taking of witness testimony, in the territory of Sudan.
38. During its cooperation missions conducted in March and May 2021, and further to the Prosecutor's wishes expressed during her visit to Sudan in October 2020 to visit Darfur to engage with the victims and affected communities, the Office discussed the feasibility of such a visit with the Government of Sudan and the United Nations. The Government of Sudan committed to support the visit, which was scheduled to take place after the confirmation of charges hearing in the case against Mr Abd-Al-Rahman. In accordance with the relationship agreement between the ICC and the United Nations, the Office relied on the logistical and operational assistance of the United Nations for this visit and is grateful for such crucial support. The Prosecutor and her team embarked on the envisaged mission on 28 May 2021. This was the last mission of the incumbent Prosecutor to a situation country prior to the end of her mandate.

39. During its various cooperation missions in Sudan, the Office had constructive and helpful engagements with the diplomatic community, various United Nations entities, civil society organisations and leaders and representatives of former Sudanese rebel movements, many of whom, pursuant to the Juba Peace Agreement, have now assumed positions in the Government of Sudan. Through these engagements, the Office was able to rely on the tangible support of the various stakeholders and their commitment to promote justice and accountability and to provide the Office with the assistance it needs. The Office has also benefitted from the cooperation of other States, including States Parties to the Rome Statute, with respect to its ongoing investigations.
40. With regard to the outstanding warrants of arrest, pursuant to UNSCR 1593 and the Juba Peace Agreement signed on 3 October 2020, the Office stressed to the authorities the urgent need to surrender the remaining suspects to the ICC. Moving forward, the Office urges all States to prevail upon the Government of Sudan to surrender the remaining suspects and to fully cooperate with the Court.
41. Mr Harun's prompt surrender is critical to a possible re-joinder of his case with that of Mr Abd-Al-Rahman, whose cases were severed in June 2020. In the Office's view, this would be in the best interests of victims and witnesses, as it would remove the need to call them to testify before the ICC twice and help avoid re-traumatising them. The Government of Sudan must demonstrate its firm commitment to work with the Office in the interests of victims in the Darfur situation by surrendering Mr Harun to the ICC without further delays.
42. The surrender of Messrs Al Bashir and Hussein to the ICC must also be predicated on full and tangible cooperation with the Office, including its unfettered access to witness, documentary and other evidence. The Office urges the Government of Sudan to preserve all information and evidence of potential relevance to the ICC's investigation and prosecution of Messrs Al Bashir and Hussein.
43. The Office is committed to continue engaging with the Government of Sudan to ensure that those most responsible for the crimes committed in the Darfur situation and against

whom warrant of arrests have been issued are prosecuted pursuant to UNSCR 1593.

## 6. CONCLUSION

44. The Office welcomes the progress that Sudan has made during the reporting period in relation to the pursuit of justice for victims in the Darfur situation. The Office is grateful to the Government of Sudan for the steps it has taken in cooperating with the Office and its positive engagement.

45. Following the signing of the Juba Peace Agreement, which makes clear that justice for victims and cooperation with the ICC are central to Sudan's peaceful transition, Sudan has been taking concrete steps to realise its commitments. During the reporting period, thanks to Sudan's renewed cooperation with the ICC, the Office was able to conduct its first investigative activities in Sudan since 2007. These developments are, and will continue to be, testament to Sudan's willingness to genuinely cooperate with the Office, and give meaningful effect to the provisions of the Juba Peace Agreement.

46. The Office welcomes these efforts and reiterates its readiness to work with the Sudanese authorities to ensure accountability for all five suspects in the Darfur situation. It also stands ready to work with Sudan to ensure accountability for atrocity crimes committed in Darfur in relation to persons who may be prosecuted domestically before the Special Court for Darfur, as agreed by the parties to the Juba Peace Agreement.

47. The Office is grateful for and counts on the continued support it receives from States, the United Nations, civil society organisations and other stakeholders in relation to the Darfur situation for the benefit of victims of Rome Statute crimes. | OTP