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## THIRTY-FIFTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UNITED NATIONS SECURITY COUNCIL PURSUANT TO RESOLUTION 1593 (2005)

### EXECUTIVE SUMMARY

This Report reflects the activities pursued by the Office of the Prosecutor (“OTP” or “Office”) in relation to the situation in Darfur over the reporting period of January to August 2022.

Action during this period has included a landmark moment for justice in Darfur and for the relationship between the ICC and the United Nations Security Council, with trial proceedings commenced on 5 April 2022 in the case of Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) (“Mr Abd-Al-Rahman”), the first trial at the Court based on a referral from the Council.

The trial of Mr Abd-Al-Rahman serves as an example of how the process of justice can be served through persistence of action by all actors and by harnessing available avenues for cooperation. Over the last four months, 28 witnesses have provided testimony that reflects the experiences of many survivors of crimes committed in Darfur. This process now continues, with presentation of the case by the Prosecution expected to conclude early next year.

In parallel with its work in taking forward proceedings in relation to Mr Abd-Al-Rahman, the Office has completed an overarching assessment of progress made to date in investigative activity in relation to the situation in Darfur. On this basis, the Office has developed an updated plan for action to build further momentum across other key lines of enquiry. With the ongoing trial demonstrating what can be achieved through concerted efforts towards justice, it is essential that focus is now placed on injecting further impetus into ongoing investigations in relation to individuals subject to outstanding arrest warrants issued by the Court.

During the reporting period investigations have progressed both inside and outside Sudan, and the Office continues to look for opportunities to build partnerships with States Parties, non-States Parties, civil society organisations and international and regional institutions to strengthen investigations, support access to witnesses and evidence, and to assist with technical and analytical endeavours.

The renewed approach outlined in this Report is founded on a core set of principles aligned with the overall strategic vision of the Prosecutor for the work of the Office and reflects a broader emphasis placed on ensuring that referrals from the United Nations Security Council

are prioritised and afforded sufficient staffing and technical capacity. The Office further presents in this Report a set of key medium-term benchmarks which will serve as a framework for action in the coming months. This plan is presented as a basis for further engagement with all stakeholders in our collective efforts to deliver justice for core international crimes.

However, in outlining this plan the Office has also sought to address the impediments it has faced with openness and realism. Further progress will require meaningful cooperation from the Government of Sudan. In order to ensure continued and sustained access to victims, witnesses and relevant documentation, there must be a revived commitment by Sudanese authorities to enhance cooperation with the Office.

The reporting period has seen a varied approach with respect to cooperation from Sudanese authorities. The Office has welcomed and acknowledged recent steps including the provision of multiple-entry visas and support with respect to a limited number of requests for assistance. However, the overall picture during the reporting period has remained challenging and represents a backwards step from the strong period of cooperation enjoyed by the Office from Sudanese authorities from February to October 2021. The insecurity that persists following the events of 25 October 2021 also continues to cause disruption to investigative activity.

A pivotal moment is being reached in which cooperation by the Government of Sudan must be improved. Key steps that Sudanese authorities should take in this regard in the coming reporting period include:

- Provide unimpeded access to documentation relevant to investigations of the Office;
- Provide unimpeded access to government or former government witnesses and other material witnesses;
- Take prompt action to facilitate an enhanced field presence of the Office in Khartoum;
- Ensure prompt responses to all requests for assistance submitted by the Office to the Government of Sudan. Only two requests out of a total of seventeen submitted since the last Report have been executed. Ten requests from the previous reporting period also remain outstanding.

From 20 – 24 August 2022, the Prosecutor will travel to Sudan to address these matters with the Sudanese authorities. He will underline that the Office stands ready to take prompt action in an effort to strengthen cooperation and in particular to increase opportunities for engagement by the Office with affected communities and the Government of Sudan.

Faced with cooperation challenges in this reporting period, the Office has also sought to deepen its engagement with other partners in order to progress investigations, including through development of new avenues for cooperation outside of Sudan. The OTP's continued engagement with victims and survivors, although challenging, has also remained essential for the entire situation, whether in relation to the trial of Mr Abd-Al-Rahman, or with respect to

the other individuals subject to arrest warrants. Despite numerous access issues, outreach efforts to key affected communities have been progressed in recent months both inside and outside Sudan, while partnerships with both local and international non-governmental organisations have been critical in advancing investigative work in this situation.

The effective cooperation of other States and international institutions has also been central to progress made in accessing relevant evidence, resources, skills and expertise. Building on this extended network of partnerships, the Office has sought to further move beyond witness-based evidence to other data sources and has developed new strategies to protect sensitive sources. The Office is grateful for the strong support provided by third States during the reporting period.

As referenced by the Prosecutor in the last report, the response of the Office to referrals by the Security Council cannot be permanently open-ended. The progress made in the case of Mr Abd-Al-Rahman now needs to be reflected with respect to those individuals subject to outstanding arrest warrants issued by the Court so that this chapter of common action towards justice between the Court, the Council and those impacted by Rome Statute crimes can be successfully concluded. The Office will now continue working on the implementation of its renewed approach in the coming months with a view to presenting a completion strategy in relation to the situation in subsequent reports.

The Office looks forward to engaging in enhanced collaboration with all relevant stakeholders in the coming reporting period, in particular the Government of Sudan whose meaningful cooperation remains crucial to meeting the legitimate demands for justice of survivors and affected communities.

The patience of victims cannot be infinite. There is now an opportunity, and a collective obligation, to translate the promises and assurances of the last two decades into meaningful action.

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## **I. INTRODUCTION**

1. On 31 March 2005, the United Nations Security Council adopted Resolution 1593 (2005), referring the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC. The Security Council invited the Prosecutor to address it every six months on actions taken pursuant to this Resolution.
2. In his thirty-fourth report in relation to the situation in Darfur, the Prosecutor noted that he had commenced a review of the structure, content, and purpose of his reports to the Security Council, with a view to more effectively meeting the expectations of the Council and providing a roadmap for the completion of such referrals.
3. The present report reflects the outcome of this review, and seeks to provide a clear vision for future action in relation to the situation in Darfur based on a transparent assessment of progress made and remaining challenges. It outlines a recalibrated strategy and roadmap for accountability in the situation in Darfur predicated on the ability of the Office to draw on its partnerships with all relevant actors pursuant to the Rome Statute. It further underlines that the delivery of this renewed vision must involve increased cooperation from Sudanese authorities.
4. It is recalled that directly upon assuming office, ICC Prosecutor Karim A.A. Khan QC voluntarily recused himself, pursuant to article 42(6) of the Rome Statute, from all cases where a conflict of interest could be perceived to arise due to his prior participation in ICC proceedings as defence counsel. This included his recusal from the case of Mr Abdallah Banda Abakaer Nourain (“Mr Banda”). Responsibility for oversight of this case has been taken by Deputy Prosecutor Nazhat Shameem Khan.

## **II. TAKING STOCK: PROGRESS AND CHALLENGES**

5. Seventeen years since the opening of the investigation by the Office of the Prosecutor into the situation in Darfur, a landmark moment was reached in the current reporting period with the commencement of the trial in relation to Mr Abd-Al-Rahman. This is an important milestone, not only in the context of the Darfur situation but in the broader relationship between the Court and the Security Council, representing the first trial stemming from a referral by the Council. The holding of this first trial is a product of common perseverance by

the Office and its partners and is a testament to the courage of survivors and witnesses who have come forward to provide their accounts.

6. During the reporting period, the Office has concluded a full assessment with respect to action taken in relation to the situation in Darfur. This holistic review has considered how the Office has sought to exploit a wide range of avenues for the collection of evidence since the referral by the Council, with the cooperation of States and other entities, while maintaining its independence, objectivity, and impartiality. A review of the last seventeen years has demonstrated how the speed of progress in this work has varied over time, reflecting factors including the level of cooperation received from Sudanese authorities and resources allocated by the Office to the situation.
7. In the early years of the investigation, the Office benefited from a tangible but limited level of cooperation from the Government of Sudan, while also focusing investigative efforts on the collection of testimony from witnesses located outside Sudan, and documentation provided by a variety of individuals, States, non-governmental institutions and international organisations, including the United Nations. Following the issuance of the first warrants of arrest in relation to this situation in 2007, the Office sought to address increased challenges in its cooperation with the Government of Sudan by focusing investigative efforts on the collection of testimonial and other forms of evidence that could be collected outside of the country.
8. As detailed further below, these external investigative actions have led to some significant steps forward including the issuance of warrants of arrest in relation to a number of alleged perpetrators of Rome Statute crimes. However, overall progress in investigations in relation to the situation were consistently impacted by a lack of access to the country and a consequent inability of the Team to engage directly with affected communities. The complete absence of any cooperation from Sudanese authorities at this time led to a period in which investigations were temporarily hibernated.
9. The signing of Memoranda of Understanding with the Government of Sudan on 14 February and 12 August 2021 respectively, offered renewed hope that further momentum may be generated in investigations, drawing on an increase in cooperation from the Sudanese authorities that stemmed from these engagements. The Memorandum of Understanding of 12 August 2021 in particular marked an important moment, extending the Government of Sudan's cooperation with the Office to include commitments to cooperate in relation to

each of the four individuals subject to arrest warrants not currently in ICC custody.

10. Following the conclusion of these instruments, the Office gained access to witnesses located in Sudan and took the opportunity to directly engage with various governmental bodies. However, since the events that took place on 25 October 2021, a number of requests for assistance have not been executed by the Sudanese authorities or have been executed only partially. As outlined below, since the last briefing of the Prosecutor to the Council, the Office has faced significant challenges in the discharge of its investigative activities in Sudan.
11. During the reporting period, the Office has received increased cooperation from other States and institutions leading to the provision of new material and other assistance both with respect to individuals subject to arrest warrants currently at large, as well as in relation to the trial of Mr Abd-Al-Rahman.
12. A more detailed overview of the current status of key lines of enquiry is provided in subsection (i), with an update on recent investigative action undertaken in the last reporting period provided in subsection (ii) and an overview of key contextual factors and challenges impacting investigative activity to date provided in subsection (iii).
13. The Office remains constrained in its ability to provide specific details of its lines of enquiry, collected evidence and information, cooperation or investigative steps due to the confidential nature of ongoing investigations and associated security concerns. However it is hoped that in providing an overview of current progress, challenges and opportunities, fresh impetus will be generated for cooperation and the support of all relevant actors to ensure meaningful delivery on the responsibilities conferred by the Security Council to the Office upon adoption of Resolution 1593 (2005), in line with the renewed strategy of the Prosecutor in relation to the situation in Darfur.

**(i) Progress in key lines of inquiry**

*a. Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb*

14. The trial in the case against Mr Abd-Al-Rahman commenced on 5 April 2022 at the seat of the Court in The Hague. As the first case to come to trial in the situation in Darfur, this was an historic moment in the pursuit of justice, not only for the victims and their families, but also for the Darfur community more broadly and for the process of international justice as a whole. The opening of the trial provides an initial but tangible movement towards accountability by

the Office and represents a landmark as the first trial before the Court stemming from a referral by the Security Council to the Prosecutor under Chapter VII of the Charter of the United Nations.

15. Mr Abd-Al-Rahman faces 31 counts of war crimes and crimes against humanity, including murder, attempted murder, pillaging, destruction of property, torture, rape, forcible transfer, and persecution in connection with attacks on the civilian population, and the arrest, detention, mistreatment and killing of men and boys, in the Wadi Salih and Mukjar localities in Darfur between August 2003 and March 2004.
16. The commencement of the trial is the culmination of a period of intensive pre-trial litigation since the surrender of Mr Abd-Al-Rahman on 9 June 2020. Most notably, on 9 July 2021, all charges presented by the Prosecution were confirmed by the Pre-Trial Chamber II, and the case was committed for trial. The trial is proceeding efficiently, with 28 Prosecution witnesses having now testified. Mr Abd-Al-Rahman has remained in pre-trial detention since his surrender.
17. A significant amount of evidence presented during the course of the trial was secured through access to witnesses located in Sudan and to a lesser extent through engagement between the Office and the Government of Sudan since the signing of the first MoU on 14 February 2021. That period of cooperation allowed the Prosecution to access the territory of Sudan to conduct investigative activities for the first time in 14 years. Such access was critical to the investigation, enabling the Office to establish local networks to obtain lead information, find and contact relevant witnesses, interview witnesses in Sudan and obtain official documentation relevant to investigative priorities. As noted above, this cooperation has now been subject to backward steps following the high-point of the period between February and October 2021.
18. Reflecting the importance of the trial of Mr Abd-Al-Rahman for affected communities, the proceedings were broadcast live on major television and radio networks in Sudan, with the Prosecutor also holding dedicated briefings to Sudanese journalists and civil society actors during the reporting period.
19. To further enhance engagement of affected communities in the proceedings, a series of outreach activities have also been undertaken by the Office jointly with the Registry of the Court, including seminars and training workshops on the work of the Court. These activities, undertaken in March and June 2022, have reached over 200 individuals representing Sudanese lawyers, civil society organisations, and media, as well as members of the affected communities either



through online sessions or in-person. Collectively, they have allowed the Court to help key partner entities from Sudan gain a better understanding of the ongoing trial.

20. The trial of Mr. Mr Abd-Al-Rahman demonstrates what can be achieved through common and determined efforts of the Office and its key partners including survivors and affected communities.

*b. Omar Hassan Ahmad Al Bashir, Ahmad Muhammad Harun and Abdel Raheem Muhammad Hussein*

21. Ahmad Muhammad Harun (“Mr Harun”) and Abdel Raheem Muhammad Hussein (“Mr Hussein”) are each charged with war crimes and crimes against humanity, including murder, persecution, forcible transfer, rape, torture and pillaging, committed in the Wadi Salih and Mukjar localities in Darfur between 2003 and 2004. Mr Omar Hassan Ahmad Al Bashir (“Mr Bashir”) is charged with war crimes and crimes against humanity, including murder, extermination, forcible transfer, torture, rape and pillaging, and with the crime of genocide, committed between 2003 and 2008 in Darfur.

22. The investigations regarding the remaining arrest warrants continue. Mr Al Bashir, Mr Hussein, and Mr Harun reportedly remain in custody in Khartoum. The Office has requested access to the suspects through the competent authorities of Sudan but such access has not materialised to date. Further efforts will be made in the coming reporting period to achieve this.

*c. Abdallah Banda Abakaer Nourain*

23. Mr Banda is charged with war crimes pertaining to an attack on a peacekeeping base in North Darfur on 29 September 2007. He remains at large despite the warrant for his arrest. The Office has been and continues to conduct multiple investigative activities in anticipation of eventual prosecution.

**(ii) Investigative activities and cooperation in the current reporting period**

24. During the reporting period, the Office has identified and traced high-value individuals who are able to provide corroborated accounts and were in key positions or central to networks of power in Sudan. With regard to the trial of Mr Abd-Al-Rahman, the Office has continued to reach out to victims and witnesses to further secure their cooperation, and has also engaged with relevant States and institutions to obtain documentation to support the ongoing proceedings.

25. Over the last six months the Office has been able to conduct limited field-based enquiries in Khartoum, allowing it to engage with some Government Ministries and visit locations relevant to investigations. Out of a total of seventeen new formal requests for assistance transmitted to the Government of Sudan since the last briefing of the Council by the Prosecutor, two have been executed and one partially executed. In addition, ten outstanding requests from the previous reporting period remain to be progressed or executed. The Office has followed-up repeatedly on these requests for assistance with the Sudanese authorities on various occasions, including during in-person meetings.
26. The progress made by the Office in its investigations during the period of enhanced cooperation following the signing of the MoU in February 2021 until October 2021, and the positive impact it had with respect to the proceedings concerning Mr Abd-Al-Rahman, underlines the importance of sustained and regular access to Sudan. The presence of investigators and other Office officials on the ground significantly enhances its ability to engage directly with national authorities and those impacted by alleged Rome Statute crimes. In contrast with the previous reporting period marked by commendable support by the Government of Sudan in the provision of visas in a timely manner, the Office noted increased difficulties in the issuance of visas.
27. In light of this, the Office reiterates its call for the Government of Sudan to fulfil its obligations to issue visas to all relevant staff without undue delay and in a manner that does not restrict the required continuous presence of ICC staff in Sudan for the fulfilment of its mandate. The issuance of multiple entry visas to the Prosecutor and seven other members of the Office in the last week represents a positive step forward.
28. Outside of Sudan, the Office has continued to progress investigations through partnering with a number of States and non-State entities to obtain evidence and information. New partnerships and cooperation avenues recently developed by the Office with various States and organisations have proved productive and are expected to continue to provide good dividends moving forward. Access to material in the possession of other institutions and States will be key in parallel with efforts to strengthen cooperation with Sudan. The Office has also engaged in effective cooperation with the Special Adviser to the Prosecutor on Darfur and other relevant partners to advance analysis and review of information and evidence collected.

29. Engagement with non-governmental actors has also remained a priority, with the Office continuing to increase its interactions with victims and survivors' groups, as well as civil society organisations. The Court's annual roundtable with civil society organisations, held on 1 June 2022, provided a further platform through which the Office was able to deepen understanding of its activities in Sudan as well as the challenges it has been facing, and to explore ways for enhanced cooperation with non-governmental actors in and outside Sudan. Other activities aimed at training civil society organisations partners through both traditional and more innovative means have also represented key opportunities to further the strategy of the Office.

### **(iii) Context and Resources**

30. In reviewing its investigative activities in relation to the situation in Darfur, the Office has identified the following key challenges: (a) the current operational, security and political environment in Sudan; (b) the importance of renewed cooperation with the Sudanese authorities; and (c) internal resource limitations.

#### *a. Operational, security and political environment*

31. As outlined above, the resumption of cooperation with the Government of Sudan in October 2020, followed by the signing of two memoranda of understanding between the Government and the Office, gave rise to initial renewed momentum in cooperation and a consequent increase in the ability of the Office to conduct meaningful investigative activities in Sudan.

32. In recent times however a number of challenges have impacted attempts to continue to accelerate investigative activities on the territory of Sudan. Political developments have required the Office to continually adapt and enhance its efforts to engage with the Sudanese authorities. During the period of anticipated political transition the Office sought to maintain engagement with all relevant actors so as to strengthen the basis for cooperation. However in the aftermath of the events of last year, the Office has seen a decrease in cooperation from the Sudanese authorities.

33. During this reporting period, members of the Office have enjoyed minimal opportunities to effectively engage with relevant officials so as to build the necessary understanding and support for its activities. The challenging security situation both in Khartoum and Darfur since the end of 2021 has also had a negative operational impact on the ability of the Office to engage with victims and witnesses in Sudan in a manner consistent with its obligations under the

Rome Statute to protect their safety, physical and psychological well-being, dignity and privacy.

34. As referenced above, the Office also notes the lack of execution of a number of formal requests for assistance, including with respect to access to government and military officials, documents and detainees. Through his visit to Sudan in August 2022 the Prosecutor intends to address a number of the issues that have negatively impacted investigations.
35. The Office notes that the absence of demonstrable action in relation to existing allegations of international crimes in Darfur have the potential to feed a cycle of impunity in which perpetrators feel able to act without challenge or consequence. This in turn can fuel further violence. In this context, the Office has noted with serious concern recent reports of inter-communal violence leading to the killing of civilians, large-scale displacement, property destruction, and attacks against hospitals in West and North Darfur during April and June 2022.

*b. Cooperation and complementarity*

36. Since the referral of the situation in Darfur by the Security Council, the Office has sought to engage with Sudanese authorities to explore investigative opportunities and consider how the principle of complementarity can be most effectively applied in the national context. In this respect, whether under the previous transitional administration or the current administration, the Office has indicated its openness to explore various possible avenues to collectively address the existing impunity gap with respect to the Darfur situation. The Office remains willing to engage in this dialogue and to explore innovative approaches to addressing accountability at the domestic level provided there is a willingness from the Government of Sudan to contribute and participate fully in the delivery of accountability.
37. To date however, the Office has not identified any specific opportunities for provision of support to ongoing proceedings in Sudan. A starting point for the more effective implementation of the principle of complementarity in the Darfur situation lies in the recommencement of effective cooperation by Sudan in relation to ongoing enquiries and requests made by the Office.
38. Reflecting the present accountability gap in the domestic context, under its proposed roadmap the Office will seek to redouble its efforts to identify any realistic opportunities to support the introduction of the necessary legislative

and operational measures needed to take forward credible domestic criminal proceedings.

*c. Internal resources*

39. The allocation of sufficient resources across situations addressed by the Office was identified as a key internal challenge in the Report of the Independent Expert Review dated 30 September 2020 and initiated by the Assembly of State Parties of the International Criminal Court. The lack of sufficient resources has presented ongoing challenges in the investigation of the situation in Darfur.
40. As reflected in the thirty-fourth report to the Council in relation to this situation, the Prosecutor has now sought to refocus the allocation of resources to the dedicated investigation team taking forward action in relation to the situation in Darfur, supporting recruitment of additional staff with required skill sets. This has included personnel with fluency in Arabic, additional analytical expertise and deep experience with witness and source management.
41. While this has supported the acceleration of some targeted areas of investigative and analytical activities, further additional resources would strengthen the ability of the Office to address all aspects of the Darfur situation. For example, the Darfur investigative team would continue to benefit from additional Arabic and Fur speaking investigators and analysts in order to further progress its investigative activities in key lines of enquiry.
42. Limitations in resources continue to represent a challenge for the effective discharge of the functions of the Office across all situations and its ability to accelerate the collection and analysis of evidence. In this context, and as addressed in further detail in section III, the Office recalls its Note Verbale dated 7 March 2022 transmitted to all States Parties seeking voluntary financial contributions and the provision of national experts on a secondment basis to support its work and welcomes the strong response from States Parties to date to this request for assistance, which will allow for the allocation of national experts in support of the investigation into the situation in Darfur.

### **III. LOOKING FORWARD: A ROADMAP FOR ACCOUNTABILITY**

43. The trial of Ali Kushayb has demonstrated the impact that the work of the Office, and the Court more broadly, can have for affected communities in Sudan. To further meet the expectations of those awaiting justice, and to

provide a meaningful resolution to the call for action by the Council seventeen years ago, the future approach of the Office must be targeted and focused on tangible outputs that are achievable in the near to medium term.

44. Reflecting this, and drawing on the assessment of action undertaken to date outlined in section II, the Office has updated its investigative strategy to further strengthen focus of work and allocation of resources in support of key investigative objectives. A clear framework of core principles will guide action towards their achievement.
45. First, a reinvigorated approach to empower those impacted by alleged crimes in Darfur to participate in the work of the Office, including through an enhanced field presence in Sudan. Second, securing improved cooperation and engagement from Sudanese authorities. This will be critical in the upcoming reporting period. Finally, the establishment of a proactive and accelerated policy of cooperation with third States, regional organisations and international partners so as to further exploit all avenues for the use of information and evidence collected by the team.
46. As referenced above, the response of the Office to the referral by the Security Council cannot be permanently open-ended. The renewed strategy of the Office reflects this imperative for urgent action, while emphasising the effective cooperation of Sudanese authorities as a crucial factor in the effective implementation of the mandate of the Office in Darfur stemming from resolution 1593 (2005).
47. The following subsections outline the core strategic principles of the renewed strategy, detail the key actions to be undertaken in their implementation, and provide initial benchmarks the Office seeks to achieve through this vision.

**(i) Priority of the Darfur investigation: Key principles for renewed action**

*a. Empowering victims, witnesses and affected communities*

48. The capacity of the Office to assist in bringing justice to victims and survivors of crimes committed in Darfur lies not only in its ability to bring a case before judges based upon the required legal and evidentiary standards, but to also engage with those it seeks to serve and be responsive to their needs. As part of its renewed strategy in relation to the situation in Darfur, the Office will seek to significantly and continuously deepen its engagement with affected communities, by bringing its work closer to them. In this context, the Office

intends to increase the frequency of missions to Darfur as well as enhance its permanent field presence in order to allow it to more effectively engage with all communities.

49. This emphasis on the need to strengthen relationships with affected communities is reflected in the scheduled visit of the Prosecutor to Sudan from 20 – 24 August 2022. As part of that mission, the Prosecutor will meet with victims and survivors groups in internally displaced people's (IDP) camps in both South and Central Darfur States, with another engagement between the Office and members of the Darfur legal and civil society community taking place in Khartoum.
50. A key step towards deeper engagement with those impacted by Rome Statute crimes is the intention of the Court to establish a field office in Khartoum, in implementation of the agreements concluded with the Government of Sudan in February 2021 and August 2021. Since the last visit of the Prosecutor to Sudan, steps have been taken by the Registry to explore possible locations for the presence of the Court in Sudan which shall enjoy privileges and immunities as provided in the abovementioned agreement.
51. The Registrar of the Court has been engaging with the competent authorities of the Government of Sudan to facilitate a field presence for the purpose of supporting trial activities and providing efficient support to the ongoing investigative activities and other activities of the Court. The Office would welcome urgent engagement from the Government of Sudan in this regard with a view to finalizing the necessary arrangements in the near future in order to ensure the establishment of an office in Sudan during the next reporting period.
52. The establishment of a continuous field presence in Khartoum will allow the Office to build on a number of initiatives already undertaken to engage affected communities, including significant engagement with victims that remain in IDP camps in Darfur.
53. With the surrender of Mr Abd-Al-Rahman, the Office has also developed an enhanced outreach strategy, coordinated with related initiatives by the Registry of the Court. This incorporates the conduct of awareness-raising activities and the provision of training designed to provide affected communities or their representatives, media organisations, lawyers and legal practitioners with information about the functioning of the Court, the mandate of the Office and specific updates on the proceedings relating to Mr Abd-Al-Rahman.

54. Reflecting the renewed difficulties encountered by the Office to deploy to Darfur in light of the prevailing security and political context, the Court has embraced the use of virtual tools to ensure continued access to information by survivors, victims, and other sources with respect to the work of the Court. In particular, the Registry has worked with the Office to ensure that, to the greatest extent possible in the prevailing circumstances, updates on the ongoing trial are shared with communities and other local partners.
55. As reflected above, the Prosecutor has also engaged with civil society organisations and representatives of survivors and victims, including during a visit to Sudan in August 2021 and at the seat of the Court during June 2022. In furtherance of this work, the Office has launched a new initiative aimed at strengthening its ability to benefit from the expertise and energy of civil society, both with respect to the implementation of effective investigations and prosecutions and in the development of a broader policy framework governing the exercise of the Office's independent mandate.
56. This new initiative has already led to the joint development of guidance materials with the European Union Agency for Criminal Justice Cooperation ("Eurojust") and the European Network for investigation and prosecution of genocide, crimes against humanity and war crimes ("the Genocide Network"), aimed at supporting civil society organisations to engage with witnesses and victims in compliance with best practices that preserve the integrity of potential testimony in criminal proceedings and reduce the risk of re-traumatisation. The Office will be holding a number of outreach activities in the coming reporting period in order to disseminate and support the effective use of these guidelines by civil society partners in Sudan and other situation countries.

*b. Strengthening cooperation with Sudanese national authorities*

57. The renewed investigative strategy will seek to prioritise re-engagement with Sudanese authorities in order to ensure that required cooperation obligations are met and effective steps can be taken towards the adjudication of cases with respect to those individuals subject to outstanding arrest warrants issued by the Court.
58. The Office will also give due consideration to genuine possibilities, should they arise, to assist the national authorities to discharge Sudan's primary responsibility to investigate and prosecute these suspects for the crimes alleged in their respective ICC warrants.



59. As noted above, the imperative of cooperation is an area requiring a significant shift in approach. Over the reporting period, the Office has made several efforts to engage with Sudanese authorities at various levels to enhance cooperation with relatively minimal outcomes. Between 20 June and 25 July 2022 the Office completed two missions to Sudan, incorporating meetings with government officials in the Ministry of Justice and the Office of the Attorney General, as well as engagement with individuals relevant to the investigation. These missions however also highlighted the continued limitations placed on cooperation by the Government of Sudan, with a number of key engagements not supported by national authorities.

*c. Increasing avenues for accountability: Cooperation with third States, international and regional organisations*

60. Under its renewed strategy, the Office will also seek to broaden its engagement with national authorities of third States and the international community order to effectively exploit all potential channels for accountability.

61. The Office has already taken steps to increase cooperation and dialogue with many African States as well as the African Union in the framework of this renewed strategy and intends to expand on this initiative with a view to obtain the broadest possible support for action to address issues of accountability in the situation in Darfur. This approach, which the Council was mindful of when referring the situation to the Prosecutor, could help address the recent challenges impacting the Office's investigative activities stemming from the limitations in cooperation received from Sudanese authorities including the lack of responses to requests for assistance and the non-execution of outstanding warrants of arrest.

62. Various mechanisms to adjudicate the current outstanding cases under the principle of complementarity may be explored with the Government of Sudan, the African Union, third States or interested institutions including the United Nations. Similarly with regards to other alleged crimes being committed in Darfur, efforts should be made to help strengthen the national judicial and investigative capacities of Sudan to address the present impunity gap in a manner conducive to the conduct of fair and impartial proceedings and the preservation of the safety and well-being of witnesses and victims.

63. The excellent cooperation the Office has enjoyed over the years from various bodies and agencies of the United Nations remains important for the Office's ongoing and future activities. Logistical, administrative and other assistance to

the Office field presence in Sudan, in particular by United Nations entities, will be critical to the success of the future activities of the Office.

**(ii) An updated roadmap for accountability: identified benchmarks under the new investigative strategy**

64. The updated investigative strategy in relation to the situation in Darfur also seeks to support a more targeted approach to investigations. This is intended to align all investigative action with pre-identified objectives while also supporting a more accurate, real-time tracking of progress made.
65. In line with this approach, the Office has identified the following key benchmarks within the next six to nine months:
- a. Establishment of a continuous field presence in coordination with the Registry by late 2022. This step is dependent on the agreement by the Government of Sudan to relevant institutional arrangements in the near future;
  - b. Securing physical access to Government of Sudan document collections relevant to investigations by December 2022;
  - c. Completion of enquiries regarding identified holdings of third States relevant to individuals subject to outstanding arrest warrants by January 2023;
  - d. Securing responses to all outstanding requests for assistance to the Government of Sudan before the next report of the Prosecutor to the Council in February 2023;
  - e. Completion of the Prosecution case in relation to Mr Abd-Al-Rahman in early 2023.
66. The renewed strategy and associated benchmarks will continue to be assessed as implementation is taken forward in the coming months, supporting a continual process of review and improvement drawing on lessons learned.
67. This work will also seek to set a basis for the ultimate finalisation of a completion strategy in relation to the Darfur situation, drawing on the views and experience of all relevant actors including survivors, families of victims, competent national authorities and international partners.

#### IV. CONCLUSION

68. The trial of Mr Abd-Al-Rahman demonstrates the results of persistence of action and common purpose in efforts towards justice. To deliver on the promise of accountability made to victims and affected communities through Security Council resolution 1593 (2005) this momentum must now be applied across action to those individuals subject to arrest warrants that remain at large.
69. By outlining its renewed strategic approach to the situation in Darfur in this Report, the Office seeks to set a common roadmap for this collective work, with goal of achieving broader and meaningful justice in Darfur. To deliver this, the Office requires the cooperation and engagement of all actors and in particular the strong support of Sudanese authorities.
70. This is the message the Prosecutor will provide in his upcoming high-level visit to Sudan from 20 - 24 August 2022. Together, through concerted action, there is now an opportunity to vindicate the rights of those who have awaited justice for two decades. But this requires true common purpose, engagement and cooperation from all relevant actors. The Office stands ready to work with the Government of Sudan and all partners in the coming reporting period order to accelerate progress towards justice.