

ANNEX

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World news/Sudan News Today

The Attorney-General reveals the hidden story and clarifies the conditions of Al-Bashir's surrender to The Hague

Lately, several issues and intense debate have come up about the Prosecution. There has been talk about conflicts and obstacles to work, the prolonged imprisonment of many politicians and the heated statements of the Public Prosecutors' Association that raise doubts over the integrity of the Prosecution. There has also been talk about the status of the investigations into the attempt to assassinate the Prime Minister, Dr Abdalla Hamdok, and the numerous committees formed by the Attorney-General over a multitude of cases, such as the incidents that took place on 28 Ramadan and the incidents of al-Aylafun and al-Ubayyid, as well as the individuals who went missing after breaking up the sit-in. This also includes the matter of the trial of Al-Bashir at the International Criminal Court (ICC) in The Hague. The Al-Sudani Newspaper has put all these issues to the Attorney-General, Judge Taj al-Ser al-Hibr, who has made significant statements revealed here for the first time.

At the beginning of the interview, you spoke about obstacles faced by the Prosecution. The Sovereignty Council issued a statement saying that you had informed them of these obstacles. Could you tell us about them?

There are several obstacles that the Prosecution faces, as there is a lack of immediate response from assisting authorities, such as the Auditor-General and the ministries. Their delay in providing the required reports, as well as the information and the data, had a negative impact on the investigation's goals. The Prosecution suffers from a significant shortage in manpower and logistical support, including cars and transportation. Moreover, the Prosecution has no network connections. There isn't even a website or a network for communication between the prosecution offices in the states and at the centre, or among the prosecution offices within the states themselves, not to mention the State's failure to meet its financial obligations as part of the operational budgets.

We also have many technical constraints, namely poor professional qualifications and training, lack of adequate auxiliary personnel for assisting in the investigations conducted by the Prosecution and the police, lack of support force from the police or from other authorities concerned with the work of the Prosecution, shortage of guards and failure to comply with international specifications and standards with regard to them.

Have you come up with any solutions to these obstacles?

I have come up with a set of solutions to the leaders of the State in order to advance the work of the Prosecution. These included the amendment of the Public Prosecution Law of 2017 to allow the restructuring of the Public Prosecution, raising manpower to 1,000 public prosecutors by the end of 2020, completing the formation of the Supreme Prosecution Council and the Commission for Reform of the Legal and Justice System and the training of

employees through courses, missions and scholarships. In addition, there is a need to provide buildings, offices and guest houses in the states and the Capital, especially in the localities where there are neither prosecution offices nor accommodation for prosecutors. The prosecutors need means of transport as well as security protection in conflict areas.

It is important to create dedicated specialist police and investigation departments for the Public Prosecution in order to carry out enquiries, provide information, and implement the Prosecution's orders. I have requested the Sovereignty Council to instruct all support bodies, especially the police, the security services and the Auditor-General, to promptly provide the requisite documentation and data and to instruct the security services to lift their personnel's immunity in criminal proceedings.

The Darfur case is a very problematic one. How much progress have you made in it?

It is problematic, indeed, I concur with your assessment. Investigations into this issue came to a halt in 2008, when matters took certain courses, as bodies were exhumed and the finger of blame was then pointed at various powerful individuals. The investigation stopped at that point. Even Kushayb was arrested and then released. Not a single accused person is in custody in relation to that report. The investigations took time until Judge Daf'-Allah al-Hajj Yusuf took his report to a much higher level. Although the report was conducted under the Investigation Committee Act of 1954. According to the law, it is not deemed evidence, but rather an indicator to you as an investigator to make use of its content in drawing a road map. But in itself it is not evidence. When I assumed my responsibilities, I was looking for this file, and I received it two months after my request.

***Where did you get it from?**

From what was then called the Attorney-General for Darfur. An interesting thing was that I asked the Prosecutor-General for Darfur if the case file included Judge Daf'-Allah al-Hajj Yusuf's report. He replied, "No." I asked him if it included the ICC'd report, and he said, "No." I asked him, "Have you reviewed these reports?" He said, "We have not reviewed them." I then asked him – as he was the last Attorney-General, "What have you done with regard to this case?" He said, "By God, I'm just the one managing this case."

What about you, what have you done with regard to it?

First of all, I reviewed the case file in its entirety. I concluded that it contained investigations conducted by an investigation committee. I summoned a former member of the investigation committee. Based on the evidence, it was found that certain accused persons could be easily identified. Arrest warrants were issued. Some of the accused are in prison – with the exception of Kushayb.

I have information that, before Kushayb surrendered himself to the ICC, you were about to arrest him. What happened?

That is correct. He was in Um Dukhun at that time and a police force surrounded him. The police chief told me, "I'm very sorry." After the blockade we imposed on Kushayb, he was able to enter the Central African [Republic] with his group – he never moves alone.

Does this mean that Kushayb preferred to be tried in The Hague rather than in Khartoum?

He might have thought at that time that if he went to the Central African [Republic] he would not be arrested and would find a safe haven.

So, Kushayb had information that you wanted to arrest him?

Exactly, not just information, he was absolutely sure.

Where did Kushayb get the information about his arrest? From the police (the Prosecution) or from another entity?

He is no ordinary person. He is originally a policeman and was a member of a security committee in his state. He has a lot of connections. Anyway, he entered the Central African [Republic]. We have connections with the International Institute for Justice and the Rule of Law in Nairobi and they notified us that he was under surveillance in the Central African [Republic] and that he was going to be arrested. According to one account, he turned himself in. According to another account, he knew that the net was closing in around him, because there is an international force there.

A third account says that the Sudanese government concluded a deal with him!

I have no knowledge about this. I would rule this out, because I am privy to everything that is going on in the case.

It is possible that the alleged deal is in fact true, a kind of bellwether to see what will happen to Kushayb? Then a decision will be made about surrendering Al-Bashir and the rest of the wanted individuals?

This cannot happen without my knowledge.

In any case, Kushayb has been arrested and extradited to The Hague. The procedures have continued and we have formed a committee here that includes three senior public prosecutors and three others who had worked on this case before – as part of the Prosecution and not as members of previous investigation committees. The case file has been opened and the investigative procedures have been conducted. All available accused

persons have been questioned, and some of them refused to make any statements. We have also questioned field commanders who were on the ground at that time.

Military commanders?

Yes, military commanders. We want to know from them – as witnesses - what happened at that time.

Have you questioned Musa Hilal?

We have not questioned Musa Hilal, but the investigations are still ongoing.

Would you be able to question anyone, regardless of their position in the State?

We question anyone, regardless of their position.

Will you not yield to political pressure, especially since it has been circulated that accusations were being levelled against the Chairman of the Sovereignty Council, General al-Burhan and his deputy, General Hemedti.

That is not correct. There has been no such thing according to our procedures. The situation is different now. You are talking about incidents that occurred between 2003 and 2005, which Al-Bashir and others are accused of. They are in prison now and all the accused persons who were in power then are not in power now.

People say that, within a short period of him being handed over to The Hague, Kushayb was promptly tried, while you are still dragging your feet over the trials!

That is an odd way of looking at it. The trial is being conducted in accordance with the Rome Statute, and Ali Kushayb appeared before the first chamber at the ICC in order for it to be understood what the Court wanted him for. The Prosecutor is now looking at the investigations and the procedures. In order for the trial to commence, time and other lengthy procedures are needed. Look at the Beirut tribunal – the assassination of Hariri – how long it took, and the extent of the investigations and the trials. We have a principle that says, “Rushed justice is no justice.” Another proverb goes “Justice delayed is justice denied.” This is the nature of procedures the world over. There are rules and standards to be abided by.

What I mean is that there have been subsequent developments in the case. The Prosecutor, Fatou Bensouda, came. There were established channels between us – note that she came following the signing of the peace agreement – and there was talk about the possibility of

handing people facing ICC accusations over to the Attorney-General. We talked about many things. We sat together for more than five hours and had discussions in relation to this case. We put a lot of questions to her – that included myself; the Minister of Justice, Dr Nasr-al-Din ‘Abd-al-Bari; and even the Committee tasked with investigating the Darfur case. There was a lot of discussions over how much progress they had achieved in the case and how much progress we had achieved in the case. We also discussed possible options – in principle, that the accused persons would appear before the Court. It is an international obligation arising from the fact that this case was referred to the Office of the Prosecutor (OTP) by the UN Security Council. Sudan is a member of the UN General Assembly, and is therefore bound by the Security Council’s resolutions. In other words, it is a matter of changing the stance from a hostile one that rejects the ICC and international criminal justice in general – from a stance of impunity – to a new stance, one that acknowledges the existence of an obligation, with the State declaring that it is prepared to co-operate with the ICC and the OTP.

What is the nature of the co-operation? Will you hand over Al-Bashir and the other accused persons to the ICC or a hybrid court, or will the ICC be convened in Sudan?

Our co-operation with them takes into consideration a number of things. In the Rome Statute there is ample scope for co-operation. The general trend now in international law is towards negotiation, deliberation and consultation with a view to reaching a common understanding over anything relating to international matters. There are matters relating to sovereignty and several other considerations. In the agreement [the Rome Statute], there are Articles 4, 98, 99 and 100, all of which talk about options. Thus, the ICC can convene in any nation – in The Hague, in Sudan or Arusha. The matter comes down to what we and the ICC agree upon. It can be held in The Hague, or an agreement can be reached for the trial to be conducted in Sudan in a hybrid court, or the ICC can convene in any other African State.

What are the prerequisites for convening the Court in Sudan?

You submit your application, the grounds and a whole range of other things and then the Court decides. Convening the Court in Sudan depends upon a number of factors and requires very large resources. Firstly, you have to set up a whole complex, with courtrooms that meet certain specifications; you need interpreters, you need to provide security and protection for the members of the Court. The places where they will stay need to meet very high security specifications. All of this requires a large budget, and huge amounts of money. The Hariri assassination tribunal has cost a billion dollars – the international community paid 700 million dollars, and Lebanon paid 300 million dollars. These international issues depend upon how much you persuade others.

This is about international prerequisites – what about local prerequisites?

With regard to surrendering a Sudanese national to an international court, then this touches on matters of sovereignty.

It is well known that the ICC intervenes when governments are either unwilling or unable to hold trials locally. Frankly, given the current regime, is the government, as represented by yourself, Justice al-Hibr, unable or unwilling?

The State has declared its position. Indeed, it has become a constitutional obligation. The peace agreement has been integrated into the Constitutional Charter. Co-operation with the ICC was a central topic in the peace negotiations. Without the matter of co-operation with the ICC, peace would not have been achieved.

There is an important point; the ICC's jurisdiction is not inherent – it is rather complementary in case the State fails in its obligation or if there is anything that might cause the ICC and the Prosecutor, or the international community, to consider that existing circumstances will not allow the trial of the wanted persons within the State. This matter existed before the change. However, following the change, I do not believe that this matter continues to exist. The matter is entirely dependent upon sovereign decisions.

As Attorney-General, what are your next steps vis-à-vis this case?

We have been dealing with this case from 'Day Zero'. There are issues involving forensics and witnesses have to be interviewed again. We now have a major prosecution office in Darfur in relation to this matter. The peace agreement has set out clearly the new structure of justice in Darfur. The justice institutions will revert to it and rely on it. It involves transitional justice, traditional justice and the Special Court for Darfur. It also has a Darfur prosecutor dealing with crimes against humanity, crimes of genocide, war crimes, ordinary crimes and so on. This way, Darfur has a new justice system and we are now working on its restructure.

Interview by 'Itaf Muhammad Mukhtar

Al-Sudani Newspaper

These were the details of the item 'The Attorney-General reveals the hidden story and clarifies the conditions of Al-Bashir's surrender to The Hague.' We hope that we have given you full details and information. To keep track of all our news, you may join our system of alerts or any of our various systems in order to stay up to date.

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