

**THIRTY-SECOND 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-second report 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 June 2020, the Republic of the Sudan (“Sudan”) has continued to make positive progress in the pursuit of justice for victims of atrocity crimes in Darfur.
4. In July 2020, Sudan’s Sovereignty Council passed into law several legislative amendments, including the repeal of criminal law provisions that prevented cooperation with the ICC.
5. On 3 October 2020, representatives of the Government of Sudan, the Sudan Revolutionary Front, and other movements, signed a peace agreement in Juba, South Sudan (“Juba Peace Agreement”). This includes a number of provisions relating to the ICC. In particular, the parties agreed to full and unlimited cooperation with the ICC

in relation to persons for whom arrest warrants have been issued, and emphasised their commitment to UNSCR 1593.

6. The parties also committed to facilitating the appearance of those wanted before the ICC, providing ICC prosecutors and investigators with easy access to victims, witnesses and investigation sites, and allowing ICC personnel to freely travel throughout Sudan. The Juba Peace Agreement also states that the parties shall not interfere with ICC investigations, and shall ensure the safety of victims and witnesses.
7. The parties to the Juba Peace Agreement also agreed to establish a Truth and Reconciliation Commission in relation to Darfur, and a Special Court for Darfur Crimes. The jurisdiction of this Special Court will include genocide, crimes against humanity and war crimes since 2002.
8. On 12 November 2020, the Chairman of the Sovereignty Council, Lt. Gen. Abdel Fattah al-Burhan, reportedly signed a general amnesty decree in relation to armed combatants. The amnesty reportedly does not apply to all persons, including those against whom arrest warrants have been issued by the ICC.

#### *Status of Suspects*

9. Following the surrender of Mr Ali Muhammad Ali Abd-Al-Rahman (also known as Ali Kushayb), four ICC arrest warrants remain outstanding against Messrs Omar Hassan Ahmad Al Bashir, Ahmad Muhammad Harun, Abdel Raheem Muhammad Hussein and Abdallah Banda Abakaer Nourain.
10. Mr Banda remains a fugitive from the Court and his whereabouts are unknown.
11. 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.

12. In June 2020, shortly after the surrender of Mr Abd-Al-Rahman to the ICC, the Sudanese Attorney General, Mr Taj el-Sir el-Hibir, reportedly announced that Sudan will reopen investigations into crimes committed in Darfur by the former regime. In October 2020, Mssrs Al Bashir, Harun and Hussein were reportedly questioned by the Darfur War Crimes Investigation Commission regarding crimes committed in Darfur.
13. As detailed in the section on cooperation below, with full respect for our respective roles and the principle of complementarity, the Office is in an ongoing dialogue with the Government of Sudan, 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.
14. Notwithstanding these ongoing discussions, Sudan remains under an obligation, pursuant to UNSCR 1593 and the related orders of judges of the ICC, to surrender the four remaining suspects in the Darfur situation to the Court.
15. Mr Abd-Al-Rahman was transferred to the Detention Centre of the ICC on 9 June 2020, after surrendering himself in the Central African Republic. The next section of this report outlines the main judicial activities in his case.

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

16. On 11 June 2020, Pre-Trial Chamber II (“Chamber”) filed a public redacted version of a second warrant of arrest against Mr Abd-Al-Rahman for crimes against humanity (murder and other inhumane acts) and war crimes (murder), allegedly committed in the Darfur locality of Deleig and surrounding areas in March 2004. This second warrant of arrest was issued on 16 January 2018, with a classification of secret, *ex parte* only available to the Prosecutor.
17. On 12 June 2020, Judge Rosario Salvatore Aitala, acting as the Single Judge of the Chamber, severed the case against Mr Abd-Al-Rahman from the joint case with Mr

Ahmad Harun, with a view to protecting Mr Abd-Al-Rahman's rights to a fair and expeditious trial and in the interest of judicial economy.

18. Mr Abd-Al-Rahman made his first appearance before the Court on 15 June 2020. The Single Judge verified his identity, and ensured that he was informed of the crimes he is alleged to have committed and of his rights under the Rome Statute in a language he fully understands and speaks. During the hearing, the Single Judge tentatively scheduled the commencement of the confirmation of charges hearing on 7 December 2020.
19. On 1 July 2020, Mr Abd-Al-Rahman's Defence team filed a request for interim release to the territory of the Host State, The Netherlands, pending trial, pursuant to article 60(2) of the Statute. The Office opposed the request. On 14 August 2020, the Single Judge rejected the request for interim release, concluding that Mr Abd-Al-Rahman's continued detention appeared necessary to ensure that the investigation or court proceedings are not obstructed or endangered. The Defence appealed this decision. On 8 October, the Appeals Chamber confirmed the decision of the Single Judge to reject the interim release of Mr Abd-Al-Rahman.
20. Mr Abd-Al-Rahman's Defence also appealed the Single Judge's decision to reject a request to implement a series of proposed additional principles on reparations, pursuant to article 75(1) of the Statute, prior to the conclusion of the Court's confirmation hearing proceedings. The Single Judge ruled that this request had no legal basis. This appeal, which the Office opposed, is pending before the Appeals Chamber.
21. On 26 June 2020, the Defence requested that the Court submit a funding request to the United Nations ("UN") pursuant to article 115(b) of the Statute, for an amount not less than the total updated costs of the Court's activities carried out to date in relation to the Situation in Darfur. The Defence stated this amount to be €47,510,100. On 23 July 2020, the Single Judge rejected the request on the basis that the Defence has no legal standing to either evaluate or to provide recommendations regarding the Court's financial management. This decision noted that the ICC Assembly of States

Parties, not the Chamber, is responsible for considering and deciding on the Court's budget. Requests for leave to appeal and for reconsideration of this decision were rejected by the Chamber.

22. On 25 September 2020, the Defence brought the same funding request before the Presidency of the ICC. On 12 October 2020, the Presidency dismissed the request as having no legal basis. It noted that issues concerning the general administration of the Court, including in matters of diplomatic relations, do not give rise to an entitlement to a remedy for parties in proceedings, and that matters involving fair trial rights rest with the Chamber in charge of these proceedings and not the Presidency.
23. On 17 September 2020, the Office submitted a request to postpone the confirmation hearing from 7 December 2020 to 1 June 2021. Mr Abd-Al-Rahman's Defence team opposed the Office's request. On 2 November 2020, the Chamber partially granted the Office's request and postponed the confirmation hearing of Mr Abd-Al-Rahman to 22 February 2021.
24. On 5 October 2020, the Defence requested a stay or termination of the proceedings. The Office opposed the request. On 16 October 2020, the Single Judge rejected the Defence's request, dismissing the arguments for a stay of proceedings and noting that the issues were similar to those raised in the response to the request for postponement. Mr Abd-Al-Rahman's Defence applied for leave to appeal this decision, which the Chamber denied.
25. On 5 November 2020, the Appeals Chamber confirmed the Chamber's decision that Mr Abd-Al-Rahman does not have the right to the free assistance of an interpreter for his communications with his counsel, since article 67(1)(f) of the Statute covers only proceedings and documents presented in court and does not extend to counsel-client communications. The Appeals Chamber noted that since Mr Abd-Al-Rahman and his counsel do not speak the same language, this could affect his other rights under article 67(1), such as his right to effectively prepare his defence, and accordingly, held that a solution must be found by the Chamber.

26. The Defence also has appeals pending before the Appeals Chamber in relation to the Single Judge's decision during Mr Abd-Al-Rahman's initial appearance to read out the charges in full, and to reject Mr Abd-Al-Rahman's request for a minute of silence in memory of the victims in the Darfur situation.

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

##### *Ongoing Investigations*

27. Following Mr Abd-Al-Rahman's surrender, the Office has continued its investigative activities focusing on obtaining additional evidence, reinforcing existing evidence, and re-contacting its current witnesses, many of whom were interviewed more than 13 years ago. Regrettably, the COVID-19 pandemic has severely undermined this process. The Office also plans to carry out vital investigative activities in Sudan at the earliest opportunity. Access to the territory of Sudan is critical for the Prosecution to interact, for the first time *in situ*, with the local communities affected by Mr Abd-Al-Rahman's alleged crimes.

28. The Office, at the request of the Sudanese authorities, postponed an assessment mission to Sudan originally scheduled for mid-November 2020. The purpose of this planned mission was to conduct the necessary feasibility assessments of the logistical requirements prior to operational and investigative deployments, and to further develop cooperation with the national authorities and other partners. The Office aims to deploy investigative missions to Sudan as soon as it can.

##### *Enquiries into allegations of ongoing crimes*

29. During the reporting period, the security situation deteriorated in Darfur, with approximately 107 civilian deaths recorded. Violence reportedly increased due to tribal clashes, attacks by unidentified armed men against civilians, and internal

conflict between two opposing factions of the Sudan Liberation Army–Abdul Wahid (“SLA-AW”). These incidents were mainly reported in June and July 2020.

30. On or about 25 July 2020, an attack against Masteri, West Darfur, allegedly involving Arab and Masalit tribes, resulted in between 60 to 84 people dead and between 6,570 and 11,000 people displaced. It is unclear whether the people killed were armed tribesmen participating in clashes or civilians. The United Nations Children’s Fund (“UNICEF”) reported that amongst those killed were five children between the ages of one and three years old.
31. Several attacks by unidentified armed men against farmers and internally displaced persons (“IDP”) were reported. On 23 July 2020, armed men attacked Abdoze, in South Darfur, which reportedly resulted in the deaths of between 15 to 19 civilians and the displacement of thousands of people. Prior to this attack, 4,000 IDPs had returned to Abdoze for the farming season. On 13 July 2020, Fata Borno IDP camp in North Darfur was attacked, which reportedly resulted in the death of nine IDPs, the looting of livestock and the burning of houses and the market.
32. The Office also notes that, on 12 June 2020, during fighting between opposing factions of the SLA-AW in the Jebel Marra area, a woman and her four daughters were reportedly raped by SLA-AW members in Tairo village, Central Darfur. On 2 July 2020, the United Nations Office for the Coordination of Humanitarian Affairs (“OCHA”), reported that 27,000 people, of which 90% were women and children, fled their homes because of this internal fighting.
33. In a report on 13 November 2020, the Chairperson of the African Union Commission and the Secretary-General of the United Nations on the African Union-United Nations Hybrid Operation in Darfur (“UNAMID”), noted that children in Darfur remain vulnerable to human rights violations and have repeatedly been subjected to killings, maiming and sexual violations from June to October 2020. The same report states that the majority of victims of conflict-related sexual violence in 2020 were girls under the age of 18.

34. The Office reiterates that it condemns any type of crimes committed against civilians, especially those affecting women and children.

## 5. COOPERATION

35. During the reporting period, the Office has taken significant steps in its efforts to engage in a constructive dialogue with the Government of Sudan. After more than a decade, the Office undertook a visit to Khartoum between 17 and 20 October 2020. A delegation led by the ICC Prosecutor, Ms Fatou Bensouda, met with the highest officials of the Government of Sudan and other important stakeholders.

36. Discussions focused on the importance of effective cooperation, the execution of the outstanding warrants of arrest, complementarity and the delivery of genuine justice to the victims of Darfur. In the course of these meetings, the Government of Sudan expressed its firm commitment to work with the Office in the interests of the victims in the Darfur situation.

37. Following this mission, the Government of Sudan and the Office are now in the process of agreeing on a memorandum of understanding that will, among other things, seek to facilitate the Office's operations in Sudan.

38. In the same spirit, the Office remains ready to further engage with Sudan in relation to the execution of various requests for cooperation it has transmitted during the reporting period. In the light of the ongoing proceedings against Mr Abd-Al-Rahman and the judicial calendar in this case, it is critical that Sudan promptly responds to these requests. For the same reasons, the Office emphasises the importance of facilitation by the Government of Sudan of expedited, safe and unimpeded access for its investigators throughout Sudan, and in particular, Darfur. It is vital that there are no undue delays that further prevent the victims in Darfur situation from obtaining the justice they have waited so long for.



39. Execution of requests for cooperation by States and other partners have been, and will continue to be, impacted by the COVID-19 pandemic related challenges. Nevertheless, these challenges have provided the Office with opportunities to expand its network of partners in support of its activities, thus benefiting from the assistance of a number of civil society organisations. The Office is grateful for the continued support it receives from States, civil society organisations and other stakeholders in relation to the Darfur situation.
40. The Office welcomes the signing of the Juba Peace Agreement and the central importance it affords to cooperation with the ICC, as set out at the start of this report. The Office stands ready to work with Sudan to ensure accountability for atrocity crimes committed in Darfur, both in relation to persons who may be prosecuted in the Special Court for Darfur Crimes and the four remaining ICC suspects.
41. The Office notes the establishment, pursuant to UNSCR 2524 (2020), of the United Nations Integrated Transition Assistance Mission in Sudan (“UNITAMS”), whose objectives include assisting political transition in Sudan, supporting peace processes, and assisting peacebuilding. The Office further notes that pursuant to UNSCR 2525 (2020), the mandate of UNAMID, which includes the protection of civilians in Darfur, has been extended to 31 December 2020. The Office reiterates its concerns in relation to the ongoing violence in Darfur, and stresses the importance of ensuring the protection of the civilian population, including those in the IDP camps.

## **6. CONCLUSION**

42. 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 Juba Peace Agreement makes clear that justice for victims in the Darfur situation and cooperation with the ICC are central to Sudan’s peaceful transition. These promising developments must now translate into concrete cooperation with the ICC. The Office

welcomes this historic opportunity to work together with the Sudanese authorities to ensure accountability for all five suspects in the Darfur situation.

43. The Prosecutor's mission to Khartoum, and the related high-level meetings, represent a turning point in the Office's formal relationship with the Government of Sudan. Sudan must now facilitate the Office's requests for assistance and *in situ* investigations in Sudan, and in Darfur in particular, without delay. These concrete steps will be testament to Sudan's willingness to genuinely cooperate with the Office, and give meaningful effect to the provisions of the Juba Peace Agreement. | OTP