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*Statement to the United Nations Security Council on the situation in
Darfur, pursuant to UNSCR 1593 (2005)*

New York
15 December 2011

Mr. President,

1. I am honoured to brief the UN Security Council on the activities of the International Criminal Court following UN SC Resolution 1593.
2. As you remember, in our first case, we investigated Government of Sudan forces attacks against the civilian population during the period from 2003 to 2005. The evidence shows that Sudanese armed forces would bomb villages in Darfur, surround them and then ground troops would move in to kill, rape and pillage civilians in their homes. These attacks forced the displacement of 4 million civilians to a hostile environment. The evidence showed the role of the then Minister of State for the Interior, Ahmad Harun, as the coordinator of the GoS forces and of Militia/*Janjaweed* leader Ali Kushayb, as the ground commander of some of the attacks.
3. On 27 April 2007, Pre-Trial Chamber I issued warrants of arrest against both individuals for war crimes and crimes against humanity. The Chamber found that the crimes were the consequence of coordinated efforts supervised by a clear chain of command. The Pre-Trial Chamber ruled that Local Security Committees coordinated these attacks. They were supervised by State Security Committees which reported to Mr. Harun, acting through the Darfur Security Desk.
4. A few days ago the Office requested an additional warrant of arrest for then Minister of Interior Abdelrahim Mohamed Hussein, currently Minister of Defence, for the same crimes charged in the case "*the Prosecutor vs. Harun and Kushayb*", thus expanding the number of suspects in the first case.
5. The evidence shows that Hussein was also involved in the crimes committed by his subordinate Harun. Between 2003 and 2005, Mr. Hussein was the Minister for the Interior and Special Representative of the President in Darfur, with all of the powers and responsibilities of the President. Mr. Hussein delegated some of his responsibilities to his deputy, Mr. Harun. The evidence shows that directly and through Mr. Harun, Mr. Hussein played a central role in coordinating the crimes, including in recruiting, mobilizing, funding, arming, training and deploying the Militia/*Janjaweed* as part of the Government of the Sudan forces, with the knowledge that these forces would commit crimes.
6. In its second case, the Office identified the responsibility of the President of the Sudan, Mr. Al Bashir. He launched attacks against villages, and publicly instructed his forces

to “take no prisoners, nor wounded” but to leave behind only “scorched earth”. President Bashir’s genocidal intentions were clear when he denied any assistance to entire groups forced out of their homes to inhospitable areas. They were condemned to die in the desert.

7. The UN and others saved lives by setting up the largest humanitarian operation in the world. President Bashir confirmed his genocidal intentions by ordering a different type of attack against those in the camps through rape and hunger. President Bashir appointed Ahmed Harun in September 2005 as Minister of State for Humanitarian Affairs to be in charge of the victims he displaced. Harun since 2005 obstructed humanitarian efforts each step of the way. The crimes of extermination and genocide under article 6(c) do not require killing by bullets. They consist of intentionally inflicting conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population or a group.
8. This was the conclusion of Pre-Trial Chamber I on 4 March 2009 when it issued an arrest warrant against President Omar Hassan Ahmad Al Bashir for war crimes and crimes against humanity, including the crimes of extermination and rape. More than one year later, on 12 July 2010, the Pre-Trial Chamber issued a second arrest warrant for President Al Bashir for three counts of genocide, including rape as a form of genocide and genocide by deliberately inflicting conditions of life calculated to bring about physical destruction.
9. In our third case, we are prosecuting two commanders of the rebel groups that attacked AU peacekeepers in their base at Haskanita in September 2007. They killed 12 African Union peacekeepers, looted the entire base, and left thousands of people displaced in the area without protection.
10. The two commanders charged, Mr. Abdallah Banda Abakaer Nourain and Mr. Saleh Mohammed Jerbo Jamus, are members of the Zaghawa, one of the ethnic groups targeted by President Bashir’s campaign. On 17 June 2010, they appeared voluntarily before the Court and both have committed to surrender to the Court for trial. The trial should start during 2012.
11. Interestingly, the rebel commanders accepted their actual participation in the attack and are contesting only three specific issues at trial: A) whether the attack was unlawful, B) whether they knew it, and most importantly C) whether the AU Mission in the Sudan was a peacekeeping mission in accordance with the Charter of the United

Nations. If such issues are settled in favour of the Prosecution, the accused persons will plead guilty to the charges against them.

12. These are the cases. We are still evaluating the responsibility of Mr. Abu Garda, the leader of the rebel attack, against whom charges were not confirmed. These are the persons identified as most responsible for the most serious crimes committed in Darfur over the last 6 years. In order to facilitate any decision of the Council, I want to state that there is no sealed arrest warrant requested or pending. There is no other case at this stage.

Mr President,

13. My duty is to galvanize efforts to implement the arrest warrants issued by the Court.
14. In accordance with SC Resolution 1593, the Government of the Sudan has the legal obligation to cooperate with the International Criminal Court. However, in 2007, after the issuance of the arrest warrant against Harun and Kushayb, President Bashir publicly refused to implement them, challenged the Security Council's authority and stated that Harun had done what he had been ordered to do.
15. In 2009, after the Court issued an arrest warrant against him, President Bashir expelled humanitarian organizations that provided more than half of the total amount of aid delivered. He confirmed his criminal plans to exterminate those ethnic groups displaced. In addition President Bashir blackmailed the international community by threatening to commit the same crimes in the south of the country, threatening the North-South peace process. President Bashir was trying to avoid isolation and campaigned at the African Union and elsewhere for political support.
16. Muammar Gaddafi supported this campaign and as the Chairman of the African Union, at the last minute of the AU Summit in Sirte, on 3 July 2009, Muammar Gaddafi promoted adoption of the following clause: *"in view of the fact that the request by the African Union for an Article 16 deferral had never been acted upon, the AU Member States shall not cooperate pursuant to the provisions of Article 98 of the Rome Statute of the ICC relating to immunities, for the arrest and surrender of President Omar El Bashir of the Sudan."*

17. On 26 May 2010, Pre-Trial Chamber I decided that the Government of the Sudan was not cooperating with the Court in violation of Security Council Resolution 1593 and communicated this decision to the Security Council.

Mr. President,

18. Cooperation is coming from other countries. On 28 November, the High Court in Kenya responded to a petition from Kenyan civil society under Kenya's Rome Statute implementing legislation, and issued two Kenyan arrest warrants for war crimes, crimes against humanity and genocide against President Al Bashir. President Bashir retaliated diplomatically against the Kenyan Court decision and threatened economic and trade sanctions.
19. Recently Malawi refused to arrest President Bashir, arguing that the AU Resolution and article 98 of the Statute provided the legal foundations for this refusal. On 12 December, Pre-Trial Chamber I (PTCI) issued a Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir. PTCI found that "*...customary international law creates an exception to Head of State immunity when international courts seek a Head of State's arrest for the commission of international crimes. There is no conflict between Malawi's obligations towards the Court and its obligations under customary international law; therefore, article 98(1) of the Statute does not apply.*"
20. Further, the Chamber decided that Malawi had a) failed to comply with its obligations to consult with the Chamber by not bringing the issue of Omar Al Bashir's immunity to the Chamber for its determination, and (b) failed to cooperate with the Court by failing to arrest and surrender Omar Al Bashir to the Court, thus preventing the Court from exercising its functions and powers under the Statute.
21. On 13 December, PTCI issued a similar decision, finding non-cooperation on the part of the Government of Chad in relation to the visit of President Al Bashir to Chad and transmitted both decisions to the UN Security Council and to the Assembly of States Parties.

Mr President,

22. Let me conclude. The arrest warrants shall be implemented. The Security Council Resolutions shall be respected. Millions of civilians in Darfur shall be protected. The individuals sought by the Court are still allegedly committing genocide and crimes against humanity in Darfur.

23. The world knows where the fugitives of the Court are. They are in official positions, controlling the Government of the Sudan, commanding military operations in different parts of the Sudan. Harun is the Governor of South Kordofan, presenting himself as the man to solve problems. The attempts to appease them, to reward them with money and recognition are not working. Civilians in Darfur continue to be subject to indiscriminate aerial bombardment, despite numerous injunctions by this Council that such bombardment cease. Likewise, the numerous injunctions by this Council that the Militia/*Janjaweed* be disarmed have not resulted in their disarmament. It is very easy to produce a long list of false promises and refusals to abide by previous commitments.

24. The execution of the arrest warrants will end the crimes in Darfur. In the coming months the Court will decide on the arrest warrant requested against Minister of Defence Hussein. Such decision will provide a new opportunity to the Council to develop a strategy to implement Security Council Resolution 1593 and Presidential statement 21. My next report in June 2012 could offer an opportunity to establish consensus on the way forward. The African Union and the Arab League should play a central role to achieve a solution that respects the Security Council's authority and the Judges' decisions. The Government of the Sudan has to receive a clear message and adjust to the world. Darfuris need the Security Council's leadership.

Thank you.