



SIXTEENTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT TO THE UN SECURITY COUNCIL PURSUANT TO UNSCR 1593 (2005)

INTRODUCTION

1. The present report is submitted by the Prosecutor of the International Criminal Court (ICC) pursuant to paragraph 8 of UN Security Council Resolution (UNSCR) 1593 of 31 March 2005. It outlines the judicial activities undertaken since the last report to the Security Council on 5 June 2012, the cooperation received or lack thereof from the Sudan and other Parties, the ongoing investigation, and anticipated next judicial activities.
2. On 31 March 2005, in UNSCR 1593 (2005), the Security Council determined that the situation in Sudan continued to constitute a threat to international peace and security and, acting under Chapter VII of the Charter, decided to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the ICC. UNSCR 1593 provided jurisdiction to the Court.
3. On 31 July 2012, when renewing UNAMID's mandate, the UN Security Council adopted Resolution 2063, determining that the situation in Sudan continues to threaten international peace and security and further *"Recalling its resolutions reaffirming that there can be no peace without justice, and recalling the importance that the Council attaches to ending impunity and to ensuring justice for crimes committed in Darfur, expressing concern at the lack of progress made so far in the work of the Special Prosecutor for Darfur appointed by the Government of Sudan, and noting the appointment of a new Special Prosecutor."* Resolution 2063 continues, *"Reiterating its condemnation of all violations of international human rights and humanitarian law in Darfur and in relation to Darfur, calling on all parties to comply with their obligations under international human rights and humanitarian law, emphasizing the need to bring to justice the perpetrators of such crimes, and urging the Government of Sudan to comply with its obligations in this respect."*
4. The same resolution *"expresses deep concern at increased restrictions and bureaucratic impediments placed by the Government of Sudan upon UNAMID movement and operations, particularly to areas of recent conflict"; "Demands that all parties to the conflict in Darfur immediately end violence, attacks on civilians, peacekeepers and humanitarian personnel, and comply with their obligations under international human rights and humanitarian law"; and*

notes that *“while...the overall humanitarian situation in Darfur has not deteriorated, [the Council] expresses its serious concern at the fact that it has not improved, and at the threats to humanitarian organizations that persist, and the increased restrictions on humanitarian access in Darfur resulting from increased insecurity, attacks against humanitarian workers, denial of access by the parties to the conflict and bureaucratic impediments imposed by the Government of Sudan.”*

5. The Office of the Prosecutor shares the Security Council’s concerns with respect to the current situation in Darfur, in particular regarding the ongoing impunity for Rome Statute crimes reflected in the failure to arrest the four individuals subject to five ICC separate arrest warrants: President Omar Al Bashir, Abdel Raheem Hussein, Ahmad Harun, and Ali Kushayb.

1. RECENT JUDICIAL ACTIVITIES

6. The Office has continued to proceed with judicial activities, in particular focused on preparations for the trial of Abdallah Banda and Saleh Jerbo (“the Banda & Jerbo case”). On 11 and 12 July 2012, there were hearings and a status conference in the Banda & Jerbo case. Outstanding disclosure and cooperation issues were discussed and the Chamber heard further legal arguments on the Defence request for a temporary stay of the proceedings on the grounds that a fair trial is impossible arising *inter alia* from the difficulties faced by the Defence team in securing access to Darfur and accessing documents from third parties. The Defence also addressed logistical and security issues concerning the accused persons.
7. In August and September 2012, the Defence and Prosecution made separate proposals to the Chamber on the scope and content of a “Protocol” to deal with the handling of non-public information and contact by a party with witnesses of the opposing party. The Victims and Witnesses Unit also made proposals. The Chamber is expected to decide on a Protocol in due course.
8. On 26 October the Trial Chamber refused the request of the Defence for a temporary stay of the proceedings. It decided that at trial the Chamber, the parties and the participants will be in a position to assess the evidence adduced to see whether the complaints about the impossibility of fair trial are founded. On 5 November 2012 the Defence applied for leave to appeal the Trial Chamber’s decision and on 9 November 2012 the Prosecution responded, opposing the Defence application. The Chamber is yet to decide on the Defence application for leave to appeal.

9. In its decision refusing the temporary stay of proceedings, the Chamber also directed the parties and participants to propose a possible date for the commencement of the trial. On 19 November 2012, the Prosecution proposed a commencement date of the end of March or in early April 2013, by which time it expects to have completed the outstanding translation of Rule 76(1) related material. The Prosecution however, stated that this date depends on an outstanding decision of the Trial Chamber concerning the disclosure of certain material to the Defence. The Legal Representatives for Victims also proposed a trial date in April 2013, while the Defence argued that the trial should not start before October 2014. The Chamber will convene a status conference in due course during which it will fix a date for the trial to start.

2. THE ONGOING INVESTIGATIVE ACTIVITIES

10. The Office continues to monitor the situation in Darfur. No decision has yet been taken about whether additional cases will be pursued.

2.1. Monitoring of current crimes

11. The Office continues to monitor: (a) alleged attacks either targeting or indiscriminately affecting civilians by the Ministry of Defence and other persons that could be part of the ongoing acts of genocide, crimes against humanity and war crimes, as well as alleged attacks on civilians by rebel movements; (b) alleged acts affecting the persons displaced, that could be part of ongoing acts of genocide and crimes against humanity; (c) the alleged use of child soldiers by the Government and rebel movements constituting war crimes; and (d) alleged abductions of and attacks on humanitarian aid workers and peacekeepers.

12. In addition to the UN Security Council's ongoing concern about the Darfur situation, the Office notes that the United Nations-African Union Mission in Darfur; the US Department of State; the High Representative of the European Union for Foreign Affairs & Security Policy; and other Governmental and Non Governmental Organizations, also expressed concern about the recent increase in violence and security incidents in Darfur – particularly, in North Darfur.

2.2. Alleged aerial bombardments indiscriminately targeting or affecting civilians

13. The Office notes an alleged aerial attack in the South Jebel Marra area in mid-July including the towns of Sabon El Fabur, Guido and Bor Basi, where four civilians were reportedly killed, three of them children, and three students at a secondary school

reportedly injured. The Office notes as well reports of shelling in the area of Hashaba, North Darfur, between 25 and 27 September 2012, killing at least 60 civilians, injuring 50, and displacing more than 2000; reports of aerial bombardments in East Jebel Marra on 5, 19 and 20 August, 24 and 25 September, and 1, 3 and 6 October, reportedly killing 16 civilians and destroying civilian property and livestock; and bombardment in North Darfur between Zam Zam and Tabet areas on 18 September, reportedly killing at least 14 people.

14. The ongoing use of aerial bombardment is in violation of numerous Security Council resolutions, and the targeting or indiscriminate killing of civilians could be war crimes under the Rome Statute.

2.3. Alleged ground attacks targeting civilians

15. The Office notes reports of attacks by both Government and rebel forces in populated civilian areas and IDP camps, including killing, rape, looting, arson and other destruction of property, including livestock. These include a reported attack in North Darfur on 13 August by members of the Liberation and Justice Movement, in which they took hostage the Minister of Youth and Sports from the Darfur Regional Authority, among others, and looted offices.
16. Additionally, the Office notes reports of an attack by Militia/Janjaweed on an IDP camp in Zalingei on 9 July, including the rapes of three women, injuries to four other civilians, and abductions of 19 persons who were later released, with some complaining of torture in detention. A similar attack in Nyala, South Darfur, on 6 August resulted in four civilians killed, several injured, and the looting of civilian property. There have reportedly been repeated attacks in Kutum, Kabkabiya and Fatah Borno in North Darfur on 31 July, 2, 6 and 7 August, including attacks on Kassab IDP camp in Kutum, in which 21 civilians were reportedly killed and 600 injured; in the aforementioned areas, attacks on 11 September reportedly killed eight civilians and wounded eight more. During this period, rapes, looting, arson and destruction of civilian property were also reported, as well as arrests of dozens of displaced individuals. The UN has reported the displacement of 25,000 people in the Kutum area. On 14 and 15 August, Militia/Janjaweed reportedly killed three civilians, injured 17, and burned down the market in Mellit, followed by another attack in the Mellit market on 15 September. On 18 August, Sudanese Central Reserve Forces allegedly attacked the Tabit market in North Darfur, killing at least three civilians, looting and destroying property and livestock. Between 25 and 28 September, reportedly at least 87 civilians, including

women and children, were killed and 60 additional civilians were injured in a reported Militia/Janjaweed attack on Hashiba; one survivor put the numbers at between 250 and 300 injured and killed, but the exact number is unknown. The UN reported that 2,000 people were allegedly displaced due to the attacks.

17. Ongoing attacks against civilians are also in violation of numerous Security Council resolutions, and could constitute war crimes or crimes against humanity under the Rome Statute.

2.4. Alleged widespread occurrence of sexual and gender based violence

18. The Office notes the continued underreporting of sexual violence in Darfur. One of the alleged reasons is the reported persecution of those who speak out about rape by the Sudanese Security Forces. The Office notes reports by the UN and others of regular rapes of displaced women, including those collecting firewood, as well as the rapes of underage girls and elderly women, gang rapes, abductions and intimidation by armed men, and torture and beatings both of victims and of those who try to defend victims. Victims have reportedly been as young as three years old, as with a victim on 12 October in Kass, South Darfur, and as old as 70 years old, as with a victim on 8 September in Nertiti camp, Central Darfur.

2.5. Alleged crimes against human rights defenders, civil society members and community leaders

19. The Office shares the Security Council's concern, as well as that of the UN Independent Expert on the situation of human rights in the Sudan, over reports about arbitrary arrests and detentions, including of civil society members, political and human rights activists, and internally displaced people, and notes reports of killings of IDP camp leaders and regional authorities, sometimes triggering retaliatory attacks by Government forces and rebel groups.
20. The Office notes the qualitatively grave nature of attacks against civil society representatives and human rights defenders and the impact of such attacks on the broader civilian population whose human rights they seek to protect and defend.

2.6. Alleged abductions of and attacks on humanitarian aid workers and peacekeepers

21. The Office notes reports of ongoing attacks against aid workers and peacekeepers, including six UNAMID peacekeepers killed since the last report, bringing the total of peacekeepers killed to 43 since UNAMID's deployment.
22. The Office reminds parties to the conflict that the third case pursued by the Office addresses the killing of African Union peacekeepers at the Haskanita base in 2007, and that such attacks are sufficiently grave to be prosecuted at the ICC.
23. The UN reports that attacks on UN staff members and aid workers have increased, including the looting of a World Food Programme location in Otash IDP camp on 11 July, among other incidents of hijacking and looting.

2.7. Alleged recruitment and use of child soldiers

24. The Office welcomes the efforts made by the United Nations-African Union Mission in Darfur, and different armed groups in Darfur to end the use of child soldiers, as demonstrated, for example, on 16 September when UNAMID hailed the JEM's decision to prohibit the recruitment and use of child soldiers.
25. In the same manner, the Office notes Security Council Resolution 2068 of 19 September 2012 on children in armed conflict, which expresses concern "*over the lack of progress on the ground in some situations of armed conflict, where parties to conflict, continue to violate with impunity the relevant provisions of applicable law relating to the rights and protection of children in armed conflict.*" The Office will continue to monitor the use of child soldiers in the armed conflict in Darfur.

2.8. Allegedly deliberate infliction of conditions of life calculated to bring about physical destruction of a group in whole or in part

26. The Office also shares the Security Council's concerns about reports of continued, deliberate delays in the provision of visas for UNAMID personnel, which according to the Council "*threaten seriously to undermine the ability of the mission to implement its mandate.*"
27. The Office notes as well reports of the blocking of the World Food Programme's food distribution activities for four months, which were only allowed to resume at the start of October, as well as reports of the blockage of transfer of medical supplies for long

periods in areas such as Zalingei. Residents of IDP Camps Rwanda, Argo and Dali in North Darfur are reportedly suffering from deterioration of health and humanitarian conditions due to the alleged blocking of access by humanitarian organizations by North Darfur authorities since September. In May, the UN reported that the NGO Médecins Sans Frontières suspended medical activities in the Jebel Si area of North Darfur due to difficulties in obtaining staff travel permits and permission to transport medical supplies, a move which could potentially affect a million people. European Union ambassadors have also expressed their concern over restrictions imposed by Sudanese security services on the movement of international experts and representatives who visit Darfur to identify and develop projects.

28. The Office notes that the intentional restriction of humanitarian aid with the aim of deliberately inflicting conditions of life calculated to bring about physical destruction of a group in whole or in part can amount to genocide.

3. COOPERATION RECEIVED OR LACK THEREOF FROM THE SUDAN AND OTHER PARTIES

29. Under UNSCR 1593, the Security Council decided that the *“Government of Sudan and all other parties to the conflict in Darfur shall cooperate fully and provide any necessary assistance to the Court and the Prosecutor.”* Pursuant to this resolution and to the Judges’ orders, the Court’s pending arrest warrants have been transmitted to the Government of the Sudan for execution.

30. Sudan, as the territorial State, has the primary responsibility and is fully able to implement the warrants, consistent with its sovereign authority. It has still not done so.

4. CONCLUSION

31. The Office of the Prosecutor reiterates the responsibility of all States Parties to cooperate with the Court in line with their obligations under the Rome Statute, and for the Government of the Sudan to cooperate with the ICC in line with its obligations under UNSCR 1593. The Office further notes that all States are urged by the Security Council to cooperate with the Court’s investigations and prosecutions in Darfur.
32. The Office of the Prosecutor calls on the Security Council to ensure Sudan’s compliance with UNSCR 1593, and calls on Rome Statute States Parties to do whatever they can to promote cooperation and the arrest of individuals wanted by the ICC in the Darfur situation. The Office will continue to monitor the Darfur situation.