

THIRTIETH 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 thirtieth 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 19 June 2019, there continue to be significant developments in the Republic of the Sudan (“Sudan”). On 17 August 2019, the Transitional Military Council and the Forces for Freedom and Change, with the mediation support of the African Union and the Government of Ethiopia, signed a Constitutional Declaration that set out a transitional framework for the ensuing 39 months. The new Sovereign Council, which is composed of five military personnel and six civilians, was sworn in on 21 August. Prime Minister Abdalla Hamdok was appointed on the same day, and a new Cabinet was inaugurated on 8 September 2019.
4. Subsequent to these new political appointments, the Office observes a number of positive developments in relation to the Darfur situation. In particular, on 11 September 2019, the Sovereign Council and a coalition of armed groups across Sudan, including in Darfur, signed the Juba Declaration for Confidence-building Procedures and the Preparation for Negotiation (the “Juba Declaration”). The Juba Declaration sets out a comprehensive roadmap to address conflict across Sudan with the aim of signing a peace agreement. To date, the parties have reportedly agreed, amongst other measures, a ceasefire and the opening of humanitarian access to areas of ongoing conflict in Sudan, including in Darfur.

5. In addition, Prime Minister Hamdok reportedly met Abdul Wahid al-Nur of the Sudan Liberation Army-Abdul Wahid (“SLA-AW”) in Paris, France in late September 2019. In early November, the Prime Minister also visited areas of Darfur, including camps for internally displaced persons (“IDPs”).

Status of Suspects

6. As noted in the Office’s prior report to the Council, Mr Omar Hassan Ahmad Al Bashir (“Mr Al Bashir”) was arrested on 11 April 2019 and detained in Kober prison in Khartoum. According to open source reports, Mr Al Bashir is now being prosecuted in Sudan for financial crimes, and the verdict will reportedly be delivered in December. In addition, on 12 November, Sudanese authorities reportedly filed new charges against Mr Al Bashir and a number of other former government officials in relation to the coup that brought him to power in 1989.
7. As regards the other suspects in the Darfur situation, the Office notes that in response to the previous report to the Council, the representative of Sudan confirmed that investigations by the public prosecutor in Sudan were ongoing in relation to Messrs Abdel Raheem Muhammad Hussein (“Mr Hussein”) and Ahmad Muhammad Harun (“Mr Harun”), as well as Mr Al Bashir.
8. Regarding Ali Muhammad Ali Abd-Al-Rahman (also known as Ali Kushayb), his current location is unknown. Finally, as regards Abdallah Banda Abakaer Nourain (“Mr Banda”), open source reports suggest that he has been engaged in gold mining in Chad in recent years and that his group clashed with Chadian rebels in southern Libya in late 2018.
9. Pursuant to the principle of complementarity, which underlies the framework of the Rome Statute, the primary responsibility to investigate and prosecute crimes rests with States. However, there is currently no information indicating that any of the ICC suspects, including Mr Al Bashir, are subject to domestic investigation or prosecution in Sudan for the crimes alleged in the relevant ICC arrest warrants.
10. The Court’s warrants for all five suspects in the Darfur situation therefore remain in force, and all five suspects continue to be fugitives from the Court. In the present circumstances, Sudan’s new authorities remain under an obligation, pursuant to both UNSCR 1593 (2005) and subsequent orders of the ICC judges, to arrest and surrender the suspects to the Court.

3. RECENT JUDICIAL ACTIVITIES

11. On 30 October 2019, Trial Chamber IV (the “Chamber”) in the case of *The Prosecutor v. Abdallah Banda Abakaer Nourain* held an *ex parte* confidential status conference with the Defence, Registry and the Prosecution to discuss the status of the case and the way forward to ensure Mr Banda’s appearance for trial.
12. At the outset of the status conference, the Chamber referred to the fact that the warrant of arrest for Mr Banda, issued on 11 September 2014 and confirmed by the Appeals Chamber on 3 March 2015, has yet to be implemented. At the end of the proceedings, the Chamber indicated that it would take into consideration the respective confidential submissions received from the parties and provide further direction in due course.
13. On 13 November 2019, the Chamber issued a Confidential “Order following Status Conference on 30 October 2019.” The public version of this Order, issued on 19 November 2019, outlines a number of requests made by the Chamber. In particular, the Chamber requested that the Defence make submissions on reports raised by the Prosecution stating that Mr Banda was involved in gold mining and combat activities outside Sudan. The Chamber also, by majority, invited the parties to file submissions on trials *in absentia* in the specific circumstances of the case against Mr Banda.

4. ONGOING INVESTIGATIONS AND ENQUIRIES INTO ALLEGATIONS OF CURRENT CRIMES

14. Despite significant and persistent budgetary constraints, the Darfur team has made further progress in its investigations during the reporting period and has continued to strengthen its cases.
15. Since its last report to the Council, the security situation in Darfur has remained volatile, but broadly unchanged, with the number of reported civilian casualties at approximately 60. Regrettably, in the Jebel Marra area, sporadic clashes between government forces and the SLA-AW reportedly continued. As at the date of submission of this report, the SLA-AW has not joined the peace talks process in Sudan.
16. Regarding IDPs, fighting between security forces and the SLA-AW in and around North Jebel Marra reportedly resulted in the new displacement of about 2,300 people, mainly women and children. In his briefing to the Council on 17 October 2019 on the

UN–African Union (“AU”) Mission in Darfur (“UNAMID”), the UN Under-Secretary General for Peace Operations, Mr Jean-Pierre Lacroix, reported that incidents of criminality in Darfur had increased, particularly in IDP camps. IDPs who attempt to return to their area of origin in Darfur also reportedly continue to be subject to violence.

17. Regrettably, incidents of sexual and gender-based violence against women and girls, as well as grave violations against children, continue in Darfur. During this reporting period, UNAMID noted incidents of sexual and gender-based violence against 17 victims, including 7 minors. UNAMID also verified grave violations against 84 children, including 35 girls, in situations of armed conflict in Darfur between June and September 2019. UNAMID identified the perpetrators as mostly SLA-AW factions in the Jebel Marra, but also members of the Rapid Support Forces (“RSF”), amongst others.
18. The Office also notes with concern UNAMID reports that during July 2019, SLA-AW elements were responsible for the temporary abduction of several local and international staff members from international non-governmental organisations around Golo, Jebel Marra, as well as the alleged looting of humanitarian equipment.
19. In her statement before the Council on 19 June 2019, the Prosecutor referred to the reports that the RSF allegedly seized facilities previously belonging to UNAMID. In that context, the Office is pleased to note that UNAMID now reports an assurance by the Sudanese authorities that all UNAMID facilities would be handed over to the relevant Darfur states for the purposes of health, education and other services.
20. Given the critical mandate of UNAMID in Darfur, including in particular the protection of civilians and its essential reporting on human rights abuses, the Office welcomes the Council’s recent adoption of UNSCR 2495 (2019) which extended UNAMID’s mandate until 31 October 2020.

5. COOPERATION

21. The Office is grateful for the principled cooperation and support it continues to receive from various States for its ongoing investigations into the situation in Darfur.
22. In relation to Sudan, following the recent, pivotal developments on the ground, the Office commends the express public commitments that have been undertaken

by Sudan's new authorities to ensure peace in Darfur and to honour the demands for justice from Darfuri victims.

23. Pursuing and achieving accountability for Rome Statute crimes in Darfur must be a shared goal of the Office and Sudan's new authorities. Cognisant of our respective roles and mandates, the Office welcomes this unprecedented opportunity to develop a cooperative relationship with the Government of Sudan, in a spirit of dialogue, respect and constructive engagement.
24. The Council's 31 March 2005 referral of the Darfur situation to the Court was clear in relation to Sudan's duty to cooperate with the ICC and the Office. Acting under Chapter VII of the UN Charter, the Council stated that the "*Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.*" As described in the twenty-ninth report of the Office to the Council, the ICC Appeals Chamber unequivocally affirmed this position on 6 May 2019 in its decision relating to the Hashemite Kingdom of Jordan, confirming Sudan's obligation to cooperate fully with the Court and the Prosecutor, as mandated by the Council, is legally binding.
25. The Office continues to reach out to Sudan's authorities and remains hopeful that, in response, they will unambiguously demonstrate their commitment to Sudan's obligations under UNSCR 1593, by fully and effectively cooperating with the Court.
26. The full cooperation of Sudan's government remains crucial for the Office as it continues with its independent and impartial investigations of alleged crimes committed in Darfur. As the State where the crimes are alleged to have occurred, Sudan has the sole capacity to facilitate access to the territory, and to enable the Office to connect with key witnesses and collect documentary and forensic evidence.
27. Moreover, the Office continues to rely on all States, and Sudan in particular, for the apprehension, arrest and surrender of the five suspects in the Darfur situation.

6. CONCLUSION

28. Sudan has undergone remarkable changes during the course of the past year. The new administration has already taken significant steps towards securing peace in

Darfur. If these efforts are successful, ensuring justice for the victims in the Darfur situation will be critical to the maintenance of enduring peace and security.

29. Sudan has the primary responsibility to investigate and prosecute the suspects in the Darfur situation for the crimes alleged in their respective ICC arrest warrants. As a court of last resort, where Sudan will not, or cannot, deliver genuine justice for the victims in Darfur, then the ICC must be given the support it needs to ensure fair and effective prosecutions, consistent with its mandate.
30. The Office stands ready to work with the Government of Sudan to ensure that justice for the victims in Darfur is secured, whether it be in a courtroom in Sudan or at the ICC in The Hague, The Netherlands. In this respect, the support of the Government of Sudan, States Parties to the Rome Statute, the Council, and all States committed to peace and justice in Darfur remains essential. | OTP