



**THIRTY-FOURTH REPORT OF THE PROSECUTOR OF THE INTERNATIONAL
CRIMINAL COURT TO THE UNITED NATIONS SECURITY COUNCIL PURSUANT
TO RESOLUTION 1593 (2005)**

1. INTRODUCTION

1. On 31 March 2005, the United Nations Security Council adopted Resolution 1593 (2005), referring the Situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court (“ICC” or “Court”). The Security Council invited the Prosecutor to address it every six months on actions taken pursuant to this Resolution.
2. This is the thirty-fourth report to the Security Council on the activities of the Office of the Prosecutor (“OTP” or “Office”) in the Situation in Darfur, covering the period of July to December 2021. It is the first report of the Prosecutor Karim Asad Ahmad Khan QC to the Security Council under Resolution 1593 (2005) since he assumed office on 16 June 2021.
3. The Prosecutor reiterates his position that situations referred by the Security Council must be given greater prioritisation. It therefore follows that the Situation in Darfur constitutes an important priority for the Office. Since assuming office, Prosecutor Khan has initiated a comprehensive review of the Darfur file and all cases before the Office, including an assessment of the state of evidence in the cases where the Court has issued warrants of arrest.
4. The Prosecutor has also commenced a review of the structure, content, and purpose of his reports to the Security Council with a view to more effectively meeting the expectations of the Council and providing a roadmap for the completion of such referrals.

5. In keeping with his commitment to respect the core principle of complementarity enshrined in the Rome Statute, the Prosecutor further instructed the Office to explore all possibilities and options available under the Rome Statute and Resolution 1593 (2005), to expedite accountability for the crimes subject to the ICC's jurisdiction committed in Darfur.
6. In August 2021, immediately upon reviewing the Darfur case files and in light of that review, Prosecutor Khan travelled to Khartoum, Sudan. During that mission, the Prosecutor met with the Sudanese authorities at the highest level to confirm his commitment to delivering justice for victims and survivors in Darfur, and to seek enhanced cooperation from the Government of Sudan to strengthen the evidentiary foundations of the cases for which the Court has issued warrants of arrest.
7. The Office has undertaken several subsequent missions to Sudan, however recent political and security developments in the country have complicated follow-up investigative initiatives, and this remains a cause for concern moving forward.
8. The present report sets out the main developments during the reporting period, including in relation to investigation, cooperation and complementarity strategies to secure justice for the victims of atrocity crimes committed in Darfur. As set out below, important progress has been made, notwithstanding the significant ongoing challenges.

2. VOLUNTARY RECUSAL FROM THE CASE OF ABDALLAH BANDA ABAKAER NOURAIN

9. Given Prosecutor Khan's prior representation of Mr Abdallah Banda Abakaer Nourain ("Mr Banda") as his defence counsel before the ICC, the Prosecutor and the Office have taken all necessary legal and practical measures to protect the integrity of the proceedings from any risk or perception of a conflict of interest.
10. Directly upon assuming office as ICC Prosecutor, Prosecutor Khan voluntarily recused himself pursuant to article 42(6) of the Rome Statute, from all cases where a conflict of interest may be perceived to arise due to his prior participation in ICC proceedings as

defence counsel. As a consequence of his voluntary recusal from the *Banda* case, the Prosecutor has not had access to any non-public filings and non-public evidence, and will have no involvement in discussions or decisions related to this case. The Prosecutor has delegated his functions to the Deputy Prosecutor for the purposes of the *Banda* case.

3. THE PROSECUTOR'S VISIT TO SUDAN

11. As referenced above, immediately upon reviewing the Darfur case files, Prosecutor Khan visited Sudan from 10 to 13 August 2021, making Sudan the first Situation country he travelled to as Prosecutor. During this visit, the Prosecutor met with the Chairman of Sudan's Sovereignty Council, General Abdel Fattah Abdelrahman al-Burhan; the then Prime Minister, H.E. Abdalla Hamdok; Vice-Chairman of the Sovereignty Council, General Mohamed Hamdan Dagalo; then Foreign Minister, H.E. Mariam Al-Mahdi Al-Sadig; then Minister of Justice, H.E. Mr Nasredeen Abdulbari; then Acting Attorney General, H.E. Mr Mubarak Mohammad Osman; and other senior members of the Transitional Government at the time.
12. Prosecutor Khan also met with Darfuri representatives and Sovereignty Council members, Dr El Hadi Idris, Head of the Sudan Revolutionary Front and General Al-Tahir Hajar, Chair of the Sudan Liberation Forces Alliance.
13. The focus of these meetings was to reaffirm the Prosecutor's commitment to prioritise efforts to bring justice to Darfuri victims and survivors through the successful prosecution of those cases where there are outstanding warrants of arrest issued by the Court, and thereby potentially bring closure to this Security Council referral. The Prosecutor further called upon the Government of Sudan to deepen its cooperation with his Office, and the Court as a whole, to achieve this end.
14. In particular, the Prosecutor requested access to documents, archives, witnesses and other evidence in relation to the Darfur cases, as well as unhindered access to the territory, including to crime scenes. Importantly, the Prosecutor emphasised that any surrender of suspects in Sudanese custody should be preceded and accompanied by

tangible cooperation; notably access to, and provision of, relevant evidence. The Prosecutor also highlighted the importance of Sudan fulfilling its obligations under Resolution 1593 (2005), the Juba Peace Agreement, and the Rome Statute.

15. During his official meetings in Khartoum, the Prosecutor echoed his previous public statements that, with respect to the principle of complementarity, he was open to considering and engaging on all potential options available under the Rome Statute that would provide meaningful and effective justice to the survivors of the Darfur crimes. At the same time, the Prosecutor underscored that the integrity of independent investigations and any subsequent judicial process was of paramount importance.
16. The Prosecutor welcomed the commitment by General al-Burhan, and all government officials with whom he met, to fully support the ICC, and in particular, to cooperate with the investigative activities of the Office. Practical steps were agreed that included Sudan's commitment to facilitate the establishment of a full-time presence of the Office in the country. The Prosecutor further welcomed the decision at the time, conveyed to him by the then Prime Minister and Foreign Minister, that Sudan intended to ratify the Rome Statute.
17. The Prosecutor's visit concluded with the signing of a Memorandum of Understanding ("MoU"), on 12 August 2021 which, for the first time, extended the Government of Sudan's cooperation with the Office to include commitments to cooperate in relation to each of the four suspects not currently in ICC custody. Importantly, the Government of Sudan has reassured the Office, in recent weeks, that this MoU continues to remain in effect.
18. In this reporting period, the Prosecutor also met with representatives of Darfuri civil society, including Darfuri victim and survivor groups. In these meetings, the Prosecutor provided an update on the status of investigations and judicial proceedings, and reaffirmed the Office's commitment and responsibility to promote accountability for the crimes committed in Darfur. It was emphasised that to discharge this responsibility, the Office would redouble efforts in the Darfur Situation and strive to independently and

impartially investigate cases in relation to each of the suspects against whom warrants have been issued by the Court.

4. RECENT DEVELOPMENTS IN SUDAN

Status of suspects

19. Mr Banda remains a fugitive from the Court and his exact whereabouts are unknown.
20. In addition to Mr Banda, three ICC arrest warrants remain outstanding in the Darfur Situation, pertaining to the cases of Omar Hassan Ahmad Al Bashir (“Mr Al Bashir”), Ahmad Muhammad Harun (“Mr Harun”) and Abdel Raheem Muhammad Hussein (“Mr Hussein”).
21. Since July 2020, Mr Al Bashir has been detained in Khartoum and is currently on trial domestically for charges relating to the 1989 military coup that brought him to power. The trial has been adjourned several times and as yet a final judgement has not been reported. Mr Hussein is believed to still be in custody and on trial for charges relating to the 1989 military coup. Mr Harun also remains in detention in Sudan. To the best of the Office’s knowledge at the present time, none of these three ICC suspects has been charged with the same criminal conduct as that which forms the basis of the ICC warrants against them.
22. An update in relation to the case of Mr Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb (“Mr Abd-Al-Rahman”), who surrendered to the Court in June 2020, is set out below in Part 5, “Recent Judicial Activities”.
23. An update on the Office’s effort to ensure accountability for ICC suspects who remain at large is set out below in Part 7, “Cooperation and Complementarity”.

5. RECENT JUDICIAL ACTIVITIES

24. Following the 24-26 May 2021 hearing on the Confirmation of Charges in the case against Mr Abd-Al-Rahman, on 9 July 2021, the Office successfully secured Pre-Trial Chamber II's confirmation of all 31 charges of war crimes and crimes against humanity that had been proffered against him.
25. The confirmed charges brought by the Office against Mr Abd-Al-Rahman relate to alleged crimes committed in Kodoom, Bindisi and surrounding areas in August 2003 (Counts 1-11), including attacking civilians, murder, pillaging, destruction of property, other inhumane acts, outrages against personal dignity, rape, forcible transfer of population, and persecution. The charges also relate to alleged crimes in Mukjar and surrounding areas in February-March 2004 (Counts 12-21) and Deleig and surrounding areas in March 2004 (Counts 22-31), including torture, other inhumane acts, cruel treatment, outrages against personal dignity, murder, attempted murder, and persecution.
26. On 8 September 2021, Trial Chamber I scheduled the opening of the trial against Mr Abd-Al-Rahman for 5 April 2022.

6. ONGOING INVESTIGATIONS AND ALLEGATIONS OF CURRENT CRIMES

Ongoing investigations

27. At the outset of the reporting period, and upon review of the case files, the Prosecutor allocated additional resources to the Office's Darfur team, increasing the number of investigators and trial lawyers, and ensuring the requisite skills, including Arabic language proficiency, are available to the team. The Prosecutor further ensured that the team was allocating resources sufficiently across all cases within the Darfur file. Additionally, the Prosecutor appointed a *pro bono* Special Adviser, whose portfolio is devoted solely to Darfur, to enhance investigative and cooperation efforts. Special Advisers to the Prosecutor are persons with outstanding professional credentials and

expertise in their fields and provide advice to the Prosecutor within their respective mandates as Special Advisers.

28. During the reporting period, the Office conducted multiple missions to Sudan and interviewed a number of witnesses. In line with the MoU referenced above, and in an effort to improve efficiency and reduce costs, the Office had finalised plans to deploy an investigation team to be based full-time in Sudan. With the cooperation of the Government of Sudan, this team was planning to work closely with the relevant Sudanese authorities to advance the Office's investigations.
29. The insecurity that followed the events of 25 October 2021, compelled the Office to suspend this deployment and to immediately pause its investigative activities in the country. While a team from the Office was able to travel to Khartoum in December 2021 to discuss cooperation matters, the interruption of investigative activities in Sudan has been a significant setback for the investigation and cooperation activities of the Office in regard to all cases in this Situation. It is essential that the Office is able to deploy a team to Sudan as envisaged, without delay, and with the full support of the Sudanese authorities, in order to resume its investigative work. The sooner investigations can resume, the sooner justice can be delivered for the people of Darfur as contemplated by Resolution 1593 (2005). The Prosecutor respectfully requests the Government of Sudan to redouble its engagement with the Office and to facilitate and enhance such efforts.

Allegations of ongoing crimes

30. The security situation in Darfur has deteriorated significantly during the present reporting period. The Secretary-General in his 3 December 2021 report on the Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in Sudan ("UNITAMS"), noted the deteriorating security environment in the country, highlighting that Darfur remains a main focus of tension.

31. According to various reports from UNITAMS, the United Nations Office for the Coordination of Humanitarian Affairs, and the Office of the United Nations High Commissioner for Refugees, attacks against civilians, often in the context of inter-communal fighting, continued in several locations, in particular in West and North Darfur resulting in civilian deaths, rape of women and girls, forced displacement of thousands, and destruction of property.
32. This cycle of violence must come to an end. Accountability plays a critical role in this regard. Those who continue to commit violence against innocent civilians must know that there are consequences for their actions. The Security Council has recognised the imperative for such accountability. The Prosecutor calls on the authorities to investigate these reported incidents to establish the facts and to ensure accountability and justice for the victims.
33. Notwithstanding jurisdiction over the current Situation in Darfur, due to the limited resources available to the Office, the Prosecutor will, at this time, continue to prioritise resources in this Situation in relation to the cases for which there are outstanding warrants issued by the Court.

7. COOPERATION AND COMPLEMENTARITY

Cooperation

34. Cooperation between the Office and the Government of Sudan remains essential if this Situation is to be ultimately closed in line with this Security Council referral. It is important to recall that the Security Council referred the Situation in Darfur to the Prosecutor over sixteen years ago, in 2005. However, it was not until October 2020 that the Office had meaningful access to the territory of Sudan due to former Sudanese President, Mr Al-Bashir's open hostility to the Court. This complete lack of cooperation, including with respect to the arrest of suspects, led to former Prosecutor Fatou Bensouda's decision to hibernate the investigation until such time as cooperation from Sudan and the international community became meaningful. This previous lack of

cooperation has presented significant investigative challenges that must be noted and finally addressed.

35. The evidence, in particular in relation to the cases against former President Mr Al-Bashir and also Mr Hussein, must be strengthened. This requires enhanced and genuine cooperation between the Office and the Government of Sudan and other stakeholders. The Sudanese Government undertook a significant commitment in this regard with the signing of the August 2021 MoU that extended cooperation between the Office and Sudan to include all suspects for which the Court has issued warrants of arrest. Progress now requires that these commitments are welded to action and a joint and collective determination to ensure effective investigations and meaningful accountability.
36. It is vital that full effect is given not only to this MoU, but also to Sudan's obligations to the Security Council under Resolution 1593 (2005) and its domestic obligations under the Juba Peace Agreement. In particular, the Office reiterates that it must be granted full access to the territory of Sudan, including to documents, archives, crime scenes, witnesses, and other evidence in relation to Darfur.
37. This access is essential to ensure that all the cases are built on the strongest possible foundations. This is especially true in complex cases of war crimes and crimes against humanity and genocide, where significant time has elapsed since the alleged crimes began in 2003. Without such access and full cooperation from Sudan, investigations will have to continue and the successful adjudication of the open cases in the Darfur Situation may continue to be delayed.
38. The Sudanese authorities have facilitated the issuance of visas to staff of the Office and have continued to provide logistical support to its delegations travelling to Sudan. This cooperation and assistance is fully recognised and greatly appreciated. At the same time, it must be stated that during this reporting period, the Office has made a number of formal Requests for Assistance that, as of the date of this report, have still not been executed.

39. Progress has only been made in relation to two out of the seven Requests for Assistance, despite numerous follow-up requests by the Office. From the previous reporting period, out of four Requests for Assistance, one was executed, one is partially executed and two remain to be executed. Notwithstanding the challenging events in Sudan during this reporting period, it must still be emphasised that the timely and full execution of these Requests for Assistance remains essential. In short, the state of cooperation must improve.
40. Another challenge facing the Office in its investigative and cooperation activities has been the turnover of government officials following the events of 25 October 2021. Many of the government officials who were interlocutors with the Office no longer hold their official positions, and this has stymied follow-up requests for support and cooperation. The Office was pleased to be able to conduct its most recent mission to Khartoum from 11 to 15 December 2021 in an effort to re-engage with the Sudanese authorities. While some progress was made on this mission, the Office still awaits notification as to Sudan's nominated focal points. This has acted as somewhat of a barrier to sustained engagement with various Sudanese ministries and offices whose support is needed to continue and advance cooperation. The Prosecutor hopes that the requested focal points can be nominated by Sudan without delay to help accelerate cooperation and dialogue with the Office, and notes with appreciation efforts underway in this regard.
41. The Office acknowledges the support it has received for its investigations from various States, in Africa, Europe and elsewhere, including those States that facilitated exemptions to COVID-19 requirements, which would have otherwise hampered these investigations. In particular, the Office is grateful for the support received from ICC States Parties and non-States Parties in Khartoum, including the European Union ("EU") Delegation and EU member states, as well as Norway, the United Kingdom and the United States of America. The Office is also appreciative of the excellent execution rate of Requests for Assistance sent to a number of States, including Canada, in relation to the Darfur Situation.

Complementarity

42. During the Prosecutor's visit to Khartoum, and in subsequent missions and correspondence, the Office has expressed an openness to engage with the Sudanese authorities in relation to potential complementarity approaches, in particular with respect to those ICC suspects who remain in custody in Sudan.

43. Subject to the requirements of the Rome Statute, the Office is willing, when and where appropriate, to explore and consider viable options that can deliver genuine, transparent, impartial, and effective justice to the victims in the Darfur Situation, without further delay.

8. CONCLUSION

44. The violence and suffering witnessed today in Darfur is a stark reminder of the need to break the cycle of impunity that has plagued Darfur in the past. Justice and accountability for atrocity crimes remain an essential component of Sudan's quest towards a democratic and rule-based society. These aims cannot be achieved, and the Security Council's referral of the Darfur Situation cannot come to a close, without the full and effective cooperation of the Government of Sudan.

45. The Office recognises the significant progress which was underway before the events of 25 October 2021. Just two years ago, it was unthinkable that the Government of Sudan would invite the Prosecutor of the ICC to Khartoum, pledge support and cooperation, and signal an intent to ratify the Rome Statute. A palpable change was underway that, if continued and strengthened, would have led to significant progress in the Office's investigations and prosecutions with respect to the Security Council's referral of the Situation in Darfur. Victims and survivors of the Darfur conflict could also sense this momentum.

46. While Sudan remains in a delicate phase of transition, progress on accountability for past crimes can still move forward. The Office has consistently expressed its readiness to work in partnership to progress the Darfur cases in conformity with the Rome Statute and in a manner that does not negatively impact this transition. For this to be achieved, further genuine and tangible steps must be taken by Sudan, through a frank and positive dialogue with the Office.
47. The opportunity created by the conclusion of the recent MoU between the Office and Sudan must be fully seized and realised, to urgently secure accountability for suspects in the Darfur Situation against whom ICC warrants have been issued. Pending Requests for Assistance must be executed, full access to Sudan must be granted in a secure and safe environment and all complementarity options must be fully explored.
48. The Office will continue to prioritise the Situation in Darfur. However, to achieve meaningful accountability, and to enable this Office to bring closure to this referral, the Office counts on the support of Sudan, the Security Council and all States committed to securing long-awaited justice for the victims in the Darfur Situation. | 011