

# **SEVENTH 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 (2005). The Prosecutor outlines in this report cooperation, investigative and monitoring activities undertaken since the last report on 5 December 2007.
2. The Office of the Prosecutor opened a first investigation into the situation of Darfur on 1 June 2005. The evidence collected during two years includes the report from the National Commission of Inquiry and other Government of Sudan (GoS) documents, *inter alia* a report on the conflict prepared specifically at the request of the Office. The evidence unveiled a system of attacks against the civilian population. It shows that Ahmad Harun, as Sudanese Minister of State for the Interior in 2003 and 2004, and head of the “Darfur security desk” coordinated the activities of the GoS army and Militia Janjaweed to attack civilians in their villages, killing, raping and torturing civilians who were not participants to any conflict, causing massive displacement. The evidence also shows Ali Kushayb, a Militia Janjaweed leader, leading the attacks in Mukjar, Kodoom, Bindisi and Arawala.
3. The Court is complementary to national jurisdictions. The Office, in accordance with statutory requirements, reviewed carefully all accountability mechanisms in the Sudan, but found that there were no national proceedings related to those crimes.
4. On 27 April 2007, the Pre-Trial Chamber issued arrest warrants against Ahmad Harun and Ali Kushayb for 51 counts of crimes against humanity and war crimes. The Court transmitted the warrants to the GoS on 16 June 2007. Interpol Red Notices have been disseminated.
5. The GoS has not responded. The GoS is not cooperating with the Court. The GoS has not complied with UNSCR 1593. The GoS has taken no steps to arrest and surrender the suspects and stop the crimes. One year after the warrants, Ahmad Harun and Ali Kushayb are free and involved in acts against civilians. Ahmed Harun is Minister of State for Humanitarian Affairs. Ali Kushayb is active with his military unit in Darfur. They are fugitives from the ICC.
6. The Office concurs with Council Members’ December 2007 statements that ending impunity is an essential component of a solution in Darfur “in all its aspects”- political, security, humanitarian and judicial. All are mutually reinforcing and complementary.
7. In the context of this comprehensive approach, the Office will fulfil its strictly independent, legal mandate. The selection of cases is a judicial process based on the evidence and the law. The conduct of impartial investigations to establish the truth,

considering both incriminatory and exculpatory evidence, is a judicial process based on the evidence and the law. The admissibility assessment is a judicial process. The law is detailed in the Rome Statute, and the Office's prosecutorial policy is transparent – in particular the focus on those most responsible for the most serious crimes. The Office offers as much clarity and predictability as possible to facilitate the integration of its judicial work with other aspects and allow other actors to adjust to the legal framework. Since its first report, the Office has endeavoured to keep the Security Council apprised of activities undertaken and activities planned.

8. Impunity is not an abstract notion. The continuation of crimes is a concrete obstacle facing all actors engaged in helping Darfurians. Impunity is fuelling violence. The criminals, as they want to pursue their objective of destroying the communities of Darfur, and not be exposed, are hampering security and humanitarian efforts. Arresting Harun will disrupt criminal activities and can contribute to the creation of genuine conditions for peace and security.

9. The execution of arrest warrants requires further concrete efforts. The GoS, as the territorial State, has the legal duty and the capacity to execute the warrants. The Council, States, the UN and regional organizations in accordance with UNSCR 1593 must ensure their execution by recognizing the gravity of the crimes; by requesting the arrests; and by halting any political and economic support to those indicted and those protecting them. Council members must ensure respect for UNSCR 1593 and secure the full and immediate cooperation of the GoS.

10. The Office urges the international community, the Council and all UN members to send a strong and unanimous message to the GoS on the execution of the warrants. The Office regards the June 2008 trip of the UNSC to the Sudan, in this light, as a crucial opportunity. The Sudanese authorities can—they must—surrender the two indicted criminals now, and break the system of violence and impunity in Darfur.

11. As previously reported, the Office is now proceeding with its second and third Darfur investigations. The Office informed the Council in December that the people of Darfur were being attacked in their homes and in the camps. They were attacked in the past and they are attacked now.

12. Civilians, in particular the Fur, Massalit and Zaghawa, are being targeted. More than 2.5 million are displaced. Destruction of means of livelihood, and the presence in the vicinity of villages of GoS forces and Militia Janjaweed create a hostile environment meant to discourage returns. Civilians are being killed, houses burnt or looted, markets and schools bombed, mosques destroyed. Land, the very foundation of society, is being in effect usurped. New settlers upset traditional demographic balance.

13. Women and girls are raped. Victims are as young as 5 or 6 years old. Parents are forced to watch. This is not an incidental by-product of war. It is a calculated crime, intended to do irreparable damage to communities. In the IDP camps community leaders are detained, tortured, even killed. Destitution and insecurity are organized. For those

who have been displaced for more than five years, there will be no return to normalcy. These crimes are conducted in a systematic and identical manner throughout Darfur.

14. The mobilization of the state apparatus to plan, commit and cover up crimes against civilians, in particular the Fur, Massalit and Zaghawa, is the focus of the Office's second investigation. The failure to punish Ahmad Harun, a Minister who commits crimes under guise of humanitarian affairs, is one telling indicia of the involvement of high officials.

15. The Office anticipates that it will be able to present a new application under Article 58 of the Statute to the Judges by July 2008.

16. The investigation into allegations of rebel crimes, focusing among others on the Haskanita attack against peacekeepers, continues. The progress of both investigations is described below.

## **JUDICIAL PROCEEDINGS**

17. The Office opened an investigation on 1 June 2005, focusing on some of the most serious crimes which occurred in 2003-2004. On 27 February 2007, the Office presented its application against those who, according to the evidence, bear the greatest responsibility for those crimes. On 27 April, the Judges of Pre-Trial Chamber I issued arrest warrants against Ahmad Harun and Ali Kushayb. This investigation continues in preparation for further Pre-Trial and Trial proceedings. The Registry and the Office continue to monitor the security of victims and witnesses and to implement protective measures under article 68(1) of the Rome Statute.

18. On 27 May, the Office informed Pre-Trial Chamber I of the ICC of the non-cooperation of the GoS since the issuance of the arrest warrants.

19. The Office is now proceeding with its second and third investigations.

## **ADMISSIBILITY**

20. Consonant with the complementarity provisions of the Rome Statute, the Office has carefully reviewed the admissibility of the case against Ahmad Harun and Ali Kushayb and is conducting the same thorough assessment for the second and third cases. Under the Statute, admissibility analysis is not an assessment of the judicial system as a whole, but an assessment as to whether or not the GoS has investigated or prosecuted, or is investigating or prosecuting genuinely the cases selected by the Office.

21. In previous reports, the Office has referenced the various mechanisms established by the GoS to deal with the alleged crimes including: the Darfur Special Court, established in June 2005; the two additional Courts created in November 2005; and the *ad hoc* institutions preceding and supporting the work of those Courts (*inter alia* the Judicial Investigations Committee, the Special Prosecutions Commissions, the National

Commission of Inquiry, the Committees against Rape, and the Special and Specialised Courts of 2001 and 2003).

22. Since June 2005, after the Office's opening of the first investigation, the GoS has presented publicly its initiatives as alternatives to the ICC – invoking complementarity - and promised to deal with any perpetrators, regardless of rank or affiliation. The GoS announced that approximately 160 suspects were identified for investigation and possible prosecution: 92 from South Darfur, 38 from North Darfur, 32 from West Darfur.

23. However, the Office undertook missions to Khartoum in 2006 and 2007 to assess whether there were national proceedings related to individuals and crimes investigated by the Office, but found none. The Special Court President stated to Office representatives on mission to Khartoum that no cases involving serious violations of international humanitarian law were going for trial; the six cases tried were chosen from the case files from the ordinary Courts.

24. In its 27 April decision, Pre-Trial Chamber I concluded that no proceedings were ongoing or had taken place in relation to Harun and Kushayb for the conduct which formed the basis of the Office's application. It found that, without prejudice to any challenge to the admissibility of the case under article 19(2) (a) and (b) of the Statute or any subsequent determination, the case falls within the Court's jurisdiction and appears to be admissible.

25. Since then, the Court received no communication from either the GoS or from Ahmad Harun or Ali Kushayb. The GoS has continued to publicly insist that it is willing and able to prosecute those responsible for serious crimes but that it is not prosecuting either Ahmad Harun or Ali Kushayb. On 5 December 2007, the GoS Ambassador to the United Nations stated "in no way are we going to surrender our citizens to be tried by the ICC...If there are any accusations against our people, the Sudanese judiciary is more than capable of doing that." Zahawi Ibrahim Malik, Minister of Information, underscored this on March 10 2008: "The Sudan is not a party to the ICC. There is no trial for these two people. If we consider there have been any crimes, we will put them on trial ourselves."

26. The GoS has now known the full nature and extent of the case against Ahmad Harun and Ali Kushayb for more than a year and has taken no further steps. The GoS has not conducted nor is it conducting any proceedings in relation to crimes committed in Darfur by officials, or by Militia Janjaweed leaders, and shows no intention of carrying out national proceedings in relation to these matters.

## **INTERESTS OF JUSTICE, INTERESTS OF THE VICTIMS, OUTREACH**

27. The Office has developed relations with the AU, the UN, the League of Arab States, with local groups, NGOs and others, to seek views of affected communities and to inform victims on the Office's work. In furtherance of the ICC's outreach strategy, Court documents have been translated into Arabic and disseminated and the ICC has conducted or participated in workshops in Africa, including in Egypt; Ethiopia; Uganda; and at the

seat of the Court. The Office has participated in such trainings and workshops designed to raise awareness among Sudanese. Darfurians and other Sudanese voiced support for the arrest of Ahmad Harun and Ali Kushayb. Of continuing concern are reports that Sudanese participants in such activities are threatened upon returning to Sudan.

28. The Office and the ICC continue to dedicate specific efforts to inform the Arab-speaking public through international and regional Arabic and Sudanese media. The Prosecutor travelled extensively in the Arab region to meet with high officials and civil society and explain the Office's work on Darfur.

## **COOPERATION**

29. UNSCR 1593 requires that the GoS and all other parties to the conflict in Darfur cooperate fully and provide any necessary assistance to the Court and the Prosecutor. Other States and Organizations are urged to cooperate fully.

### **The Government of the Sudan**

30. Since 2005, the Office had endeavoured to establish a working relationship with the GoS and noted in its application to the Judges and in its previous report to the Council that the Government of the Sudan has provided a degree of cooperation. Since the issuance of the arrest warrants, that cooperation no longer exists.

31. In its 27 February application the Office described the operational system that Ahmad Harun coordinated, using the Militia Janjaweed to commit crimes. The GoS was in a position to cooperate in the arrests and also to break this system, to stop the crimes. However, they have decided to deny the crimes and protect the two indictees. That situation has not improved since the December report.

### *The promotion of Ahmad Harun*

32. Since the arrest warrants, Ahmad Harun continues as Minister of State for Humanitarian Affairs and has received new responsibilities. He is a member of the six persons NCP-SPLM committee charged in November 2007 to conduct negotiations between the two parties. Such activities involve meetings at the level of the State Presidency in Khartoum. As part of the committee, he deals with the situation in Abeyi and was dispatched on 29 April by GoS leadership to the region to "address disputes" between the Masirya and the SPLM/A.

33. Ahmad Harun continues to enjoy a high profile in the Sudanese media and public life. On 27 February 2008, one year after the Prosecution's application, he attended a ceremony in Khartoum with Minister for Finance and Economy Awad Al Jaz. He also attends security forces-related functions, such as graduation of officers. On 28 April, he appeared on Sudanese National TV.

34. As chairperson of the National Mine Action Authority (NMAA), Ahmad Harun has presided over ceremonies in April, in particular in Juba, in the presence of UN officials and Embassy representatives from Khartoum.

35. He is active as chair of the committee on human rights violations and breaches of the transitional constitution in the south and north. As member of the UNAMID national monitoring mechanism group, he participates in the overseeing of UNAMID's deployment.

36. Finally, Ahmad Harun is involved in supervising the population census in South Darfur. Census-related arrests and killings have been reported, including while his people were engaged in the census in the Kalma camp; allegedly IDPs resisted and two people including one Umda were killed.

#### *The impunity of Ali Kushayb*

37. In its report, the Sudanese National Commission of Inquiry recognized the existence of crimes against humanity and war crimes in Darfur and the responsibility of Militia Janjaweed; and mentioned Ali Kushayb as one person to be investigated. The GoS Ministry of Justice reported in a 9 December 2006 letter to the Office that fourteen persons had been arrested in relation to incidents in the areas of Shattaya, South Darfur and Deleig, West Darfur. Ali Kushayb was named as one of them.

38. In a 27 January to 7 February 2007 mission to Khartoum to analyze those developments, the Office met with the Minister of Justice, the Under-Secretary for Justice, the Chief Justice of West Darfur and the President of the Special Court for West Darfur, among other officials. The Office interviewed the three special advisers of the Judicial Investigations Committee.

39. The mission confirmed that while there were indications that Ali Kushayb was under investigation, there was no investigation of Ahmad Harun and Ali Kushayb joining together as part of a systematic and organized initiative to attack civilians in Darfur. No proceedings addressed the case investigated by the Office, as required by the Statute.

40. On 30 September 2007, then Foreign Affairs Minister Lam Akol stated that Ali Kushayb is no longer under investigation or in custody, and has returned to active duty. Ali Kushayb was reportedly present during a meeting organized by the Humanitarian Aid Commission for local leaders and international actors in November 2007 in Darfur. On 31 March 2008, GoS spokesman in London, Khalid al Mubarak, was quoted as saying that Kushayb and Harun are not up for trial because there is no evidence against them.

#### *Non-cooperation by the GoS.*

41. The GoS has failed to comply with its legal obligations under UNSCR 1593. The Registry of the Court, in consultation with the Office, submitted a new request to the GoS on 17 October 2007 for an update as to "the activities undertaken by the Sudan in the

execution of the warrants and as to any potential difficulty, which may have arisen in this process, pursuant to rule 176 (2) of the Rules of Procedure and Evidence.” The letter requested the update to be provided by 15 November. The Court has received no response from the GoS.

42. In accordance with UNSCR 1593, the Office confirms to the Security Council that the GoS is not cooperating with the Office or the ICC. The Office had brought this matter to the Council’s attention in December 2007. There has been no positive change.

### **African Union**

43. UNSCR 1593 invites the ICC and the African Union (AU) to discuss practical arrangements for facilitating the work of the Office and the ICC, including the possibility of conducting proceedings in the region. As reported previously, the Office meets regularly with representatives of African States, of the African Group in New York, and of the AU. The Office is grateful for their cooperation.

44. On 26 January 2008, Deputy Prosecutor Fatou Bensouda met with AU Chairperson Alpha Oumar Konare on the margins of the AU Summit to discuss Darfur. Since then, contacts have been taken with Jean Ping, new AU Chairperson. The Office will also be briefing Tanzania, as the current AU President, before the AU Summit on 24 June-1 July in Sharm el Sheikh, Egypt.

45. In relation to the Memorandum of Understanding between the ICC and the AU, the draft is now with the AU Secretariat and has not yet been signed.

### **Other States and Organisations**

46. The Office has benefited from States and international organizations cooperation in its investigations and in the protection of witnesses. A number of States expressed public support for the enforcement of the arrest warrants.

47. The Prosecutor meets regularly members of this Council. The Prosecutor has regular contacts with the Office of UN Secretary-General Ban Ki-Moon and is grateful for the insight and support provided. The Secretary General’s words at the Assembly of the States Parties in December 2007 stating that “justice is a condition of peace” and “peace and justice are indivisible” fuelled the strong support of the Assembly for the execution of the arrest warrants by the GoS.

48. The Prosecutor met with UN officials seeking a comprehensive solution for Darfur: the Office of Legal Affairs, the Departments of Peacekeeping Operations and of Political Affairs, the Office for the Coordination of Humanitarian Affairs as well as the UN Special Envoy on Sudan. In Geneva on 11-12 March, the Prosecutor met High Commissioner for Human Rights Louise Arbour, as well as UN Special Rapporteur on the situation of human rights in Sudan Sima Samar.

49. On the third anniversary of UNSCR 1593, the EU adopted a declaration expressing dismay at "the Sudan's continued failure to comply with its obligations under UNSCR 1593 including its refusal to arrest and surrender [Harun and Kushayb] (...) The EU reiterates that the International Criminal Court is an essential means of promoting respect for international humanitarian law and human rights (...) as well as contributing to the preservation of peace". The EU called on the GoS to cooperate unconditionally with the ICC and to surrender the two individuals. In the event of continued non-compliance with UNSCR 1593, the EU will support "appropriate further measures against those who bear responsibility for Sudan's failure to cooperate with the ICC."

50. The Office also notes the statement of the India-Brazil-South Africa Dialogue Forum (IBSA) on 13 May urging the GoS and all armed groups to respect civilian life and ensure maximum access by humanitarian workers to the displaced.

51. The Prosecutor continues his constructive exchanges with Arab League Secretary-General, Amr Musa, as well as with its Member States, on the promotion of international criminal justice. Their support to the independence and impartiality of the Office is steadfast. In the words of ASP President Bruno Stagno Ugarte, the ICC uniqueness is based on the promise of its universality; its standing as a permanent and independent institution; its complementarity, neutrality and impartiality; and its provisions for victims. This is what the Office strives to present to its interlocutors.

52. The Prosecutor was in Cairo on 9 February and 10 May to meet with Egyptian Foreign Minister Aboul Gheit and local civil society organizations; in Qatar on 29 January to meet Prime and Foreign Minister Sheikh Hamad Bin Jassim Bin Jabr Al-Thani ; in Jordan on 8 March to meet with Foreign Minister H.E. Mr. Salaheddin Al-Bashir; and in Saudi Arabia on 13 May to meet Foreign Minister His Royal Highness Prince Saud Al-Faisal. The Prosecutor travelled to Indonesia on April 30 to meet with Foreign Minister Dr. N. Hassan Wirajuda, with Defence Minister Prof. Dr. Juwono Sudarsono and with civil society.

53. In all such travels, the Prosecutor heard the consistent message that crimes committed should not be denied, should not continue and should not go unpunished. Crimes of the magnitude of those that have been and continue to be committed in Darfur cannot be ignored. The importance of furthering a revitalized peace process and stopping the crimes was underlined. Bringing an end to crimes and protecting the civilians is the shared goal of the international community. In the words of one Foreign Minister, to compromise on crimes is "to compromise the uncompromisable."

54. Recent initiatives of civil society, including the Justice for Darfur Campaign, comprising thousands of NGOs operating in more than 150 countries, highlight the link between bringing justice and dignity Darfur victims. The role of civil society, having helped to lay the foundations for the creation of a permanent, independent and impartial ICC, remains as vital as ever.



## **ACTIVITIES OF THE OFFICE OF THE PROSECUTOR IN RELATION TO ONGOING CRIMES**

55. The Office continues gathering information on ongoing crimes by all parties. The Office is also monitoring the impact of the Darfur situation in Chad and in the Central African Republic, both Rome Statute States Parties. There are around 250,000 Sudanese refugees, and more than 170,000 IDPs in Chad, vulnerable to cross-border incursions. The deployment of MINURCAT and EUFOR under UNSCR 1778 (2007) may improve security conditions; the Office has exchanged letters with the EU to organize cooperation with EUFOR.

### **Background on ongoing investigations of crimes within the jurisdiction of the Court**

56. In December, the Office announced the opening of its second and third investigations.

57. The second case focuses on the pattern of repeated attacks on civilians, in particular the Fur, Massalit and Zaghawa. The Office is investigating who bears the greatest responsibility for past and ongoing crimes against civilians in villages and in camps; who is maintaining Harun in a position to commit crimes; who is instructing him and others. The third case is focused on the targeting of AU and UN peacekeepers, aid workers; it is centered on the September 2007 rebel attack on Haskanita. While investigations concern past and present acts, the present report focuses on recent findings.

### **The investigation into ongoing attacks against civilians**

58. Present crimes include : targeting of civilians in villages, including recent aerial bombardments; looting and destruction of means of livelihood leading to displacement; protracted presence of GoS forces and Militia Janjaweed in areas attacked, preventing returns; resettlements resulting in the usurpation of IDPs' land; organized insecurity and destitution within and around IDP camps; rapes; attacks against local leadership including detention, torture and killing; lack of Government assistance, hindering of humanitarian assistance and imposing harsh conditions of life within the camps; impunity of the perpetrators and official denial of crimes adding to the mental anguish of victims. All this leads to the actual destruction of entire groups.

59. The continuing role of Ahmad Harun as Minister of State for Humanitarian Affairs, in particular in relation to the displaced, is indicative of the support he receives from superiors. But he is not alone.

60. The official denial of such crimes – denying the existence of crimes, their extent, shifting responsibility, failing to punish the perpetrators –is a characteristic feature of the case under investigation.

61. Conduct of GoS members in relation to the Militia Janjaweed, simultaneously using them as agents to commit crimes, denying their existence, characterizing them as

autonomous bandits or self-defence militia, and proclaiming no GoS connection with their crimes is part of the cover up.

62. These are evidence of a criminal plan based on the mobilization of the whole state apparatus, including the armed forces, the intelligence services, the diplomatic and public information bureaucracies, and the justice system.

***Attacks against civilians in villages including through aerial bombardments***

63. Although a great number of villages have been abandoned since the 2003/04 attacks, and although the GoS has agreed to numerous ceasefires, GoS forces and Militia Janjaweed continue to target villages and civilians within.

64. The GoS continues to employ aerial bombardments, notwithstanding, first, that all offensive flying is banned under multiple UNSC resolutions, including 1755, 1769 and 1779 (2007) and second, that ensuing civilian casualties and displacement are widely known. Recent bombardments including on a school appear to constitute attacks on the civilian population as such.

65. On 8 February 2008, GoS Forces and Militia Janjaweed launched an attack on Abu Suruj, where JEM previously had a presence, north of El Geneina in West Darfur. The attack included over 130 vehicles, hundreds of militia, three attack helicopters, and at least one Antonov aircraft. Much of Abu Suruj was burned down and thousands of civilians fled. Abu Suruj residents said that approximately 28 civilians had been killed. A joint GoS and Militia Janjaweed force attacked Sirba in the same vicinity also on 8 February, killing approximately 42 civilians, including a tribal leader. Residents reported that several thousand civilians fled; just under half of the town was burned to the ground. On the evening of 8 February, Seleia, northeast of Sirba, was bombed by GoS aircraft. Almost the entire population was displaced. During the attack and over several days, GoS forces and Militia Janjaweed looted INGO compounds and the ICRC office. Members of the GoS forces were seen raping girls.

66. On 18 February, GoS Antonov aircraft dropped at least five bombs in Aro Sharow, and eight bombs on Kandare and Kurlongo. These areas hosted displaced civilians from the 8 February attacks on Abu Suruj, Sirba and Seleia.

67. In this series of attacks, at least 115 were killed, and more than 30,000 displaced. The UN noted that “the scale of destruction of civilian property, including objects indispensable for the survival of the civilian population, suggests that the damage was a deliberate and integral part of a military strategy” and that GoS military units again used disproportionate force and refused to differentiate between military and civilian targets in their response to rebel attacks, including aerial bombardments. On 20 March, the Periodic Report of the UN High Commissioner for Human Rights highlighted attacks on civilians during this campaign, in particular the use of Militia Janjaweed to terrorize the population before the arrival of regular forces.

68. These tactics are familiar. As Edmund Mulet, Associate Secretary-General for Peacekeeping, told the UN Security Council on 11 March, they include “joint Sudanese Armed Forces/Janjaweed militia attacks, supported by fighter jets, helicopter gunships and Antonov aircraft....Humanitarian agencies are extremely concerned by the deliberate targeting of civilians and civilian assets, in particular clinics and water points.”

69. Mr. Mulet noted that “In response to the Government's actions in West Darfur, on 5 March the Secretary-General called Foreign Minister Deng Alor and made clear that, notwithstanding arguments of the GoS that its actions are in response to the military engagement of rebels, civilian suffering of that scale is unacceptable and is sending signals to the international community that the Government has no regard for the lives of its citizens or for humanitarian law...those actions were undermining prospects for political negotiations and posed fundamental challenges to the ability of UNAMID to fulfill its mandate.”

70. Nine days after, the website of the External Information Council, an arm of the GoS Ministry of Information, said the attacks were against the rebel group JEM, citing the recovery of military gear, vehicles and identity cards. Contrary to the facts, the GoS has not acknowledged the attack as one focusing on civilians.

71. Again, on 4 May, GoS planes struck a market and a primary school as children were in attendance in Shegeg Karo; at least 13 people were reported killed including 6 children. On 5 May, Ceasefire Commission Head, UNAMID Force Commander General Martin Agwai called the bombings of Umm Siddir, Ein Bassar and Shegeg Karo villages in North Darfur “unacceptable acts against civilians, compounding the extent of displacement, insecurity and human suffering.” UNSG Ban Ki Moon stated that in particular the bombing of a school, water installation and a market...are entirely unacceptable. Humanitarian coordinator Ameerah Haq, in Oslo for the Sudan Consortium on 5-7 May, was “deeply perturbed by the reported bombings of a school, water installations and a market where civilians, especially women and children are present.”

72. On 5 May, UNICEF expressed deep concern at reports of children being killed during the attacks and called on the GoS forces and other parties to take necessary action to prevent future deaths or injuries among children, noting that half of the conflict-affected populations in Darfur are children, including at least one million who have been displaced by fighting.

### ***Organized insecurity – Attacks against persons displaced***

73. In 2008, thus far, crimes have resulted in a further 100,000 individuals being newly displaced. OCHA reported 60,000 newly displaced people since January in West Darfur alone. Information points at an organized context of insecurity against this vulnerable population. Civilians leaving the camps risk harassment, beatings, arrests and killings. In his 9 May report, the UN Secretary-General again expressed concern that very little effort was being made by the GoS to end impunity.

74. GoS officials deny the situation. On 5 December 2007, GoS Ambassador to the UN expressed disagreement with the notion that people were dying now in Darfur, echoing President Bashir statement of June 2007 that “most of Darfur is now secure and enjoying real peace. People are living normal lives.”

*Rapes and other forms of sexual violence*

75. Particularly worrisome is the continued evidence of high levels of sexual violence. On 22 April, John Holmes reported to the Council that in the northern corridor of West Darfur, this was made clear “by the dramatically increased number of women and girls seeking treatment for the effects of those brutal acts and statistics for sexual transmitted infections treated at local health clinics.”

76. Sexual violence in IDP camps has continued since December 2007. Militia Janjaweed and GoS forces rape girls and women who leave the camps to fetch firewood or water.

77. This pattern of sexual crimes extends to towns, villages and rural areas throughout Darfur. As the main towns serve as garrisons, many cases are allegedly committed by GoS soldiers and Militia Janjaweed. Rape and gender violence are used as a means to cause displacement. The potential list of perpetrators also reportedly includes rebels.

78. Meanwhile, GoS authorities deny that such violence exists in the Sudan. Victims and aid workers denouncing such crimes are threatened. In her 3 March 2008 report, Sima Samar noted that IDPs were victims in 80 percent of all reported cases of sexual and gender-based violence; and that the majority of victims choose not to file complaints because the police could or would not take appropriate action

*Failure to ensure protection and Refusal to disarm the Militia Janjaweed*

79. Victims consistently report such lack of police intervention. At the same time, their attackers are allowed to remain armed. Despite the obligation to disarm the Militia Janjaweed under UNSCR 1556 and 1564, AU Resolutions, the N’Djamena Agreement, the 2004 Abuja Protocol and the DPA, there are no GoS efforts to disarm the Militia Janjaweed or end their activities. They, along with other security forces, are stationed in the vicinity of IDP camps with knowledge and consent of GoS officials, and perform targeted attacks on civilians. This is a failure to protect civilians.

80. With its mandate—to contribute to the protection of civilians under imminent threat and prevent attacks against them, to a secure environment as well as to the sustainable return of displaced and refugees—UNAMID can prove invaluable to saving lives. Lack of GoS support for UNAMID is another failure by the GoS to actively protect its citizens.

81. There are numerous obstacles to the deployment and functioning of the peacekeeping operation; a major instance is the 7 January GoS attack on a UNAMID convoy, as reported by UN Under-Secretary-General for Peacekeeping Jean-Marie Guehenno to the UN Security Council. The GoS commander on the ground took responsibility for the

attack (whereas on 9 January, the Sudanese Ambassador in New York stated that the attackers “were not the Government. The rebels did that.”)

82. The UNSC presidential statement cited as responsible “elements of the Sudanese armed forces.” The GoS Defense Minister then acknowledged to Sudanese newspaper Al-Sahafah that “some elements of the armed forces” attacked the convoy, but blamed the UN, accusing UNAMID of not notifying the convoy’s movement and arguing that the GoS armed forces had confused the UN convoy with rebel forces. The UN reported however that it had notified the GoS, and further, that UN vehicles, painted white and marked with the UN logo to signal neutrality, could not be mistaken for the camouflaged pickup trucks of the rebels. This attack on the UNAMID convoy was a serious act, and not an isolated one. On 24 April, Rodolphe Adada, Joint AU/UN Special Representative for Darfur, reported to the Council: “the obstacles [our forces] need to surmount and the risks that they run have not diminished over the past three months.”

### ***Destruction of the social fabric of communities – attacks against local leadership***

83. Communities are fundamentally undermined by forcible and protracted displacement, which destroys the traditional links to the land. In addition, unlawful arrests and killings of local civilian leaders undermine any leadership structures within the camps. To be released, arrested leaders may have to accept to become informants on behalf of the GoS.

84. As previously, reports point to members of the HAC gathering intelligence in camps and organizing the targeting of leaders.

85. This undermining of any structural leadership adds to the mental hardship suffered by the displaced. John Holmes notes “we need also to be aware of the cumulative effects of continued violence, stress and upheaval in Darfur. Those in the camps feel helpless and voiceless. The fear of never being able to return to their area of origin and the pressure by Government authorities to return when conditions are not right lead to increased tension, polarization, politicization and even militarization... The conflict and the continuing degradation of traditional social structures after 5 years of fighting and flight have serious consequences not just for the stability of IDPs camps but more fundamentally for the longer stability of Darfur. How many will be able, or indeed willing, to return to their previous lives when peace finally arrives? Normality cannot simply be suspended for 5 years and then resume.”

### ***Organized Destitution - Conditions of life within the camps***

86. On 5 December 2007, the GoS through its UN Ambassador stated that “we have reached a very good situation now regarding...the humanitarian situation”. In fact, more than one of every three Darfurians lives in overcrowded IDP camps with no viable educational or livelihood opportunities. In Oslo, in May 2008, it was noted that nutritional indicators are above emergency threshold for the first time since 2005.

87. On 22 April 2008, John Holmes noted that observations made in 2004 remain only too relevant: “growing numbers of displaced, continuing hostilities and violence against civilians, increasing humanitarian needs and limited access to beneficiaries. The difference is that almost six times as many people are now affected. Jan Egeland spoke in April 2004 of approximately 750,000 people in danger. Of Darfur’s estimated 6 million people, some 4.27 million have now been seriously affected by the conflict; 2.45 million are internally displaced, while an additional 260,000 have sought refuge in neighboring countries.” He suggested that as many as 300,000 people may have been killed. GoS Presidential Adviser Mustafa Osman Ismail responded that the report “lacked professionalism and...is not based on any documentation,” and that “if they continue adding to those figures, one day they will come up with a number that will exceed the whole population of Darfur itself.” The UN Ambassador added that there were no dead from malnutrition and starvation “because in Darfur there (are) no epidemics, no starvations. The exaggerated number given is to serve political ends...to give the impression that the government is not doing much... to save its own people.”

88. GoS Officials are denying the suffering of the Sudanese people in Darfur. Furthermore, although the country is increasingly prosperous, they leave the international community to shoulder virtually all financial responsibility of humanitarian assistance in Darfur and do not assist their own citizens.

### *Hindering of humanitarian assistance*

89. The GoS states that it supports humanitarian aid; the 28 March 2007 Joint Communiqué with the UN pledged to facilitate all humanitarian operations in Darfur through implementation of the July 2004 Moratorium on Restrictions. But humanitarian operations are still faced with deliberate obstacles. According to OCHA, although both documents were extended in January 2008, they “do not ensure physical access to IDPs and other vulnerable groups. Humanitarian workers are too often blocked by military intelligence, national security elements or civilian police, seemingly at random. Those denials of access serve no discernible purpose aside from frustrating relief efforts and increasing suffering.”

90. Relief organization and bilateral aid agencies sources reported that “during the month of April, bureaucratic impediments and insecurity continued to hamper relief efforts and access throughout Darfur...[including] visa processing delays and new local government requirements for travel to project sites.” The HAC plays a pivotal role.

91. The situation in the northern corridor of West Darfur, illustrates such concerns. On 25 February, UN spokesperson, Michele Montas cited the resulting food insecurity from lack of humanitarian access, on top of bad crops, and in combination with the harassment by Militia Janjaweed as spurring major population movements towards the camps. Since JEM launched a few attacks in this area in December 2007, the GoS has denied humanitarian agencies access to areas north of Seraf Jidad. This cut off assistance to 160,000 conflict-affected people. This is one example among many.

92. Governments may of course take measures to control movements of persons in conflict zones, but the above suggests a calculated effort to make access difficult and perpetuate the suffering of the displaced, a deliberate policy.

93. This strategy has been seen before. In March 1995, President of Republika Srpska Radovan Karadzic, reacting to international pressure, issued Directive 7. It specified that the Republika Srpska army was to “by planned and well-thought out combat operations, create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants of Srebrenica.” Part of the plan included the blocking of aid convoys. The Directive stated that “the relevant State and military organs responsible for the work of UNPROFOR and humanitarian organizations shall, through planned and unobtrusively restrictive issuing of permits, reduce and limit the logistics support of UNPROFOR to the enclaves and the supply of material resources to the Muslim population, making them dependent on our good will while at the same time avoiding the condemnation of the international community and international public opinion.”

### ***Usurpation of land belonging to IDPs***

94. The DPA commits the GoS to recognising traditional rights including land rights. The GoS has formally committed to promote returns of those displaced. But there is little information that such voluntary returns have occurred or that the GoS has taken steps to support them. Acts such as crop destruction, and the burning of arable land by militias prevent returns. Further, no security is guaranteed: as armed forces or Militia Janjaweed are stationed in the vicinity of abandoned villages, persons displaced cannot return.

95. The civilians recently displaced from Seleia did not return to the town, because of the presence of large numbers of GoS troops in the area and of persistent looting of local residents by Militia Janjaweed in and around Seleia.

96. In South and West Darfur, IDPs’ land is being occupied by other tribes, in some cases with GoS acquiescence or active support. As an example, monitoring of destroyed and abandoned Fur and Massalit villages in West Darfur indicates that so far, more than one of every three villages monitored has been occupied by other tribes, including those affiliated with Militia Janjaweed.

97. Resettlements deprive persons displaced of a place to return to or create an unacceptable level of risk, since villages are surrounded by Militia Janjaweed. Land is being usurped. Land occupation can serve to consolidate an ethnic cleansing, difficult to reverse. There is concern that the ongoing census will crystalize the situation.

### ***The focus on those most responsible for the most serious crimes***

98. As described above, the information gathered points to an ongoing pattern of crimes committed with the mobilization of the whole state apparatus. The coordination of different bureaucracies, ranging from the military to the public information domains, suggest the existence of a plan approved and managed by GoS authorities at the highest

level. Failure to punish any individuals with any level of responsibility for alleged crimes, including Ahmad Harun, further underscores the support of high level GoS members for these crimes and for those committing them.

99. The Office will present a full account of these criminal activities to the Judges based in the evidence collected, identifying the role of those most responsible in the organization, commission and cover-up of crimes in Darfur.

### **The investigation into attacks on AU and UN personnel**

100. In Darfur today, different parties are targeting those who came to help civilians, the AU and UN Peacekeepers, the aid workers. Such attacks can constitute war crimes within the ICC's jurisdiction; they also have a direct impact on the delivery of vital services and thereby exacerbate the suffering of vulnerable groups. They impact on the lives of thousands. This is an ongoing concern. It is recalled that half of the casualties suffered by the AU Mission in Sudan (AMIS) occurred in 2007.

101. OCHA reported since the start of the year 106 vehicles hijacked, one driver of the WFP killed and 26 still missing; the rate of hijackings is 350 per cent higher than the already alarming numbers of 2007. So far, 42 humanitarian premises have been assaulted and six aid workers killed. John Holmes has assessed that "rebel groups and individuals associated with them appear to be primarily responsible for the attacks on convoys and hijackings."

102. The present focus of the Office investigation is the 29 September 2007 attack on Haskanita in which AMIS 10 soldiers were killed, 8 seriously injured and 1 unaccounted for. Nigeria, Mali, Senegal and Botswana lost peacekeepers during that attack. The Haskanita incident appears to have been committed by rebel forces.

103. In December, Council Members emphasized that no effort should be spared to bring the perpetrators to justice. The Office encouraged Council members to submit any information they have on these crimes.

104. Preliminary contacts have been taken with and requests for information and assistance have been sent to the AU, the UN, to 5 individual countries and other organizations. Preliminary interviews have been conducted. The Office received information that requires corroboration on the possible responsibility of members of two rebel factions. Credible sources suggest that one goal of the alleged criminals could have been to attain international recognition and inclusion in the peace talks. This allegation also requires further corroboration.

## **CONCLUSION**

105. The UN Security Council referred the Darfur situation to the Prosecutor, recognising that international justice is an integral part of a comprehensive solution for Darfur. The Council must ensure compliance with UNSCR 1593 (2005) and the full and immediate cooperation of the GoS in the arrest and surrender of Ahmad Harun and Ali Kushayb. International justice can thus be a contribution to ending the crimes in Darfur.



106. Massive crimes are committed today in Darfur. The Government has the duty to control violence on its territory. It is its right and responsibility. But civilians may not be attacked. There are no excuses for bombing schools or raping girls in front of their families. Such acts are criminal acts.

107. The Office is proceeding with two new investigations.

108. There are allegations of crimes committed against peacekeepers and humanitarian personnel. Rebels are alleged to be responsible in particular for the killing of AU peacekeepers in Haskanita. Such acts are under investigation.

109. The mobilization of the state apparatus to plan, commit and cover up crimes against civilians, in particular the Fur, Massalit and Zaghawa, is the focus of the Office's other investigation. GoS forces associated with Militia Janjaweed target civilians in villages and camps. GoS aircraft bomb civilian targets, including markets and schools. Widespread rapes are intended to destroy the foundations of communities. The humanitarian situation is manmade and deteriorating. In and around the camps for displaced persons, insecurity and poverty, meant to destroy the spirit and existence of entire groups, are organized. Impunity reigns.

110. Crimes being committed today in Darfur cannot be denied, or minimized. Decisions to commit crimes, to deny crimes, to disguise crimes are taken at the highest level. Denial of crimes, by the authorities that vowed to protect Darfurians, is an additional harm to the victims. If the international community is persuaded to look away and fails to recognize the situation for what it is, the execution of a massive criminal plan, it would be a final blow to the victims, left with no hope for the present and no prospect for the future.

111. The Office will fulfil its duties and present its evidence before the Judges of the International Criminal Court. Justice efforts should be part of the Council's comprehensive strategy to protect the life of millions of Sudanese citizens in Darfur.