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

New York, 3 December 2008

English Version

*Check against delivery*

Mr. President, Excellencies

I thank you for the opportunity to brief the Council again on my judicial activities. As in the past, I will endeavour to give you as much clarity as possible on the steps foreseen by my Office.

One year ago, in December 2007, I informed you that my Office would investigate who bears the greatest responsibility for ongoing attacks against civilians in Darfur; who maintains Minister Harun, a man indicted for war crimes and crimes against humanity, in a position to commit crimes; who instructs him and others. I also informed the Council that I was planning to investigate a third case focusing on the attack against African Union Peacekeepers.

In June 2008, I informed this Council about the details of those two cases.

I described the attacks against ethnic groups throughout Darfur, in their villages and in the camps for displaced persons, attacks which have been pursued for a period of five years. Such acts have required the sustained mobilization of the Sudanese state apparatus, including the military, security and intelligence services, the integration of the Militia/Janjaweed, the coordination of the diplomatic and public information bureaucracies and the control of the judiciary. I indicated that the case would be presented to the Judges by mid- July 2008.

I described the progress of the investigation into the murderous attack by rebels against peacekeepers in Haskanita in September 2007.

I reported again that the Sudan has taken no steps to arrest and surrender Ahmad Harun and Ali Kushayb against whom the Judges issued arrest warrants since April 2007.

Finally I asked the Security Council to send a strong message to the Government of the Sudan requesting cooperation and compliance.

Presidential Statement 21 of 16 June 2008 sent this strong and united message, stating I quote "The Security Council takes note of the efforts made by the Prosecutor of the International Criminal Court to bring to justice the perpetrators of war crimes and crimes against humanity in Darfur ... and the Council urges the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593, in order to put an end to impunity for the crimes committed in Darfur." UNSCR

1593 gave jurisdiction to the Court. Presidential statement 21 confirmed your support to the judicial work of the Court.

Mr President,

As announced, on 14 July 2008, I requested Pre-Trial Chamber I to issue an arrest warrant against President Omar Al Bashir, on charges of genocide, crimes against humanity and war crimes.

The evidence shows that in March 2003, President Al Bashir ordered the attacks against the Fur, Masalit and Zaghawa. Stating "*I want no prisoners or wounded, only scorched earth*", he triggered brutal attacks in the villages and in the camps for displaced persons. At least 35.000 persons have been killed, around 300.000 suffered a 'slow death', thousands of women and girls are the victims of rape. 2.5 million people in the camps, today, are subjected to conditions of life calculated to bring about their physical destruction.

In response to the Application, Presidential Adviser Bona Malwal said on 25 July : "*We are telling the world that with the indictment of our president Al-Bashir we can't be responsible for the well-being of foreign forces in Darfur*" ; Adam Hamid Musa, recent governor of South Darfur, threatened that there will be "*more genocide like it has not seen before by anyone*", if President Al Bashir is indicted ; and President Al Bashir himself said that "*we are not looking for problems, but if they come to us then we will teach them a lesson they won't forget.*"

Such statements inciting violence are threats against the victims and against the men and women deployed on the ground under the authority of this Council. Such threats should be seen for what they are – a confirmation of criminal intentions.

The Judges will rule shortly on this Application. It is time to be prepared for their ruling.

On 20 November 2008, I presented to Pre-Trial Chamber I the Haskanita case, against three rebel commanders allegedly responsible for the war crimes of directing attacks against peacekeepers, murder and pillaging. They led forces of around 1,000 men with heavy weapons to attack AMIS peacekeepers. They killed twelve peacekeepers and severely wounded eight others. Such attacks against peacekeeping operations constitute exceptionally serious offences ; they strike at the heart of the international system established for the purpose of maintaining peace and security ; they affect the millions of civilians that peacekeepers are mandated to protect.

In response to the Application, there have been reactions by five rebel groups, parties to the conflict, stating that they are ready to collaborate with the ICC and to hand over any member of their movement if requested by the Court.

Such words must be followed by actions. Individuals involved in the crimes will have to come to The Hague and appear before the judges. No one is above the law.

Mr President

Over the last months, the Government of the Sudan did not heed UNSC Presidential Statement 21.

Genocide continues. Rapes in and around the camps continue. Humanitarian assistance is still hindered. More than 5,000 displaced persons die each month.

In Kalma camp on 25 August, Government forces armed with guns attacked civilians, Furs, who sought to defend themselves with sticks and spears. At least 31 were killed, more than 65 wounded including women and children. On 10 September, my Office sent a letter to the Government of the Sudan, requesting information on *"national investigations or prosecutions planned or underway in relation to the events of 25 August."* There has been no response.

In the camps all over Darfur, the HAC, or Humanitarian Aid Commission, within Minister Harun's remit, working in close association with the intelligence and security apparatus, is as active as ever. The most recent act of HAC, significantly, is the halting of mental health care for the displaced.

Day after day, UNAMID and others tally the incidents of rapes against women and girls. Yet President Bashir publicly stated as recently as 7 October 2008, that *"Mass rape does not exist"* in Darfur; he stated that *"women make these claims because they are relatives of the rebels"*.

Villages are still bombed as evidenced by recent air strikes on Dairi Shagi and Oum Al-Wadi in North Darfur. Cultivated land and livestock are destroyed. A further 300,000 people have been displaced since the beginning of this year.

Mr President,

Complementarity is a cornerstone of the Rome Statute. Complementarity is an opportunity for each State to shoulder their own primary responsibility to investigate and prosecute crimes. And as Ivo Sanader, Prime Minister of Croatia, described in one concise sentence in the UN General Assembly: "The ICC provides a vital recourse to justice in situations where national Governments cannot or will not address these issues themselves".

In the present case, the complementarity test is straightforward to apply. There has been no change since June. There are no national proceedings in the Sudan in relation to the massive crimes investigated by the Court. The report of the Government of the Sudan circulated to the African Union and the United Nations on 17 September 2008 officially confirms it. The report indicates that over the last 5 years, the Sudan has tried and completed only seven cases, from the dockets of the ordinary courts, and with no connection to the campaign of crimes coordinated by Ahmad Harun, perpetrated by Ali Kushayb and others, and, as the Prosecution alleges, ordered by President Bashir. The gravest case investigated is the case of a student killed during a demonstration. In spite of all the statements about the work of the Special Courts since 2005, and in spite of recent announcements and appointments, nothing has been done.

Rumours of an investigation of Ali Kushayb have not materialized to this day. And Ahmad Harun, as all of you know, is still the Minister of State for Humanitarian Affairs of the Sudan in charge of the people he displaced. President Bashir has publicly declared that he would not hand over Minister Harun to the ICC, because Minister Harun was implementing his instructions. The impunity afforded to Ahmad Harun is a direct message to all perpetrators of crimes in Darfur that the President will protect those who are following his orders. It is a threat to the victims, to the personnel you mandated on the ground, and a direct challenge to the authority of this Council.

Mr President,

President Kikwete of Tanzania stated in the UN General Assembly, as President of the African Union, that the most urgent matter is to save lives in Darfur. His were wise words. Crimes must be stopped.

For years, the Security Council and member States have warned the Sudanese authorities of the illegality of bombing schools, of the dangers of not disarming the Militia/Janjaweed.

The issue of disarming the local militia was especially important. Their mobilization allowed President Al Bashir for years to disguise the conflict as a tribal one that had nothing to do with state forces. President Al Bashir created the illusion of Militia/Janjaweed autonomy, and this helped him to continue to carry out the genocide in the face of international scrutiny.

In order to stop the crimes, the Council has repeatedly formulated key recommendations: disarming the Militia/Janjaweed; ending air strikes against civilian targets; facilitating aid; promoting accountability. In response, the GoS has offered empty promises, which have been contradicted by their actions.

As early as June 19, 2004 President Bashir ordered a "complete mobilization to disarm all illegal armed groups in the Darfur region . . . including the Janjaweed." Only to state the day after his pledge that it "applied only to the bandits, not to the Popular Defence Forces, Popular Police or other tribesmen armed by the state to fight the rebels".

Again on 3 July 2004, the Government of the Sudan issued with the UN a joint communiqué in which the Government promised to "disarm the militias, bring the perpetrators of human rights abuses to justice, and remove any obstacles to humanitarian access."

The list is endless

On 15 September 2007, in Italy, President Bashir promised a ceasefire. Three weeks later Sudanese troops and their allied militias killed over 30 civilians in an attack on Muhagiriya in South Darfur.

On 19 December 2007, President Bashir gave a public address, stating the Government's unilateral commitment to ceasefire in Darfur. Aerial bombardments of civilians ensued within a month with strikes against the villages of Abu Surouj, Sirba and Suleia in January and February 2008.

On 17 October 2008, the UN Secretary General reported to this Council that the GoS had yet to stop aerial bombardments; had yet to take steps to disarm the Militia/Janjaweed, and had yet to comply with its obligations under humanitarian law to protect civilians.

On 12 November, President Bashir pledged once again to commit to a ceasefire and to disarm the Janjaweed. On 19 November, one week later, Secretary-General Ban Ki Moon said the United Nations was again looking into reports of continuing aerial bombings on civilians in Darfur.

When it comes to Justice, also, only words have been offered.

Opening the Sudanese People's Initiative one month ago, President Bashir said *"Because we believe that justice is a paramount value and ... is the foundation of good governance, we announce our commitment to establish the rule of law in all parts of Darfur in order to do justice to the oppressed ... I have instructed all legal bodies to continue performing their duties in Darfur without laxity, paying a special attention to acting on complaints and finalizing legal procedures in the best possible way in order to guarantee the conduct of fair trials in total transparency."*

But every day we hear of human rights defenders arrested and tortured in Khartoum; three of them were arrested last week and tortured on account of giving information to the ICC; so called "suspected ICC witnesses" are arrested and tried for treason. Sudanese officials are looking for possible witnesses to silence them; this is not how evidence is collected; this is how crimes are covered up. This is the *"justice to the oppressed"* that President Al Bashir is talking about.

Mr President,

All the partners of the Sudan have advised the Sudan that the only way ahead is to take "concrete and concise steps". The Sudanese authorities have not taken any. President Al Bashir could have disarmed the Militia, stopped the attacks on civilians, returned the land to the displaced, arrested and surrendered Harun and Kushayb to the ICC in the Hague. He has not done so. He continues with the implementation of his plan to destroy entire groups; his criminal behaviour includes providing immunity and concealing the crimes. He is using the diplomatic apparatus and campaigning against the ICC. He is trying to convince organizations and this Council that you have to protect him. The international community cannot be part of such a cover up, Faced with genocide and crimes against humanity, we know that inaction and "business as usual" are part of the crimes

Listen to his victims. They are not afraid of justice.

Mr President, Excellencies,

Let me conclude.

You have identified four tracks for a comprehensive solution in Darfur: peace, security, humanitarian aid and justice. None can succeed in isolation.

Peacekeepers and aid workers should not be forced to work in an environment where the crimes they are trying to prevent are ordered by President Al Bashir himself. In such an environment, their efforts will never be enough. As I told you in June, as long as the arsonists are in charge, it does not matter how many fire-fighters you send. There will never be enough.

You requested judicial intervention. I investigated those bearing the greater responsibility. All the arrest warrants, and all the requests for arrest warrants, have been made public. There are no others. Ahmed Harun and Ali Kushayb must be surrendered to the Court. All parties to the conflict must respect the law.

The decision on the request for an arrest warrant against President Al Bashir is now in the hands of the Judges. The Council must be prepared. If the judges decide to issue an arrest warrant against President Al Bashir, there will be a need for united and consistent action to ensure its execution. President Al Bashir will insist to deny his crimes and will offer a few words. President Al Bashir will insist to get your protection.

The International community cannot conceal the crimes. President Al Bashir criminal actions should not be ignored, statements of ceasefires followed by bombings, denial of massive rapes or promises of justice while torturing the witnesses should not be supported. The international community cannot be part of any cover up of genocide or crimes against humanity.

As the Minister of Foreign Affairs of Costa Rica, Bruno Stagno Ugarte said in June *"All we need is for the States members of the Security Council to... muster the political will necessary to enforce the full compliance of resolution 1593 by the authorities in Khartoum. Enough appeasement — the time has passed to continue accommodating evil."*

Thank you.