



FACT SHEET

The Situation in Darfur, the Sudan

BACKGROUND

- On 31 March 2005, the Security Council adopted Resolution 1593 referring the Situation in Darfur, the Sudan, to the Prosecutor.
- In accordance with the Rome Statute (“the Statute”), the Office of the Prosecutor (“the Office”) conducted a preliminary examination of the situation. On this basis, the Prosecutor opened an investigation into the situation in Darfur, the Sudan, on 1 June 2005.
- After a 20-month investigation into crimes allegedly committed in Darfur since 1 July 2002, the Prosecutor has presented evidence to the judges.
- On 27 February 2007, pursuant to Article 58(7) of the Statute, the Prosecutor applied to Pre-Trial Chamber I, a panel of 3 judges, requesting the Chamber to issue summonses to appear (“the Application”) against Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman (also known as Ali Kushayb).
- Based on the evidence collected, the Prosecutor has concluded that there are reasonable grounds to believe that Ahmad Harun and Ali Kushayb bear criminal responsibility for crimes against humanity and war crimes committed between 2003 and 2004.
- The crimes alleged in the Application were perpetrated during attacks carried out jointly by Sudanese Armed Forces and Militia/Janjaweed¹ upon 4 villages and towns in West Darfur: Kodoom, Bindisi, Mukjar and Arawala. The Prosecutor’s investigation has revealed the underlying operational system that enabled the commission of those massive crimes.

¹ The term “Militia/Janjaweed” in the Application refers to those forces that were mobilised, armed and funded by the Government of the Sudan to fight in the counterinsurgency in Darfur. The Militia/Janjaweed are described using various terms such as “Janjaweed”, “Fursan” “Mujahideen” and “Bashmerga”. The term Janjaweed literally means “a man (a devil) on horse”.

- The Application is a public document, although redacted when necessary to protect the identity of witnesses. By making the Application public, it exposes the facts as conveyed by the victims and witnesses the Office interviewed. The victims deserve to know that the Office is working to ensure justice in Darfur and we are making progress.
- The Office is also concerned with crimes that allegedly continue to be committed in Darfur and with the spill-over of violence into neighbouring countries, Chad and the Central African Republic. Our mandate includes contributing to the prevention of crimes, and we are monitoring allegations of new crimes.

THE INVESTIGATION

- In accordance with its duties under the Statute, the Office has conducted an independent investigation.
- Since the start of the investigation in June 2005, the Office has collected statements and evidence during 70 missions in 17 countries.
- Reaching the victims is a priority. The Office has screened hundreds of potential witnesses and taken more than 100 formal witness statements, many of which were from victims.
- The Office also conducted five missions to the Sudan and obtained information from a number of Government officials. The participation of the Government of the Sudan in the process has been important to ensure an impartial investigation.
- For the purposes of the Application, the Prosecutor has relied primarily on:
 - (1) statements from victims and other eyewitnesses to rebel attacks and attacks by Sudanese Armed Forces and Militia/Janjaweed in the Darfur region;
 - (2) statements from individuals knowledgeable about activities of the Sudanese Government officials and the Militia/Janjaweed in conducting the counterinsurgency campaign in Darfur;
 - (3) documents and other information provided by the Sudanese Government;
 - (4) Report of the UN International Commission on Inquiry (“UNCOI”) and other materials provided by the UNCOI; and
 - (5) Report of the Sudanese National Commission of Inquiry (“NCOI”) and other materials provided by the NCOI.
- The Office has thoroughly examined incriminating and exonerating facts.

THE CRIMES

- The crimes alleged in the Application were perpetrated in the context of a non-international armed conflict in the Darfur region between the Government of the Sudan and rebel forces, including the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), from about August 2002.
- A characteristic of the armed conflict in Darfur is that the majority of civilian deaths in the region have been caused during attacks on towns and villages in Darfur carried out by the Militia/Janjaweed attacking either singly or together with Sudanese Armed Forces. The vast majority of attacks carried out by the Sudanese Armed Forces and/or Militia/Janjaweed in Darfur were directed at areas inhabited mainly by Fur, Masalit and Zaghawa tribes.
- The Sudanese Armed Forces and Militia/Janjaweed did not target any rebel presence within these villages. Rather, they attacked the villages based on the rationale that the tens of thousands of civilian residents living in and near the villages supported the rebel forces.
- This strategy became the justification for the mass murder, summary execution, mass rape, and other grave crimes against civilians who were known not to be participants in any armed conflict. The strategy also called for and achieved the forced displacement of entire villages and communities. As a result, hundreds of villages in Darfur have been pillaged and destroyed. Two million people are displaced from their homes.
- The Application alleges that Ahmad Harun and Ali Kushayb bear criminal responsibility in relation to 51 counts of war crimes and crimes against humanity including: rape; murder; persecution; torture; forcible transfer; destruction of property; pillaging; inhumane acts; outrage upon personal dignity; attacks against the civilian population; and unlawful imprisonment or severe deprivation of liberty.

THE NAMED INDIVIDUALS

- From about April 2003 to about September 2005, Ahmad Harun was State Minister of the Interior and responsible for the "Darfur Security desk." The most prominent of the coordination tasks entrusted to Ahmad Harun in this capacity was his management of, and personal participation in, the recruitment of the Militia/Janjaweed to supplement the Sudanese Armed Forces. He recruited Militia/Janjaweed with full knowledge that they, often in the course of joint attacks with forces of the Sudanese Army, would commit crimes against humanity and war crimes against the civilian population of Darfur.

- Ahmad Harun was often physically present in Darfur to carry out his duties, visiting Darfur on a regular basis beginning in about April 2003. When describing Harun, witnesses immediately identified him as the official from Khartoum responsible for mobilising, funding, and/or arming the “Janjaweed” or “Fursan”. Witnesses also often stated that they saw Ahmad Harun meeting with or addressing leaders of the Militia/Janjaweed, including Ali Kushayb.
- Ali Kushayb, was the “Aqid al Oqada,” or “colonel of colonels,” in the Wadi Salih locality of West Darfur. By mid-2003 he commanded thousands of Militia/Janjaweed.
- Ali Kushayb led the attacks on the villages of Kodoom, Bindisi, Mukjar, and Arawala and also mobilised, recruited, armed and provided supplies to the Militia/Janjaweed under his command.
- The Prosecution alleges that Ahmad Harun and Ali Kushayb joined each other, and others, in pursuing the shared and illegal objective of persecuting and attacking civilian populations in Darfur.

VICTIMS AND WITNESSES

- Under the Statute, the Prosecutor and the Court are obligated to take measures to protect victims and witnesses.
- Victims of alleged crimes committed in the Darfur region were interviewed in other countries because of the ongoing insecurity in Darfur. Under the Statute, the Prosecutor and the Court are obligated to take measures to protect victims and witnesses. To uphold those duties to protect the well-being of victims and witnesses under Article 68(1), the Prosecution determined not to go to Darfur to seek statements from victims.
- Throughout the investigation the Prosecution monitored the security of victims and witnesses and implemented protective measures. The Prosecution and the Victims and Witnesses Unit of the Registry will continue to monitor and assess the risks to witnesses.

ADMISSIBILITY

- The ICC is a court of last resort, and may initiate cases only where: (i) there has not been any national investigation or prosecution of the case; or (ii) there is, or has been, such an investigation or prosecution, but the state is unwilling or unable genuinely to carry out the investigation or prosecution.

- In this context, a “case” is defined by the specific incidents during which one or more crimes within the jurisdiction of the Court seem to have been committed by one or more identified individuals. For a case to be *inadmissible*, the national proceedings must encompass both the person and the conduct which is the subject of the case before the Court.
- The Prosecutor has devoted considerable resources and given careful attention to the issue of admissibility. The Office has undertaken 5 missions to the Sudan, most recently at the end of January 2007, gathering information on national proceedings from relevant Government departments, including the judiciary, prosecution and police service.
- Having analysed all of the relevant information, the Prosecutor has concluded that the Sudanese authorities have not investigated or prosecuted the case which is the subject of the Application.
- On this basis, the Prosecution has concluded that the case is admissible. This assessment is not a judgement on the Sudanese justice system as a whole.
- If an issue is raised regarding admissibility, the judges will make the final determination.

ENSURING the APPEARANCE of AHMAD HARUN and ALI KUSHAYB

- The Application is a document filed by the Office to the Pre-Trial Chamber requesting the judges to issue Summonses to Appear against Ahmad Harun and Ali Kushayb. The Application is not a document containing the charges.
- Under Article 58, if the Pre-Trial Chamber is satisfied that there are reasonable grounds to believe that the named individuals have committed crimes within the jurisdiction of the Court, the Chamber may issue either a summonses to appear or warrants of arrest against Ahmad Harun and Ali Kushayb.
- The Sudanese Government, as the territorial State, has both the legal responsibility to facilitate the appearance of the individuals, and the ability to do so.

NEXT STEPS

- By submitting our evidence to the judges, the Office is fulfilling its responsibilities under the Statute, as well as the task set by the Security Council in Resolution 1593. The judges will review the evidence submitted. Ultimately the judges will determine what will happen next.

KEY DATES

- 31 March 2005: The Security Council adopts Resolution 1593 referring the Situation in Darfur, the Sudan to the Prosecutor.
- 5 April 2005: OTP receives more than 2,500 items from the International Commission of Inquiry for Darfur; the Prosecutor received a sealed envelop from the Secretary-General containing the Commission's conclusions.
- 1 June 2005: Based on the OTP's analysis, the Prosecutor determines that there was "sufficient information to believe that there are cases that would be admissible in relation to the Darfur situation."
- 1 June 2005: The Prosecutor opens an investigation into the situation in Darfur, the Sudan.
- 29 June 2005: The Prosecutor delivers the First Report and Statement to the Security Council pursuant to Resolution 1593.
- November 2005: First mission of the Office of the Prosecutor to the Sudan.
- 13 December 2005: The Prosecutor delivers the Second Report and Statement to the Security Council pursuant to Resolution 1593.
- February 2006: Second mission of the Office of the Prosecutor to the Sudan.
- 14 June 2006: The Prosecutor delivers the Third Report and Statement to the Security Council pursuant to Resolution 1593.
- June 2006: Third mission of the Office of the Prosecutor to the Sudan.
- August 2006: Fourth mission of the Office of the Prosecutor to the Sudan.
- 14 December 2006: The Prosecutor delivers the Fourth Report and Statement to the Security Council pursuant to Resolution 1593.
- January / February 2007: Fifth mission of the Office of the Prosecutor to the Sudan.