



5 December 2007

**SIXTH 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 1593 (2005). The Prosecutor outlines in this report activities undertaken since the last report to the Council on 7 June 2007: efforts to secure cooperation, investigative and monitoring activities.

2. On 27 April, Pre-Trial Chamber I of the ICC issued warrants of arrest against Ahmad Muhammad Harun, former Minister of State for the Interior and current Minister of State for Humanitarian Affairs of the Sudan and Ali Muhammad Ali Abd Al Rahman, otherwise known as Ali Kushayb—a Janjaweed/militia leader—for war crimes and crimes against humanity. The Prosecution demonstrated that they joined together to persecute and attack civilians who were not participants in the conflict, based on the rationale that those civilians were rebel supporters.

3. Following the Pre-Trial Chamber's decision, the Registry transmitted requests to execute the warrants to the Government of the Sudan (GoS), States Parties to the Rome Statute, Security Council members and the Sudan's neighbour countries. The GoS was formally notified on 16 June 2007. Under the terms of UNSCR 1593 (2005), the UN Security Council decided "that the Government of the Sudan and all other parties to the conflict in Darfur shall cooperate fully and provide any necessary assistance to the Court and the Prosecutor pursuant to [this] resolution".

4. The Office of the Prosecutor reports that the GoS is not cooperating. The GoS has taken no steps to arrest and surrender Ahmad Harun and Ali Kushayb. Ahmad Harun is still, Minister of State for Humanitarian Affairs. Ali Kushayb is reported to be moving about freely in the Sudan.

5. In Darfur today, crimes within the jurisdiction of the Court continue to be committed. There are consistent reports of targeted attacks against civilians, in particular against those 2.5 million people forcibly displaced into camps. Persons displaced are

subjected to persecution, abuses and violations of fundamental rights—sexual violence, illegal detentions, unlawful killings, looting; they are kept within the camps in a state of destitution and insecurity, discouraged from organizing themselves, often surrounded by hostile forces, offered no viable possibility to return home and threatened with forced displacement to hostile areas. Together, available information points not to chaotic and isolated acts but to a pattern. Attacks are taking multiple forms but the rationale is still the same: target civilians seen as rebel supporters.

6. Ahmad Harun is still allowed to play a role in this situation. As Minister of State for Humanitarian Affairs, he has been put in a position to control the livelihood and security of those people he displaced. The GoS has maintained him in this position with full knowledge of his past and present activities. GoS officials, far from taking steps to stop the crimes, publicly deny their existence. These are clear indications of the support Ahmad Harun is receiving. Such active support to a person charged by the Court and to his activities warrants further investigations by the Office.

7. The Office has also documented attacks allegedly committed by rebel factions in particular against peacekeepers and humanitarian convoys. Such attacks warrant further investigations by the Office.

8. The international community is striving for a comprehensive solution. When the UN Security Council referred the Darfur situation to the Prosecutor, it made international justice, including the investigation and prosecution of crimes committed, an integral component of such a solution. To uphold this decision, Council members must ensure respect for UNSCR 1593 (2005) and secure the full and immediate cooperation of the GoS to arrest and surrender Ahmad Harun and Ali Kushayb.

## **JUDICIAL PROCEEDINGS**

9. The Office of the Prosecutor 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 Prosecution presented its application against those, who according to the evidence collected, bear the greatest responsibility for those crimes. On 27 April, the Judges 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.

## **ADMISSIBILITY**

10. The Office has applied the Rome Statute's principle of complementarity. All relevant Sudanese accountability initiatives have been closely followed and assessed. The Office undertook missions to Khartoum in 2006 and 2007, gathering information on national proceedings. This analysis is not an assessment of the judicial system as a whole, but an assessment as to whether or not the Sudan has investigated or prosecuted, or is investigating or prosecuting genuinely the case(s) selected by the Office.

11. In its 27 April decision, Pre-Trial Chamber I concluded that there appeared to be no proceedings which 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, on the basis of the evidence and information provided by the Office in relation to both Ahmad Harun and Ali Kushayb and 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 against Ahmad Harun and Ali Kushayb falls within the jurisdiction of the Court and appears to be admissible.

12. Since then, the Court has received no relevant communication from either the GoS or from Ahmad Harun or Ali Kushayb.

13. The GoS has continued to publicly insist that it is willing and able to prosecute all those responsible for serious crimes. However, the GoS has now known specifically the nature of the case against Ahmad Harun and Ali Kushayb for ten months and has taken no further steps. In relation to Ali Kushayb, against whom the GoS had previously indicated that there were investigations, on 30 September then Foreign Affairs Minister Lam Akol reportedly stated that he was released for lack of evidence. Sudan's Justice Minister Ali Al Mardi—who in June was quoted as saying that any attempts to arrest Harun and Kushayb through Interpol would amount to 'kidnapping and international piracy'—reiterated on 2 October through the Sudanese Media Centre the GoS refusal to surrender any Sudanese, stating that the Sudanese judiciary is capable of holding accountable all of those who violate internal laws.

14. The GoS position on the situation of Ahmad Harun was also expressed by the Minister of the Interior, Zubeir Bashir Taha, quoted on 6 August as saying "Harun has been interrogated about the allegations, and there is no case. The evidence does not stand scrutiny, and whether it does or not, it is a matter for Sudan to decide and act upon. The Prosecutor has no jurisdiction here. He is an intruder."

15. All public statements concerning Ahmad Harun indicate that he would neither be surrendered nor subject to national proceedings. The GoS has not conducted nor is it conducting any proceedings in relation to the Prosecution's case.

#### **INTERESTS OF JUSTICE - INTERESTS OF THE VICTIMS –OUTREACH**

16. The Office has pursued contacts with international organisations including 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 work of the Office. In furtherance of the Court's outreach strategy, Court documents have been translated into Arabic and disseminated. The Registrar travelled to Chad, to refugee camps, to explain the Court's activities and in particular the rights of victims to participate in the proceedings. Refugees voiced their strong wish that Ahmad Harun and Ali Kushayb be arrested.

17. Since then, the Office and the Court dedicated specific efforts to inform the Arab-speaking public through international and regional Arabic and Sudanese media. The Prosecutor travelled to Cairo in July and November 2007. The Court conducted workshops in Africa and at the seat of the Court. There is worrisome information that Sudanese participants in such activities have been threatened upon returning to Sudan.

## **COOPERATION**

18. Paragraph 2 of UNSCR 1593 (2005) requires that the GoS and all other parties to the conflict in Darfur shall 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**

19. The Office has taken four factors into consideration in assessing GoS cooperation: the existence of a request made to the GoS by the Court; the existence of an obligation to comply with the request; the response of the GoS; and the implications for the UN Security Council and the Court.

20. The Court has made a request to the GoS. Following the issuance of arrest warrants, Pre-Trial Chamber I assigned to the Registrar the task of “preparing and transmitting the requests for the arrest and surrender of Ahmad Harun and Ali Kushayb to the competent authorities of the Republic of the Sudan.” To this end, the Registrar, on 4 June 2007, prepared requests to the GoS for the arrest and surrender of Ahmad Harun and Ali Kushayb. The requests for cooperation were delivered to the GoS on 16 June 2007. Interpol Red Notices were subsequently disseminated. In addition, there have been official statements by the Prosecutor and Court officials, in particular the President in his 1 November address to the UN General Assembly, requesting the arrest and surrender of Ahmad Harun and Ali Kushayb.

21. The GoS is under an obligation to cooperate with the Court’s requests. As recalled by the Pre-Trial Chamber on 27 April 2007, “the United Nations Security Council, acting pursuant to Chapter VII of the United Nations, decided that the Government of the Sudan and all other parties to the Darfur conflict, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.” The GoS is obliged to cooperate under Paragraph 2 of UNSCR 1593 (2005). The GoS has not respected its obligations under UNSCR 1593 (2005). The GoS has not cooperated with the Court, Ahmad Harun and Ali Kushayb have not been arrested and surrendered.

22. As reported before to the Security Council and in its application to the Court, the OTP had noted that “the Government of the Sudan..has..provided a degree of cooperation in response to the Prosecution’s requests.” That degree of cooperation no longer exists. Instead of ensuring the arrests of Ahmad Harun and Ali Kushayb, the GoS has chosen to protect them. Ahmad Harun continues to serve as a GoS Minister and has been granted additional responsibilities, including serving as Acting Minister for Humanitarian Affairs.

23. In its 27 February application the Office thoroughly described the operational system that Ahmad Harun coordinated, utilising the Militia/Janjaweed to commit crimes. The GoS was in a position not only to cooperate in the arrest of Ahmad Harun but to break this system and contribute to halting crimes. However, the GoS has decided to deny the crimes, and to protect and promote Ahmad Harun. The GoS has not moved beyond superficial inquiries of Ahmad Harun's behaviour, conducted in 2004 by the Sudanese National Commission of Inquiry.

24. Since the issuance of the arrest warrants, Ahmad Harun has enjoyed a high profile in the Sudanese media and in public life, participating in more than 17 high level official events organized by his Ministry, the GoS or the ruling National Congress Party. He accompanied President Bashir to Darfur on 18-22 June 2007; he visited Nyala on 20 August, as arrest operations started in Kalma; he attended a Humanitarian Aid Commission (HAC—a Commission within the Ministry of Humanitarian Affairs,) meeting on 27 August, reporting on resettlements in Darfur; he headed a meeting for the follow-up of the GoS-UN Joint Communiqué to facilitate humanitarian aid to Darfur on 1 September; he—along with the Minister of Interior and Director General of the Police—attended the meeting on 5 September where President Bashir appointed Nafie Ali Nafie to the Darfur Portofolio and reported on the “improvement” of the humanitarian situation in Darfur; and on 29 September, he presided over the presentation of the Ministry's Plan including for Darfur. He regularly attends security forces' functions such as graduation ceremonies. He was also appointed in September 2007 to a fact-finding committee on human rights violations and breaches of the transitional constitution in the south and north, and in November 2007 to a six person NCP-SPLM committee which was charged with conducting talks about the current crisis between the two parties.

25. As mentioned earlier, Ali Kushayb, previously said to be under investigation, has reportedly been released.

26. The GoS has failed to comply with its legal obligations under UNSCR 1593 (2005). The GoS's lack of cooperation is impeding the functioning of the Court as it cannot proceed with the case against Ahmad Harun and Ali Kushayb.

27. 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 Registrar's letter requested any such update by the GoS to be provided by 15 November. The Office has received no response from the GoS.

28. In accordance with UNSCR 1593 (2005), the Office reports to the Security Council that the GoS is not cooperating with the Office or the Court. The Office will also proceed to inform the competent Chamber of the Court.

## **African Union**

29. Paragraph 3 of UNSCR 1593 (2005) invites the Court and the African Union (AU) to discuss practical arrangements for facilitating the work of the Prosecutor and the Court, including the possibility of conducting proceedings in the region. As reported previously, the Office of the Prosecutor meets regularly with representatives of African States, of the African Group in New York, and of the AU. On 20 June 2007, the three Principals of the Court met with the President of the AU, Ghanaian President John Kufuor. The Prosecutor updated him on the Office's work, including on Darfur.

30. The Office is grateful for the cooperation provided bilaterally by AU member states. In relation to the Memorandum of Understanding (MOU) between the Court and the AU, President Kirsch sent a letter to AU Commission Chairperson Alpha Konare on 5 September. The AU Legal Counsel responded on 12 November and the MOU text is now in the process of being finalized.

31. It is the Office's hope that cooperation with the ICC and enforcement of the two arrest warrants will be addressed during the AU-EU Summit on 8-9 December in Lisbon.

## **Other States and Organisations**

32. The Office of the Prosecutor is grateful for State cooperation in its investigations and in the protection of witnesses, and for the public support they have expressed for the enforcement of the arrest warrants.

33. Since June, the Prosecutor and the Deputy Prosecutor have met respectively with UN Secretary-General Ban Ki-Moon and with Deputy Secretary-General Asha-Rose Migiro. The Prosecutor is grateful for the Secretary-General's efforts to remind President Bashir of his legal obligation to execute the arrest warrants. Such efforts from the UN and other organizations such as the EU and the AU are key to ensuring accountability.

34. The Prosecutor regularly meets with officials involved in seeking a comprehensive solution for Darfur: the UN Office of Legal Affairs, the Department of Peacekeeping Operations, the Department of Political Affairs, and the Office for the Coordination of Humanitarian Affairs, as well as the UN Special Envoy on Sudan, the High Commissioner for Human Rights, the UN Special Rapporteur on the situation of human rights in Sudan, and the UNSRSG on the prevention of genocide. The Prosecutor has explained that enforcement of the Court's decisions must be consistently and publicly presented as a non-negotiable, integral part of any comprehensive solution, a vital contribution to ending crimes and to achieving key political, security and humanitarian goals.

35. The Prosecutor has continued his constructive exchanges with the Secretary-General of the Arab League, as well as with its Member States, on the promotion of international criminal justice. Their support to the independence and impartiality of the Office's work remains invaluable.

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

36. The Office continues gathering information on ongoing crimes by all parties to the conflict. The Office is also monitoring the impact of the Darfur situation in Chad, and in the Central African Republic, both States Parties to the Rome Statute. In Chad, there are around 236,000 Sudanese refugees, and more than 170,000 IDPs, 50,000 more than reported in June. Insecurity in Eastern Chad significantly affects civilians. Sudanese refugees and Chadian civilians remain vulnerable to cross-border incursions. The deployment of a UN mission (MINURCAT) and a European Union operation (EUFOR) under UNSCR 1778 (2007) is an opportunity to improve security conditions; the Office looks forward to close cooperation with them.

### **Crimes within the Jurisdiction of the Court**

#### Background

37. As reported before to the UNSC, and as found by the Pre-Trial Chamber, crimes have been committed in Darfur from around August 2002 in the context of an armed conflict between the GoS and armed rebel movements.

38. The counter-insurgency campaign entered a new, more violent phase in 2003, after Ahmad Harun's appointment as Minister of State for the Interior and to the Darfur Security Desk, resulting in attacks mainly against Fur, Masalit and Zaghawa civilians.

39. In particular, under Ahmad Harun's coordination, "the Sudanese armed forces and the Militia/Janjaweed attacked the towns of Kodoom, Bindisi, Mukjar and Arawala and their surrounding areas between August 2003 and March 2004, while these towns were devoid of any rebel activities." They attacked these on the rationale that civilians in and near them were allegedly rebel supporters. This strategy became the justification for mass murder and rape of civilians who were not taking any active part in the hostilities.

#### Current situation

40. By 2005, these attacks had resulted in the uprooting and forcible displacement of entire communities (mainly Fur, Masalit and Zaghawa); and had made more than 4 million Darfurians dependent on assistance to survive. As the campaign of terror of 2003-2004 has achieved its aim and with international presence expanding, there emerges a new phase: a pattern of repeated abuses and targeted attacks directed in particular against the persons displaced.

41. The Office has identified numerous incidents which may constitute crimes within the ICC's jurisdiction: forcible transfer of civilians; murder; intentionally directing attacks against the civilian population; rape or other forms of sexual violence; and intentionally directing attacks against personnel or vehicles involved in a humanitarian assistance. These include strong allegations of crimes committed by all parties, including alleged rebel attacks against peacekeepers and humanitarian personnel. Such attacks can constitute war crimes within the ICC's jurisdiction.

*Attacks on AU, UN personnel, humanitarian staffs and convoys*

42. The Office continues to monitor attacks against AU and UN staff and humanitarian personnel by all parties to the conflict.

43. In general terms, OCHA reported in September that attacks on humanitarian relief convoys had increased in the past year by 150%. Between January and July, 64 relief vehicles were hijacked, and 132 members of staff were threatened at gunpoint. In June alone, 1 in 6 relief convoys were hijacked. Violent hijackings of humanitarian vehicles have a devastating effect on humanitarian access. 1/3 of West Darfur's population—the Darfur State with the best humanitarian access—is unreachable. Some IDP camps in Jebel Marra have received no aid in the last 6 months. The Office is monitoring this trend with concern.

44. On 29 October, 10 soldiers of the AU Mission in Sudan (AMIS) were killed, 8 seriously injured and 1 unaccounted after the attack on their Haskanita base; 17 vehicles were stolen, bringing the total to 20 casualties and 19 wounded. The Haskanita incident appears to have been committed by rebel forces.

45. There is no information that the GoS is taking measures to protect international forces. On the contrary, there are allegations that some Sudanese aircraft have been painted with UN or AU colours and flag and are being used in the counter-insurgency campaign in Darfur. Such acts—among others—undermine the UN and AU, create the impression of collusion and can encourage attacks against them. In turn, these attacks further limit access to those in need of assistance. Recent language to the media by Sudanese officials, indicating that Scandinavian peacekeepers would be at risk in Darfur, could lead to actually encouraging attacks against international forces when they deploy.

*Continued targeting and attacking of civilians in villages*

46. Previously, GoS and Militia/Janjaweed forces attacked villages, resulting in the forcible displacement of the civilian population thought to be associated with the rebels. Although most villages have thus been abandoned, such attacks continue. GoS forces and Militia/Janjaweed continue to target civilians in villages based on the rationale that they may be supporters of the rebels.

47. Between 2006 and 2007, 72 attacks were reported. Many attackers could not be identified. But as many as 26 of these reported attacks were coordinated GoS and Militia/Janjaweed attacks. These joint attacks include the attack on Deribat, Jebel Marra in December 2006, in which GoS ground forces together with Militia/Janjaweed attacked the town with aerial support. Dozens of women and girls were abducted and raped. In October 2007 in Mujaharija, attackers killed 48 civilians, including 5 children. 8 civilians were allegedly praying in the mosque when they were rounded up and slaughtered. Civilians left the town. Attacks continued in the area throughout October and November, causing further civilian suffering. After the events of 2003-2004, such familiar attacks are sufficient to terrorise the civilian population.



48. From November 2005 through July 2007, 364,174 individuals were newly displaced. In July, OCHA reported that 160,000 people had been newly displaced since January. Many camps cannot absorb new arrivals.

#### *Aerial bombardments*

49. Repeated aerial bombardments by GoS forces also contribute significantly to displacements.

50. The GoS continues to employ the tactic of aerial bombardments, notwithstanding abundant public notice that aerial bombardment of villages causes mass displacement. In addition, bombardments are conducted in conditions that appear to constitute an attack on the civilian population as such or on civilians not taking a direct part in hostilities, or on establishments such as schools, all with the result of killing civilians and forcing displacement. Among such incidents are the attack on Bir Maza in November 2006 and Abu Sakin in December 2006 killing 20 civilians and displacing over 1000; the attack on Um Rai in April 2007, killing and wounding civilians and destroying property and livestock, hitting a school with 170 children, and injuring several; the bombardment of Jebel Moon in West Darfur and areas of North Darfur in October 2007. In August 2007, bombings in Adilla allegedly produced 20,000 new IDPs.

51. The GoS has agreed to numerous unilateral and multilateral ceasefires, from the N'Djamena Humanitarian Ceasefire Agreement of 2004 to the Comprehensive Ceasefire Agreement of the DPA to unilateral ceasefire commitments, most recently in September during the visit of Secretary General and in October 2007 at the start of the Sirte peace talks. In this context, GoS forces' bombardment of Haskanita in North Darfur in September 2007, drew a response from the UN, noting that "the Secretary-General is alarmed by the fact that the reported attacks took place in spite of the signing of a joint communiqué on 6 September, during the Secretary-General's visit to Sudan, in which the Government of Sudan committed to a full cessation of hostilities in Darfur in the lead-up to the political negotiations."

#### *Attacks against persons displaced*

52. Despite the Government's obligations to disarm the Militia/Janjaweed under UNSC Resolutions 1556 and 1564, AU Summit Resolutions, the N'Djamena Agreement, the November 2004 Abuja Protocol and the Darfur Peace Agreement (DPA), the Office found no GoS efforts to disarm the Militia/Janjaweed or to end their activities in Darfur generally and in and around the camps specifically. They, along with other security forces, are stationed in the vicinity of most IDP camps with knowledge and consent of GoS officials, surrounding smaller camps and performing targeted attacks on civilians in larger camps. This is a failure to protect civilians. The GoS is not providing safety and security to the persons displaced. The police are not responding to their complaints and show no commitment to ameliorating the situation.

53. Persecution of civilians in IDP camps continues. Militia/Janjaweed and GoS forces sexually assault girls and women who leave the camps to fetch firewood or water;

assaulted girls and women are called “slaves” and “tora bora” and told to get off the land, the same tactic used earlier in the conflict. Civilians going to markets risk harassment, beatings, unlawful detentions and killings. On 18 September, the UN High Commissioner for Human Rights expressed concern that very little effort was being made by the Government to end impunity of the perpetrators.

54. GoS officials deny these attacks and the resulting situation. They have publicly referred to their commitment to protect civilians and IDPs and to what they suggest is resulting increased security. In statements made during and after a visit to Darfur in June 2007, which did not include any IDP camps, President Bashir concluded that “most of Darfur is now secure and enjoying real peace. People are living normal lives.” The President repeated this to 35 ministers in an open cabinet meeting. In September, State media reported that the Government called for the AU to pull its forces out before September 30 as the Cabinet said it would take over security which “has improved, except for violations perpetrated by the National Redemption Front.”

55. The GoS is also hindering the deployment of peacekeepers to protect civilians, as noted by the Secretary-General in his 5 November report to the Security Council where concern is expressed that “continuing delays in the deployment of UNAMID could lead to a further deterioration in the situation on the ground.”

#### *Attacks against local leadership within the camps*

56. Of particular concern also are the unlawful killings and arrests of local civilian leaders, which undermine political and traditional leadership structures within the camps. The communities were already fragmented by forcible displacement from their land. Distrust between those factions which signed the DPA and those which did not exacerbates the situation.

57. Today, as soon as leaders emerge and speak up, they are targeted. This further impedes the development of any form of organization that could help structuring and regrouping among the persons displaced. Examples include attacks against the largest camp in Darfur—Kalma—in August and September, when tribal leaders were arrested by GoS forces, amid allegations that Ahmad Harun was organizing militia to infiltrate the camp. Again in October, after a shooting in Kalma allegedly between supporters of now GoS adviser Minni Minawi and supporters of SLA Abdul Wahid al-Nour, GoS police raided the camp and arrested 9 people as Sheiks were discussing the incidents with the AU. Over 2,000 IDPs fled and were reportedly to be forcibly relocated to Amakassara, an area said to be controlled by Militia/Janjaweed.

58. The sequence of events suggests coordinated efforts to foster instability in the larger camps and reduce support for IDP camp leaders. Sudanese officials have blamed the insecurity on persons displaced and suggested it was a justification for military action in the camps and for the dismantling of the bigger camps. The same happened after incidents in Hamadiya camp when persons displaced allegedly killed GoS soldiers on 20-21 October; tribal leaders were arrested and were reportedly still detained at the

time of drafting this report; the Zalingei Commissioner has called for the camp to be restructured.

59. Linked to this are reports that the HAC operatives act as intelligence gatherers on activities within the camps.

#### *Conditions of life within the camps*

60. The GoS has repeatedly reported that the humanitarian situation is improving. "The humanitarian situation in Darfur is at its best in more than two years," Abdul Rahman Abudom, a senior adviser at the Ministry of Humanitarian Affairs, told reporters in June. On 12 August, the Ministry cited stable health indicators, with no epidemic diseases; declining malnutrition rates, and excellent food indicators "where food is available and accessible to all citizens," stating that "these measuring indicators are agreed upon internationally with the United Nations." Then Minister Lam Akol said the humanitarian situation had improved and there were no epidemics, hunger or food shortages, according to Government indicators. Sudanese official figures assess the number of people in need of humanitarian assistance at 2.6 million in need, and the number of IDPs at only 700,000.

61. However, according to the UN and relief organizations, one of every three Darfurians (a total of 2.5 million) lives in an IDP camp, and two of every three (a total of 4.5 million) require food assistance. Darfurians rely for their survival on the world's largest humanitarian operation, involving more than 14,000 aid workers, and contributions from numerous States and organisations. The UN reported in September that malnutrition is increasing. IDP camps are overcrowded; with few viable educational or livelihood opportunities. Assistant Secretary-General Margareta Wahlstrom noted on 31 August, "the humanitarian situation in the last few months has become more critical in many parts of Darfur."

#### *Hindering of humanitarian assistance*

62. The GoS states that it is supporting humanitarian efforts; the 28 March Joint Communiqué signed with the UN pledged to support, protect and facilitate all humanitarian operations in Darfur through rapid and full implementation of all measures outlined in the Moratorium on Restrictions, from July 2004. In June 2007, Then Humanitarian Affairs Minister Kosti Manibe, returning from Darfur, said "for the first time, I did not hear as many complaints as in the past about access and these sorts of things," adding that the GoS was working to improve access. We are doing everything possible."

63. In fact, humanitarian operations are hindered by the imposition of bureaucratic requirements that limit visas and travel permits, exact high costs and delay shipment of equipment. The HAC plays a pivotal role. Aid workers must have explicit HAC permission to enter the Sudan and then Darfur. The complex system of travel permits regulates and often chokes off access. Obtaining permits requires multiple visits to ministries to obtain official stamps for visas and import tax exemptions, all

of which can be denied. Aid organizations are known to employ full-time staff to navigate this maze.

64. While the Sudanese authorities may wish to take measures to control movements of persons in conflict area, what is happening goes beyond such measures; the obstacles to the delivery of humanitarian aid seem to represent deliberate policy choices. The UN and relief organizations have made numerous complaints to the GoS to no avail. This suggests a calculated effort to make access difficult and perpetuate the suffering of persons displaced.

65. Whenever international officials expose this, they are targeted. It appears that the HAC has powers to expel international staff. CARE's regional manager was expelled on 29 August and the South Darfur Director of UNOCHA was been forced to leave on November 7. These are only two examples of a regular occurrence.

#### *Forcible transfers from the camps*

66. The Office has information on forcible transfer of persons displaced from camps allegedly aiming to disperse them into smaller groups, with the likely consequence of exposing them to higher risks.

67. This seems to be happening in particular with regard to those living in the big camps in South Darfur, where, as mentioned above, the IDPs try to organize themselves politically and there is an apparent effort by officials to undermine such structuring.

68. The UN and others have expressed concern at such forced relocations, in the light of the desire of persons displaced not to leave camps before it is safe to do so. On 29 October, the UN expressed concern that attempted relocations from Otash and Nyala were not voluntary. They emphasized "that it is imperative that any relocation is wholly voluntarily" and noted that "given that security forces were threatening the displaced with sticks and rubber hoses at Otash camp, the involuntary nature of this relocation is clear."

69. UN officials are targeted when they do not acquiesce with a policy of forced returns. On 7 November, the South Darfur Director of the UNOCHA, who had referred to such forcible relocations, was ordered to leave. Justice Minister Al Mardi justified the measure by saying, "he was discouraging civilians ...from returning to their villages".

#### *Resettlements on land belonging to IDPs*

70. The DPA commits the GoS to recognising traditional rights including historical land rights. The GoS has formally committed to promote returns of persons displaced. President Bashir stated on 22 July that "IDPs are voluntarily returning to their villages" and that "the Government is committed to voluntarily repatriating them to their original villages, after securing these areas and providing them with services... now IDPs are

voluntarily returning to their villages.” In July, HAC Commissioner-General Hasabo Mohamed Abdel-Rahman announced that 45% of IDPs had returned to their villages.

71. But the Office has little information on such voluntary returns and on measures to facilitate them; few services such as education or health are offered. As no security is guaranteed, persons displaced cannot reasonably attempt to return to their homes and land.

72. The available information indicates that in South and West Darfur, the land of persons displaced is being inhabited by other, mostly Arab, tribes. This, in some cases, is taking place with GoS acquiescence or active support: some Arab tribes who supported the Militias/Janjaweed have been allowed to settle on land belonging to Fur and Masalit. It has been alleged that the Militia/Janjaweed allied themselves with GoS forces in order to avail themselves of this land. Today, in Masalit and Fur areas, there has been a considerable increase of local Arab population, amid indicators of permanent settlement. In some cases, the GoS informed persons displaced that their areas had been demarcated for new occupants and proposed other places for them to relocate. This shows no intention to genuinely facilitate returns.

73. In addition, approximately 35,000 Chadians have inhabited land in West Darfur over the past months. Most appear to have fled from general insecurity, and have expressed no intention of returning. They have been encouraged to settle in destroyed villages or on cultivated land belonging to persons displaced.

74. This resettlement deprives persons displaced of a place to return to or creates an unacceptable level of risk, since they may be returning to live in villages surrounded by Militia/Janjaweed. Resettlement creates facts on the ground in relation to land occupation that even legal agreements may not be able to reverse.

*The new role of and support for Ahmad Harun*

75. As described above, the information gathered points to an ongoing pattern of crimes against the persons displaced; continued targeting and attacking of civilians in villages; aerial bombardments; attacks against persons displaced; dire conditions of life within the camps; hindering delivery of humanitarian assistance; continuing forcible transfers; resettlements on land belonging to persons displaced. There are reasons to believe that Ahmad Harun still plays a critical role in these events, supported by GoS officials.

76. Ahmad Harun is Minister of State for Humanitarian Affairs and, at the time of drafting this report, with the withdrawal of SPLM ministers from the Government of National Unity, was in fact the acting Minister for Humanitarian Affairs.

77. The Ministry’s own documents demonstrate how Ahmad Harun is responsible for providing relief, for coordinating and controlling the work of NGOs, international relief and other voluntary organizations, and for coordinating with relevant security

organs to enhance the security of roads and IDP camps. In essence, he shares responsibility for the security and well-being of the displaced population. As persons displaced continue to suffer constant abuses by Militia/Janjaweed and other GoS agents, Ahmad Harun has done nothing to ameliorate their situation. It is inferred that either he is directly involved in those activities or he is entirely failing in his responsibility to take steps to prevent and put an end to those acts. Ahmad Harun's presence is alleged during specific operations in IDP camps.

78. Such failure to take steps to protect persons displaced from constant attack and harassment by Militia/Janjaweed and GoS agents conveys the impression of official endorsement of or acquiescence in these acts.

79. Ahmad Harun was also appointed on 7 March 2006 as Secretary General of the National Mine Action Authority (NMAA), a function which allows him to declare areas open and to grant return rights. Through his deployment to the Ministry and his appointment as Secretary-General of the NMAA, he can perpetuate the system of displacement and persecution of the mainly Fur, Zaghawa and Masalit tribes.

80. When Ahmad Harun took up his post in the Ministry of Humanitarian Affairs, it is alleged that he took key staff from the Ministry of the Interior. Similarly, the HAC Commissioner-General is reported to be a former general in the security apparatus.

81. Ahmad Harun reportedly played a similar role as the Executive Director of the Peace and Resettlement Association (PRA) in South Kordofan from 1997 until 2000. In this capacity, he oversaw IDP camps. The PRA had close links to national security, was dominated by former security staff, had access to all areas in the Nuba Mountains and collected information to prepare attacks on villages. Information points to a similar role being played by the HAC today.

82. Ahmad Harun's presence in the Ministry of Humanitarian Affairs and the other high profile responsibilities he is being given by the GoS signals official tolerance or even active support for his crimes. GoS officials have decided to deny the crimes, and to protect and promote Ahmad Harun. This denial and concealment of crimes is consistent with the denial of the responsibility of any member of the GoS, as reflected in the report of the Sudanese National Commission of Inquiry. All of the national mechanisms the GoS established, ostensibly to investigate crimes in Darfur, have only succeeded in sheltering from responsibility Ahmad Harun and other members of the GoS.

## CONCLUSION

83. The GoS, as the territorial State, has the responsibility and the ability to arrest Ahmad Harun and Ali Kushayb. The GoS has failed to meet that responsibility. The Government has not taken any step to this effect. In accordance with its obligations under UNSCR 1593 (2005), the OTP reports to the UN Security Council the failure of the GoS to respect UNSCR 1593 (2005) and to cooperate with the Office or the Court and urges the Council to act and put an end to this pattern of non-cooperation. The support of the international community and of UN Security Council members are key to ensuring that the GoS abides by its international legal obligation and to bringing an end to crimes in Darfur.

84. In monitoring ongoing crimes in Darfur, the Office has documented what appears to be a pattern of coordinated multiple attacks against the civilian population: forcible displacement of civilians; continuous abuse against persons displaced including rapes, sexual violence, illegal detentions, unlawful killings; attacks against those venturing out of the camps; failure to provide security near and around camps and failure of police and security forces to investigate such crimes; failure to disarm the Militia/Janjaweed and promoting their operations with impunity, including encampment near or around IDP camps; promoting occupation by new settlers of land previously belonging to or inhabited by persons displaced; preventing persons displaced from organizing politically; and hindering or blocking delivery of humanitarian relief to persons displaced, thereby causing drastic worsening of life conditions.

85. It can reasonably be inferred that such victimisation of persons displaced is a continuation of a policy of deliberately targeting the civilian population thought to be associated with rebel forces. Officials of the Ministry for Humanitarian Affairs, including Ahmad Harun in his present capacity as acting Minister, fail to protect the persons displaced, thereby contributing to alleged crimes of the Militia/Janjaweed and GoS agents. Other officials in the GoS military and civilian authorities, including at the highest levels, cannot ignore the attacks. The protection offered to Ahmad Harun, the public and official denial of crimes and of the present plight of the displaced are clear indicia. The Office of the Prosecutor will proceed with its investigations in this regard.

86. Allegations of crimes committed by other parties, including alleged rebel attacks against peacekeepers and humanitarian personnel warrant further investigations.

87. The UN Security Council referred the Darfur situation to the Prosecutor, recognising that international justice, including the investigation and prosecution of crimes committed, is an integral component of a comprehensive solution for Darfur. The UN Security Council must ensure compliance with UNSCR 1593 (2005) and the full and immediate cooperation of the GoS through the arrest and surrender of Ahmad Harun and Ali Kushayb. International justice can thus be a contribution to ending the crimes in Darfur. The victims demand no less.