



Situation in Darfur, the Sudan
Prosecutor's Application under Article 58(7)
Summary

I. The Application

Over the past 20 months, the Prosecutor (hereafter also referred to as the "Prosecution") has conducted an investigation into crimes within the jurisdiction of the International Criminal Court allegedly committed in Darfur, the Sudan, since 1 July 2002. After completing the necessary investigative steps, the Prosecutor has presented evidence to the judges.

The Prosecution has focused on some of the most serious incidents and the individuals who, according to the evidence collected, bear the greatest responsibility for those incidents. The Prosecution has concluded there are reasonable grounds to believe that Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of the Sudan, and Ali Muhammad Ali Abd-Al-Rahman (better-known in West Darfur as Ali Kushayb), a Militia/Janjaweed¹ leader, bear criminal responsibility in relation to 51 counts of alleged crimes against humanity and war crimes, including persecution, torture, murder and rape committed in Darfur in 2003 and 2004.

On 27 February 2007, pursuant to Article 58(7) of the Rome Statute ("the Statute"), the Prosecution applied to Pre-Trial Chamber I for the issuance of summonses to appear ("the Application") against the named individuals.

The crimes alleged in the Application were perpetrated during attacks upon the villages and towns of Kodoom, Bindisi, Mukjar, and Arawala, in West Darfur, the Sudan.

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 where necessary to protect the identity of witnesses.

II. Legal Framework

On 31 March 2005, the Security Council, acting under Chapter VII of the UN Charter, adopted Resolution 1593, referring the situation in the Darfur region of the Sudan to the Prosecutor of the International Criminal Court. In accordance with the Statute, the Prosecution conducted an analysis of the situation. On this basis, the Prosecutor opened an investigation into the situation in Darfur, the Sudan on 1 June 2005.

In accordance with its duties under the Statute, the Prosecution has carried out an independent investigation.

III. Scope of the Investigation

Since the start of the investigation in June 2005, the Prosecution has collected statements and evidence during 70 missions conducted in 17 countries. Throughout the investigation, the Prosecution has thoroughly examined incriminating and exonerating facts in an independent and impartial manner. The Prosecution also conducted five missions to the Sudan and obtained information from a number of Government officials.

For the purposes of the Application, the Prosecution 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 who possess knowledge of the activities of officials of the Sudanese Government and of the Militia/Janjaweed in conducting the counterinsurgency campaign in Darfur; (3) documents and other information provided by the Sudanese Government; (4) the Report of the UN Commission of Inquiry (UNCOI) established under UNSC Resolution 1564 and other materials provided by the UNCOI; and (5) the Report of the National Commission of Inquiry (NCOI) established by the Government of the Sudan in January 2005 and other materials provided by the NCOI.

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.

IV. Summary of Evidence and Information Provided in the Prosecution's Application

Consistent with the requirements of Article 58(2)(d) of the Statute, the Prosecution furnished in the Application “a summary of the evidence” and “other information” sufficient to establish “reasonable grounds to believe” that Ahmad Harun and Ali Kushayb have committed crimes within the jurisdiction of the Court, namely war crimes and crimes against humanity.

a. The Context: The Counterinsurgency Campaign

The Darfur region is comprised of the three Sudanese States at the western border of the Sudan: North Darfur, West Darfur and South Darfur.

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 armed forces, including the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), from about August 2002. Both rebel groups mainly recruit from the Fur, Zaghawa and Masalit tribes.

The conflict involved rebel attacks on Sudanese Government installations in Darfur and the counterinsurgency campaign by the Sudanese Government against the rebels.

The turning point in the counterinsurgency strategy occurred after the attack against the Al Fashir airport in April 2003 with unprecedented losses for the Government. Shortly after, the recruitment of Militia/Janjaweed greatly increased, ultimately into the tens of thousands.

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 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 by mainly Fur, Masalit and Zaghawa tribes.

The Sudanese Armed Forces and Militia/Janjaweed did not target any rebel presence within these particular villages. Rather, they attacked these villages based on the rationale that the tens of thousands of civilian residents in and near these villages were supporters of the rebel forces. This strategy became the justification for the mass murder, summary execution, and mass rape of civilians who were known not to be participants in any armed conflict. Application of the strategy also called for, and achieved, the forced displacement of entire villages and communities.

b. The Personal Responsibility of Ahmad Harun and Ali Kushayb

After the attack on Al Fashir, Ahmad Harun was appointed Minister of State for the Interior of the Government of the Sudan and tasked to head the “Darfur Security desk”. State and local Security Committees in Darfur, which were comprised of representatives of the Sudanese Army, the Sudanese Police, the Sudanese intelligence agencies, reported to Ahmad Harun, especially on matters relating to the staffing, funding, and arming of the Militia/Janjaweed in the context of the counterinsurgency.

The most prominent of the coordination tasks entrusted to Ahmed Harun as the head of the “Darfur Security desk” was his management of, and personal participation in, the recruitment of Militia/Janjaweed, to supplement the Sudanese Armed Forces. Ahmad Harun 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 and he did so with the aim of furthering them.

Ali Kushayb, was the “Aqid al Oqada,” or “colonel of colonels,” in the Wadi Salih locality of West Darfur. Ali Kushayb, who commanded thousands of Militia/Janjaweed by mid-2003, personally led Militia/Janjaweed at the attacks upon Kodoom, Bindisi, Mukjar, and Arawala.

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.

Ahmad Harun’s own statements and speeches while in Darfur demonstrate that he had full knowledge that the Militia/Janjaweed were routinely attacking civilian populations and committing crimes against them.

In a statement before the NCOI, Ahmad Harun presented a dilemma: how to discriminate between rebels and civilians? The dilemma, he stated, was that the “rebels infiltrate the villages” and thus that the villages “are like water to fish”. Ali Kushayb, like Ahmad Harun was heard to acknowledge openly the objective of targeting civilian communities, based on the rationale that those communities shielded or supported rebels.

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 Ahmad 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. During a public meeting, Ahmad Harun said that in being appointed to the Darfur security desk, he had been “given all the power and authority to kill or forgive whoever in Darfur for the sake of peace and security.”

Documents created in the office of the Governor of West Darfur show that on 18 November 2003, during an inspection and recruitment visit to a camp in the village of Qardud, South Darfur, Ahmad Harun announced that there should be preparations to “recruit 300 ‘knights’ for Khartoum” and directed the Governor to ensure the completion of such recruitment. Less than a week later, on 22 November, the Governor directed the Commissioners of the localities of Nyala and Kass to execute the directive.

Ahmad Harun also provided funds to the Militia/Janjaweed from a budget that was unlimited and not publicly audited. The evidence shows him going “every three months” to Mukjar in an aircraft from Khartoum to pay the Militia/Janjaweed. The Militia/Janjaweed were paid in cash, and Ahmad Harun was seen travelling with well guarded boxes.

Ahmad Harun personally delivered arms to the Militia/Janjaweed in Darfur. He was seen in aircrafts loaded with supplies of arms and ammunition, in some cases G-3s and Kalashnikov assault rifles.

In early August 2003, Ahmad Harun reportedly met privately with Ali Kushayb and other Militia/Janjaweed leaders in Mukjar. Ahmad Harun then gave a speech to army and police commanders, the governor of West Darfur and commanders of the Militia/Janjaweed, including Ali Kushayb. In his speech, Ahmad Harun stated that since the “children of the Fur” had become rebels, “all the Fur” had become “booty” for the Militia/Janjaweed. The Militia/Janjaweed who had heard the speech commenced a looting spree as soon as Ahmad Harun departed. In the days that followed, Ali Kushayb and the Militia/Janjaweed under his command began attacking the towns and villages between Bindisi and Mukjar. When victims of the looting complained, they were told that the Militia/Janjaweed “could do what they wanted” because “they were acting on the orders of the Minister of State.”

Ali Kushayb led the attacks and also mobilised, recruited, armed and provided supplies to the Militia/Janjaweed under his command.

In another attack, Ali Kushayb was issuing instructions to the Militia/Janjaweed. Civilians were being fired upon as they fled and a witness remembers, in particular, seeing a woman shot while carrying her child.

During the attack on Bindisi on or about 15 August 2003, Ali Kushayb was present wearing military uniform and he was issuing orders to the Militia/Janjaweed. Ground forces were shooting at civilians and burning huts. The attacking forces pillaged and burned dwellings, properties and shops. The attack on Bindisi lasted for approximately five days and resulted in the destruction of most of the town and the death of more than 100 civilians, including 30 children.

In Arawala, in December 2003, Ali Kushayb personally inspected a group of naked women before they were raped by men under his command. The victims were tied to trees with their legs apart and continually raped.

In or around March 2004, Ali Kushayb personally participated in the execution of at least 32 men from Mukjar. The evidence shows Ali Kushayb standing near the entrance of the prison and hitting these men as they filed past and into Land Cruisers. The vehicles left with Ali Kushayb in one of them. About fifteen minutes later, gunshots were heard and the next day 32 dead bodies were found in the bushes.

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.

V. Criminal Episodes related to Ahmad Harun and Ali Kushayb

The following describes some of the attacks and criminal episodes related to the named individuals that are included in the Application.

i. Torture – Mukjar town

In late August and early September 2003, the Militia/Janjaweed and members of the Sudanese Armed Forces implemented a search and arrest policy in Mukjar town. Witnesses described that arrested men had their arms tied wide apart to a plank of wood on the ceiling; their legs were also tied wide apart and a stove was left burning between them. All the men had whip marks on their bodies, and their clothes were torn and blood-stained. One man had been badly beaten and his fingernails and toenails had been forcibly removed.

ii. Rape – Bindisi and Arawala

Bindisi

One victim was held by her arms and a leg by her attackers. Two attackers slapped her repeatedly, and threatened her with a sword, before raping her. In the same incident six or seven of the attackers raped other girls. Two of the attackers held a girl by her arms and legs, while the third raped her.

Arawala

In or about December 2003, the Sudanese Armed Forces and Militia/Janjaweed apprehended a group of young women and took them to the local military garrison. All the women were stripped naked. That night, men tied the women to trees with their legs apart and continually raped them.

iii. Murder – Kodoom Villages and Mukjar Town

Kodoom Villages

During one of many attacks on the Kodoom villages and the surrounding areas, on 31 August 2003, members of the Militia/Janjaweed moved through the villages firing upon civilians as they fled. A witness remembers, in particular, seeing a woman shot while carrying her child. The gunfire hit both mother and child. Her arm was broken and her child died from gunshot injuries. The witness also remembers seeing a member of the Militia/Janjaweed shoot a heavily pregnant woman who later died as a result.

Mukjar Town

From in or around August 2003 to in or around March 2004, the Sudanese Armed Forces and the Militia/Janjaweed carried out executions of civilians in and around Mukjar town. One witness saw members of the Sudanese Armed Forces and Militia/Janjaweed line up and shoot twenty-one men. Afterwards the Militia/Janjaweed returned to their base, leaving the corpses behind and making celebratory noises.

In another instance, at least thirty-two men were loaded onto a convoy of Land Cruisers and taken to a brook where they were all shot and killed. The shooting lasted for about ten minutes. A short while later the vehicles returned empty. The next day, some women found thirty-two dead bodies in the bushes.

iv. Destruction of an entire village and forcible transfer of its inhabitants – Arawala

Before the attacks there were at least 7,000 residents inhabiting Arawala. According to a witness, in or about December 2003, the Sudanese Armed Forces and Militia/Janjaweed destroyed Arawala, burning every hut and forcing all surviving inhabitants to flee.

VI. 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.

For a case to be inadmissible, the Pre Trial Chamber has indicated that the national proceedings must encompass both the person and the conduct which is the subject of the case before the Court. In this context, “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 suspects.

The Prosecution has undertaken 5 missions to the Sudan, most recently at the end of January 2007, gathering information on national proceedings from relevant Government departments, as well as the judiciary, prosecution and police service.

The investigations being carried out by the relevant Sudanese authorities do not cover the same persons and the same conduct which are the subject of the Prosecution's case. The Government of the Sudan informed the Prosecution that Ali Kushayb is under criminal investigation and was arrested on the 28 November 2006. Although investigations in the Sudan do involve Ali Kushayb, they are not in respect of the same incidents and they encompass a significantly narrower range of conduct.

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.

VII. Ensuring the Appearance of Ahmad Harun and Ali Kushayb

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 summons to appear or a warrant of arrest against Ahmad Harun and Ali Kushayb.

Ensuring the appearance of Ahmad Harun and Ali Kushayb is a major challenge. It will primarily be the responsibility of the territorial State, the Sudan, upon the Chamber's decision, either to take steps to serve the summonses or to arrest the individuals. The Sudanese Government, as the territorial State, has both the legal responsibility to cooperate to facilitate the appearance of the individuals and the ability to do so. The Prosecution has assessed at this stage that a summons to appear could prove sufficient to ensure the persons' appearance. The Pre Trial Chamber will weigh the record independently on the issue of whether it is more appropriate to issue warrants of arrest or summonses.

VIII. Conclusion

In making this application, the Prosecution has submitted its evidence to the Pre-Trial Chamber. The judges will review the evidence submitted and decide how to proceed.