

**Security Council**

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Letter dated 18 June 2005 from the Chargé d'affaires a.i. of the Permanent Mission of the Sudan to the United Nations addressed to the President of the Security Council

Further to our letter dated 23 January 2005, whereby we transmitted the report of the National Commission of Inquiry on Darfur (S/2005/80), you may recall that, in compliance with the recommendations of the Commission, my Government has established an investigative committee.

In this regard, and as a result of the work of his investigative committee, the Chief Justice established, on 7 June 2005, the Special Criminal Court on the Events in Darfur.

I have the honour to attach hereto the text of a press release, the decree on the composition of the Special Criminal Court and the decree of the Chief Justice establishing the Special Criminal Court (see annex).

I would greatly appreciate it if the present letter and its annex could be circulated as a document of the Security Council.

(Signed) Omar Bashir Mohamed **Manis**
Chargé d'affaires a.i.
Deputy Permanent Representative

**Annex to the letter dated 18 June 2005 from the Chargé d'affaires
a.i. of the Permanent Mission of the Sudan to the United Nations
addressed to the President of the Security Council**

[Original: Arabic]

In the name of God, the Merciful, the Compassionate

Press Release

The operation of the judiciary, the settlement of disputes and the spread of justice represent the ultimate concern and the highest aim of the judicial community and the noblest of its constitutional duties. It is for this reason that the judiciary has accorded priority and paid the utmost attention to that sacred duty in the various states of the Sudan. It has also been the reason for repeated visits to those states by the judicial authorities.

Last week, within the framework of those visits, I myself undertook a visit to the three Darfur states in the company of a number of other judges and the Deputy Minister of Justice. Our purpose was to gain an idea of the performance of the judiciary and, more generally, of the judicial system and to devote special attention to the reports concerning attacks against persons, property and honour in those three states, where there has been great suffering.

After hearing the statements of heads of judicial organs and officials in law-enforcement and other bodies concerning the reports mentioned in the previous paragraph, which are currently being looked into by the judges, I decided that a special court should be established to examine those reports and any reports transmitted to it by the investigation committees; that the special court should be headed by a Supreme Court judge, who has had nearly half a century's experience in the judicial and legal fields; and that its members should be judges of the Court of Appeals with experience and knowledge in the judicial area.

Owing to the nature of some of the reports, a woman judge of the Court of Appeals was chosen as one of the members, being considered most appropriate for judging such cases.

I have in fact issued an order for the establishment of a Special Criminal Court on the Events in Darfur, understood to be a major court according to the legal concepts prevailing in the Sudan. I have granted the Special Court the power to rule on any complaint submitted to it involving violations of honour, killing, bloodshed or the plundering or destruction of property.

The Court is to begin operating this week. It has been granted freedom of movement in Darfur, so that it may have its seat in all the Darfur states.

We affirm that the Sudanese judiciary, as always, is capable and desirous of fully shouldering its responsibility in earnest for doing justice and restoring rights to their owners, free of any partiality, fear or influence, so that no person who has committed an offence may escape punishment, whatever his position or rank.

May God support our endeavour.

Jalal el-Din Mohammed **Osman**
Chief Justice
President of the Supreme Court

In the name of God, the Merciful, the Compassionate

Decision No. 702 of 2005

I, the Chief Justice,

Having considered the order establishing the Special Criminal Court on the Events in Darfur, issued on 7 June 2005, and pursuant to chapter I, article 2, of the said order,

Hereby issue the following decree:

1. The Court shall be composed of the persons whose names are indicated below:
His Honour Mr. Mahmoud Mohammed Saeed Abkam, Judge of the Supreme Court, President;
His Honour Mr. Inshirah Ahmed Mukhtar, Judge of the Court of Appeals, Member;
His Honour Mr. Awad el-Karim Osman Mohammed, Judge of the Court of Appeals, Member.
2. The Court shall begin operating immediately, in accordance with the decree whereby it was established.

Issued under my hand this fifth day of the month of Jumada I in the year A.H. 1426, corresponding to the eleventh day of the month of June of the year 2005.

(Signed) Jalal el-Din Mohammed **Osman**
Chief Justice

In the Name of God, the Merciful, the Compassionate

Decree Establishing the Special Criminal Court on the Events in Darfur

Pursuant to article 10 (e) of the Law on the Judiciary of 1986, in conjunction with article 6 (h) and article 14 of the Code of Criminal Procedure of 1991, I have issued the following Decree:

Title and entry into force of the Decree

(1) This Decree shall be called “Decree on the Establishment of the Special Criminal Court on the Events in Darfur” and shall enter into force from the date on which it is signed.

Chapter I

Composition and seat of the Court

(2) The Court shall consist of three members to be appointed by the Chief Justice. It shall be presided over by a Supreme Court judge and its members shall have the rank of public court judge at least.

(3) The seat of the Court shall be the city of El Fasher.

(4) The Court shall hold its sessions at its seat, which is specified in paragraph (3) above, but it may travel and hold its sessions in any other place which it specifies.

Chapter II

Jurisdiction

(5) The Court shall have jurisdiction on the following matters:

- (a) Acts which constitute crimes in accordance with the Sudanese Penal Code and other penal codes;
- (b) Any charges submitted to it by the Committee established pursuant to the decision of the Minister of Justice No. 3/2005 of 19 January 2005 concerning investigations into the violations cited in the report of the Commission of Inquiry;
- (c) Any charges pursuant to any other law, as determined by the Chief Justice.

Chapter III

Court procedures

Notification of the defendant

(6) The defendant shall be notified and provided with a list of the indictments at least 72 hours prior to the scheduled date of hearing.

Representation by counsel

(7) The defendant shall be entitled to be represented by the defence counsel of his or her choice. Such attorney shall be permitted to meet the accused, address the Court on his or her behalf and examine and interrogate witnesses within the limits of the statements contained in their depositions.

Public sessions

(8) Sessions of the Court shall be public and anyone may attend them. However, the Court may, at its discretion, at any stage bar the public generally or a particular person from attending or remaining in the session, where the nature of the court proceedings so requires.

Commencement of the court proceedings

(9) The court proceedings shall commence with the registration of the name or names of the accused and related statements.

Case for the prosecution

- (10) (1) A representative of the prosecution shall open the case against the accused with an opening statement, reading out a description of the crime and stating briefly the evidence on the basis of which the prosecution expects to prove the case against the accused.
- (2) Thereafter the investigating officer, as the first prosecution witness, shall present the available evidence in support of the prosecution case.
- (3) The prosecution representative shall then examine the other prosecution witnesses. The defendant, or his or her counsel, may cross-examine these witnesses. The prosecution representative may then examine them once more.

Authority of the Court in examining the defendant

- (11) (1) After hearing the testimony of the prosecution witnesses, and with a view to enabling the defendant to elucidate any circumstances in the evidence that may militate against him or her, the Court may address any questions it deems necessary to the defendant.
- (2) The defendant shall not be penalized if he or she refuses to answer those questions or answers them incorrectly. However, the Court is free to infer whatever conclusions it deems just from such a refusal or such answers.
- (3) The indictment or indictments against the defendant are then read out, accompanied by any explanation that is necessary. The defendant is then asked whether or not he or she is guilty of the crime, or crimes, of which he or she is charged.
- (4) In the event that the accused pleads guilty, this confession must be recorded; the Court is then free to convict the defendant on the basis of that confession.
- (5) Should the defendant enter a plea of not guilty or decline to respond to the charge, the Court may then proceed with the trial. In either of these

cases, the defendant, or his or her counsel, must provide a brief description of the defence strategy.

- (6) After the defendant has been questioned pursuant to paragraph (11) (1) above, he or she shall be asked whether or not he or she intends to summon any defence witnesses based on the list submitted or any character witnesses.
- (7) Should the defendant decline to summon any defence witnesses, the prosecution representative may then proceed to sum up the case against the defendant.

Summoning defence witnesses

(12) If the defendant elects to summon defence witnesses, he or she must prepare a list of their names and furnish the Court with it at least 72 hours before the date of the indictment and the defence's reply.

Case for the defence

- (13) (1) If the defendant responds by expressing a wish to summon witnesses other than character witnesses, the Court shall request a justification of the defence's case for so doing.
- (2) The defendant, or his or her counsel, may examine defence witnesses as they appear on the list that contains their names. After examining these witnesses and cross-examining them, the defendant, or his or her counsel, may then make the closing speech for the defence.
- (3) The prosecution representative may then proceed to make a final commentary on the defence case. He or she may also make a final presentation if the defence counsel declines to make a closing speech for the defence.

Administering the oath

(14) This chapter makes it obligatory for each witness who testifies before the Court to take an oath or to swear sincerely that he or she will tell the truth, the whole truth and nothing but the truth. However, in hearing the evidence of any person whom it deems, on grounds of youth, ignorance or any other grounds, to be unable to understand the nature of the oath, the Court may hear his or her testimony without administering the oath or declaration, if it determines that the person in question is rational enough to warrant his or her testimony being heard and to comprehend the duty to speak the truth.

Proceedings following sentencing

(15) Once sentence is passed, the Court must ask the defendant whether or not he or she wishes to summon any character witnesses, providing they have not already been summoned. Once such witnesses (if any) have been heard, the Court must then inquire whether or not the defendant wishes to present any information in mitigation of the sentence. Once such information (if any) has been presented, the Court must adjourn for deliberation.

Adoption of majority opinion

(16) Members of the Court shall confer about the issues to be settled and, in case of disagreement, the majority opinion shall be adopted.

Recording the dissenting opinion

(17) Each dissenting opinion shall be recorded in the minutes along with its legal justifications. However, it shall not appear in the sentence.

The sentence

(18) Once the Court has completed its proceedings and deliberations, it must issue and promulgate its verdict without delay.

(19) Notwithstanding the contents of this chapter, the Court is obliged to adhere to the 1991 Code of Criminal Procedure and the rules of evidence stipulated in the 1994 law of evidence.

Chapter IV

Appeals procedure

- (20) (a) Appeals against judgements, sentences or injunctions issued by the Court shall be heard before a special court of appeal to be set up by the Chief Justice.
- (b) Appeals to quash a sentence of the special court of appeal may be filed with a chamber of five judges of the Federal Supreme Court to be appointed by the Chief Justice.
- (c) When considering appeals, the appeals authorities shall follow the rules of procedure stipulated in the 1991 Code of Criminal Procedure.

Witness my hand today, 7 June 2005

Jalal el-Din Mohammed **Osman**
Chief Justice
