

STATEMENT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT MR. LUIS MORENO OCAMPO TO THE SECURITY COUNCIL ON 29 JUNE 2005 PURSUANT TO UNSCR 1593 (2005)

Mr President

I welcome the opportunity to address the Security Council on activities and planning undertaken by my office since the adoption of Resolution 1593.

Immediately following the Resolution, we established a Darfur team with staff of the three divisions of the Office and initiated an extensive process of information gathering and analysis.

On 5 April 2005 my office collected more than 2,500 items, including documentation, video footage and interview transcripts that had been gathered by the International Commission of Inquiry on Darfur. The same day, I collected a sealed envelope containing the list of 51 individuals identified by the Commission as potentially bearing responsibility for the crimes. My Office will conduct its own independent investigation in order to determine those persons who must be prosecuted. The list is an advice and will remain sealed.

Prior to the commencement of a formal investigation the Rome Statute requires the Prosecutor to determine whether there is a reasonable basis to proceed with an investigation. This determination is made following consideration of the three factors set out in the Statute, namely whether¹:

- a) The information available provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

¹ For an explanation of the process of preliminary analysis see the Annex to the [“Paper on some policy issues before the Office of the Prosecutor”: Referrals and Communications](http://www.icc-cpi.int/) (available at the ICC website: <http://www.icc-cpi.int/>).

b) The case is or would be admissible under article 17, and

c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.

In addition to the Commission material, the Office has collected more than 3000 documents from a variety of other sources, has been in contact with more than 100 groups and individuals and has interviewed more than 50 individuals with specific expertise on the situation in Darfur.

There is a significant amount of credible information disclosing the commission of grave crimes within the jurisdiction of the Court having taken place in Darfur. These crimes include the killing of thousands of civilians, the widespread destruction and looting of villages, leading to the displacement of approximately 1.9 million civilians. The conditions of life resulting from these crimes have led to the deaths of tens of thousands from disease and starvation, particularly affecting vulnerable groups such as children, the sick and the elderly. Information also highlights a pervasive pattern of rape and sexual violence.

In addition to these crimes, my Office has received information showing the persistent targeting and intimidation of humanitarian personnel.

In light of the complementarity regime and article 53(1)(b) of the Statute, I am required to consider whether there could be cases that would be admissible within the situation in Darfur.

The Office has studied Sudanese institutions, laws and procedures. We have sought information on any national proceedings that may have been undertaken in relation to crimes in Darfur. We have also analyzed the multiple ad hoc mechanisms that were created by the Sudanese authorities in 2004 in the context of the conflict in Darfur,

including the Committees against Rape, the Special Courts and the Specialized Courts that replaced them, the National Commission of Inquiry and other ad hoc judicial committees and non judicial mechanisms.

Following this analysis, I determined that there are cases that would be admissible in relation to the Darfur situation. This decision does not represent a determination on the Sudanese legal system as such, but is essentially a result of the absence of criminal proceedings related to the cases on which I will focus.

The admissibility assessment is on-going. Once specific cases are selected, my Office will assess again whether or not those cases are being, or have been, the subject of genuine national investigations or prosecutions.

The Office also examined issues relating to the interests of justice. Taking into account all these factors, on 1 June 2005 I decided to initiate an investigation in relation to the crimes committed in Darfur.

After my decision, the Government of Sudan provided my Office with information relating to the establishment of a new specialised tribunal to deal with some individuals considered to have been responsible for crimes committed in Darfur. As part of the on-going admissibility assessment my Office will follow the work of the tribunal.

Mr President

The full support of the international community will be essential to carry out our investigation.

Paragraph 2 of Resolution 1593 requires the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with, and provide necessary assistance to, the Court and the Prosecutor. This Paragraph also urges all States to cooperate fully with the Prosecutor and the Court.

Specific requests for assistance were not issued to the Government of Sudan or other parties to the conflict during the preliminary analysis phase. However, since the referral I have held two exploratory meetings (in April and May) in The Netherlands with officials of the Government of Sudan.

Members of my Office have also held exploratory meetings with other parties to the conflict in Darfur in order to establish channels for communication and future cooperation.

Mr President

Paragraph 3 of Resolution 1593 invites the Court and the African Union to discuss practical arrangements for facilitating the work of the Prosecutor and the Court, including the possibility of conducting proceedings in the region.

Following the referral of the situation, an ICC delegation went to Addis Ababa to finalize the negotiations of a relationship agreement with the African Union, which had started in 2004, and to meet with officials of the African Union. The discussions successfully ended in an agreed text which the Court hopes will be signed soon.

In May I also met with HE President Obasanjo, in his capacity as President of the Federal Republic of Nigeria and President of the African Union. In this meeting I recognised the importance of traditional mechanisms for justice and reconciliation.

My Office is in the process of concluding, necessary agreements and arrangements with various other organisations. The UN Relationship Agreement concluded in October 2004 provides an existing framework for cooperation with the Court. In addition, my Office developed contacts with other organisations, such as the Arab League, which are playing a role in seeking an end to the conflict in Darfur.

Mr President

The International Criminal Court received the referral of the situation in Darfur into a well developed institution.

Preparations for investigations relating to Darfur are advancing rapidly. Recruitment of additional personnel is well underway and the selection process will conclude in July.

Analysis and planning related to evidence collection and legal strategies is already at an advanced stage, a database has been created and key analytical and research tools have been developed for the investigation. Protocols and systems have also been developed to handle disclosure obligations and the investigation of exonerating circumstances, as well as the storage and use of information from sensitive sources. It is vital to take all available steps to preserve information and materials that may form part of the evidence in future proceedings.

The protection of victims and witnesses is a major challenge in any conflict situation and it is a core responsibility shared by my Office and the Registry. The information currently available highlights the significant security risks facing civilians, local and international humanitarian personnel in Darfur. These issues will present persistent challenges for any genuine investigations, international or national.

Communication of the ICC's activities will be vital to ensuring understanding of, and participation in, the process. We will take all possible steps to bring the proceedings closer to those affected by the crimes. This may include the establishment of ICC presences and the conduct of proceedings at places within the region.

Mr. President

In the coming weeks and months, my Office will request the cooperation of the Government of Sudan and all other parties to the conflict in Darfur. We will also request

the assistance of other states, inter-governmental and non-governmental organisations. The language of Resolution 1593 must be converted into a reality as soon as possible. Continued reporting and engagement of the Security Council on these matters will be vital.

We are also vigilant to the on-going commission of serious crimes in Darfur. The commencement of the investigation marks an opportunity for all parties to take all possible steps to prevent the continuation of such offences.

The referral of the situation in Darfur to the ICC has brought an international, independent and impartial justice component to the collective international and regional efforts to end the violence in Darfur.

My Office will identify those individuals who bear the greatest responsibility for the crimes and assess the admissibility of the selected cases. My Office will work expeditiously to these ends, conscious of the high evidential threshold for criminal responsibility imposed by the Rome Statute.

Additional efforts will be required to bring to justice other offenders and to promote the rule of law and reconciliation. This has particular significance in the context of Darfur where tribal and traditional systems exist for the promotion of dispute resolution. My Office will cooperate with and support such efforts, the combination of which will mark a comprehensive response to the need for justice.