



**FOURTH REPORT OF THE PROSECUTOR OF THE
INTERNATIONAL CRIMINAL COURT, MR. LUIS MORENO
OCAMPO, TO THE UN SECURITY COUNCIL
PURSUANT TO UNSCR 1593 (2005)**

14 December 2006

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INTRODUCTION

The present report is submitted by the Prosecutor of the International Criminal Court pursuant to paragraph 8 of Security Council Resolution 1593 (2005). The report supplements the briefing given to the Council on the activities undertaken to implement UNSCR 1593 (2005) since the last report to the Council on 14 June 2006.

The Office is completing an investigation and the collection of sufficient evidence to identify those who bear the greatest responsibility for some of the worst crimes in Darfur. The evidence provides reasonable grounds to believe that the individuals identified have committed crimes against humanity and war crimes, including the crimes of persecution, torture, murder and rape. The relevant criminal incidents took place during a period in which the gravest crimes occurred. In assessing the admissibility of the case the Office requested in November 2006 an update from the Government of the Sudan on their national proceedings. At the time of preparing this report there has been no formal response from the Government, although there are indications of developments, including the arrest of 14 individuals suspected of serious violations of international humanitarian law. These indications do not appear to render the current case inadmissible, therefore the Office is seeking to finalise the preparation of the submission to the Judges by February 2007. In the meantime, the Office will request to travel to the Sudan in January 2007 to gather further information on these developments.

By advancing the investigation and the assessment of relevant national proceedings the International Criminal Court is fulfilling its duties under the Rome Statute, and the task set out in Resolution 1593 (2005).

These developments take place within a context dominated by violence and instability. This lack of security has also permeated Chad and the Central African Republic (CAR), leading to allegations of crimes having been committed on the territory of those states, in some cases against individuals and groups that were

already displaced by the violence in Darfur. On 1 November 2006 the Government of Chad acceded to the Rome Statute, the Statute therefore entering into force on 1 January 2007. The Central African Republic is also a state party to the ICC. The Office is therefore closely following the increasing violence in Chad and reports of a spill over of violence into the CAR, as well as possible links to the situation in Darfur.

The restoration of security in Darfur is the responsibility of the Government of the Sudan and the Security Council, working with the African Union and other relevant organisations. Justice for past and present crimes will contribute to enhancing security and send an important warning to those individuals who might otherwise continue to resort to violence and criminality as a means of achieving their aims.

A concerted, collective, coordinated effort on the part of the Government of the Sudan and the regional and international community remains essential to stop the commission of further crimes and reverse the prevailing sense of impunity in Darfur.

CONDUCT OF THE INVESTIGATION

The evidence collected and analysed by the Office has confirmed the complex nature of the conflict in Darfur: it follows that the challenges facing the identification of specific individuals as bearing the greatest degree of individual criminal responsibility for the crimes are significant. The continued commission of crimes by different groups and shifting factions within these groups is also the subject of investigation and analysis. These facts reinforce the likely need for a sequence of cases, rather than a single case dealing with the situation in Darfur as a whole.

On 24 July 2006 the Pre-Trial Chamber issued a decision inviting observations on the protection of victims and the preservation of evidence from Antonio Cassese, Chairperson of the International Commission of Enquiry for Darfur and Louise Arbour, High Commissioner of the Office of the UN High Commissioner for Human Rights. Observations were filed on 25 August 2006 and 10 October 2006 and the OTP responded by filings dated 11 September 2006 and 19 October 2006 respectively.

The protection of victims and witnesses has been, and remains, a paramount concern of the Office in the conduct of investigations in relation to Darfur, as well as the other

situations under investigation. It is a specific statutory duty imposed on the Office and the Court, and requires a security framework for responding to emergencies threatening the safety of victims and witnesses. It is due to the absence of this framework, alongside the on-going violence within Darfur, that the Office has conducted its investigations from outside Darfur and therefore avoided exposing victims and witnesses to additional risks. Despite this the Office has made significant advances in the completion of the investigation of the first case.

The Office has collected evidence from a wide range of sources, thoroughly investigating incriminating and exonerating facts in an equal, independent and impartial manner. These sources include statements from victims as well as officials of the Government of the Sudan; documentation provided by the Government of the Sudan at the request of the Office; thousands of documents collected by the International Commission of Inquiry and information provided by the National Commission of Inquiry, as well as material generated by states and organisations such as the United Nations.

Reaching the victims is also a priority for the Office. Since the start of the investigation the Darfur team has conducted more than 70 missions to 17 different countries, screening hundreds of potential witnesses and conducting more than 100 formal witness interviews, many of which were with victims of the crimes in Darfur currently under investigation.

Crimes within the Jurisdiction of the Court

Previous reports to the Council have highlighted the broad scope of the alleged crimes in Darfur. The Office cannot investigate the hundreds of alleged criminal incidents and prosecute all alleged perpetrators. Therefore the focus of the investigation is upon the most serious incidents and the individuals with greatest responsibility for those incidents.

Despite numerous clarifying statements and reports issued by the Office, there remains a great deal of confusion surrounding the relevance of the list of names submitted by the International Commission of Inquiry and the individuals identified by the UN Sanctions Committee pursuant to UNSCR 1591 (2005). It should again be

made clear that these bodies have an entirely separate mandate to that of the ICC and the individuals identified by them do not bind the selection of suspects by the OTP. The Office conducts its own independent investigations and identifies those bearing criminal responsibility in accordance with the Statute and the evidence collected.

Having selected some of the gravest alleged criminal incidents in Darfur for full investigation the Office has, since June 2006, focused the collection of evidence in relation to a series of incidents that occurred in 2003 and 2004, during a period and in a location where the highest number of crimes were recorded. Based upon a careful and thorough source evaluation of all the evidence collected, the Office has been able to identify some of the gravest criminal incidents and some of those individuals who could be considered to bear the greatest responsibility. The evidence proves that numerous crimes within the jurisdiction of the Court were committed including: crimes against humanity (such as persecution, murder and wilful killing, rape and other forms of sexual violence, inhumane acts, beatings and deprivation of liberty, torture, imprisonment or severe deprivation of liberty, destruction of property and forcible transfer of civilians) and war crimes (such as wilful killings, extra-judicial killings, rapes, intentionally attacking civilians, inhumane acts, cruel treatment, outrages upon personal dignity and pillaging).

In addition to the case identified above, the Office has continued to gather information in relation to the current crimes that are affecting the lives of the people of Darfur. Despite the signature of the Darfur Peace Agreement by some of the parties to the conflict, there continue to be daily allegations of grave criminal acts, some of which may fall within the jurisdiction of the ICC. There have been increasing tensions within and between groups inside and outside the Darfur Peace Agreement that have led to violent clashes, particularly in North Darfur, during which civilians were killed. The patterns associated with earlier crimes have allegedly been repeated in recent months in various parts of Darfur, with reports of attacks on villages by armed militia, supported by elements of the Sudanese security forces. Reports of violence against women and children remain at high levels, including allegations of rapes and sexual assaults associated with those who are living in the camps for the displaced and who are therefore the most vulnerable. These crimes are particularly serious given that they affect a population that is already suffering greatly due to the violence of

previous years; moreover these perpetrators are standing in the way of progress towards peace and security in Darfur and the region.

Reports of insecurity and the commission of crimes spreading across the border of Darfur into Chad and the CAR are also of grave concern to the Office. These reports throw into stark focus the need for a concerted effort by all parties to restore security to Darfur and to tackle the pervasive sense of lawlessness that is casting a shadow over the region. As indicated above, with the accession of Chad to the Rome Statute, and the fact that the CAR is a state party to the Court, the Office is gathering information on these developments.

In each report to the Council the Office has referenced attacks on humanitarian personnel and AU peacekeepers. This reporting period is no exception, with numerous examples of direct and deliberate attacks by factions of those movements that remain outside the DPA and other armed groups on peacekeepers and humanitarian staff. During July – September 2006 there are reports of the hijacking of more than 21 humanitarian vehicles and the ambushing and looting of more than 31 convoys leading to the deaths of 6 humanitarian workers and 2 AU military observers. These attacks, as well as other forms of intimidation, have caused a number of organisations to withdraw from Darfur, further consolidating the plight of the most vulnerable and threatening the lives of the millions of displaced persons. Attacks on humanitarian personnel are prohibited under international humanitarian law and constitute a war crime within the jurisdiction of the ICC. The Office continues to collect information relating to these attacks and to the persons most responsible for the attacks and may take further action before the ICC, or provide the information to other relevant bodies where appropriate.

ADMISSIBILITY

In the first report to the UN Security Council on Darfur (June 2005) the Office emphasised that the ICC is a court of last resort, only acting in situations where: (i) there has not been any national investigation or prosecution of the case being brought to the Court; or (ii) where there is, or has been, such an investigation or prosecution, but it is vitiated by an unwillingness or inability to genuinely carry out that investigation or prosecution.

Prior to the initiation of the investigation on 1 June 2005 the Office carried out extensive fact-finding in relation to national proceedings concerning alleged crimes in Darfur. Information was gathered from numerous sources, including expert witnesses and organisations active in Darfur. The Government of the Sudan also stated that they would investigate and prosecute those responsible for the alleged crimes in Darfur and that they had established a system of special courts to undertake this task. At that time the Office concluded that there were cases that would be admissible within the situation in Darfur because there were no national proceedings focusing on the most serious crimes and on those who bear the greatest responsibility for those crimes.

Once specific cases are selected within a situation for full investigation the Office assesses the admissibility of those cases. Since June 2005 considerable attention and resources have been devoted making this assessment. During each of the four missions to the Sudan the Office has met with judicial and legal officers, as well as representatives of the relevant Government departments in order to receive briefings and information relating to the conduct of national proceedings.

In June 2006 the Office reported to the Security Council on the developments concerning national proceedings in relation to Darfur, particularly the work of the Special Courts established for each of the Darfur states and the Judicial Investigation Committee and the Special Prosecutions Commission. At that time the Office had information indicating that the Special Courts had tried six cases involving less than 30 suspects. These suspects included 18 low-ranking military officers (8 of whom were members of the Popular Defence Forces) and the remainder were civilians. The Judicial Investigations Committee had not completed any investigations or prosecutions and the Special Prosecutions Commission was continuing the investigation of the Hamada situation and had recently acquitted those charged with war crimes in relation to the crimes that allegedly took place in Tama. In early November 2006 the Government of the Sudan provided further documentation to the OTP focusing in particular on reports of prosecutions of rapes, cases against members of the police force and members of the regular armed forces.

It is important to reiterate that the admissibility assessment is not a judgement on the Sudanese justice system as a whole, but an assessment as to whether or not the Government of the Sudan has investigated or prosecuted, or is investigating or prosecuting in a genuine manner *the case* selected by the Prosecution for presentation to the Court. In these circumstances a case is defined by the specific incidents in which the crimes were committed by identified perpetrators.

In accordance with the Statute, the Office is assessing whether or not the Government of the Sudan is dealing with, or has dealt with, the incidents and the individuals identified in the current case. In making this assessment the Office is gathering information from a variety of sources. In November 2006 the Office requested an update from the Government of the Sudan relating to their national proceedings. At the time of writing this report, the Office has not received a formal answer from the Government, but has received indications that there are further developments concerning the work of the Judicial Investigation Committee, including the arrest of 14 individuals suspected of having been involved in violations of international humanitarian law and human right abuses. These indications do not appear to render the current case inadmissible. Therefore, the Office is finalizing its submission to the Judges of the Pre-Trial Chamber and further enhancing security measures in light of the increased profile of the case. We are planning to complete this work no later than February.

The Office will, however, request to travel to the Sudan in January 2007 to gather further information in relation to the abovementioned developments. We hope to pursue our dialogue with the Government of the Sudan and receive their full cooperation in order to facilitate access to the relevant documentation and other information, including access to the individuals in custody for the purposes of interview.

INTERESTS OF JUSTICE and the INTERESTS OF THE VICTIMS

The Office continues to gather information from a variety of sources relevant to the assessment of the interests of justice and the interests of the victims. The Office has therefore developed and maintained contacts with a number of local groups, NGOS, and international organisations including the AU, the UN and other experts who are

engaged in Darfur and who have regular contact with the victims of the crimes in Darfur.

COOPERATION

Paragraph 2 of UNSCR 1593 (2005) requires the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with, and provide necessary assistance to, the Court and the Prosecutor. Other states and organisations are also urged to cooperate fully.

Paragraph 3 of UNSCR 1593 (2005) 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.

African Union

Following the June 2006 report to the Council the Prosecutor and the President of the Court travelled to Addis Ababa to brief the African Union (AU) Peace and Security Council on the activities of the Court, including in relation to the situation in Darfur. During this visit the Prosecutor met with Prof. Konare, AU Commission Chairperson and Ambassador Djinnit, Commissioner for Peace and Security. These meetings provided an important forum for the exchange of information about the Court, its organisation and procedures. Discussions also continue in relation to the conclusion of a Memorandum of Understanding dealing with the general relationship between the Court and the AU. It is hoped that progress will be made towards the conclusion of that text soon. In October 2006, in the margins of the OTP's second public hearing, the Prosecutor briefed the African group in New York on the developments in the three situations under investigation, including Darfur. Further briefings of this nature are being planned, reflecting the importance of the relationship between the Court and the African Union and the vital nature of the cooperation between the two institutions.

In June 2006 the African Union Mission in the Sudan (AMIS) provided the OTP with the first batch of information relating to the situation in Darfur responding to a request for assistance issued by the OTP to AMIS in February 2006. The Office continues to work with AMIS towards the fulfilment of this request, and intends to make further requests for assistance in the near future.

Other States and Organisations

The Office has been following the adoption of UNSCR 1706 (2006) and the discussions surrounding the re-formulation of the peacekeeping presence in Darfur. In the June 2006 report to the Council the Office noted the relevance of ensuring a proper framework for cooperation between the security presence in Darfur and the ICC, particularly in the context of possible future witness protection measures, as well as the provision of information relevant to crimes committed in Darfur, including attacks on peacekeepers and humanitarian personnel. It is important that the security presence in Darfur, irrespective of its specific nature and composition, is able to provide these forms of assistance to the Court.

The Government of the Sudan

In June 2006 the OTP updated the Security Council on progress in the cooperation with the Government of the Sudan in relation to both the fact-finding process and the assessment of admissibility.

The participation of the Government of the Sudan in the process is important to ensuring a full picture of the events in Darfur, taking into account the duty of the Office to conduct an impartial investigation that considers incriminating and exonerating circumstances equally.

The OTP has made a number of requests for assistance to the Government of the Sudan, for access to documentation and individuals for the purposes of interview. A detailed and extensive request was made in June 2006, adding to the requests made earlier in 2005 and 2006. In June 2006 the Office reported to the Council that the requested interviews had not yet taken place, but that the Sudanese authorities had agreed that the process could start in August 2006.

An OTP mission to the Sudan took place in August 2006, during which formal witness interviews were conducted with two senior Government officials who, by virtue of their positions were able to provide information in relation to the conflict in Darfur and the activities of Government forces and other groups. The Office also met with officials from the Ministry of Justice and senior members of the judiciary to

receive updates on national proceedings and the work of the Compensation Commission. The Government of the Sudan has also provided a limited amount of the documentation requested by the Office.

There are a number of outstanding requests for documentation and interviews which remain an important feature of the fact-finding process and the OTP is following up on this issue with the Government of the Sudan. The Office will keep the Council informed of developments in this regard.

In addition, as indicated above, the Office will request to travel to the Sudan in January 2007 to gather further information relating to the indications that 14 individuals, suspected of violations of international humanitarian law, have been arrested. The full cooperation of the Government of the Sudan will be essential, including facilitating access to the individuals in custody.

CONCLUSION

The Office is moving to the completion of the investigation and the presentation of evidence in relation to the first case. In parallel, the investigation team will continue to gather information relating to other alleged crimes, in particular those current crimes that are bringing further suffering to the victims and that are detracting from the national, regional and international efforts to advance the cause for peace and alleviate the suffering of the victims in Darfur.

The Security Council has stated that lasting peace and security require justice. Justice can be delivered through genuine national proceedings, or through the International Criminal Court, or both. The Office of the Prosecutor and the ICC is fulfilling its mandate in relation to the situation in Darfur and to contributing to ending impunity for the most serious crimes of international concern.