

STATEMENT OF THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT, MR. LUIS MORENO OCAMPO TO THE UN SECURITY COUNCIL PURSUANT TO UNSCR 1593

(2006)

MADAM PRESIDENT

I welcome the opportunity to update the Council on the activities undertaken by my Office since my last report in December.

In adopting Resolution 1593, the Council has affirmed that justice and accountability are critical to achieving lasting peace and security in Darfur. This position is reinforced in Resolution 1674, which concludes that the prevention of armed conflict requires a comprehensive approach and that ending impunity - through appropriate national and international mechanisms - is essential to ensuring the non-recurrence of abuses.

My Office is committed to contribute to this comprehensive approach by investigating and prosecuting crimes within the jurisdiction of the International Criminal Court. My Office will, in due course, select those to be prosecuted on the basis of the evidence collected and will present its conclusions to the judges. The judges will finally decide who will be tried by our Court. In accordance with our rules and policies, we will only make such a presentation once we have gathered comprehensive and solid evidence of individual responsibility for crimes committed in Darfur and thoroughly analyzed the admissibility of our cases. This will guarantee both fair and expeditious trials.

Given the scale of the alleged crimes in Darfur, and the complexities associated with the identification of those individuals bearing greatest responsibility for the crimes, my Office currently anticipates the investigation and prosecution of a sequence of cases, rather than a single case dealing with the situation in Darfur as a whole.

The gravity of the crimes is central to the process of case selection. My Office looks at factors such as the scale and nature of the crimes, as well as the impact of ICC investigations and prosecutions in the prevention of further crimes. In the context of Darfur, particular attention will be given to investigating crimes currently affecting the lives and safety of the two million displaced civilians in the region, in an effort to improve conditions for humanitarian assistance and protect victims from further attack. The Office needs to gather sufficient information on these crimes to meet the evidential standards in the Statute.

My Office is collecting all available information from outside Darfur and has managed to make progress in its work despite serious obstacles. I wish to emphasize, however, that we are now entering a new phase where unconditional cooperation will be essential to complete the investigation and identify those most responsible for crimes committed in Darfur in an expeditious manner. Our speed will depend on the cooperation received.

The full cooperation of the Government of the Sudan and other parties to the conflict is of course vital. Furthermore, the cooperation of those organisations with significant presence on the ground such as the African Union and the United Nations is and will continue to be essential.

MADAM PRESIDENT

My previous reports to this Council have highlighted the slow progress of cooperation between the African Union Mission in the Sudan and my Office.

Since December 2005, we have engaged on a number of occasions with AMIS and the African Union seeking to expedite cooperation. I have also offered to brief the Peace and Security Council of the African Union on our activities and on the importance of reinforcing mutual efforts to ensure justice and accountability. Representatives of my Office have also met with AMIS in Khartoum and have delivered a detailed request for information relevant to the investigation.

I welcome the recent statement of the Peace and Security Council of 10 March 2006 supporting cooperation between the African Union and the Court in Darfur. I have also received confirmation in writing from both Ambassador Konare and Ambassador Kingibe of the commitment of the African Union to fully cooperate with the ICC and the determination of the African Union to assist in the fight against impunity. In addition, I have been invited to brief the Peace and Security Council of the African Union in the near future on progress in the context of Resolution 1593.

These are signals that cooperation will now be forthcoming. It is important to reiterate that the assistance of the African Union remains a fundamental component to progress in key aspects of the investigation.

MADAM PRESIDENT

In December 2005 the OTP reported to the Security Council on a series of cooperation requests that had been made to the Government of the Sudan. These included a request to visit the Sudan to assess national proceedings relating to Darfur and a request to conduct several interviews of officials identified by my Office. These officials, due to their positions, functions and experiences could provide an insight into the events in Darfur, the activities of all Parties to the conflict, and the manner in which the Government of the Sudan sought to address the situation.

Pursuant to the first request, with the objective of assessing national proceedings, a delegation of the OTP visited the Sudan in February 2006 for an extensive programme of meetings with judges, prosecutors, representatives of the police force and other government departments. The Government of the Sudan cooperated with the Office in allowing access to the requested officials in meetings that were formally video recorded. In addition to the officials requested by the OTP, the Government facilitated meetings with the Governor of South Darfur and with representatives of the commission demarcating nomadic routes, offering further information on the situation in Darfur.

During this mission and throughout this reporting period the Office has gathered significant amounts of information to determine whether the Government of the Sudan has dealt with, or is dealing with, the cases that my Office is likely to select for prosecution.

The Government of the Sudan has also provided significant amounts of information relating to the conduct of traditional tribal reconciliation mechanisms in Darfur. These are not criminal proceedings as such for the purposes of assessing the admissibility of cases before the ICC, but they are an important part of the fabric of reconciliation for Darfur, as recognised in Resolution 1593.

In previous reports the OTP has highlighted the fact that the admissibility assessment is a *case specific* assessment and not a judgment on the Sudan justice system as a whole. Once I identify the cases for prosecution, I must examine whether or not the national authorities are conducting or have conducted national proceedings genuinely in relation to those cases.

It is clear that the national authorities face significant challenges to the conduct of effective criminal proceedings in Darfur, particularly in light of the fact that the conflict has destroyed or dislocated the normal criminal justice infrastructure.

The Special Courts appear to remain relatively inaccessible, with judges performing other duties in Khartoum, awaiting the start of trials in Darfur. Limited resources and specialised expertise, with reliance on existing infrastructure for investigations, is also hampering progress. Some efforts have been made by the Government of the Sudan to rectify these deficiencies, but these efforts have also reportedly been restricted by the lack of security on the ground.

Many of the investigation mechanisms are reactive to complaints, but there is a reluctance or inability on the part of witnesses and victims to come forward with complaints and in some cases there are allegations of intimidation and harassment of complainants. This is particularly prevalent in the context of rape

allegations. The lack of any system for protection of witnesses is also a strong disincentive to complainants and presents a serious obstacle to the conduct of any effective national criminal proceedings.

Based upon our current assessment, it does not appear that the national authorities have investigated or prosecuted, or are investigating and prosecuting, cases that are or will be the focus of our attention such as to render those cases inadmissible before the ICC. We reinforce the point made in previous reports, that this assessment is on-going and a final determination will be made when specific cases are selected for prosecution. This will require the continued cooperation of the Government of the Sudan in providing access to proceedings, to officials and institutions, including in Darfur.

MADAM PRESIDENT

In respect of the request to conduct other interviews related to activities undertaken in Darfur, I reported in December that we had agreed with the Sudanese authorities that, in preparation of the interviews, the Ministry of Defence would cooperate in establishing and submitting, in advance, a comprehensive report on matters specified by my Office.

At the start of May 2006, the Government of the Sudan submitted a written report responding to questions from my Office. This report provides information on the various phases of the conflict from the Government's perspective, on matters relating to the military and security structures operating in Darfur, the activities of other parties to the conflict and the legal system governing the conduct of military operations. The written report was supplemented by an oral exchange in a meeting between representatives of my Office and military officers in Khartoum last week.

The requested interviews that were to follow up on the report have not yet taken place. However the Government of the Sudan has recently agreed that they can start in August 2006. These interviews are extremely important in order to establish a comprehensive and complete account of events in Darfur since July 2002. In accordance with the Rome Statute, we are obliged to investigate not only incriminating but

also exonerating circumstances. Particularly because my Office is conducting its investigation from outside Sudan, access to all parties in the conflict will be extremely important to allow us to fully test and corroborate the numerous accounts and allegations of crimes.

MADAM PRESIDENT

In addition to a moral duty, my Office is under a legal obligation to protect victims and witnesses. The absence of a functioning and sustainable system for their protection continues to prohibit an effective investigation inside Darfur. The investigative activities of the Office have therefore continued in several countries outside Darfur, including Chad, until April 2006, when our activities were suspended as a result of clashes between Government and rebel forces. Operations are expected to resume soon.

The Office has already gathered significant amounts of information and evidence on crimes committed in Darfur. The ICC has jurisdiction over crimes against humanity, war crimes and genocide. Various allegations have been made that some of the groups involved in the commission of crimes in Darfur did so with specific genocidal intent. This issue remains the subject of investigation and I have not, and will not, draw any conclusions as to the character of the crimes pending the completion of a full and impartial investigation.

Identifying those persons with greatest responsibility for the most serious crimes in Darfur is a key challenge for the investigation. The complexity of the conflict in Darfur exacerbates this challenge, given that it involves multiple parties, varying over time throughout the different states and localities.

As stated in previous reports, the list of 51 names provided by the International Commission of Inquiry on Darfur is of course not binding on my Office and I will keep this list confidential.

My Office has also noted the developments in the work of the UN Sanctions Committee and the listing of individuals for the purposes of sanctions. This list is in no way connected to the process of identification of

individuals for possible prosecution by the ICC. It is important to reinforce the fact that the mandate and activities of the Sanctions Committee and the ICC are distinct.

My Office will not present evidence or identify suspects to the media or other institutions. We are an independent body bound by the Rome Statute and rules of due process including specific evidentiary standards. The best contribution of the ICC to a meaningful and lasting solution in Darfur will be to fulfil its judicial mandate in accordance with these rules and standards.

My Office will, in due course, identify those to be prosecuted on the basis of the evidence collected and present its conclusions to the judges.

MADAM PRESIDENT

The ICC is a complementary international mechanism for the delivery of justice for the most serious international crimes. The concern of the ICC is to see that effective justice is delivered to the victims of the crimes in Darfur. This can be achieved either at a national level, where the domestic authorities are genuinely willing and able to prosecute those most responsible for the most serious crimes, or by the ICC, or by both. In the coming phase the Office will seek to complete the investigation of the first case and will continue to assess on an ongoing basis the admissibility of selected cases.

I have stressed throughout this presentation the need for cooperation in order to ensure accountability, not only for past but also for present crimes within the jurisdiction of the Court that continue to affect the displaced population in Darfur. Our justice efforts should contribute to their protection and to the prevention of further crimes. We need more information on groups that continue to attack them or to impede their access to humanitarian assistance.

We turn to this Council to assist us in obtaining this and other types of cooperation essential to implementing Resolution 1593.

