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**International  
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**PRE-TRIAL CHAMBER I**

**Before:** Judge Claude Jorda, Presiding Judge  
Judge Akua Kuenyehia  
Judge Sylvia Steiner

**Registrar:** Mr Bruno Cathala

**SITUATION IN DARFUR, SUDAN**

**Public Document**

**Prosecutor's Response to Cassese's Observation on Issues Concerning the  
Protection of Victims and the Preservation of Evidence in the Proceedings on  
Darfur Pending before the ICC**

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**Other Participants**  
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## Introduction

1. On 24 July 2006 Pre Trial Chamber I (“Chamber”) issued a decision inviting observations in Application of Rule 103 of the Rules of Procedure and Evidence (“Decision”). The Decision invited Louise Arbour, United Nations High Commissioner for Human Rights (“HCHR”), and Professor Antonio Cassese (“Professor Cassese”), Chairperson of the International Commission of Inquiry on Darfur Sudan, to submit in writing their observations concerning the protection of victims and the preservation of evidence in Darfur within 45 days of the Decision. The Decision further invited the Prosecutor to provide a written response to the observations submitted by the amicus curiae within 10 days of the notification of the said observations.
2. On 18 August 2006 HCHR applied for an extension of 30 days in which to file her observations under Regulation 35 of the Regulations of the Court. On 28 August 2006 the Chamber granted both the HCHR and Professor Cassese an additional 30 days in which to file their observations.
3. On 31 August 2006 Professor Cassese filed his observations concerning the protection of victims and the preservation of evidence in Darfur in Sudan (“Cassese Observations”).<sup>1</sup>
4. The Prosecutor expresses his gratitude to Professor Cassese for the Cassese Observations and joins in acknowledging Professor Cassese’s wide experience as both an international jurist and as Chairperson of the United Nations International Commission of Inquiry on Darfur.

## Legal Background

5. The Decision notes articles 57(3)(c) and 68(1) of the Rome Statute (“Statute”) and rule 103 of the Rules of Procedure and Evidence (“Rules”). Articles 57(3)(c) and 68(1) of the Statute construed together give both the Chamber and the Prosecutor an obligation to protect victims and witnesses during the

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<sup>1</sup> Antonio Cassese: *Observations on issues concerning the protection of victims and the preservation of evidence in the proceedings on Darfur pending before the ICC* (filed with Pre-Trial Chamber I on 31<sup>st</sup> August 2006).

investigation and expressly provide for the Chamber to preserve evidence where the Prosecutor so applies in accordance with the provisions of article 56 of the Statute. Rule 103 of the Rules gives the Chamber the right to invite submissions on any issue from a state, organisation or person at any stage of the proceedings, when the invitation might be desirable “for the proper determination of the case.”

6. Thus the Chamber by invoking articles 57(3)(c) and 68(1) of the Rome Statute has confined both the written observations of HCHR and Professor Cassese and the response(s) of the Prosecutor to the protection of victims and to the preservation of evidence.

### **Summary of Cassese Observations and Prosecutor’s Response**

7. Professor Cassese makes a series of points in the Cassese Observations:
  - a) Introductory comments in which he provides his view on the role of the Prosecutor and the Office of the Prosecutor’s (“OTP”) responsibility under the Statute for victims. Professor Cassese begins his submission by articulating two important premises, that the purpose of victim protection is: (1) to place victims “in a position to testify” about possible crimes;<sup>2</sup> and (2) to serve a “more humanitarian” motivation of ensuring that offences against victims are “terminated.”<sup>3</sup> In other words, Professor Cassese proposes that an underpinning of Art. 68(1) is the use of protective measures to promote witness testimony, by improving the security in Darfur and thus shielding those most vulnerable from further attacks and crimes;
  - b) Proposals relating to investigative strategy and policy, modes of liability and means of proof under the Statute;<sup>4</sup>

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<sup>2</sup> *Ibid.* at page 3 - ‘Protection of Victims-Its General Purpose’.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* at pages 4-6, 8, 10-11.

c) Proposals relating to the practical implementation of measures necessary for the protection of victims and witnesses and the preservation of evidence in Darfur.<sup>5</sup>

8. The OTP has carefully examined the points raised by Professor Cassese and responds as follows:

- a) At the heart of Professor Cassese's observations is the belief that the OTP and the Chamber have a responsibility to enhance security for victims of crimes in Darfur. While the OTP notes that the criminal investigation currently underway can and should have the consequence of contributing to the protection of the civilian population in Darfur, by preventing further crimes, neither the OTP nor the Chamber have a mandate under the Statute to establish or promote security in Darfur generally. Responsibility for security of the civilian population in Darfur rests with the Government of the Sudan ("GoS"), the Security Council working with the African Union ("AU") and other relevant organisations.<sup>6</sup>
- b) Observations by any party on the wider issues of investigative strategy and policy, modes of liability and means of proof are beyond the scope of the Decision;
- c) The measures recommended by Professor Cassese to protect victims and witnesses and preserve evidence in Darfur go beyond the scope of art 68(1) because currently the OTP is not taking statements in Darfur; and therefore there are no witnesses to protect there. The OTP is successfully carrying out an investigation without exposing or endangering any victims or witnesses in Darfur, after having determined that the investigation can progress on the basis of

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<sup>5</sup> *Ibid.* at pages 3-11.

<sup>6</sup> UNSC Resolution 1564 (2004): the Preamble recalls that 'the Sudanese Government bears the primary responsibility to protect its population within its territory, to respect human rights, and to maintain law and order.'; The Security Council has also addressed the security situation in several other resolutions, namely: UNSC Resolutions 1556 (2004), 1574 (2004), 1590 (2005), 1591 (2005), 1593 (2005), 1663 (2006), 1665 (2006), 1679 (2006), 1706 (2006); AU Decision 54 (2004), AU Decision 68 (2005).

statements taken from victims (including victims of crimes committed in Darfur) who currently reside in areas where meaningful protective measures can be provided. In Darfur itself, despite numerous resolutions passed by the Security Council<sup>7</sup> and decisions by the AU,<sup>8</sup> the security situation remains extremely volatile.<sup>9</sup> There has been a recent upsurge in violence which has now placed even United Nations ("UN") and humanitarian workers at risk and threatens to destabilise the entire region.<sup>10</sup> This security situation continues to render it impracticable to carry out investigations inside Darfur which are safe for those with whom the OTP might interact.

9. The Prosecutor respectfully submits that the Cassese Observations mistakenly broaden the meaning of Art. 68(1) to encompass the provision of protective measures which might promote the creation of witnesses instead of protecting witnesses and victims within the scope of the investigation. The investigative measures recommended by Professor Cassese encroach upon the discretion of the Prosecutor in "conducting investigations and prosecutions before the Court," *See* Art. 42(1).
10. Nevertheless as an elected official of the Court who is responsible and accountable for his actions to the international community and for the sole purpose of transparency this response will set out further:
  - a. The security situation in Darfur;
  - b. The Prosecutor's current strategy in the Darfur investigation;
  - c. The Prosecutor's reasons to continue with his investigative approach after a careful consideration of the Cassese Observations; and

<sup>7</sup> SC Res 1564 (18 September 2004); SC Res 1574 (19 November 2004); SC Res 1590 (24 March 2005); SC Res 1591(2005).

<sup>8</sup> AU Decision 54 (2004); AU Decision 68 (2005).

<sup>9</sup> UNSC Resolution 1706 (2006); the Preamble determines that 'the situation in the Sudan continues to constitute a threat to international peace and security.'

<sup>10</sup> UNHCR, September 8 – Statement by High Commissioner for Refugees António Guterres: 'Deteriorating security has left us unable to provide even minimal help across wide areas of Darfur, and resources in neighbouring Chad have been stretched to the limit. An already bad situation is worsening by the day.'  
<http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=45015e104>

d. Current witness protection measures being implemented by the Prosecutor.

**a. The security situation in Darfur**

11. On 31 March 2005, the Security Council adopted Resolution 1593 referring the situation in Darfur, Sudan to the Prosecutor and affirming that justice and accountability are critical to achieving lasting peace and security in Darfur. This intrinsic link between security and justice was reinforced by SC Resolution 1674 on the protection of civilians in armed conflict. SC Resolution 1674 concluded 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. This clear acknowledgement of the important links between justice, peace and security should not confuse the entirely separate roles of the Security Council and the Court.

12. The AU and the Security Council have requested the parties to cease military operations on numerous occasions with little effect.<sup>11</sup> The Darfur Peace Agreement (“DPA”) signed by the GoS and certain rebel factions on 5 May 2006 expressly prohibits combat operations between the parties.<sup>12</sup> Nevertheless fighting is continuing in the region and indeed the government renewed military operations in North Darfur on 28 August 2006.<sup>13</sup>

13. The Security Council on 31<sup>st</sup> August 2006 reaffirmed that the situation in Darfur constituted a threat to international peace and security<sup>14</sup> and recognised that the

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<sup>11</sup> SC Res 1564 (18 September 2004); SC Res 1574 (19 November 2004); SC Res 1590 (24 March 2005); SC Res 1591(2005). See also African Union Peace and Security Council Communiqué from the Peace and Security Council meeting on 20<sup>th</sup> October 2004, paragraph 19: the Council ‘urges the Government of Sudan to take all steps required to bring the attacks against civilians to an end and to bring to justice all perpetrators of human rights violation; AU Ceasefire Commission report on ceasefire violations, 5 July 2004 at paragraph 8: ‘the Government of Sudan should do its utmost best to put an end to the activities of the Janjaweed...’; AU Ceasefire Commission report on ceasefire violations, 23 October 2005 at paragraphs 39-40: ‘The both parties which Government of Sudan and SLA (*sic*) must stop attacking each other and respect the Ceasefire Agreement....the Government of Sudan to stop (*sic*) the aircraft employment...’

<sup>12</sup> Darfur Peace Agreement, 5 May 2006 at paragraph 226.

<sup>13</sup> Human Rights Watch: Darfur Resolution only a first step, August 31 2006.

<http://www.hrw.org/english/docs/2006/08/31/sudan14104.htm>

<sup>14</sup> UNSC Resolution 1706 (2006) of 31 August 2006, para. 13 of the preamble.

ongoing conflict had the potential to destabilise the entire region including Chad and the Central African Republic.<sup>15</sup> In this same resolution the Security Council authorised the deployment of 17,300 military personnel to Darfur<sup>16</sup> as a means to establish security in the region and set out in detail the establishment of a framework to protect victims,<sup>17</sup> to ensure an effective ceasefire<sup>18</sup> and to facilitate the work of UN personnel and humanitarian workers in the region.<sup>19</sup> The deployment of these personnel still requires the consent of the GoS and nothing in the resolution provides for the specific protection of ICC witnesses as such.

14. UN and AU observers recognize that while security briefly improved following the signature of the DPA it has deteriorated markedly, especially in the last two months, reflecting an overall, serious deterioration since the start of 2006.<sup>20</sup> UN Special Rapporteur Sima Samar wrote in mid-August 2006 that she “was extremely disturbed by the critical human rights situation in the region and the signs that there will be a *further deterioration* (emphasis added) in the coming months if action is not taken to protect civilians from attacks and end the conflict through peaceful means. *Despite the ceasefire provisions there has been an upsurge in violence* (emphasis added) in the region resulting in killings of civilians, rape, and displacement.”<sup>21</sup> In mid-August, the UN Special Representative of the Secretary-General for Sudan, Jan Pronk, described six

<sup>15</sup> *Ibid*, para. 6 of the preamble.

<sup>16</sup> *Ibid*, para. 3.

<sup>17</sup> *Ibid*, paras. 8(l), 9(c), 12(a) and 13.

<sup>18</sup> *Ibid*, para. 11.

<sup>19</sup> *Ibid*, paras. 10 and 12(a).

<sup>20</sup> Amnesty International- Sudan: Fear for safety/ fear of forcible displacement, August 31 2006: ‘On 28 August, the area of Kukul, some 40 km northwest of North Darfur’s capital al-Fasher, was heavily bombed by government Antonov aircraft, prompting civilians to flee the town and their villages. A few hours later, government troops moved in the town of Kukul.’ <http://web.amnesty.org/library/Index/ENGAFR540452006>

<sup>21</sup> Sima Samar, “UN Human Rights Expert on the Situation of Human Rights in the Sudan Concludes Visit,” 17 August 2006. The UN Secretary-General’s reports have made the same point, that humanitarian access has worsened between May and July 2006 with the upsurge in violence that followed the peace agreement, and that “an estimated 250,000 people have been displaced or redisplaced in Darfur as a consequence of the ongoing violence since the beginning of 2006. The worsening humanitarian situation is compounded by reduced access as a direct result of the violence. The limited access, together with shortages of funding, has translated into scaled down activities in all sectors, including food aid. Shortages have forced the World Food Programme (WFP) to reduce food rations for both camp and non-camp populations by about 50 per cent. The announcement of shortages, of which the camp population became aware around the time of the signing of the Darfur Peace Agreement, resulted in much unrest in the camps and in less support for the Agreement. S/2006/430, “Monthly report of the Secretary-General on Darfur,” 21 June 2006, para. 17.

waves of violence in Darfur that have “resulted in stalling a considerable part of our humanitarian operations.” He noted also that the organisations best placed to protect victims—aid agencies and the AU Mission in Sudan (AMIS)—have been hard hit in recent months. He pointed out that in the first seven months of 2006 the number of security incidents affecting the non-governmental *organisations increased by 75% in comparison with the first seven months of 2005*, and that violent activities targeting the AU increased even more: by 900.<sup>22</sup> At the start of August, the AU reported a similar decline in security conditions in Darfur to members of the Core Coordination Group which is responsible for the oversight of the DPA’s implementation.<sup>23</sup>

15. This level of insecurity in Darfur has threatened and fundamentally undermined even the provision of the most basic human services to Darfurians by representatives of the international community dedicated to and skilled in the execution of this particular task.
16. The invitation of the Chamber for the submission of observations on the security of victims and the preservation of evidence should not be viewed to have conferred any authority under Art. 68(1) for the ICC or the OTP to set about improving the general security of the Darfur region or the well-being of the civilian residents of Darfur. This is not the mandate of the OTP nor is it the function of the Chamber. Security in Darfur is the primary responsibility of the GoS and the Security Council working with the AU and other relevant organisations. Furthermore it should be emphasised that the Prosecutor has consciously decided not to conduct investigations in Darfur at this time based on his assessment that the OTP can best comport with the requirements of Art. 68(1) by conducting investigations where either meaningful security exists or effective protective measures can be provided to victims and witnesses.
17. The Prosecutor concurs, of course, in the view reflected in the Preamble to the Rome Statute that the criminal investigation and prosecution of atrocities must

<sup>22</sup> <http://www.janpronk.nl/index120.html>

<sup>23</sup> Final CCG Summary, 9 August 2006 [confidential].



contribute ultimately to the prevention of such crimes. For example, the Prosecutor stressed throughout his last presentation before the Security Council the need for cooperation in order to ensure accountability in Darfur not only for past but also for present crimes within the jurisdiction of the Court.<sup>24</sup> Judicial efforts thus have an important role to play in the protection of civilians and the prevention of further crimes. This view, however, does not endorse the different notion that the Court like the Government of Sudan or the Security Council, has an obligation, or the authority, directly to enhance security in Darfur. On the matter of security generally the OTP is monitoring with interest developments in Sudan following the adoption of UN Security Council Resolution 1706.

#### **b. The Prosecutor's current strategy in the Darfur investigation**

18. The Prosecutor is obliged under the Statute to establish the truth and to assess whether there is criminal responsibility under the Statute; he must investigate incriminating and exonerating circumstances equally.<sup>25</sup> In carrying out investigations, the Prosecutor has a duty to ensure the protection of victims and witnesses under Articles 54(1)(b), 54(3)(f) and 68(1) of the Statute. The Prosecutor also has an obligation to respect the principle of complementarity by monitoring any ongoing investigations and prosecutions by the GoS itself.<sup>26</sup> Subject to all the aforementioned legal duties the Statute grants to the Prosecutor discretion in the manner in which the investigation is carried out.<sup>27</sup>

19. On the issue of victim and witness protection, the OTP has regularly consulted with the relevant agencies of the UN and with the AU and continues to make an assessment of the security situation in Darfur. The Prosecutor concluded in June 2005 that it was not possible to adequately protect witnesses in Darfur. On June 29 2005, in his first statement to the Security Council, the Prosecutor stated: "The information currently available highlights the significant security

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<sup>24</sup> Third Report of the Prosecutor of the International Criminal Court, Mr. Luis Moreno Ocampo, to the Security Council pursuant to UNSC 1593(2005) of 14 June 2006.

<sup>25</sup> Article 54(1) of the Statute.

<sup>26</sup> Article 17 of the Statute.

<sup>27</sup> Article 54(3) of the Statute.

risks facing civilians, local and international humanitarian personnel in Darfur. These issues will present persistent challenges for any genuine investigations, international or national.”<sup>28</sup> In his second report to the Security Council, after monitoring the situation in Darfur for a period of six months, the Prosecutor reported that no effective system of witness protection could be established in Darfur and thus investigative effort was continuing outside Darfur.<sup>29</sup> In his third report to the Security Council and as cited in the Cassese Observations: “the continuing insecurity in Darfur is prohibitive of effective investigations inside Darfur, particularly in light of the absence of a functioning and sustainable system for the protection of victims and witnesses.”<sup>30</sup> The Prosecutor has continued to monitor the security situation in Darfur in light of the need to constantly re-evaluate the feasibility of establishing safe and sustainable contact with potential witnesses in Darfur.

20. The necessity of focusing investigative efforts in more secure locations has not prevented the investigation from proceeding. The OTP has been investigating this situation for a period of fourteen months. During that time the OTP has taken statements from witnesses and victims, including refugees from Darfur. The OTP has conducted investigative steps in fifteen countries. The full collection of evidence gathered since June 2005 includes approximately nine thousand seven hundred fifty items of evidence or information; this includes those documents provided by the UN International Commission of Inquiry on Darfur. The OTP also has requested cooperation from the GoS. Four missions have taken place in Khartoum. Investigative staff from OTP have recently conducted formal interviews of two senior officials of the GoS about the conflict in Darfur. Further missions to the Sudan, including the conduct of interviews and the collection of documentation and other evidence, are planned for later

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<sup>28</sup> 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) at p5.

<sup>29</sup> Second Report of the Prosecutor of the International Criminal Court , Mr. Luis Moreno Ocampo. to the Security Council pursuant to UNSC 1593(2005) of 13 December 2005 at p.4.

<sup>30</sup> Third Report of the Prosecutor of the International Criminal Court . Mr. Luis Moreno Ocampo, to the Security Council pursuant to UNSC 1593(2005) of 14 June 2006 at p.6.

this year. The OTP has gathered significant amounts of information and evidence on crimes committed in Darfur.

21. Among the material which has been supplied by the GoS is information which purports to demonstrate their own efforts to investigate and prosecute crimes which potentially fall within the jurisdiction of the Court. The OTP continues to monitor this activity by the GoS in accordance with its obligations under the Statute.

22. In the coming phase the OTP will seek to complete the investigation and planning of the presentation of the first case and will continue to assess on an ongoing basis the admissibility of cases. The OTP will, in due course, identify those to be prosecuted on the basis of the evidence collected and present its conclusions to the Chamber. The best contribution of the Court to a meaningful and lasting solution in Darfur would be to fulfil its mandate of carrying out investigations and adjudicating cases in accordance with the Rome Statute.

**c. The Prosecutor's reasons to continue with the investigative strategy after a careful consideration of the Cassese Observations**

23. In the Cassese Observations, Professor Cassese recommends that the OTP pursue witnesses in the larger urban areas of Darfur<sup>31</sup> and request security escorts from the GoS when investigators visit camps and villages in Darfur.<sup>32</sup> He suggests that the OTP request certain documents from the GoS<sup>33</sup> and on a failure to comply with this request by the GoS, to make application to the Chamber under Article 57(3)(d) of the Statute.<sup>34</sup> In respect of crimes of sexual violence, he recommends that the OTP take down the testimony of the victims in Darfur under article 56 of the Statute.<sup>35</sup>

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<sup>31</sup> Antonio Cassese: Observations on issues concerning the protection of victims and the preservation of evidence in the proceedings on Darfur pending before the ICC (filed with Pre-Trial Chamber 1 on 31st August 2006), at page 5.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.* at Page 10.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.* at Page 11.

24. Furthermore in respect of crimes of sexual violence Professor Cassese recommends that the OTP request the Chamber to call upon the GoS to prosecute the direct perpetrators of crimes of sexual violence in Darfur.<sup>36</sup>
25. Professor Cassese calls on the Prosecutor to invite the President of the Court through the Chamber to take steps with the GoS in Khartoum to draw their attention to the urgent need to protect victims under articles 38(3) and (4) of the Statute.<sup>37</sup> He also suggests that the OTP should directly, or through the Chamber, call on the GoS to protect victims and to have them report to the OTP or the Chamber on the specific measures that they have undertaken or intend to undertake for the protection of victims. Moreover he states that the OTP could request, via the Chamber, that the GoS refrain from harassing or interfering with victims interviewed by the ICC.<sup>38</sup>
26. Professor Cassese states that the Chamber itself could request the HCHR to monitor non-compliance with any orders the OTP might request relating to the refraining from harassing or interference with victims.<sup>39</sup> Professor Cassese believes that the facilitation of interviews in Darfur could be hastened by the OTP requesting that rebel leaders in Darfur temporarily suspend armed activities in the region in order to facilitate investigation.<sup>40</sup>
27. Professor Cassese suggests that the OTP apply to the Chamber to request the GoS to allow third State entities as well as non-governmental organisations operating in Darfur to provide full assistance to victims (medical, humanitarian and psychological) of such crimes with any non-compliance being referred by the OTP to the Security Council.<sup>41</sup>
28. The recommendations made by Professor Cassese and summarised in paragraph 23 above propose investigative strategies. The investigative strategy

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<sup>36</sup> *Ibid*, page 8.

<sup>37</sup> *Ibid*, page 4.

<sup>38</sup> *Ibid*, page 8.

<sup>39</sup> *Ibid*, pages 5 & 6.

<sup>40</sup> *Ibid*, page 6.

<sup>41</sup> *Ibid*.

that the OTP chooses to adopt is a matter over which it enjoys discretion and as mentioned previously that strategy does not currently involve investigative operations in Darfur. In fact, it is precisely because the Prosecutor does not believe he can responsibly meet his obligations to protect victims and witnesses in Darfur under Article 68(1) of the Statute that the OTP's current strategy does not involve taking statements in Darfur. In the case of statements taken elsewhere, as the Chamber is aware, the OTP with the support of the VWU, have established protocols to ensure the protection of witnesses before, during and after interviews. In this Court's investigations, it has been demonstrated that witness security is not simply a matter of protection during the interview; it often requires continuous follow-up monitoring and periodic re-evaluation of the adequacy of protective measures.

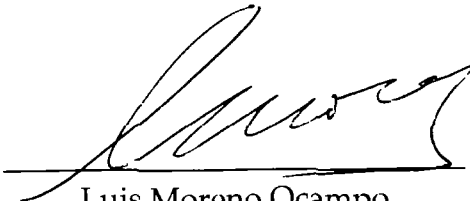
29. The recommendation made by Professor Cassese and summarised in paragraph 24. above relates to the OTP's obligations under article 17 of the Statute to respect the principle of complementarity. The OTP continues to monitor the efforts of the GoS to investigate and prosecute crimes which potentially fall within the jurisdiction of the Court. Requesting that the GoS prosecute certain crimes is not the responsibility of the Chamber or the OTP. If the GoS is not investigating or prosecuting crimes which fall within the jurisdiction of the court then it is the responsibility and discretion of the OTP to investigate those crimes and if the Prosecutor so decides to subsequently apply to the Chamber for a warrant of arrest or summons to appear under Article 58 of the Statute.
30. Those recommendations that Professor Cassese makes and which are summarised in paragraphs 25. to 27. above relate to the wider issue of security in Darfur as previously emphasised in paragraph 8(a) of this response. Professor Cassese states in paragraph 2 of the Cassese Observations that he infers that protection of victims is grounded on a two fold motivation – firstly to ensure that victims are put in a position to testify about possible crimes or to provide information to the OTP on those crimes, and secondly a broader humanitarian motivation to shield those victims most vulnerable to the

commission of further crimes in Darfur.<sup>12</sup> The OTP believes that the investigation and prosecution of crimes will have a positive impact on ongoing crimes in Darfur. However the mandate of witness protection cannot realistically be viewed as a duty to protect all the victims in Darfur regardless of their lack of connection to the investigation. Overall security in Darfur is neither the responsibility of the OTP nor the Chamber. As emphasised already it rests squarely with the GoS, the AU and the Security Council.

31. The security situation in Darfur may improve opening up opportunities for investigative activity in the future at which time some of the Cassese Observations would become more relevant for consideration.

**d. Current witness protection measures being implemented by the Prosecutor**

32. The Prosecutor notes the significant role that the Chamber is able to play in providing for the protection and privacy of victims and witnesses and continues to review the protective measures currently being taken with this role in mind. Protective measures have been implemented in those countries in which the OTP is conducting investigations and as yet there has been no matter which in the OTP's assessment requires the Chamber's intervention. Nonetheless should any such matter arise, including a unique investigative opportunity, the OTP will not hesitate to seek the Chamber's guidance or decisions.



Luis Moreno Ocampo  
Prosecutor

Dated this 11<sup>th</sup> day of September 2006

At The Hague, The Netherlands

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<sup>12</sup> *Ibid*, page 3.