



**Address by Luis Moreno-Ocampo,
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Address to the United Nations Security Council

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Mr. President

I welcome this opportunity to address the Security Council again on the activities undertaken by my office since my first report on 29 June 2005.

The current reporting period coincides with the first phase of the investigation, which I launched on 1 June 2005. In this first phase the Office has made good progress in gathering facts relating to the universe of crimes alleged to have taken place in Darfur, as well as the groups and individuals responsible for those crimes.

In order to carry out the investigation, my Office has completed the recruitment of a multi-disciplinary team and has developed the essential infrastructure for the management and analysis of large quantities of information and evidence. We are also addressing the challenge of identifying and training impartial and effective interpretation and translation services through contacts with states and organisations, as well as missions to identify staff and resources.

In accordance with the policies and strategies of the Office, in the coming second phase the investigation will focus on a selected number of criminal incidents and those persons bearing greatest responsibility for those incidents.

My Office has collated a comprehensive picture of the crimes allegedly committed in Darfur since 1 July 2002. From this overall picture we have identified particularly grave events, involving high numbers of killings, mass rapes and other forms of extremely serious gender violence for full investigation.

We continue to monitor ongoing violence. Attacks on humanitarian workers and facilities remain prevalent, including incidents involving the killing of African Union peacekeepers. The impact of these crimes on the delivery of humanitarian assistance and efforts to secure peace and stability in Darfur has been recently highlighted in the November report of the UN Secretary-General on Darfur. In some instances these crimes may fall within the jurisdiction of the Court. I encourage, national and international organisations suffering such attacks to take steps to record and preserve information and evidence and to provide these materials to us.

Mr. President

There continues to be a great deal of speculation around the list of 51 names prepared by the International Commission of Inquiry on Darfur. As I stated before, this list, which remains sealed, represents the conclusions of the Commission and is in no way binding on the Prosecutor. In addition, it should be emphasised that the activities and objectives of the Sanctions Committee and the Panel of Experts, established by Resolution 1591, are entirely distinct from the work of my Office.

We will conduct our own independent investigations, in accordance with our Statute and policies. In the coming months, upon completion of this first investigative phase, my Office will identify persons to be prosecuted, subject to article 53(2) of the Rome Statute. I would like to emphasize that no decisions have been taken at this stage as to whom to prosecute.

Mr. President

Witness protection is an issue of paramount concern to our Court.

As I already indicated, the current security situation in Darfur remains volatile with ongoing violence and attacks. The establishment of an effective system for the protection of victims and witnesses is a precondition to the conduct of investigative activities in Darfur. Given the prevailing climate of insecurity and the current absence of an effective system of protection, investigative activities have so far taken place outside Darfur.

Despite these limitations significant progress has been made in the investigation thanks to the information and other forms of assistance provided by States and organisations. We have identified witnesses in seventeen countries. Well over a hundred potential witnesses have been screened and a number of formal statements have already been taken. We are currently screening hundreds of additional potential witnesses either directly or with the assistance of states and organisations. To facilitate this process, my Office has established a semi-permanent presence in the region, which provides logistical, security and other support to the process of witness identification and interview.

The ICC is complementary to national criminal jurisdictions. In accordance with article 53(2)(b) of the Statute, the legal test is specific to the cases selected for prosecution, and not the state of the Sudanese justice system as a whole.

Accordingly, my Office continues to gather and assess information relating to the various mechanisms established by the Sudanese authorities in relation to crimes

allegedly committed in Darfur, including the Special Court for Darfur established by decrees issued on 7 and 11 June 2005.

In November 2005 a decree is reported to have been issued establishing two new Special Courts to sit in Geneina and Nyala. Additional prosecutors and judges have been appointed to staff these Courts. The jurisdiction of the Court is also reported to have been expanded to consider allegations of violations of international humanitarian law and the Government of the Sudan has renewed its commitment to allow access to the AU and other international monitors. In addition, various other mechanisms and committees have been established to look at aspects of the crimes in Darfur, including the centres for the elimination of violence against women and an attorney office for Crimes against Humanity. The Government has also pointed to efforts to promote tribal reconciliation and to the proposed Darfur Conference to take place in December 2005 as efforts towards a comprehensive solution to the conflict.

However, the continuing insecurities in Darfur do not allow for an effective system of victim and witness protection. This has forced my Office to investigate outside Sudan and represents a serious impediment to the conduct of effective investigations in Darfur by national judicial bodies as well. Up to this point, the work of the Special Court does not suggest that cases likely to be prosecuted before the International Criminal Court would be inadmissible in terms of Article 53(2)(b) of the Statute. My Office will continue to follow closely all national proceedings.

In addition to admissibility I am also required by the Rome Statute to consider whether a prosecution is not in the interests of justice. In considering this factor I will follow the various national and international efforts to achieve peace and security, as well as the views of witnesses and victims of the crimes.

Mr. President

Resolution 1593 requires the Government of the Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court and the Prosecutor. Other states and organisations are also urged to cooperate fully, in particular the African Union.

Since our last report to the Council, the Court has continued to press for the signature of the ICC-AU relationship agreement, the text of which was finalised in May 2005.

In addition, I have contacted AMIS in Khartoum and written to the Chairperson of the African Union seeking meetings with relevant officials to discuss the modalities for cooperation in relation to Darfur, as well as an opportunity to brief their Peace and Security Council.

The next phase of the investigation will be a decisive one, the success of which will require the full cooperation of the African Union. It is hoped that rapid progress in this relationship will be achieved in this phase.

Mr. President

This reporting period has seen further steps in the implementation of the Comprehensive Peace Agreement, including the establishment, on 22 September 2005, of the new Government of National Unity. In the lead-up to this transition the OTP did not make formal requests for assistance to the Sudan, but contacts with the Sudanese authorities were maintained.

As set out above, following the initiation of the investigation, my office has gathered information and evidence from outside the Sudan. During this initial fact-finding phase,

it is vital that the Office develops a full understanding of the situation in Darfur and the context in which the alleged crimes took place.

In this regard, on 17-24 November 2005 representatives of the Office of the Prosecutor and the Registry of the ICC visited Khartoum to discuss matters related to the Lord's Resistance Army and the situation in Darfur. As part of the fact-finding process, during this visit a request for assistance was made to the Sudanese authorities to undertake several interviews that could provide an insight into the activities of all parties to the conflict in Darfur, as well as an assessment of national proceedings undertaken by the Special Courts and other relevant judicial bodies.

In response to this request Sudanese officials have agreed to organise a visit to the Sudan by the end of February 2006 by representatives of my Office to meet with the Special Courts and other relevant judicial bodies in order to assess national proceedings in relation to alleged crimes committed in Darfur. In addition, officials also agreed that, in preparation of the other interviews, the Ministry of Defence would cooperate in establishing and submitting, by March 2006, a comprehensive report on matters to be identified in advance by us. At the time of submission of my report to the Council, I was still waiting for written confirmation of these arrangements by the Government of the Sudan. The Government of the Sudan has now provided this written confirmation.

We have also had contacts with other parties to the conflict, including the main rebel groups. Establishing consistent liaison with the SLM/A has been hampered by divisions within the group, however we continue to open channels and offer an opportunity for all parties involved in the conflict to provide information and evidence to the Court during the next phase of the investigation.

The investigation of the situation in Darfur is taking place within a context of on-going violence and multiple efforts to secure peace, as well as a complex process of political transition. The Office will continue to be sensitive to these dynamics and will seek to reinforce the work of the AU, the UN, the Sudan and other states and organisations. At the same time the Office is conscious of the fact that accountability for the most serious crimes alleged to have been committed in Darfur is an essential component to effective peace and effective transition.

Having made the first steps towards a cooperative relationship, during the next phase we will seek the further assistance and cooperation of the Government of the Sudan in relation to the process of fact-finding and evidence gathering. We will keep the Council informed of developments and challenges that arise during the next phase.

Thank you