

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No: ICC-02/05
Date: 24 July 2006

PRE-TRIAL CHAMBER I

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

Registrar: Mr Bruno Cathala

SITUATION IN DARFUR

Public Document

**Decision Inviting Observations in Application of Rule 103 of the Rules of
Procedure and Evidence**

The Office of the Prosecutor
Mr Luis Moreno Ocampo

PRE-TRIAL CHAMBER I (“the Chamber”) of the International Criminal Court (“the Court”);

NOTING the Decision of the Presidency Assigning the Situation in Darfur, Sudan to Pre-Trial Chamber I issued on 21 April 2005;¹

NOTING the Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General of 25 January 2005, which reports that crimes against humanity and war crimes have been committed in Darfur, Sudan;

NOTING Security Council resolution 1593 (2005) of 31 March 2005², whereby the United Nations Security Council (“the UNSC”), acting under Chapter VII of the Charter of the United Nations, decided to “refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court” and in which it “invites the Prosecutor to address the Council within three months of the date of adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution”;

NOTING the first report of the Prosecutor (“the First Report”) to the UNSC dated 29 June 2005, whereby the Prosecutor, after preliminary analysis, informs the UNSC (i) that he has decided to initiate an investigation into the situation in Darfur since

¹ ICC-02/05-1-Corr.

² S/RES/1593 (2005).

1 July 2002; (ii) that planning and preparations for investigations relating to Darfur are advancing rapidly; and (iii) that communication with the Government of Sudan and discussions on cooperation with other States and organisations have started;

NOTING the second report of the Prosecutor (“the Second Report”) to the UNSC dated 13 December 2005, whereby the Prosecutor informs the UNSC (i) that the Prosecution has now selected a number of alleged criminal incidents for full investigation and will closely monitor the ongoing commission of serious crimes in Darfur; (ii) that the establishment of an effective system for protection of victims and witnesses is a precondition to the conduct of investigative activities in Darfur; and (iii) that the current security situation in Darfur remains volatile with ongoing violence and attacks, and because of the absence of an effective system of protection, investigation activities have so far taken place outside Darfur;

NOTING the third report of the Prosecutor (“the Third Report”) to the UNSC dated 14 June 2006, whereby the Prosecutor informs the UNSC (i) that his office has selected several incidents for further investigation and analysis; (ii) that 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 his office; (iii) that 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; and (iv) that unconditional cooperation will be essential to complete the investigation and identify those most responsible for crimes committed in Darfur in an expeditious manner;

NOTING articles 57 (3) (c) and 68 (1) of the Rome Statute (“the Statute”) and rule 103 of the Rules of Procedure and Evidence (“the Rules”);

CONSIDERING that pursuant to article 57 (3) (c), the Chamber may “where necessary, provide for the protection and privacy of victims and witnesses [and] the preservation of evidence” and that article 68 (1) provides that “the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”;

CONSIDERING that, in view of the latest report of the Prosecutor to the UNSC and of the recent developments in the situation in Darfur, Sudan, the protection of victims is paramount;

CONSIDERING that inviting representatives of organisations to submit observations on current and specific issues related to the protection of victims and to the preservation of evidence would contribute specifically to realising the objective mentioned above in the present situation;

CONSIDERING that rule 103 (1) of the Rules provides for the Chamber to invite any State, organisation or person to submit any observation on any issue that the Chamber deems appropriate when it is desirable for the proper administration of justice, and that rule 103 (2) expressly gives the Prosecution and the Defence the opportunity to respond;

FOR THESE REASONS

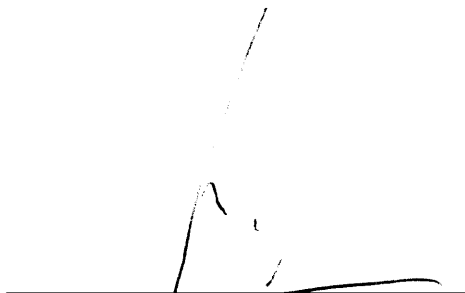
DECIDES to invite:

- (i) Louise Arbour, High Commissioner of the Office of the United Nations High Commissioner for Human Rights and Antonio Cassese, Chairperson of the International Commission of Inquiry on Darfur, Sudan, to submit in writing their observations on issues concerning the protection of victims and the preservation of evidence in Darfur, Sudan within 45 days of the notification of the present decision;

- (ii) the Prosecutor and/or his representatives as well as the *ad hoc* Counsel for the Defence to provide a written response to the observations submitted by the organisations within 10 days of the notification of the said observations;

ORDERS the Registrar to appoint an *ad hoc* counsel to represent and protect the general interests of the Defence in the Situation in Darfur, Sudan during the proceedings pursuant to rule 103 of the Rules.

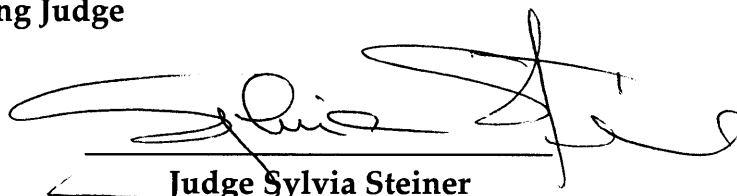
Done in English and French, the English version being authoritative.



Judge Claude Jorda
Presiding Judge



Judge Akua Kuenyehia



Judge Sylvia Steiner

Dated this Monday 24 July 2006

At The Hague

The Netherlands