

AMICC

Questions & Answers on the ICC investigation in the Democratic Republic of Congo

How did this situation get before the ICC?

The DRC signed the Rome Statute of the ICC on September 8, 2000 and ratified it on April 11, 2002. As a State Party, the DRC consented to the Court's jurisdiction for crimes in the ICC's Rome Statute arising after its entry into force on July 1, 2002. In March 2004, the DRC referred its situation to the ICC following significant international pressure to go to the Court.

At what stage is the investigation now?

On March 17, 2006, Thomas Lubanga Dyilo, leader of the Union des Patriotes Congolais/Forces Patriotique pour la liberation du Congo (UPC/FPLC) militia, was arrested in Kinshasa and transferred to the ICC. Lubanga has been charged with committing war crimes that include enlisting and conscripting children under the age of fifteen and using them to participate actively in hostilities. Lubanga's arrest warrant, issued on February 10, 2006, was the first warrant to be issued by the ICC in connection with the atrocities in the DRC. Furthermore, this is the first arrest made by the ICC since its inception in July 2002.

In October 2004, the DRC and ICC signed an accord giving the Court authority to operate within the DRC, begin investigations within its borders, and compel DRC authorities to cooperate with the investigations. A field office has been set up in Kinshasa to support the investigation and the Prosecutor has an operational presence in Bunia, Ituri. In December 2004, and again in April 2005, the ICC held seminars in the DRC. There have been several investigative missions, focusing particularly on the Ituri region in eastern DRC. The OTP has interviewed witnesses and suspects and has also researched crimes and military structures. Six victims have been recognized by PTC I. The victims will have the opportunity to participate during the investigation phase. Despite the ongoing dangers of the security situation, significant evidence is being collected and the Prosecutor is making progress.

How soon will there be arrest warrants and indictments?

The OTP has gathered sufficient evidence to identify and prioritize those most responsible for the crimes. The Prosecutor will go to Pre-Trial Chamber I to request the issuance of arrest warrants. Warrants can be expected in early 2006. They may have already been issued but remain under seal until further investigation. Once the suspects are arrested and brought before the Court, Pre-Trial Chamber I will conduct a confirmation of charges hearing. The Chamber will then transfer the confirmed cases to the Trial Division to proceed.

What has the Court done so far?

In July 2004, the situation in the DRC was assigned to Pre-Trial Chamber I. In February 2005, the Chamber decided to convene the Court's first ever status conference, to provide for the protection of victims and witnesses and the preservation of evidence. In April 2005, the Chamber authorized the Prosecutor to request forensic examinations to be performed in light of a unique investigative opportunity which arose. In July 2005, an ad hoc counsel for defense was appointed

and sworn in to represent the interests of the defense in general rather than an individual accused. The Court's actions regarding victim's participation are discussed below. Pre-Trial Chamber I has ordered a report from the Netherlands Forensics Institute, which it expects to receive by the end of January 2006. This will detail the investigation of the Prosecutor and of the Ad hoc Counsel for Defence.

It was made public on January 18, 2006 that Pre-Trial Chamber I had accepted the applications of six victims to participate in the Court's proceedings. The Prosecutor asked PTC I to grant leave to appeal this decision, as he fears the decision to allow the victims to participate now may later be nullified or cast doubts on the impartiality of investigations. The Prosecutor argues that it is inappropriate for victims to participate at this time. No accused person has been given equal procedural rights which may lead to a biased trial. He feels that the PTC's function is not investigative, and it could choose victims before there was sufficient evidence that they would facilitate the Prosecutor's investigation of the gravest crimes. The victims' representatives submitted reasons for which they believed that the Prosecutor should not be allowed to appeal the PTC decision, to which the Prosecutor gave his counterarguments upon permission of the PTC. PTC I has not yet made a decision regarding the Prosecutor's request for leave to appeal.

How can victims apply to participate in the proceedings of the Court?

Article 68 of the Rome Statute allows victims to participate in the proceedings of the Court under certain circumstances. When the personal interests of the victims are affected, their views and concerns may be presented and considered. In such cases the Court is obliged to take the measures necessary to ensure comprehensive protection of the victims. Such measures may not "be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." In May 2005, the Pre-Trial Chamber received its first application for participation. The victims requested the non-disclosure of their identity and any information that could lead to their identification. In response the Chamber requested additional information regarding this application. In July, the Legal Representative for victims gave his solemn undertaking before the Chamber. In the same month, a hearing was held regarding the protection of victims.

Why is sexual violence such a big issue in the DRC?

One of the most severe and damaging elements of this conflict has been the pervasive sexual violence. Perpetrators are members of virtually all the armed forces and armed groups that operate in the DRC. The Rome Statute explicitly gives the ICC jurisdiction over rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and sexual violence as war crimes and crimes against humanity.

Why are Corporations such pivotal actors in this conflict?

Many of the crimes in the DRC have involved businesses and corporate actors because the conflict is almost entirely concerning the exploitation of natural resources. Though the jurisdiction of the Court is specifically limited to natural persons, Article 25(3) of the Rome Statute extends criminal responsibility to an individual who in any way aids, abets, or otherwise assists a criminal group, when that person knows that the group ordinarily commits criminal acts

within the jurisdiction of the Court. The Prosecutor intends to punish corporate actors who have supported the commission of atrocities in order to deter future crimes.

Will the ICC be able to find and capture the perpetrators of the atrocities that have been committed?

Yes. As the ICC does not have its own police force, local authorities carry out the arrest warrants and transfers of defendants to the Court. In accordance with Articles 89 and 91, the DRC, as a State Party to the Rome Statute, is obliged to “comply with requests for arrest and surrender.” The Rome Statute also creates general obligations for States Parties to cooperate with the Court’s investigations and prosecutions. Congolese authorities have already arrested individuals in Ituri and the Prosecutor has stated that the Court is waiting to see if the defendants overlap. In addition, peacekeeping forces could carry out the arrests and transfers. If indicted persons travel abroad, they could be arrested in the territory of any State Party to the ICC.

What would happen if it became clear that ICC investigations might worsen the conflict and hinder peace?

The Prosecutor has the power to suspend investigations if he concludes that this would serve the interest of justice. Such a decision could be reviewed by the Pre-Trial Chamber, on its own motion or at the request of the Security Council. If the circumstances changed, the Prosecutor could resume the investigation.

Does any organization or body oversee the Prosecutor’s actions?

The Office of the Prosecutor is an independent organ within the structure of the ICC; the Prosecutor can and should make independent impartial decisions. However, the Rome Statute limits his powers, and the Pre-Trial Chamber oversees his actions. The Pre-Trial Chamber reviews the status of his investigations and some of his decisions periodically. During an investigation, the Prosecutor must get prior authorization from the Chamber to take certain steps. In addition, his actions can be reviewed by the Assembly of States Parties, which hires and can fire him.

Researched and drafted by AMICC professional volunteer associate: Kyra Hild

Updated by AMICC professional volunteer associate: Katherine Scovner