

# AMICC

## **Information Regarding the Potential Liability of Businesspersons for Atrocity Crimes Under the Rome Statute**

### **Background:**

Soon after his inauguration, ICC Prosecutor Luis Moreno Ocampo announced that, in his investigations, he will include possible crimes by the officials of businesses involved in atrocity situations. He hopes to use financial and commercial transactions as evidence to locate and track down perpetrators of atrocities. In this way, the Prosecutor intends to deter business executives from assisting or empowering those who plan and carry out crimes within the jurisdiction of the Court.

### **Can the ICC investigate and prosecute corporations?**

The ICC can only investigate and prosecute individuals. The Rome Statute bans the prosecution of legal persons, including corporations.

### **Is the ICC currently investigating any individuals for financial involvement in crimes?**

The Prosecutor has not yet begun any formal investigations. However, he did raise the issue of the responsibility of corporate executives with reference to the situation in the Ituri district of the Democratic Republic of the Congo (DRC), where the sale of mineral resources is allegedly translated into arms and financial support for groups committing war crimes and crimes against humanity.

### **Under what legal basis would the ICC Statute allow for the prosecution of these crimes?**

The ICC might prosecute an individual for business transactions with a group that commits atrocity crimes on the basis of accomplice liability or superior responsibility. In both cases, Article 30 of the Rome Statute requires that a defendant before the Court will only be found guilty if the prosecutor can prove beyond a reasonable doubt that the material elements of the crime were committed with intent and knowledge. **Intent** refers to both *conduct* and *consequence*. As to conduct, the individual must purposefully engage in an activity. As to the consequence of an activity, the defendant must mean for it to occur, or be aware that it will occur in the ordinary course of events. **Knowledge** means a person's awareness that certain circumstances exist, or that a consequence will follow in the ordinary course of events.

### **Complicity**

Accomplice liability attaches when a person's association with, or participation in, a wrongful act is so compelling as to make that person liable for the underlying act, along with the principal perpetrator of the crime itself. Article 25 (d) of the Rome Statute extends accomplice liability to an individual who in any way contributes to the commission or attempted commission of a crime by a group acting with a common purpose. The contribution must be intentional, and must be made either with the aim of furthering the criminal act, or with the knowledge that the group itself intends the crime.

A commercial transaction could fall under Article 25 (d) if the individuals involved ***knew that they were doing business with a group that intends to commit crimes within the jurisdiction of the Court*** and they either:

- ***intended*** the transaction to further the commission of those crimes, or
- ***knew*** that the transaction would contribute to the commission of those crimes.

Thus, Prosecutor Moreno Ocampo has said, "If someone does business with people, knowing that they're killing others to come up with the goods and sending money to support the crime, they could be regarded as being part of the crime." Examples of this might be where:

- The chief of a chemical company certifies the shipment of a dangerous nerve agent to a group that he knows is using such chemicals to conduct an ethnic cleansing campaign.
- A diamond trader buys gems from a company in Africa. The company controls the region surrounding the mine, forcibly displacing the surrounding population and employing armed security forces who commit murder, torture and rape on civilians. The diamond trader knows of the company is responsible for these crimes, and that they continue.
- A bank receives and launders assets from a dictator who has stolen them from an ethnic minority he persecutes and imprisons. The bank official is well aware of these criminal acts.

### **Superior Responsibility**

Article 28 (b) states that a superior may be found liable for the atrocity crimes of ***subordinates under his or her effective authority and control*** resulting from a ***failure to exercise that control*** properly where:

- The superior acted with *knowledge or conscious disregard* of the subordinates illegal actions;
- The crimes concerned "*activities that were within the effective responsibility and control of the superior;*" and
- The superior *failed to take all reasonable and necessary measures to prevent the crime*, including referring the matter to "competent authorities for investigation and prosecution."

For a businessperson to be charged under this article, the prosecutor would have to establish that he or she had the material ability to control the conduct of those actually committing crimes under the jurisdiction of the Court. This could apply to a direct employer/employee relationship and (with sufficient evidence of knowledge or conscious disregard) even possibly an employer/contractor relationship. Examples might include:

- A company executive hires local militia to help find mineral deposits. The militia is given vehicles and arms as well as the logistical support of the company. On a daily basis the executive issues orders on where to conduct its search. The executive hears that while on its searches, the militia uses the transportation and weapons to commit atrocity crimes, but does nothing to stop their acts.
- An employee of an oil company hires a group known for committing atrocities to build and secure a pipeline over its soil. The group uses forced labor to complete the project, and commits other atrocity crimes in order to control the workers. Executives at the oil company are informed of the continuing crimes, yet retain the group in its employ.