

## THE INTERNATIONAL CRIMINAL COURT

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**"The establishment of the Court is still a gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law."** - Kofi Annan, U.N. Secretary-General at the signing of the ICC Statute

For more than half a century since the Nuremberg and Tokyo trials, states have largely failed to bring to justice those responsible for genocide, crimes against humanity and war crimes. With the creation of the International Criminal Court (ICC), the world has begun to fulfill the post-World War II promise of "never again." The ICC is the world's first, permanent, international judicial body capable of bringing perpetrators to justice, and providing redress to victims when states are unable or unwilling to do so. This represents a major stride forward for international justice.

On July 17, 1998, at a diplomatic conference in Rome, the international community adopted the Rome Statute of the International Criminal Court. The treaty has been hailed by governments, legal experts and civil society as the most significant development in international law since the adoption of the United Nations Charter. The treaty entered into force on 1 July 2002. The Court, which is now operating in The Hague, made its first arrest in March 2006.

### **What countries are party to the Court?**

As of September 2006, 102 countries are party to the ICC. The U.S. is not a party. State parties encompass countries from all regions of the globe, including major U.S. allies: all NATO members (except for Turkey) and two Permanent Members of the U.N. Security Council (France and the United Kingdom).

### **What is the United States' position on the Court?**

Despite the U.S.' long history of involvement in international justice, the current U.S. administration has opposed the ICC. Recently, however, the U.S. government opted to not block a U.N. Security Council vote to refer crimes committed in Darfur to the ICC Prosecutor. An administration official subsequently indicated that the U.S. would cooperate in the investigation if asked to by the Court.

### **How do cases come before the Court?**

Cases come before the court in one of three ways: (1) The Court's Prosecutor can initiate an investigation into a situation where one or more of the crimes has been committed, based on information from any source, including the victim or the victim's family, but only if the Court has jurisdiction over the crime and individual. (2) States which have ratified the Rome Statute may ask the Prosecutor to investigate a situation where one or more of the crimes have been committed. (3) The U.N. Security Council can ask the Prosecutor to investigate a situation where one or more of the crimes have been committed, even if the crimes occurred in the territory of a state which has not ratified the Rome Statute or was committed by the national of such a state. In each of these situations, however, it is up to the Prosecutor, not the states or the Security Council, to decide whether to open an investigation and, based on that investigation, whether to prosecute, subject to judicial approval.



The International Criminal Court at The Hague in the Netherlands © AI

### **The International Criminal Court is groundbreaking because:**

- it will serve as a permanent deterrent to people considering these crimes. In most cases in the last fifty years, international mechanisms to prosecute people accused of these crimes have only been set up after the crimes were committed;
- it will have a much wider jurisdiction than existing ad hoc tribunals. For example, the work of the International Criminal Tribunals for the former Yugoslavia and Rwanda have been limited to crimes committed in a particular territory, while crimes committed in other territories have not been addressed; and
- the Statute contains advanced provisions for the protection of victims from retraumatization, and the Court may order a convicted person to provide reparation, in the form of compensation, restitution, rehabilitation, satisfaction, guarantees of non-repetition, and any other type of reparation the Court deems appropriate.

## When can the ICC prosecute an individual suspected of committing grave crimes under international law?

The court may investigate and prosecute an individual when:

- The accused is a citizen of an ICC member state;
- The alleged crime took place on the territory of an ICC member state;
- The U.N. Security Council asks the ICC to open an investigation, or
- A country voluntarily accepts ICC jurisdiction.

Note that the U.N. Security Council can vote to block any investigation or prosecution.

## What is the ICC's relationship to national courts?

The ICC is a court of last resort. It essentially acts as a safety net when national courts are unable to prosecute, either because the criminal justice system is unequipped or collapsed, or because the perpetrators continue to wield influence over the government. Under the principle of "complementarity," the ICC prosecutes crimes only when national courts are unable or unwilling to do so, because these crimes are most effectively and fairly prosecuted in the territories where they committed. The ICC will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. In addition, the ICC can serve as a catalyst and model for reform of domestic laws and procedures: in order for countries to join the Court, they need to bring their laws and procedures into conformity with the ICC's standards.

## Is the Court able to prosecute individuals for crimes committed before the Court's establishment?

No. The Court only has jurisdiction over crimes committed after 1 July 2002, when the Rome Statute entered into force.

## Does the ICC guarantee fair trial rights?

Yes. The Rome Statute incorporates the best evolved, most comprehensive understanding of what constitutes a fair trial. It ensures that the accused receives a public and fair hearing conducted impartially. With the exception of a jury trial, the Rome Statute contains every due process protection in the U.S. Constitution. The death penalty is excluded.

## Will the ICC initiate an investigation into Iraq?

Not for the time being. This is primarily due to the fact that the alleged crimes were committed on Iraqi territory (as Iraq is not a state party, the ICC does not have jurisdiction over Iraqi territory) by nationals of countries who, like Iraq, are not parties to the Rome Statute. While the Prosecutor noted that allegations concerning willful killing or inhuman treatment of civilians in Iraq were factually sound, such allegations failed to be admissible under the Rome Statute, which requires the crimes to be above a certain threshold of gravity. The Prosecutor suggests that "effectively functioning national legal systems" are in a better position to address these allegations.

## Cases and Investigations Currently Before the ICC

As of September 2006, there are four situations before the ICC: Uganda, the Democratic Republic of Congo, the Central African Republic and the Sudan.

**Uganda:** The Prosecutor v. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen.

In October 2005, the ICC unsealed arrest warrants for five high commanders of the armed uprising group the Lord's Resistance Army (LRA). They are charged with crimes against humanity and war crimes. None of the charged men has been arrested yet.

**Democratic Republic of Congo (DRC):** The Prosecutor v. Thomas Lubanga Dyilo.

On March 17, 2006, Thomas Lubanga Dyilo, a national of the DRC and alleged founder and leader of a political and military movement, the Union des Patriotes Congolais (UPC), was arrested and transferred to the ICC. On March 20, 2006, the ICC held the first public hearing regarding the case. On August 28, 2006, the Office of the Prosecutor (OTP) filed an indictment against Lubanga charging him with enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities.

**Central African Republic (CAR):**

The ICC is not yet officially investigating crimes in the CAR, although the Court has on several occasions announced that the CAR is one of several situations under analysis. Following a referral to the ICC by the government of the CAR, the situation there was assigned to Pre-Trial Chamber III. The Office of the Prosecutor of the ICC had previously stated that it was waiting for the decision by the highest criminal court of the CAR, the Cour de Cassation, to decide whether to open an investigation. In April 2006, the Cour de Cassation held that CAR justice system was unable to carry out effective investigations and prosecutions.

**Sudan:**

The ICC's Prosecutor, with the support of the UN Security Council, continues to collect evidence, interview witnesses, and monitor the Sudanese courts from outside Sudan.

## For additional information, updates and actions:

Amnesty International USA, [www.amnestyusa.org/icc](http://www.amnestyusa.org/icc)

Coalition for the ICC (CICC), <http://www.iccnw.org>

USA for ICC, <http://usaforicc.org>

The American NGO Coalition for the ICC (AMICC), <http://www.amicc.org>

International Criminal Court (official website), <http://www.icc-cpi.int>