

# AMICC

## **Information Regarding the Possible Investigation by the ICC of the Situation in Ituri, Democratic Republic of the Congo**

### **Summary**

The Democratic Republic of the Congo (DRC) is slowly emerging from a protracted war that involved eight different neighboring countries. Although most official foreign troops have left the DRC, violence continues, especially in the north-eastern district of Ituri. Luis Moreno Ocampo, the Prosecutor of the International Criminal Court (ICC), has stated publicly that he is strongly considering an investigation of atrocities in the region that purportedly include murder, rape, forced labor, forced relocation and torture.

### **Background**

The current conflict in the DRC dates back to 1997 when Laurent-Desire Kabila deposed President Mobutu Sese Seko, a former General who had ruled the country for the better part of thirty-five years. Backed by Rwandan and Ugandan troops, Kabila installed himself as President. Later, the Rwandans fell out with Kabila and sought to depose him in favor of their own liberation movement. They were thwarted when he received military assistance from Angola, Zimbabwe and other neighbors. Defeated, the Rwandan rebel forces retreated and entrenched themselves in the east of the country. In early 1999, another Congolese faction, this time backed by Uganda, took control over the northern portion of the nation, in effect splintering the DRC into three territories.

The three sides soon came to a military stalemate and met in Lusaka, Zambia to negotiate a ceasefire. The agreement called for the withdrawal of all foreign troops, allowed for the entrance of UN peacekeepers, and contemplated an "intercongolese dialogue" aimed at establishing a transitional government and democratic elections. All parties had signed this document by August of 1999.

In the subsequent year and half, the parties made little progress towards their stated goals. In January of 2001, Laurent Kabila was assassinated, only to be replaced days later by his son Joseph Kabila. The new President made immediate changes to resolve the lingering obstacles to implementation of the peace process, including allowing the entrance of MOMUC, the UN peacekeeping force, and reinitiating the dialogue regarding the transitional government. By the next year, Kabila had announced that all DRC-allied Angolan, Namibian and Zimbabwean troops had left the country, eventually paving the way for a decisive round of multilateral meetings. The Pretoria Accord, which emerged from these meetings, detailed the formation of the transitional government and discussed the establishment of a Truth and Reconciliation Committee designed to analyze and investigate human rights abuses, and to bring emotional closure to the years of violence. The Accord was signed on December 17, 2002, and formally ratified on April 2, 2003. Rwandan and Ugandan troops had officially withdrawn by the following May. Under the agreement, President Kabila remained in power, flanked by four vice-presidents who represented the

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major parties to the Accord. Democratic elections are scheduled to take place by June 30, 2005.

### **Current Conflict**

Despite the apparent gains of the past two years, violence continues unabated in much of the eastern DRC. While fighting between official military troops has dwindled, armed factions remain in control of their respective areas and terrorize civilian populations therein. The withdrawal of foreign troops proved to be largely symbolic, as the various state militaries left behind well-organized proxy networks to act on their behalf. These operations, which the UN coined "Elite Networks," are fundamentally designed to exploit the natural resources of the DRC.

Large profits from minerals and other resources fuel the continuation of hostilities. The Elite Networks fight against each other over access to mineral deposits as well as agricultural production and local tax revenues. Caught in the middle are civilians who fall victim to these operations and the various factions of military, ex-military, armed rebels and militia who are affiliated with the different Networks. Currently, four major powers exercise de facto economic control through these operations: Zimbabwe, Rwanda, Uganda and the DRC itself.

Amnesty International estimates that at least 3 million people have lost their lives since the initiation of hostilities in 1998, and that the conflict has internally displaced up to 2 million individuals. The lack of legal enforcement mechanisms has created an accountability vacuum that allows the armed groups to act with impunity. Alleged atrocity crimes are particularly common in the mineral-rich east and north east of the country, where recent reports document crimes that include mass civilian killings, unlawful arrest, seizure of property, torture, forced prostitution and rape. The "Great Lakes" border area to the east, including the "Ituri" region in the north-east, is the current focus of international attention.

### **How is the ICC involved in the DRC violence?**

The Democratic Republic of the Congo signed the Statute of the International Criminal Court on September 8, 2000 and ratified the instrument on April 11, 2002. As a State Party to the ICC, the DRC has consented to the Court's jurisdiction for any enumerated statutory crimes arising after July 1, 2002. The ICC is a court of last resort, and therefore recognizes the sovereign right of States to domestically adjudicate crimes, including those in the Rome Statute. Absent an express referral by a State Party or the Security Council, the ICC can only try a case if the Party in question is unwilling or unable to do so itself. Prosecutor Luis Moreno Ocampo has expressed his concern over the serious crimes taking place in the DRC and believes that they may amount to genocide, war crimes and crimes against humanity. His office estimates that over 5,000 people have been killed as a direct result of violence in the Ituri region since July 1, 2002. The gravity of the situation prompted the Prosecutor to consider a formal investigation; however he has been hesitant to act absent a formal referral from the DRC government.

### **Why hasn't the DRC made a referral to the ICC?**

The DRC has been a strong supporter of the ICC, and government officials have repeatedly expressed their desire to have the Court investigate ongoing crimes in the country. The hesitation to refer the case may be due to the transitional government's delicate and complex power-sharing arrangement. The Pretoria Accord may have made it

politically difficult to request an investigation, especially if it implicates individuals who are now members of the government. Prosecutor Ocampo is sensitive to these circumstances, stating that he will not initiate action if it undermines the peace process. However, he has not ruled out the possibility of taking action, even without the express referral he desires.

### **What are the Prosecutor's responsibilities in the case of an investigation?**

If the Prosecutor decides there is a sufficient basis to proceed with an investigation, then he must address the situation as thoroughly and impartially as possible, paying special attention to the rights of persons arising under the Statute. Accordingly, Ocampo would seek to cooperate with the DRC and other intergovernmental organizations in order to perform the investigation in an efficient, timely and confidential manner. Acting with the support and assistance of the host country is a critical facet of the process. Without the aid of national and international forces, Ocampo states that he would "need to investigate from outside and rely on international cooperation for the arrest and surrender of the alleged person." MOMUC, the UN peacekeeping mission to the DRC, may be of assistance to the Prosecutor, though he would prefer the participation of domestic forces as well.

### **Why is the DRC unable to prosecute these crimes itself?**

There are many structural and circumstantial barriers to the domestic prosecution of criminals within the DRC. First, the country does not have a coherent infrastructure that can effectively apprehend and adjudicate individuals for their crimes. The judiciary is controlled by the executive branch and lacks the independence necessary to evoke confidence in the people. Courts are too few in number and are understaffed, while the judges in these courts typically receive inadequate training. More recently, the government has failed to pass legislation which would update its legal codes, allowing for the prosecution of universal human rights crimes. Overall, the judiciary is in disarray and international observers suggest it will take years to rebuild a legitimate functional legal system.

This problem is only exacerbated by the ethnically and politically fractured population which is suspicious of government courts and questions their motives. Many commentators note that the ethnic uprising of 1998 in Ituri began as a property dispute between two tribes which was mishandled by a local court. One principle reason the DRC has expressed its desire for an ICC investigation is that it hopes its rulings will appear impartial to the diverse array of interested parties. Observers see a legitimate domestic legal apparatus as essential to the peace-rebuilding process.

### **Will an investigation of the DRC disrupt the peace process?**

Some fear that an investigation into alleged atrocities may disrupt the balance of the transitional government because there is the possibility that some current high-ranking officials were involved in the commission of crimes. While this is a concern of the Prosecutor, he believes that a partnership between the DRC and ICC can immediately enhance the prospects for the government's long-term stability. On the one hand, by addressing the ongoing violence, the DRC can build trust between it and civilians who have suffered greatly over the past years. At the same time, the ICC presence gives the government the impetus to reevaluate and reorganize its judiciary. Ocampo intends to investigate those most responsible for criminal acts and hopes that with international aid, the new government can eventually deal with lesser criminals.

While the ethnic and national divisions in the DRC do pose a complex problem for investigators, the ICC would like to be viewed as an impartial organization by the many interested parties. To this point there is little evidence that the proposed investigation has

incited increased violence, and in fact, some observers claim that the recent publicity has already had a pronounced deterrent effect.

**What impact will an investigation have on the other nations involved in the conflict?**

The ICC has jurisdiction over any statutory crime committed on the territory of a state party, regardless of the perpetrator's nationality. If investigators cannot locate suspects within Congolese borders, they will have to rely upon the cooperation of neighboring states. However, because the Court must defer to national courts, the Prosecutor may find that multiple foreign governments attempt to shield their nationals from ICC investigation by claiming the right to conduct domestic inquiries. State parties to the Court are required to comply with requests for surrender, however of the DRC's neighbors, only Uganda and Namibia have ratified the Statute.

**What is the role of corporations in the DRC conflicts?**

Prosecutor Ocampo has repeatedly stated that he intends to investigate financial aspects of crimes. This is because the various parties reap immense profits from exploitation of the country's mineral wealth. The goal is to cut off these profits that they use to build and sustain their military strength, and thus their ability to commit atrocities. Ocampo recently stated, "Follow the trail of money and you will find the criminals. If you stop the money then you stop the crime." Part of the investigation may center on business people who deal with known perpetrators of atrocities. Ocampo has said, "If [businessmen] received diamonds and knew that the people delivering them were getting them because of genocide, then they could well be part of the crime." The Statute extends accomplice liability to an individual who in any way aids a criminal group, when that person knows that the group ordinarily commits criminal acts. To this extent, individual corporate executives of corporations who knowingly assist or deal with such groups in the mineral trade may be prosecuted by the ICC. The Court does not, however, have any jurisdiction over legal persons such as corporations.

***Researched and drafted by Alexander Ward and Susan Freese***