

## **Questions & Answers on the Possibility of an ICC Investigation in Colombia**

The Office of the Prosecutor has been monitoring crimes committed in Colombia for two years. In March 2005, the Prosecutor sent a letter to the Colombian Government requesting information on steps taken by the authorities to investigate and prosecute those most responsible for crimes against humanity committed in Colombia since 2002.

### **Is the letter sent to the Colombian Government a warning on the possibility of an ICC investigation in the country?**

Yes. This letter serves, in fact, several purposes: it is a way for the Office of the Prosecutor to request information that can complement the many communications it has already received on crimes perpetrated in Colombia. It is also a warning for the Colombian Government that the ICC is monitoring the situation in the country because it believes that crimes within the jurisdiction of the ICC have been committed. The Prosecutor seeks to alert the Colombian Government of the possibility of conducting trials itself and warns it on possible ICC involvement in case Colombia fails to do so.

### **Has Colombia opted out of all of the Court's jurisdiction?**

No. Colombia ratified the Rome Statute and is subject to the jurisdiction of the Court since November 1, 2002. When ratifying the Statute, Colombia took advantage of a provision which allows countries to opt out of the Court's jurisdiction over war crimes for a period of seven years. The ICC retains jurisdiction over genocide and crimes against humanity.

### **What crimes committed in Colombia are subject to ICC jurisdiction?**

Crimes committed on Colombian territory and/or by Colombian nationals include mass killing, rape, torture, forced displacement, enforced disappearances and kidnapping. These very serious crimes have been committed as part of a widespread or systematic attack directed against the civilian population and are, therefore, crimes against humanity which the ICC can try.

### **What parties of the conflict could be targeted by an ICC investigation?**

All the parties to the conflict can be prosecuted by the ICC. The illegal armed groups (guerrillas and paramilitaries) have committed very serious crimes and so have the security forces.

### **Would Colombia refer its situation to the ICC?**

This is very unlikely. The Government of Colombia is aware that by referring its situation to the ICC, all the parties to the conflict would be subject to the Court's investigation. The Colombian Government has been trying to punish guerrilla organizations for their actions and would be happy to send the rebels off for trial at the ICC. However, it certainly does not want the ICC to look into violations committed by the government-backed paramilitaries or the security forces.

### **How else could an investigation begin?**

In theory, an investigation could also begin by a Security Council referral, but this possibility is very unlikely in practice. The only probable way for the ICC to exercise jurisdiction in Colombia would be an investigation under the Prosecutor's own initiative. This investigation would have to be authorized by the Pre-Trial Chamber of judges of the Court.

**Does the Office of the Prosecutor have enough resources to take up yet another situation?**

Due to his office's limited resources, the Prosecutor will probably not be able to begin an investigation in Colombia in the near future. Funds are presently allocated to the formal investigations in Northern Uganda, the Democratic Republic of Congo and Darfur, Sudan, and the preliminary investigations in the Central African Republic and Côte d'Ivoire (Ivory Coast). Therefore, no other situation can possibly be undertaken at present unless the Assembly of States Parties allocates further funds. However, the Prosecutor can still continue to monitor developments in Colombia and prepare to take it as an investigation in the future.

**Would Colombia claim that cases be deferred to its national courts?**

Probably not. Although it might try to block ICC action initially, Colombia would prefer not to make a formal claim that its judicial system can handle the cases. This is because it lacks evidence to prove that its courts have either adequately investigated those responsible for mass crimes or could do this in the future.

**Does the new 'Justice and Peace Law' prevent the ICC from acting?**

No. This new legislation is only going to be applied to members of the paramilitary who decide to demobilize. The ICC can still look into serious crimes committed by all the other parties to the conflict. The Prosecutor could also investigate paramilitaries who benefit from the short penalties the Justice and Peace Law provides if he proved that this law was enacted to shield perpetrators from the Court's jurisdiction.

**What happens if Colombia amnesties/pardons individuals to reach peace?**

The Rome Statute does not recognize amnesties or pardons. Therefore, the ICC can try those who have been amnestied/pardoned by the Government of Colombia. However, if it turned out that such an action could affect the peace process in Colombia, and prosecution of those who have received those benefits were not in the interest of justice, the Prosecutor could decide to halt his investigation.

**Would the ICC go after US soldiers in Colombia?**

No. They are not implicated in the commission of mass crimes to which the ICC jurisdiction is restricted.

**Would an ICC investigation affect US interests in Colombia?**

No. It would probably advance these interests because it could bring stability to the country, which is what the US has been trying to achieve for some time.

**Which officials of the Government of Colombia might be prosecuted at the ICC?**

Probably none of them. The Colombian Government is responsible for not properly investigating the crimes committed by its security forces, but its officials are not directly implicated in planning the commission of atrocities. Their granting benefits such as amnesties and lack of prosecution to the illegal armed groups are part of their efforts to negotiate peace agreements and are not intended to fuel the conflict.