

**COMMUNICATIONS RECEIVED
BY THE OFFICE OF THE PROSECUTOR OF THE ICC**

Since July 2002, the Office of the Prosecutor has received 499 communications from 66 different countries. These communications address a broad range of crimes allegedly committed in a number of regions around the world. Almost all of these communications request the Office of the Prosecutor to undertake legal action.

Some of the complaints received cannot be investigated by this Office because they are outside the jurisdiction of the International Criminal Court. The provisions establishing the jurisdiction of the Court were negotiated between more than 150 countries over a period of more than four years. In accordance with those provisions, the Court may exercise jurisdiction if genocide, crimes against humanity or war crimes are committed on or after 1 July 2002. The jurisdiction of the Court may be triggered by a referral from the United Nations Security Council, a State Party or the Prosecutor exercising his *proprio motu* powers to initiate an investigation. To this date, there have not been any referrals by the Security Council or by a State.

In order to launch an investigation *proprio motu*, the Prosecutor must seek the authorisation of a Pre-Trial Chamber of the Court. In this case, the alleged crimes must have been committed by nationals of a State Party or have taken place in the territory of a State Party.

I. Allegations of crimes that are not within the jurisdiction of the ICC

Temporal jurisdiction

The Office has received over 50 communications containing allegations of acts committed before 1 July 2002, so they are not within the temporal jurisdiction of the Court.

Subject-matter jurisdiction

A number of communications allege criminal acts which by their nature lie outside the subject-matter jurisdiction of the Court. Some letters and complaints, for example, allege criminal acts related to environmental damage, drug trafficking, money laundering, tax evasion, and judicial corruption. Other communications call upon the Court to become a court of appeals for decisions taken by domestic courts or they concern human rights violations outside the scope of the Statute.

Under the Rome Statute, these allegations do not fall within the jurisdiction of the Court. The Court is not designed to deal with violations of human rights unless they constitute genocide, crimes against humanity or war crimes.

The crime of aggression

Thirty-eight communications express the view that a crime of aggression took place in the context of the war in Iraq.

The Court cannot exercise jurisdiction over alleged crimes of aggression until the crime is defined and the conditions for the exercise of jurisdiction are set out. The Assembly of States Parties of the International Criminal Court may adopt such a provision at a review conference to be convened in 2009. Thus, the alleged crime to which these communications refer does not fall within the jurisdiction of the Court.

Crimes committed in the territory of non-States Parties

Sixteen communications with no detailed information relate to acts allegedly committed by United States' troops on the territory of Iraq. Since neither Iraq nor the United States is a State Party to the Statute, the ICC has no jurisdiction in these matters.

There are two brief communications with no detailed information about the Israeli-Palestinian conflict. These communications do not involve any State Party. The alleged crimes, therefore, do not fall within the jurisdiction of the Court.

The Office has received communications alleging the killing of civilians by army soldiers in the Ivory Coast. The media has reported that the Ivory Coast has asked the UN Security Council to refer the situation in the country to the Prosecutor of the International Criminal Court in accordance with Article 13(b) of the Rome Statute, but the Office of the Prosecutor has received no information from the State or the Security Council. Thus, at this time, the Prosecutor of the Court cannot investigate the crimes allegedly committed because Ivory Coast is not a State Party to the Rome Statute.

II. Crimes allegedly committed by nationals of a State Party or in the territory of a State Party

The Office of the Prosecutor has received some communications referring to crimes allegedly committed by nationals of a State Party. For example, some communications refer to acts allegedly committed by States Parties who were part of the coalition forces during the war in Iraq. Pursuant to the Rome Statute, the jurisdiction of the ICC is complementary to that of national criminal jurisdictions. Thus, in order for the Court to exercise jurisdiction over these alleged crimes, it is necessary to determine whether the national authorities concerned are unwilling or unable to investigate or prosecute.

The Office of the Prosecutor expects that future communications alleging the commission of crimes falling within the jurisdiction of the Court contain specific information concerning the ability or willingness of national authorities to deal with those crimes, as well as a description of the efforts undertaken, if any, to seek redress before those authorities where appropriate.

III. Decision by the Office of the Prosecutor to closely follow the situation in Ituri, Democratic Republic of Congo

The Office of the Prosecutor has selected the situation in Ituri, Democratic Republic of Congo, as the most urgent situation to be followed. The Prosecutor himself and selected staff are analysing the information available and will request additional information on the occurrence of crimes and assess the ability of the State to deal with them. The Office is conscious of the peace process under way, and hopes that the efforts

of the international community to halt the violence will bear fruit. The Office of the Prosecutor will use all the powers at its disposal to contribute to the prevention of future crimes and the investigation and punishment of the alleged crimes committed in Ituri. If necessary, the Office of the Prosecutor will seek authorisation from a Pre-Trial Chamber to start an investigation.

a. Crimes allegedly committed in the Democratic Republic of Congo

The Office of the Prosecutor has received six communications regarding the situation in Ituri, including two detailed reports from non-governmental organisations. These reports estimate that 5,000 civilians have been killed in Ituri between July 2002 and early 2003. These deaths are just a fraction of the civilians who reportedly have died since the conflict started in 1998. The estimated total number of deaths varies in different reports, ranging between 2.5 and 3.3 million people. The deaths are a consequence of the fighting as well as of indirect causes including starvation, landmines, untreated injuries and diseases (including the transmission of HIV/AIDS through rape).

The fighting taking place in Ituri seems to be the outcome of ethnic strife and of the struggle for local power, intertwined with national and regional conflicts. All of these aspects of the situation are fuelled by the way natural resources are exploited.

Specifically, the reports allege that armed assailants in Ituri massacred unarmed civilians, some solely on the basis of their ethnicity, killing scores of people in individual attacks over the past year. Members of different armed groups, reportedly vying for control over the region's natural resources, have also allegedly carried out summary executions, systematic torture, unlawful arrests and detention of individuals, and abductions of persons whose whereabouts remain unknown. Crimes specifically targeting women have also been reported as taking place frequently in Ituri, including rape and other forms of sexual violence.

This information is corroborated by different United Nations, national human rights, media and non-governmental organisations reports. The report on the latest of four Security Council missions to the Democratic Republic of Congo, issued on 16 June 2003, described the occurrence of gross violations of human rights in the eastern part of the country, including murder, mass rape, large-scale displacement of civilians, the use of child soldiers and even, reportedly, cases of ritual cannibalism.

These crimes could constitute genocide, crimes against humanity or war crimes, and could thus, fall within the jurisdiction of the International Criminal Court.

b. Money-laundering and other crimes committed outside the Democratic Republic of Congo which may be connected with the atrocities

Various reports have pointed to links between the activities of some African, European and Middle Eastern companies and the atrocities taking place in the Democratic Republic of Congo. The alleged involvement of organised crime groups from Eastern Europe has also been mentioned. Their activities allegedly include gold mining, the illegal exploitation of oil, and the arms trade. There is general concern that the atrocities allegedly committed in the country may be fuelled by the exploitation of natural resources there and the arms trade, which are enabled through the international banking system.

Although the specific findings of these reports have not been confirmed, the Prosecutor believes that investigation of the financial aspects of the alleged atrocities will be crucial to prevent future crimes and for the prosecution of crimes already committed. If the alleged business practices continue to fuel atrocities, these would not be stopped even if current perpetrators were arrested and prosecuted. The Office of the Prosecutor is establishing whether investigations and prosecutions on the financial side of the alleged atrocities are being carried out in the relevant countries.

c. Ability of the government of the Democratic Republic of Congo to genuinely investigate and prosecute the crimes allegedly committed in Ituri

A transitional government was being established in the Democratic Republic of Congo on 30 June 2003. This government stated that it intends to put an end to the bloodshed, but in order to do this it requires the resolved assistance of the international community.

The United Nations Security Council is following the situation in the Democratic Republic of Congo closely. It has sent four missions to the country, the last on 7-16 June 2003. According to the report of this last mission fighting continues to affect the area, and impunity remains rampant in Ituri.

In their last meeting on 7 July 2003, members of the Security Council again expressed their concern about the situation in the country. In this meeting the Council received information from Jean-Marie Guéhenno, Under-Secretary-General for Peacekeeping Operations, and from Bertrand G. Ramcharan, acting High Commissioner for Human Rights. There was a general recognition that the transitional government faces many difficulties, but also that peace cannot be restored without an end to impunity. Several possibilities and complementary mechanisms – including national truth commissions and a human rights observatory agreed upon during the Inter-Congolese Dialogue at Sun City (South Africa) – have been identified. The members of the Security Council have also acknowledged the need for international assistance to effectively investigate the alleged crimes and punish the perpetrators.

The United States Department of State's 2002 country report on the Democratic Republic of Congo confirms the difficulties of the national government to control the territory. It also described the inability of judicial and police authorities to investigate and prosecute the alleged crimes.

The Office of the Prosecutor on the International Criminal Court supports the efforts being made by national and international actors alike to help the country along the road to peace, and will bear these efforts in mind as it continues to follow the situation in the Democratic Republic of Congo closely.