



## Q&A: ICC Opens a Fourth Investigation in the Central African Republic

*On 22 May 2007 the prosecutor of the International Criminal Court (ICC) Luis Moreno-Ocampo announced the launch of a formal investigation into the situation in the Central African Republic (CAR), following the referral of the situation by CAR officials on 7 January 2005. In his announcement, the prosecutor indicated his beliefs that 'grave crimes falling within the jurisdiction of the Court were committed in the Central African Republic.'. He also explained that 'this is the first time that [he] is opening an investigation in which allegations of sexual crimes far outnumber alleged killings'.*

For more reactions by members of the Coalition for the International Criminal Court to the prosecutor's investigation in CAR, please see [www.iccnw.org](http://www.iccnw.org)

### 1. What crimes is the prosecutor investigating in the Central African Republic?

The announcement by the prosecutor states that the preliminary analysis of the alleged crimes shows they occurred in the context of an armed conflict between the government and rebel forces and that the peak of violence and criminality occurred in 2002 and 2003. It further states that civilians were killed, that homes and stores were looted, and that the detailed and substantiated allegations of sexual crimes far outnumber alleged killings. The prosecutor refers to public and multiple rapes and abuse leading to the shunning of victims by families and communities.

### 2. Why is the ICC Prosecutor opening an investigation in the Central African Republic?

Upon the referral by the government of the Central African Republic, the prosecutor reviewed information provided by various sources and thus arrived at the conclusions that there is a reasonable basis to believe that crimes falling within the jurisdiction of the Court were committed in the CAR. Under Article 53 of the Rome Statute, the prosecutor shall initiate an investigation into a country situation if there is a reasonable basis to believe that a crime has been or is being committed. In addition, the prosecutor must determine that the case would be admissible under Article 17 of the Statute, which holds that the state in question must not itself be investigating or prosecuting the same crimes, or be unwilling or unable to properly investigate and prosecute these crimes. The prosecutor must also take into account the gravity of the crime and whether an investigation by the Court will be in the interests of victims. If the prosecutor decides that there is a reasonable basis to proceed with an investigation, he must then notify all states parties. Within one month of receiving such a notification, a state may inform the Court if it is investigating or prosecuting the same case.

### 3. Why did CAR officials refer the situation on their territory to the ICC?

On 7 January 2005, the prosecutor publicly acknowledged receipt of a letter on behalf of the government of the Central African Republic, referring the "situation of crimes within the jurisdiction of the Court committed anywhere on the territory of the Central African Republic since 1 July 2002, the date of entry into force of the Rome Statute." The Office of the Prosecutor (OTP) received the referral on 22 December 2004, indicating that national proceedings had begun in relation to serious crimes, but that a judicial decision was made to discontinue those proceedings and instead refer the matter to the ICC.

**The Coalition for the International Criminal Court is a global network of over 2,000 civil society organizations supporting a fair, effective and independent International Criminal Court.**

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In response to the letter from CAR officials, the prosecutor announced that he was “carrying out an analysis in order to determine whether to initiate an investigation” and that he would “seek additional information in relation to the criteria set out in the Statute, including the gravity of alleged crimes, any relevant national proceedings, and the interests of justice.”

Meanwhile, the decision to refer the situation to the ICC was appealed in CAR. On 11 April 2006, the highest criminal court (Cour de Cassation) of the Central African Republic partly rejected an appeal of the 16 December 2004 decision of the Bangui Court of Appeal that referred grave crimes committed in CAR since 1 July 2002 to the ICC. The Cour de Cassation held that the country's judicial system was unable to carry out effective investigations and prosecutions of those crimes. The Office of the Prosecutor of the ICC had previously stated that, on the basis of the Rome Statute's principle of complementarity, it was waiting for the decision of the Cour de Cassation to decide whether to open an investigation in CAR.

#### **4. Has CAR implemented the Rome Statute into its domestic legislation?**

The Central African Republic signed the Rome Statute on 7 December 1999, and ratified it some two years later on 3 October 2001, becoming the 41<sup>st</sup> state party to do so. The government ratified the Agreement on Privileges and Immunities on 10 October 2006. Although the government is in the process of adopting implementing legislation, a final draft has yet to come before the prime minister.

#### **5. Are countries in the region obligated to cooperate with the Court?**

According to Article 86 of the Statute, all states parties to the Court are obligated to cooperate with the Court. More than half of all African Union members are states parties to the ICC. Article 88 of the Statute requires ICC states parties to ensure that national procedures are available for all forms of cooperation set out in the Rome Statute, including assisting in investigations, protection of victims and witnesses, and arrest of suspects.

Although states that are not party to the ICC are under no obligation to cooperate with the Court, the Court can enter into an *ad hoc* agreement to secure their cooperation.

#### **6. What steps has the Court taken since the referral in January 2005?**

Following the receipt of the CAR referral in January 2005, the prosecutor has carried out an analysis of the situation and sought additional information. On 20 January 2005, the CAR situation was assigned to Pre-Trial Chamber III (PTC III), composed of Hans-Peter Kaul (Germany), Presiding Judge, Tuiloma Neroni Slade (Samoa) and Sylvia Steiner (Brazil). On 4 February 2005, Judge Sylvia Steiner (Brazil) was elected as presiding Judge of PTC III. On 30 November 2006, PTC III requested that the prosecutor provide the Chamber and the government of CAR with a report containing information on the current status of the preliminary examination of the CAR situation. On 15 December 2006, the prosecutor submitted his report on the status of his preliminary examination.

In this report, the prosecutor highlighted the particular challenges of this situation, in particular the need to properly assess national proceedings that had already been initiated. The OTP has stated that it closely monitored the judicial proceedings held in Bangui in relation to these crimes. In particular, the OTP awaited a final decision on national criminal proceedings before the Cour de Cassation before making a determination on the issue of admissibility.



## **7. Why is the Court focusing its investigations on Africa?**

Although each of the Court's four current situations are in Africa, each one is different. The opening of an investigation by the Prosecutor is not based on geographical considerations, but on the Court's jurisdiction; the gravity of the crimes committed; whether states are refusing to properly investigate or prosecute grave crimes committed under their jurisdiction; and referrals of situations to the Court by its member states parties. Three of the Court's current situations were referred to the Court by African states parties (CAR, DRC, Uganda) and one by the Security Council of the United Nations (Darfur, Sudan).

## **8. What are next steps for the ICC in the Central African Republic?**

Under Article 54, the prosecutor must investigate all facts and evidence relevant to an assessment of individual criminal responsibility, including both incriminating and exonerating evidence. The prosecutor must respect the interests of victims and witnesses and the rights of persons under investigation. During his investigation, the prosecutor may collect and examine evidence, interview victims and witnesses as well as anyone under investigation, seek the cooperation of any state or international organization, and enter into cooperation agreements.

Once the prosecutor has collected enough evidence showing that there is a reasonable basis to believe that the person has committed a crime within the Court's jurisdiction, he may submit an application for an arrest warrant or a summons to appear to the pre-trial chamber.

The Court must ensure, through its outreach programme that the affected populations are receiving sufficient information and opportunities for dialogue with Court officials. The Court must also ensure that victims are informed about the possibility to participate and that protection and support is provided where needed.

## **9. When might suspects be named?**

The length of an investigation may vary according to the particular circumstances of a situation. In the three cases currently before the Court, it took approximately 18 months, from the initiation of an investigation to the prosecutor's public naming of suspects.

## **10. What role will victims take in the investigation?**

The Rome Statute enables victims to be more than just witnesses to the prosecution or defense by actively participating and being represented in the proceedings before the Court. A person can apply to participate as a victim by using a form and transmitting it to the Victims Participation and Reparations Section (VPRS) of the Court. When a victim has requested to participate in the proceedings, the pre-trial chamber will decide whether such participation is appropriate at a given stage of the proceedings, also considering compatibility with the rights of the accused and a fair and impartial trial.

For example, on 17 January 2006, the pre-trial chamber dealing with the DRC situation allowed six applicants to participate as victims even before the prosecutor had identified suspects or revealed the alleged crimes he was investigating. PTC I also defined *how* victims could participate at such an early stage, subject to a case-by-case assessment. Examples of this participation include expressing views and concerns, participating in relevant public hearings, providing supporting documents and requesting specific actions by the Court. However, this ruling concerns only the DRC situation and circumstances might differ in the situation of the Central African Republic.

**CICC'S POLICY ON THE REFERRAL AND PROSECUTION OF SITUATIONS BEFORE THE ICC:**

*The Coalition for the ICC is not an organ of the Court. The CICC is an independent NGO movement dedicated to the establishment of the International Criminal Court as a fair, effective, and independent international organization. The Coalition will continue to provide the most up-to-date information about the ICC and to help coordinate global action to effectively implement the Rome Statute of the ICC. The Coalition will also endeavor to respond to basic queries and to raise awareness about the ICC's trigger mechanisms and procedures, as they develop. The Coalition as a whole, and its secretariat, do not endorse or promote specific investigations or prosecutions or take a position on situations before the ICC. However, individual CICC members may endorse referrals, provide legal and other support on investigations, or develop partnerships with local and other organizations in the course of their efforts.*

*Communications to the ICC can be sent to:*

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*For additional information about the ICC's investigation in the Central African Republic, please visit:  
<http://www.iccnw.org/?mod=car>.*