



# Questions and Answers

## Questions and Answers on the ICC proceedings following the UNSC referral with regard to the Libyan Arab Jamahiriya



### Why was the ICC established?

In 1998, the States delegations to the Rome Conference adopted the Rome Statute, founding international treaty of the International Criminal Court (ICC), to put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes.

The International Criminal Court is a permanent international court established to investigate, prosecute and try individuals accused of committing crimes of genocide, crimes against humanity and war crimes.

As of 1 January 2011, 114 countries are States Parties to the Rome Statute. Of these, 31 are from Africa, 15 from Asia, 18 from Eastern Europe, 25 from Latin America and the Caribbean and 25 from Western European and North America.

### Is the ICC an office or agency of the United Nations?

No. The ICC is an independent body whose mission is to try individuals for crimes within its jurisdiction without the need for a special mandate from the United Nations. Contrary to the other international tribunals, the ICC was not created by the United Nations, but by a treaty – the Rome Statute. On 4 October 2004, the ICC and the United Nations (UN) signed an agreement governing their institutional relationship.


### What happens now that the United Nations Security Council referred the situation in Libya to the ICC?

On 26 February, the United Nations Security Council (UNSC) decided unanimously (15 votes in favor) to refer the situation in Libyan Arab Jamahiriya since 15 February 2011 to the ICC Prosecutor, stressing the need to hold accountable those responsible for attacks, including by forces under the control of those responsible, on civilians.

The Statute requires the Prosecutor to first conduct a preliminary examination of the available information in order to determine whether there is a reasonable basis to proceed with an investigation. To carry out this examination, the Prosecutor may seek information from States, organs of the United Nations, intergovernmental or non-governmental organisations, or other reliable public sources.

In making his determination, the Prosecutor must consider:

- a) jurisdiction: whether the information available provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;
- b) admissibility: whether cases arising from an investigation would be admissible, which involves considerations of gravity and complementarity (whether any relevant national proceedings are being genuinely carried out);
- c) interests of justice: whether, taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.



If the ICC Prosecutor decides to open an investigation and if there is sufficient evidence, the Prosecutor may request an ICC Pre-Trial Chamber to deliver warrants of arrest or summonses to appear for the persons that, in the Prosecutor's opinion, bear the highest responsibility for the alleged crimes.

### **Can the UNSC stop a case once the ICC starts its investigation?**

The UNSC can, by a resolution adopted under Chapter VII, suspend an ICC investigation or prosecution for a period 12 months, renewable under the same conditions, pursuant to article 16 of the Rome Statute.

### **Which crimes fall within the jurisdiction of the ICC?**

The mandate of the Court is to try individuals rather than States, and to hold such persons accountable for grave crimes, namely the crime of genocide, war crimes and crimes against humanity.

“Genocide” means criminal acts, such as killing or causing serious bodily or mental harm, when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

“Crimes against humanity” include criminal acts, such as murder, torture, sexual violence and other inhuman acts, if committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Finally, “war crimes” include grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in armed conflict listed in the Rome Statute, such as murder, mutilation and pillaging, when they are committed as part of a plan or policy or on a large scale.

### **Who can be prosecuted before the ICC?**

The ICC prosecutes individuals, not groups or States. Any individual who is alleged to have committed crimes within the jurisdiction of the ICC may be brought before the ICC. In fact, the Prosecutor's prosecutorial policy is to focus on those who, having regard to the evidence gathered, bear the greatest responsibility for the crimes, and does not take into account any official position that may be held by the alleged perpetrators.

### **If those who bear the greatest responsibility hold high political or military office, are they not exempt from prosecution? Can they not be granted immunity or amnesty?**

No one is exempt from prosecution because of his or her current functions or because of the position he or she held at the time the crimes concerned were committed.

Acting as a Head of State or Government, minister or parliamentarian does not exempt anyone from criminal responsibility before the ICC. In some circumstances, a person in a position of authority may even be held responsible for crimes committed by those acting under his or her command or orders.

Likewise, amnesty cannot be used as a defence before the ICC. As such, it cannot bar the Court from exercising its jurisdiction.

### **There are allegations that the ICC is only targeting African countries. Is that true?**

No. The International Criminal Court is an independent judicial institution that it is not subject to political control. As an independent court its decisions are based on legal criteria and rendered by impartial judges in accordance with the provisions of its founding treaty, the Rome Statute and other legal texts governing the work of the Court.

The ICC is concerned with countries that have accepted the Court's jurisdiction and these are across all continents, including Africa. Three of the five situations currently under investigation were referred to the ICC by African states themselves, namely the situations in the Democratic Republic of the Congo, Uganda, and the Central African Republic. The fourth situation, Darfur, was referred to the ICC by the United Nations Security Council by resolution under Chapter VII of the UN Charter, as provided for by article 13 of the Rome Statute. In addition to that, the Prosecutor was granted authorisation, by the Pre-Trial Chamber, to open an investigation, on his own initiative, in the situation of Kenya. Situations in countries on four continents are under analysis by the Office of the Prosecutor: Afghanistan, Colombia, the Republic of Korea, Côte d'Ivoire, Georgia, Guinea, Honduras, Nigeria and Palestine.

African countries made great contributions to the establishment of the Court and influenced the decision to have an independent Office of the Prosecutor. At the Rome Conference itself, the most meaningful declarations about the Court were made by Africans. Without African support, the Rome Statute might never have been adopted. In fact, 43 African countries are currently signatories of the Rome Statute, of which 31 are parties to the Statute, making Africa the most heavily represented region in the Court's membership. In addition, continuous trust and support comes not only from governments, but also from civil society organisations.