



Cour  
Pénale  
Internationale

International  
Criminal  
Court

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# Questions and Answers

## Understanding the International Criminal Court



### **What is the International Criminal Court?**

The International Criminal Court ("The ICC" or "The Court") is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity and war crimes. The seat of the Court is in The Hague, the third largest city of The Netherlands, a country located in Europe.

### **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 Court. In fact, the Prosecutor's policy is to focus on those who, having regard to the evidence gathered, bear the greatest responsibility for the crimes.

### **Can the Court intervene in Kenya?**

The ICC can intervene in all countries that have accepted its jurisdiction. The Republic of Kenya became a member on 1 June 2005 and as such has agreed that after this date the Court could investigate, try and prosecute individuals accused of crimes that might constitute genocide, war crimes and crimes against humanity committed in their territory, or by their nationals. As of to date 111 States are parties in the ICC founding treaty called the Rome Statute.

### **How was the situation in the Republic of Kenya brought before the Court?**

The Office of the Prosecutor received information about crimes committed in Kenya in relation to the post-election violence of 2007-2008. Following an analysis the Prosecutor took the view that there is a reasonable basis to proceed with an investigation.

By letter of 5 November 2009, the Prosecutor notified the President of the Court of his intention to submit a request for the authorisation of an investigation into the situation in Kenya pursuant to article 15(3) of the Rome Statute.

### **Who are the Pre-Trial Judges assigned to the situation in Kenya?**

On 6 November 2009, the Presidency of the Court assigned the situation to Pre-Trial Chamber II, composed of Judge Ekaterina Trendafilova (presiding judge), Judge Hans-Peter Kaul and Judge Cuno Tarfusser.

### **Is the Judge from Kenya on this Chamber?**

No, the Judge Joyce Aluoch from Kenya is not on this Chamber.

### **Why did the ICC judges decide to authorize the investigation into the situation in Kenya?**

Upon examination of the information and bearing in mind the low threshold applicable at this stage of the proceedings, the majority of the judges of the Chamber consider that the information available provides a reasonable basis to believe that crimes against humanity have been committed on Kenyan territory. The majority moreover found that all criteria for the exercise of the Court's jurisdiction were satisfied, to the standard of proof applicable at this stage.

The Chamber has decided to allow the Prosecutor to commence an investigation covering alleged crimes against humanity committed during the events that took place between 1 June 2005 (i.e., the date of the Statute's entry into force for the Republic of Kenya) and 26 November 2009 (i.e., the date of the filing of the Prosecutor's Request).



### **Will all perpetrators of the post election violence in Kenya be prosecuted by the ICC?**

No. The Court will not be able to bring to justice every person suspected of committing crimes of concern to the international community. The prosecutorial policy of the Office of the Prosecutor is to focus its investigations and prosecutions on those who, having regard to the evidence gathered, bear the greatest responsibility for such crimes.

### **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 because crimes were committed by persons acting under his or her command or authority.

Likewise, an amnesty cannot be used as a defence before the ICC. No amnesty can prevent the Court from exercising its jurisdiction.

### **What are the crimes that the Prosecutor might investigate in Kenya?**

In his "Request for authorisation for investigation" the Prosecutor submits that there is a reasonable basis to believe that crimes against humanity within the jurisdiction of the Court were committed in the context of the post-election violence of 2007-2008, in particular crimes of murder, rape and other forms of sexual violence, deportation or forcible transfer of population and other inhumane acts.

### **How is an investigation conducted?**

The Office of the Prosecutor sends its investigators to collect evidence in areas where crimes are alleged to have been committed. The investigators must be careful not to create any risk to the victims and witnesses. The Office of the Prosecutor also requests the co operation and assistance of States and international organisations. The investigators look for evidence of a suspect's guilt or innocence.

### **What is the next judicial stage following an investigation?**

Once sufficient evidence has been collected to establish reasonable grounds to believe an individual bears criminal responsibility, the Prosecutor will request Judges of the Pre Trial Chamber to either issue summons to appear (requesting the suspects to voluntarily appear before the Court) or a warrant of arrest. A summons or warrant may be issued publicly or under seal.

### **Who has to execute the warrants of arrest?**

The Court does not have its own police force.

The responsibility to enforce warrants of arrest in all cases remains with States. In establishing the ICC, the States set up a system based on two pillars. The Court itself is the judicial pillar. The operational pillar belongs to the States, including the enforcement of Court's orders.

States Parties to the Rome Statute have a legal obligation to co-operate fully with the ICC.

### **Is the Kenyan government obliged to cooperate with the ICC?**

Yes, according to Rome Statute State Parties are obligated to co-operate fully with the Court in investigations and prosecutions of crimes within its jurisdiction.

When a State Party fails to comply with a request to co-operate, the Court may make a finding to that effect and refer the matter for further action to the Assembly of States Parties.

### **Can the Judges order reparations for victims during an investigation?**

No, only if the person is convicted, the Judges may order reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Judges may order that the award for reparations be made through the Trust Fund for Victims.

### **How can the victims express their concerns and ensure that their voice is heard before the Court?**

The Statute of the Court is innovative in several respects. One of the most significant points is that it grants victims unprecedented rights before an international criminal court. Victims may be involved in proceedings before the ICC either by sending information to the Prosecutor, or by willingly testifying before the Court, or by participating in the proceedings through their legal representatives (i.e. their lawyers).

This voluntary participation enables victims to express an opinion independently of the parties and offers them the opportunity to speak about their own concerns and interests.

### **How does the Court protect witnesses and victims and others who might be at risk on account of testimony given by such witnesses?**

The ICC recognizes that victims have not only survived traumatic hardships, but that many of them also testify despite the threat of retaliation. It thus includes explicit protections for "the safety, physical and psychological well-being, dignity and privacy of victims and witnesses."

In order to ensure the safety of witnesses who come to testify before the Court, the Court provides administrative and logistical support and ensures that the experience of testifying does not result in further harm, suffering or trauma for the witnesses. Protection is not limited to physical protection of witnesses, but extends to the protection of their psychological



well-being, dignity and privacy, inasmuch as it is not prejudicial to or inconsistent with the right of the accused to a fair trial.

For example, the Court may, on an exceptional basis, choose not to reveal their identity to the press and public by holding part of the proceedings in closed session or by using electronic or other special means to conceal the evidence in the courtroom. Special attention is given to the particular needs of children, the elderly, persons with disabilities and victims of sexual or gender violence.

Any measure proposed to protect a witness and, often, his or her family, must be proportional to the risk and the least intrusive with respect to the well-being of the witness.

The protection system, regardless of the measure taken, is based on the principle of limiting the exposure of a witness to threats, providing an appropriate response if required and, as a last resort, shielding him or her from the threats. The very foundation of this system relies on the adherence to established practices by all representatives of the Court who interact with witnesses. These practices are meant to conceal a witness's contact with the Court from his or her family and friends, potential sources of threats and the public. These practices are enhanced by an initial response system which enables the Court to extract witnesses who are afraid of being targeted immediately or who have been targeted and take them to a safe location in the field. A protective measure of last resort is placement in the Protection Programme and subsequent relocation of the witness and his or her close relations away from the source of the threat. With respect to the latter measure, the Registrar has to enter into agreements with States which agree that persons under the Court's protection may be relocated to their territory.