



Questions and Answers

Questions and Answers: Opening of an ICC investigation in Mali



What is the ICC? 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 July 2012, 121 countries are States Parties to the Rome Statute of the International Criminal Court. Out of them 33 are African States, 18 are Asia-Pacific States, 18 are from Eastern Europe, 27 are from Latin American and Caribbean States, and 25 are from Western European and other States.

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 (UN). 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 UN signed an agreement governing their institutional relationship.

What measures has the Office of the Prosecutor (OTP) taken since the referral from the government of Mali in July 2012?

Since the referral, the OTP had been conducting a preliminary examination of the situation in Mali. After careful analysis under article 53 of the Statute, including an assessment of admissibility of potential cases, the OTP has determined that there is a reasonable basis to proceed with an investigation. The OTP will publish a report today that will explain in detail how it came to this conclusion.

What crimes will the OTP investigate and how will the investigations be conducted?

The investigation will first and foremost be independent and impartial. This is the law. Secondly, the OTP's policy is to focus on the most serious crimes committed in Mali since January 2012 and also those who bear the greatest responsibility for these crimes according to the evidence. The OTP has analysed information about acts of murder, attacks against protected objects, mutilation, cruel treatment and torture, passing and execution of sentences without due process, rape, and pillaging. During the investigation phase, the OTP will collect witness statements and evidence, including documentary evidence, from individuals and from relevant places like crime scenes and other relevant sources. The OTP expects the full cooperation of the Malian authorities and the international community in investigating alleged crimes in Mali to move swiftly and efficiently in bringing justice to the victims in Mali.



Who can be prosecuted by the ICC for the crimes in Mali?

The OTP will investigate and prosecute individuals who, according to the evidence, bear the greatest criminal responsibility for the most serious crimes committed in Mali. The ICC can investigate or prosecute crimes committed on or after 1 July 2002 when the Rome Statute came into effect. In Mali, these will be crimes committed since January 2012. Who these individuals are will depend on the evidence gathered as the investigation evolves.

If the Pre-Trial Chamber delivers arrest warrants following the investigations and upon the Prosecutor's request, who would have to execute these warrants of arrest?

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 States, including the enforcement of the Court's orders. States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. When a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter for further action to the Assembly of States Parties.

The ICC does not hold trials in the absence of the suspects. However, the crimes within the jurisdiction of the Court are the gravest crimes known to humanity and as provided for by article 29 of the Statute they shall not be subject to any statute of limitations. Warrants of arrest are lifetime orders and therefore individuals still at large will sooner or later face the Court.

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 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. Four of the eight situations currently under investigation were referred by African States themselves. Between 2003 and 2005, the Democratic Republic of the Congo, Uganda, and the Central African Republic referred situations in their own territory to the ICC, just as Mali did recently. The situations in Darfur (Sudan) and in Libya were referred by the UN Security Council by two resolutions under Chapter VII of the United Nations Charter, as provided for by article 13 of the Rome Statute.

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 33 are States Parties to the Statute, making Africa the most heavily represented region in the Court's membership. The trust and support comes not only from the governments, but also from civil society organisations.

Lastly, situations in countries on four continents are under preliminary examination by the Office of the Prosecutor: Afghanistan, Colombia, the Republic of Korea, Georgia, Guinea, Honduras and Nigeria.