



UPDATE ON COMMUNICATIONS RECEIVED
BY THE OFFICE OF THE PROSECUTOR OF THE ICC

Key Points

- 1732 communications from 103 different countries.
- 3 referrals from States Parties, 1 referral from the UN Security Council.
- 80% of communications were found to be manifestly outside jurisdiction after initial review.
- 10 situations have been subjected to intensive analysis; of these, 3 proceeded to investigation, 2 were dismissed, and 5 analyses are ongoing.
- Three investigations have been launched, in situations involving thousands of wilful killings and large-scale sexual violence and abductions. Small teams are investigating cases in sequence. Upon completion of each case the Office examines whether other cases in the situation warrant investigation or whether to select a new situation.

In the interest of transparency, the Prosecutor of the ICC intends to publish periodic updates on communications received by the Office. The updates will include statistics on communications and information on the analysis process. The statistics in this report includes communications received up to 1 February 2006.

Communications and Referrals

Under the Rome Statute, individuals or organizations may submit to the Prosecutor information on crimes within the jurisdiction of the Court ("*communications*"). The Prosecutor shall analyse the information to determine whether there is a basis to launch an investigation.¹ To start an investigation under this mechanism, the Prosecutor must have the approval of a Pre-Trial Chamber of the Court. In addition, the Prosecutor may initiate investigations on the basis of a *referral* from any State Party or from the United Nations Security Council.

The Office has adopted a policy and regulations concerning the analysis of referrals and communications, which is available on our web site.²

Since July 2002, the Office of the Prosecutor has received **1732 communications** from individuals or groups in at least **103 different countries**. Sixty percent of the communications originate in just four countries: USA, United Kingdom, France and Germany. The communications include reports on alleged crimes in 139 countries in all regions of the world.

¹ The Statute requires the Prosecutor to consider: reasonable basis to believe that a crime within the jurisdiction of the Court has been committed; gravity of the crimes; complementarity with national proceedings; and interests of justice.

² http://www.icc-cpi.int/library/organs/otp/policy_annex_final_210404.pdf

In addition, the Prosecutor has received **three referrals from States Parties**, from Uganda, the Democratic Republic of Congo (DRC) and the Central African Republic (CAR), each referring situations in their own territories. The Prosecutor has also received **one referral from the Security Council**, regarding the situation in Darfur in Sudan.

Initial review of communications

All communications are subjected to an initial review to determine whether they provide a possible basis for further action.³ During initial review of the communications received, **80 percent of communications were found to be manifestly outside the jurisdiction of the Court.**

The communications subject to initial review can be divided as follows:

Temporal jurisdiction: Five percent (5%) of communications concerned events prior to 1 July 2002, outside the temporal jurisdiction of the Court.

Subject-matter jurisdiction: Twenty-four percent (24%) of communications concerned allegations manifestly outside the subject-matter jurisdiction of the Court: genocide, crimes against humanity, and war crimes. This has included communications on topics such as immigration issues, including claims for asylum; medical negligence; social security and pension complaints; and employment law, particularly unfair dismissal. It also includes communications on aggression (see box).

Personal/territorial jurisdiction: Thirteen percent (13%) of communications alleged crimes that were manifestly outside the personal or territorial jurisdiction of the Court. The ICC has jurisdiction only over crimes committed on the territory of, or by nationals of, States Parties,⁴ or crimes referred by the UN Security Council.

Manifestly ill-founded communications

Thirty-eight percent (38%) of communications were manifestly ill-founded because they faltered on multiple jurisdictional grounds or otherwise did not provide a basis for analysis. Examples include general conspiracy claims without specific details; general concerns about local or national politics; or communications failing to provide facts susceptible to analysis.

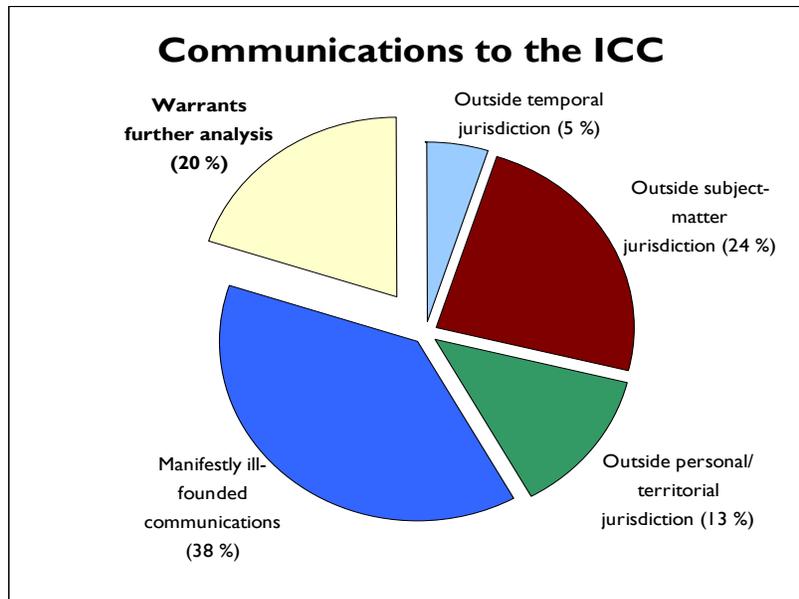
Warrants further analysis: Twenty percent (20%) of communications were identified as warranting further analysis, and were grouped together by situation for more careful study.

The crime of aggression

While the Rome Statute includes the crime of aggression, it indicates that the Court may not exercise jurisdiction over the crime until a provision is adopted which defines the crime and sets out the conditions under which the Court may act (Article 5(2)). This arrangement was established because there was strong support for including the crime of aggression, but a lack of agreement as to its definition or the conditions under which the Court could act. States Parties to the Court are currently deliberating on these two issues. The first opportunity to include such provisions will be at a review conference in 2009.

³ Phase I of analysis under the current regulations and practice of the Office (web link above).

⁴ The ICC also has jurisdiction over crimes committed on the territory of or by nationals of States submitting a declaration of acceptance of jurisdiction.



Analysis of situations

The Office analyses situations on the basis of (1) communications that passed through initial review, (2) referrals, and (3) media and open source reports.

Analysis occurs at different levels, depending on the seriousness of the information. The most elementary level is “basic reporting”, a simple factual and legal analysis, drawing on communications, referrals, and readily available public information.⁵ Since the creation of the Office, 23 situations from all regions have been subject to basic reporting. Of these, 10 were elevated for intensive analysis (see below), 6 have been dismissed and 7 remain under basic reporting. Of those dismissed, 2 were dismissed for lack of subject matter jurisdiction and 3 were dismissed due to a combination of temporal and subject matter jurisdiction.⁶

Where warranted, situations of concern continue into more thorough and intensive analysis.⁷ Detailed information is collected from open sources; systematic crime analysis is conducted; factors such as gravity, complementarity and the interests of justice may be examined; additional information may be sought; and in advanced cases, planning for potential investigation is conducted. The Office is typically conducting such analysis of 5 to 8 such situations at any given time. When the Office publicly reports on numbers of situations under analysis, it refers to situations under this level of analysis.

⁵ This is the start of “Phase II” of analysis under the current regulations of the Office. In the current practice of the Office, this basic reporting is distinguished as “Phase II-A”, to highlight that it is less intensive than other analyses under Phase II or III.

⁶ The communications referred to events before and after the entry into force of the Statute, and the allegations falling within the temporal jurisdiction of the Court did not satisfy the subject matter jurisdiction.

⁷ For the purpose of simplicity, situations under Phase II-B and Phase III analysis are presented here together, as both involve intensive analysis.

Since the creation of the Office, a total of **10 situations have been subject to intensive analysis**, of which 3 have led to initiation of investigation, 2 have been dismissed and 5 currently remain under analysis.

The policy of the Office is to maintain the confidentiality of the analysis process, in accordance with the duty to protect the confidentiality of senders, the confidentiality of information submitted and the integrity of analysis or investigation.⁸ The Office has at times acknowledged that a situation is under analysis, where senders have made the information public, or where analysis is in relation to a referral or public declaration of acceptance.

In the great majority of cases, where a decision is taken not to initiate an investigation on the basis of communications received, the Office will submit reasons for decision only to senders of communications.⁹ This policy helps to prevent any danger to the safety, well-being and privacy of senders and helps to protect the integrity of the analysis process.

However, in the interest of transparency, the Office may make publicly available its reasons for decision where three conditions are met: (1) a situation has warranted intensive analysis,¹⁰ (2) the situation has generated public interest and the fact of the analysis is in the public domain and (3) reasons can be provided without risk to the safety, well-being and privacy of senders. Accordingly, in the interests of transparency, the Office is making available the reasons for two very recent decisions, in relation to [Iraq](#) and [Venezuela](#) (see Annexes).

Among the situations currently under analysis, one (Central African Republic) is pursuant to a referral from a State Party and another (Ivory Coast) is pursuant to a declaration of acceptance from a non-State Party. The Ivory Coast situation appears to involve over a thousand potential victims of wilful killing within the jurisdiction of the Court. The Central African Republic involves lower figures of wilful killing but high levels of sexual violence.

Gravity

The Court is faced with multiple situations involving hundreds or thousands of serious crimes. The Prosecutor must devote his resources to the most serious situations, selecting situations for investigation in accordance with Statute criteria. A key consideration is gravity.

The gravity thresholds are high. The Prosecutor considers various factors, including the number of victims of particularly grave crimes.

Even in situations involving clear crimes in national law crimes or human rights violations, the violations may not amount to ICC crimes or may not satisfy the gravity threshold.

⁸ See *inter alia* Rule 46 and Rule 49(1) of the Rules of Procedure and Evidence.

⁹ Rule 49(1) of the Rules of Procedure and Evidence.

¹⁰ Phase II-B or III under the current regulations and practice of the Office.

Investigations

The Prosecutor has opened three investigations, into the Democratic Republic of the Congo, Northern Uganda, and Darfur, the Sudan. All three investigations were initiated pursuant to referrals. The Prosecutor remains ready to exercise his *proprio motu* power with firmness and responsibility. The Prosecutor selects situations in accordance with the criteria of the Statute, of which gravity is a very important consideration.

Each of the three situations under investigation involves thousands of deliberate killings as well as large-scale sexual violence and abductions, and the three situations collectively result in more than 5 million people displaced. The Office is working with small teams, investigating cases in a sequential manner. Cases within each situation are selected taking into account the policy of focusing on those bearing the greatest responsibility for the gravest crimes. This sequential approach is being applied in Uganda, the DRC and Darfur.

Upon completion of investigation of each case, the Office examines whether there are other cases warranting investigation, bearing in mind the gravity and admissibility thresholds of the Statute, or whether to redeploy its resources to initiate a new investigation into the next most serious situation, selected in accordance with the criteria of the Statute.

In the coming year, the Office will refine its regulations and policy paper on analysis, in light of comments received and experience, and in the context of an ongoing strategic planning and policy development exercise. These documents will be made public, in order to provide further information on the methods and criteria applied.

As Prosecutor Luis Moreno-Ocampo has said, "My first duty as a prosecutor is to observe scrupulously the law that governs this Court", namely the Rome Statute. The ICC has a specific and defined mandate, that enables it to deal only with a limited number of situations involving the most serious international crimes. The work of the ICC is one part of a much broader process, involving many States and organizations, to strengthen and uphold law in the world.