

**Second Assembly of States Parties to the
Rome Statute of the International Criminal Court
Report of the Prosecutor of the ICC,
Mr Luis Moreno-Ocampo
8 September 2003**

Mr President,

I thank you for the opportunity to report to the Assembly of States Parties on the work of the Office of the Prosecutor. It is my duty to report to the Assembly. But I also want to use of this opportunity to encourage States gathered here to take ownership of the Court. I want to explain to you our main concerns and the tasks we need to perform, for which I need your active support.

I can be brief with regard to the tasks performed so far by my Office, taking into account that the President of the Court has submitted a written report of the activities of its three organs.

I have been working to establish the policy, structure and Regulations of the Office. We envisage adopting the final structure and Regulations during the first half of 2004. Taking into account comments received, the Office has prepared a revised policy paper that is now posted on the website of the Court. I hope we will be able to discuss some aspects of it in the meetings that I will hold with governments and non-governmental organisations on Thursday and Friday this week.

In the design of the structure of the Office, I am trying to ensure that its operations will be cost-efficient. The cost of the operations will depend on the resources requested in the proposed budget but more importantly on the number of cases prosecuted.

We have made progress in the recruitment process. We are maintaining geographical and gender representation through a variety of ways. I have paid special

attention to the selection of the Deputy Prosecutor. The candidates nominated were selected from a pool of 130 applicants from 47 countries in all five continents.

With the advice of current and former ICTY and ICTR Prosecutors I was able to select my three nominees. In my letter to the President of the Assembly of States Parties, I expressed the view that it would be highly desirable that the Assembly adopt the approach used in the election of the Judges of the Court, whose terms were phased-in pursuant to article 36, paragraph 9(b) of the Statute.

Hence, I recommend an appointment for a shorter term than my own in order to ensure that the end of the term of the Deputy Prosecutor does not coincide with the expiration of my own. This would allow for continuity in the operation of the Office and for the proper preservation of institutional memory in senior management.

My Office has so far received no referrals from the UN Security Council or States Parties. We have received 499 communications between July 2002 and July 2003, sent by non-governmental organisations and individuals from 66 different countries. I wish to thank this expression of interest by civil society in the Office of the Prosecutor and take this opportunity to also welcome continued cooperation with non-governmental organisations. Their collaboration, especially that of those non-governmental organisations that prepared detailed reports, is essential for the current work of my Office.

In a press conference held on 16 July in The Hague, I informed about the reasons why some of the communications received cannot be investigated. Others will merit our continued attention. However, after analysing all the communications received, I have selected the situation in Ituri (DRC) as the first situation which merits to be closely followed by the Office.

Mr President,

As Judge Kirsch once said: the ICC is independent and interdependent at the same time. It cannot act alone. It will achieve efficiency only if it works closely with other members of the international community.

In order to work closely with you I wish to inform you about the alleged crimes committed in Ituri, how we intend to proceed and how you can best assist in our endeavour.

As the UN Human Rights Rapporteur indicated last week, the crimes reportedly taking place in Ituri potentially constitute genocide, crimes against humanity or war crimes, all of which fall within the jurisdiction of the International Criminal Court.

Detailed reports from a number of civil society organisations received by my Office estimate that at least 5,000 civilians have died as a direct consequence of violence in Ituri since 1 July 2002. The estimated total number of deaths from the beginning of the conflict in DRC varies in different reports, ranging between 2.5 and 3.3 million people. The deaths are a consequence of the fighting as well as of indirect causes including starvation, landmines, untreated injuries and diseases (including the transmission of HIV/AIDS through rape). These figures make this conflict the most devastating to civilians since the Second World War.

The information contained in these reports is confirmed by other sources. All sources agree that atrocities have continued to be committed in Ituri during this year. For example, the High Commissioner for Human Rights has reported that, "117 cases of arbitrary execution, 65 of rape, including child rape, 82 cases of abduction either for sexual purposes or work, and 27 of torture" took place in Mambasa in mid January. A UN team investigating the events in Drodro reported that on 3 April 2003 nearly 410 summary executions were carried out, including cases of people being burnt alive. More than 80 others were badly wounded or even mutilated. In Nkora 70 civilians were killed in mid-June. This information was confirmed by MONUC.

Mass killings are just one type of crime being committed in Ituri. Crimes specifically targeting women and children are also widespread in the area, according to UNICEF reports. Hundreds of women and girls are being raped, mutilated and killed in the province. These women are constantly exposed to the risk of contracting HIV/AIDS, which is said to afflict a sizable portion of the population of the DRC. Between 8,000 and 10,000 children are serving as soldiers in the strife-torn Ituri region. In total, it is estimated that more than 30,000 child soldiers serve among the ranks of the various belligerents in the entire DRC, representing between 40 and 60% of the soldiers fighting this war.

The Pygmies are another targeted group, threatened with extinction.

The violence has also caused the massive displacement of civilians, forcing them to live in poverty, threatened by famine and disease. An estimated 500,000 people in Ituri – about 10 percent of the population – were internally displaced before the recent upsurge in fighting (in April 2003), according to the UN.

The situation of uncontrolled violence has also had an impact on markets and property rights. The looting of farms, mines and commercial centres entails huge losses for the economy. With local economies destroyed, the population is left without any means of subsistence and is subjected to forced labour.

Different armed groups have taken advantage of the situation of generalised violence and have engaged in the illegal exploitation of key mineral resources such as

cobalt, coltan, copper, diamonds and gold. According to information received, crimes reportedly committed in Ituri appear to be directly linked to the control of resource extraction sites. Those who direct mining operations, sell diamonds or gold extracted in these conditions, launder the dirty money or provide weapons could also be authors of the crimes, even if they are based in other countries.

The dimensions of the problem of illegal exploitation of natural resources are so significant, that the United Nations appointed a Panel of Experts to analyse it. The reports of the Panel link the continuation of the conflict with the exploitation of these resources.

My Office is aware that the Panel of Experts has not yet completed its work. We have, therefore, not drawn any conclusions from existing reports. We will, however, continue to follow the views expressed by all parties concerned and to analyse information received, in order to verify, independently, the links between the killings and the exploitation of resources.

Mr President,

The Office is conscious of the peace process under way in DRC, and hopes that the efforts of the international community to halt the violence will bear fruit. In particular, I hope the national system can be reinvigorated with assistance from the international community in order to enable the Congolese themselves to investigate and prosecute those responsible.

If necessary, however, I stand ready to seek authorisation from a Pre-Trial Chamber to start an investigation under my *proprio motu* powers. In this eventuality, and in light of the current circumstances in the field, the protection of witnesses, gathering of evidence and arrest of suspects will be extremely difficult without the strong support of national or international forces. If these forces are not available, the Office of the Prosecutor will need to investigate from outside and rely on international cooperation for the arrest and surrender of the alleged perpetrators.

Our role could be facilitated by a referral or active support from the DRC. The Court and the territorial State may agree that a consensual division of labour could be an effective approach. Groups bitterly divided by conflict may oppose prosecutions at each others' hands and yet agree to a prosecution by a Court perceived as neutral and impartial. The Office could cooperate with the national authorities by prosecuting the leaders who bear most responsibility for the crimes. National authorities with the assistance of the international community could implement appropriate mechanisms to deal with other individuals responsible.

A referral or active support from African and Western countries that have taken a role in the peace process as well as other States Parties would show their commitment to the goal of putting an end to the atrocities in the region.

In coming weeks the Office of the Prosecutor will send letters to all States Parties and other countries particularly concerned, informing them that we are analysing the information regarding Ituri, and inviting them to cooperate. In one month we will enlarge the team working on this situation in the Office of the Prosecutor. Meanwhile, we are reinforcing the interaction with different national and international institutions that are already cooperating with us.

After his swearing-in, my Deputy Prosecutor will be devoted to the analysis of this situation, will begin preparing our investigation plan and will complete the recruitment of the team. All States Parties can support our work by offering security, police and investigative teams, and giving intelligence and other evidence.

The investigation of financial transactions, for example for the purchase of arms, may well provide evidence proving the commission of atrocities. Here again the interaction between State authorities and the Office of the Prosecutor will be crucial: national investigative authorities may pass to the Office evidence of financial transactions which will be essential to the Court's investigations of crimes within the Court's jurisdiction; for its part, the Office may have evidence of the commission of financial crimes which can be passed to national authorities for domestic prosecutions. Such prosecutions will be a key deterrent to the commission of future crimes, if they can curb the source of funding.

If the seriousness of the information about the crimes is confirmed and if the national State is unable to deal with the problem, my duty will be to seek authority to initiate the investigation of the International Criminal Court.

Mr President,

Before concluding my intervention, I wish to pay my tribute to the committed individuals working for the United Nations that were killed in Baghdad. Sergio Vieira de Mello may have been born in Brazil but he represented people from all over the world. He worked in Cambodia, in Rwanda, in Kosovo, in East Timor, in Congo, in Iraq. He believed global institutions were necessary to achieve global peace. And he was killed for that. His legacy, and that of his colleagues lost with him, can only strengthen our collective determination to work for peace and justice.

Thank you very much.