



INTERNATIONAL JUSTICE MILESTONE: THE INTERNATIONAL CRIMINAL COURT TURNS TEN

QUESTIONS AND ANSWERS

IOR 53/014/2012

FOR EMBARGOED RELEASE

EMBARGOED until 12.01 A.M. 1 July 2012

This Questions and Answers explains why Amnesty International is marking the 10th anniversary and why states should support the International Criminal Court (ICC) on its tenth anniversary and make voluntary contributions to the ICC's Trust Fund for Victims.

1. Why is Amnesty International celebrating the tenth anniversary of the ICC?

The ICC came into being after several years of campaigning by victims and non-governmental organisations from across the globe. The campaign for the ICC gave birth to a global civil society movement which united victims across borders and continents in their struggle for human rights and in the fight against impunity. What initially started as fledgling initiative grew over the years into the Coalition for the International Criminal Court which today includes 2,500 organisations from 150 countries around the world.

Amnesty International has been part of this initiative from the very beginning, contributing with its expertise to the development of the Rome Statute as well as lobbying governments to ratify it and support international justice. Now our *Campaign for International Justice* continues to work to ensure that victims have access to justice and reparation before the ICC and elsewhere.

On 1 July 2012 - the 10th anniversary of the ICC - there is much to celebrate. The establishment of the world's first permanent international criminal court responsible for bringing to justice perpetrators of genocide, crimes against humanity and war crimes was a great victory for victims of those crimes.

2. What is the organization doing on this milestone?

Amnesty International is marking the anniversary by launching an online campaigning platform *Demand Justice* - www.demandjusticenow.org - which will help victims and activists from across the globe to together fight against impunity.

The website will be launched on 1 July 2012. By using this site everyone can join Amnesty International in expressing support for international justice and solidarity with victims. Activists will be able to take action by pledging their support for international justice, signing

global appeals for justice, truth and reparation, and exploring Amnesty International's interactive map of international justice.

Join the CAMPAIGN FOR INTERNATIONAL JUSTICE - DEMAND JUSTICE – THE TIME FOR JUSTICE IS NOW.

3. What has the International Criminal Court achieved in its first decade?

Amnesty International along with many other human rights organizations participated the drafting of the treaty that established the Court – known as the Rome Statute - and campaigned for its universal ratification. With 121 states already party to the Rome Statute and making progress towards implementing its provision in their domestic law too, the ICC is rapidly establishing a system of international justice around the globe.

Ten years later, the ICC is a fully functional institution investigating cases in seven situation countries (Sudan (Darfur), Democratic Republic of Congo (DRC), Uganda, Central African Republic (CAR), Kenya, Cote d'Ivoire, and Libya). The Office of the Prosecutor is currently examining allegations of crimes in seven other situations in order to determine whether to open investigations: Afghanistan, Colombia, Georgia, Guinea, Republic of Korea, Honduras and Nigeria.

On 14 March 2012, the ICC issued its first ever verdict. It convicted Thomas Lubanga Dyilo (DRC) for the use of child soldiers. This judgment sent a message around the world that using child soldiers is a crime for which perpetrators will be brought to account. The judgment was hailed as a milestone for international justice by Amnesty International and others.

Several serving or former heads of state including Omar Al-Bashir, Muamar al-Gaddafi and Laurent Gbagbo have been named in ICC arrest warrants, sending a message that no-one is above the law. While Omar Al-Bashir is yet to be surrendered to the ICC, more and more states are refusing to host him in their territory. The change of venue earlier this month of the African Union Summit to Addis Ababa following Malawi's refusal to offer President Bashir safe haven is an indication that the ICC and international justice enjoys increasing support across Africa.

4. What challenges does Amnesty International believe the ICC is facing at the ten-year mark?

Notwithstanding its achievements, the ICC is facing major strategic, political and financial challenges.

Although 121 states have ratified the Rome Statute, many have not. This leaves numerous victims of crimes in countries which are not states parties without access to justice. The UN Security Council, which could refer such situations to the ICC Prosecutor, has failed to do so on a number of occasions.

This failed leadership and politicization in the situations such as Syria is greatly disappointing. The inaction of the UN Security Council in this case - apart from denying justice to the victims of the worst crimes imaginable - also negatively impacts on perceptions of the ICC as an impartial institution that does not discriminate between victims. With the death toll in Syria now between 10,000 to 15,000 men, women and children garnering only weak responses from the UN Security Council, some have been asking if it is still fit for its role of safeguarding international peace and security.

Where the ICC does have jurisdiction, governments are blocking justice for victims by failing to cooperate fully with the Court, particularly in relation to failing to arrest suspects charged by the Court (including Sudanese President Omar al-Bashir) and assist with witness protection and relocation.

Similarly, major donors are refusing to increase the ICC's budget as its activities increase, which is having a direct impact on the scope of the ICC's work. Some decisions and a number of other ICC policies are being developed and implemented in a restrictive manner – partly as a result of the financial constraints placed on the court – that may preclude victims from participating in proceedings and claiming reparation before the ICC. States must live up to their commitments under the Rome Statute by cooperating fully with the ICC and providing financial and political support.

5. What is AI calling on states do on the ICC's tenth anniversary?

On 1 July 2012, Amnesty International is calling on states to provide political, strategic and financial support the ICC.

In particular, Amnesty International is calling on states to pledge to make a voluntary contribution to the ICC's Trust Fund for Victims this year and annually thereafter. It is critical that states do so in light of the fact that the first convicting judgment of the ICC in March 2012 in the *Lubanga* case also triggered another significant development in international justice: the first reparation proceeding before the ICC. In light of this, Amnesty International is calling on states to support the ICC by helping it to fulfil its mandate to provide reparation to victims.

6. What does the right to reparation mean to victims?

Reparations are intended to help victims to rebuild their lives as much as possible to the situation before the crimes were committed against them.

Reparations have the power to transform the lives of individuals and communities affected by crimes under international law. Reparation measures may include a wide number of initiatives that serve to redress the harm suffered or put the victimized individual or community back in the position they would have enjoyed if the crimes had never taken place. For example, a victim of rape might receive medical and psychological assistance as well as benefiting from programmes that aim to eradicate stigma and discrimination against rape survivors in society and break cycles of victimization and disempowerment of women.

Under international law, reparations can be provided by states or by individuals with criminal responsibility for crimes under international law. Reparations are often identified by victims as integral to their understanding of "justice". This is because reparation measures complement victims' rights to justice and truth. While criminal processes can serve to acknowledge the harm suffered by victims, identify the perpetrators, establish responsibility and provide punishment, reparation is focused on restoring the dignity of the victim through concrete forms of assistance as well as symbolic measures, such as guarantees of non-recurrence of the crime. The integration of a reparation process into the ICC is therefore a crucial step towards ensuring a comprehensive approach to providing redress for crimes under international law.

7. Why is Amnesty International calling on states to support the ICC Trust Fund for Victims on 1 July?

The ICC is the first international criminal court to incorporate a comprehensive reparation process, allowing the judges to order convicted persons to deliver reparation to victims including "restitution, compensation, and rehabilitation".

Since the ICC can only order a convicted person to pay reparation to victims, to date no reparation orders have been made. The first individual tried by the ICC, Thomas Lubanga Dyilo, was convicted in March 2012 on charges related to using child soldiers. The victims in that case are mainly former boy and girl child soldiers, and they are now entitled to apply to the ICC for reparation against Lubanga. The first ICC reparation orders could be issued in late

2012 and implemented if and when the conviction is confirmed on appeal, which may take a further year or more.

The ICC is likely to issue reparation orders similar to those provided by other international courts. For example, the Inter-American Commission and Court of Human Rights have ordered a wide range of measures such as:

- Educational opportunities, such as building of schools and scholarships
- Healthcare, including reconstructive surgery, physical therapy and psychological care for trauma disorders
- Compensation payments
- Return of land and dwellings
- Official and public apologies
- Memorials and commemorations
- Legislative reform and public programmes
- Training for law enforcement and public officials

These measures may be individual or collective, and may depend on the nature of the harm suffered by the victims as a result of the crime. An approach focused on ensuring reparation measures are precisely tailored to the needs and wants of victims is increasingly favoured.

8. What does the ICC Trust Fund for Victims do?

The Trust Fund for Victims is an independent organ of the ICC intended to support victims and assist in the delivery of court-ordered reparation to them. The Trust Fund is both a resource for providing reparation to victim and a tool for implementing court-ordered reparation. It was established in September 2002 and has been receiving voluntary contributions from states for its work since then.

The Trust Fund has a so-called dual mandate.

First, in specific cases, the judges can decide that orders for reparation against a convicted person can be provided through the Trust Fund. Although the ICC reparation process indicates that convicted persons are liable for reparation orders, the Trust Fund can provide funds to complement reparation orders. This is critical given that many ICC defendants are unable to provide significant resources to fund reparation. Currently, the Trust Fund has a reserve of 1.2 million Euro to support ICC-ordered reparation – but with thousands of victims participating in numerous cases, there is likely to be heavy demand on this reserve.

The second aspect of the Trust Fund mandate is to provide “general assistance” to victims in ICC situation countries. Implementation of the victim support mandate is already transforming the lives of individuals and communities, for example, allowing schools to be established where education opportunities were destroyed by violence and delivering reconstructive surgery to victims of mutilation.

At present, the Trust Fund is reaching 80,000 beneficiaries in the DRC and Uganda. Activities will also soon commence in the Central African Republic. It does so through a number of projects which currently fall under the broad themes of:

- (i) assisting victims to rebuild their communities;
- (ii) assisting victims of torture and mutilation with psycho-social and medical services,
- (iii) assistance to children and youth;
- (iv) assistance to victims of rape and other forms of sexual violence.

In 2011, the Trust Fund received around 3 million Euro in voluntary contributions to support these projects. To find out more, visit www.trustfundforvictims.org.

9. Why should states make voluntary contributions to the ICC Trust Fund for Victims on the 10th anniversary?

Amnesty International supports victims receiving full reparation, including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition of the crimes committed against them and is therefore urging states to ensure that the ICC victim assistance and reparation mandate is adequately resourced by making voluntary contributions to the Trust Fund for Victims so that victims can get the support and reparation they need.

As the Trust Fund steps up its victim assistance activities and prepares for the first court-ordered reparation phase, it must increase its fundraising in order to meet the needs of victims.

The Trust Fund can raise money by receiving voluntary contributions from states, institutions, or individuals. The ICC judges can also order fines and asset seizure related to crimes under its jurisdiction be put at the disposal of the Trust Fund, but since only one case has been completed to date, this source of income is not yet a reality.

The ICC's reparation mandate is one of the chief ways that the Trust Fund is already having an impact in people's lives even though justice has been slow to unfold. As the first reparation proceedings gets underway in the *Lubanga* case, the ICC is offering hope to victims in a new way. States parties must help to make this hope a reality by making regular contributions to the Trust Fund for Victims. To date, only 28 of the ICC's 121 states parties have made voluntary contributions to the Trust Fund. (Visit www.demandjusticenow.org to see Amnesty International's guide to voluntary contributions by states).¹ Moreover, although many of those states have made very generous contributions, less than half give regularly each year. A key factor in the ability of the Trust Fund to deliver assistance and reparation to victims is to ensure *consistent and predictable* income. If the pool of states contributing to the fund can be broadened and states commit to annual contributions, it would greatly improve the ability of victims of crimes under the ICC's jurisdiction to access reparation and other services.

VICTIMS DEMAND REPARATION

Below are testimonies collected by Amnesty International from victims of crimes under international law in Latin America, Africa and the Middle East raising their voices to demand reparation for the harms they suffered.

COLOMBIA

Mari (female), survivor of conflict-related sexual violence, Colombia, February 2011

For me, reparation is to publish this book, and that is symbolic reparation. Issuing the book may encourage other women from different views to do the same. Then programmes would be created, so that there would be solutions or at least possibilities to improve the lives of these women, things like that. I am a great dreamer.

Clara (female), survivor of conflict-related sexual violence, Colombia, February 2011

And in the meantime my mother watched, humiliated, as they did bad things to me, what we all suffered there. But the worst thing was that my mum had worked so hard to give me and my little brother a good start because her dream was always to do well in business and be able to be with us all the time. But now my situation is very different since all this. We lost everything. This is what we are demanding. Justice! And that we are at least compensated for everything my mum has worked so hard for. And we are helping her to fight for this"

¹ Available from 1 July 2012.

SIERRA LEONE

Hawa (Sierra Leone), now almost 70, and originally from the town of Daru in Kailahun district, is still severely traumatized from an event that took place in 1992, but has few options and no one to take care of her due to the death of her children. She also feels isolated as she has been unable to tell anyone what happened to her. In March 2007, more than 15 years after the event took place, she told Amnesty International:

"I was abducted in 1992. I was laid in front of everyone and openly gang raped by four boys. They raped me in front of a lot of people near to where the paramount chief lives in town. As a result of this rape I used to bleed all the time. It finally stopped bleeding about two years ago. I used native herbs to treat it. I never told anyone about this as it was just too awful to recount. I still remember it as though it happened yesterday as I am still in a lot of pain now. I have not been able to be with any other man since then. I am too afraid. Before the war I had four children and now they are all dead. My daughter was pregnant and they split her stomach and she and the baby died. I am all alone now because everyone else was killed. I am lonely. I don't have anyone to share what happened to me I actually think telling others would only hurt me. I think they would only look down on me and no help would come from it. I know how people talk and then ridicule you."

Mamie (Sierra Leone), originally from Bo and nearly 60 years old, was abducted and brought to Kailahun in 1995. When she tried to return home, her community rejected her. She said:

"I returned to Bo in 2004 and 2006, and both times they called me a rebel. They said that the rebels were killing and eating people so they didn't want anything to do with me. Now to survive I take care of a child and in return the family gives me food. People in the community call me a rebel. Few people will talk to me. I need food, shelter, and medicine now."

Jusu Jarka (Sierra Leone), 49 years old, is a survivor of amputations to both arms. He describes his ordeal in January 1999 when RUF fighters invaded Freetown: *"The rebels went from door to door. They told me to open the door or they were going to fire. My 14 year old daughter was in the house and he told my daughter – 'Get my bag and follow me into the bush. I now have my wife.'... They tied my hands behind my back like a prisoner. I was crying and pleading 'please don't cut my hand my brother' but he said, 'You are not my brother because you did not join us to fight.' They cut my left hand first and then my right. Then they said, 'Let's not waste a bullet on him – let him die on the way.' "*

Jusu survived but little has been done to address the injuries he suffered. He says, *"There are no plans to make reparations for victims. We have been asking them for years throughout the court proceedings to find ways and means to compensate us but victims are still languishing in the streets and begging for a living."*

Matilda Koroma (Sierra Leone), 36 years, told Amnesty International how she was gang-raped by five men after being taken from her village in 1998. *"They entered in the night. I had just given birth to a one week old baby boy... They grabbed me and took me to one corner. Five men raped me and beat me. When they thought I was dead they raped me with a big stick."*

Matilda still suffers the wounds caused by this horrific ordeal. She says, *"No man wants me. My husband left because he is not satisfied with me. I cannot bear children so no man wants to be with me."* While the government has given her some compensation and medical assistance – she states she only received 300,000 Leons (roughly \$70USD) one year ago – she must pay for continuous medical care from the meagre wages she makes weaving.

GAZA

Randa Salha, a 34-year-old mother of seven, was killed with four of her children – one-year old Roula, Baha al-Din, aged four, Rana, 12, and Diya' al-Din, 14, and her 22 year-old sister Fatma when Israeli forces bombed and destroyed their family home in Beit Lahia in the middle of the night on 9 January 2009 during Operation Cast Lead. To date, there has been no effective investigation of this incident and the surviving members of the Salha family have received no form of justice or reparation. [Watch them.](#)

Timeline of key ICC developments, 1 July 2002 – 1 July 2012

Ten states ratify the Rome Statute of the International Criminal Court, bringing number of states parties to 60 and triggering entry into force	11 April 2002
Rome Statute of the International Criminal Court comes into force	1 July 2002
Assembly of States Parties meeting for first time, adopts annual budget of Euro 30 million for ICC's first year	August 2002
Luis Moreno Ocampo sworn in as first Prosecutor of the ICC having been elected	16 June 2003
Uganda self-refers situation concerning Lord's Resistance Army to the ICC	16 December 2003
First meeting of the Board of Directors of the ICC Trust Fund for Victims	20-22 April 2004
UN Security Council unanimously refers the situation in Darfur, Sudan to the ICC	31 March 2005
ICC Office of the Prosecutor issues first arrest warrants – for five LRA commanders in the Uganda situation	8 July 2005
Thomas Lubanga Dyilo (Democratic Republic of the Congo) first accused to be arrested and surrendered to the ICC in The Hague	16 March 2006
Arrest warrant issued for President Omar al-Bashir of Sudan on charges of war crimes and crimes against humanity	4 March 2009
The first trial opens at the ICC, in case of <i>Prosecutor v. Lubanga</i>	26 January 2009
Second arrest warrant issued for President Omar al-Bashir of Sudan, adding charges of genocide	12 July 2010
UN Security Council unanimously refers the situation in Libya to the ICC	26 February 2011
First former head of state, Laurent Gbagbo of Cote d'Ivoire, arrested and surrendered to the ICC	30 November 2011
Assembly of States Parties meets for tenth time, adopts budget of €108 million – €9 million less than required for ICC operations in 2012	12-21 December 2011
ICC issues first trial judgement, <i>Prosecutor v. Lubanga</i> , first reparation proceeding commences	14 March 2012
Office of the Prosecutor announces preliminary examination of 2008 Gaza conflict on hold pending resolution of statehood question	3 April 2012

Second ICC Prosecutor takes office

15 June 2012

ICC celebrates tenth anniversary

1 July 2012

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