Below is a brief summary of pertinent facts about the International Criminal Court (“ICC” or “Court”) and an Overview of ICC Proceedings which we hope you will find useful.

**Pertinent Facts about the International Criminal Court**

The ICC is the first and so far only permanent international criminal court. It was created in 1998 by the Rome Statute, a draft treaty adopted by 120 countries. It has so far been ratified by 124 countries including 58 African nations. The United States, Russia and China are currently not parties. It officially came into being in 2002 and accepted its first case in 2006. Its governing body is the Association of State Parties (ASP) composed of states that have ratified the Rome Statute. It is headquartered at The Hague in the Netherlands.

The Rome Statute confers jurisdiction to the ICC over persons who have committed the most serious crimes of international concern, including crimes of war, crimes against humanity, genocide and aggression. These crimes are defined in the Rome Statute and in an Appendix setting out the elements of each crime. The Court has this jurisdiction only after the date (2002) the Statute entered into force. [See Rome Statute of the International Criminal Court, Arts. 5-9]

The Court may exercise jurisdiction with respect to these crimes if a “situation” which appears to involve one of these crimes is referred by a State party or by a non-party State who has accepted the Court’s jurisdiction or if the Prosecutor initiates an investigation on his/her own and makes a recommendation for authorization to proceed which is approved by the PreChamber of the Court. In the case of a State referral, there must be a showing that the criminal conduct occurred in that State or the person accused of the crimes is a national of that State. The Security Council of the United Nations (UN) may also refer a situation without regard to the party status of the State or the nationality of the person accused, and it may defer for 12 months an investigation or proceeding initiated by the State or the Prosecutor. [Id. at Arts. 11-16]

In all such referrals by a State or Prosecutor the Court must initially determine admissibility: a case is inadmissible if it is already being investigated or prosecuted by a state with jurisdiction “unless the State is unwilling or unable genuinely to carry out the prosecution or investigation,” the State has investigated the case and decided for good reason not to prosecute, the person accused has already been tried for the crimes, or the case is “not of sufficient gravity to justify further action by the Court.” [Id. at Arts. 17-19]

The applicable law in the Court is primarily the Rome Statute including the elements of Crime and the Rules of Evidence and Procedure (also in the Appendix); secondarily, general principles of law derived from national laws including the country where the crime would ordinarily be tried, so long as the national laws are not inconsistent with international law and norms, internationally recognized human rights and are nondiscriminatory as to gender, race, color, religion, ethnicity (and other grounds). [Id. at Art. 21 et seq.]

There shall be no immunity based on official capacity, including Head of State or Government. [Id. at Art. 27]
The Court consists of judges elected by two thirds of the ASP (the number of judges may vary according to need but is generally around 18) who are nominated by State Parties, of “high moral character” and have “established competence in criminal law and procedure” and “necessary relevant experience” in criminal proceedings or “established competence in relevant areas of international law.” They sit in Pretrial, Trial and Appellate Chambers. [Id. at Art. 36]

The Prosecutor is an independent organ of the Court elected by secret ballot by a majority of the ASP for a term of 9 years. The current Prosecutor, the second one thus far, is a woman barrister from Gambia, in the middle of her term. Judges and the Prosecutor are removable for cause by the ASP (2/3 majority for judges, majority for Prosecutor). [Id. at Arts. 42, 46].

Accused persons receive the vast majority of due process rights we enjoy in our own country including the right to be present, some forms of pretrial release, generous discovery, rights to counsel including assigned counsel for indigent persons, right to an interpreter if needed, rights to present and cross examine witnesses, to remain silent, and a standard of guilt beyond a reasonable doubt. The two main differences are the prosecution may appeal an acquittal and there is no jury but a trial panel of 3 judges. There is no death penalty allowed. [Id. at Arts. 55, 67, 77]

A State Party may withdraw from the Court by a written notification to the Secretary-General of the UN. The withdrawal takes effect one year later. Proceedings involving the withdrawing State which had commenced prior to the withdrawal shall not be affected. [Id. at Art. 127] A recent decision by a High Court in Pretoria found that South Africa’s attempt to withdraw by means of a letter from the Justice Minister was not valid as the approval of the Parliament was also necessary. In response, the UN Secretary General has announced that South Africa’s attempted withdrawal is invalid in light of the court’s judgment and that a debate in South Africa’s parliament is expected.

Overview of ICC Proceedings*

The ICC has opened formal investigations in 10 situations, nine in African countries and the tenth in Georgia. It has indicted 39 people. Seven persons are in detention currently, nine are fugitives, four are under arrest in non-ICC facilities, and eight are under summons to appear. Eight are on trial and one is on appeal. Seventeen have completed proceedings, 22 are involved in ongoing proceedings. Three have been convicted, one acquitted, six have had charges dismissed, three have had charges withdrawn or the case found “inadmissible.” Four have died before trial.

Charges of genocide were brought against one accused, crimes against humanity against 26 accused, war crimes against 20 accused.

Of those convicted, and sentenced, terms of imprisonment ranged from 9-14 years. Several are currently on provisional release awaiting sentence.

* Numbers are taken from material provided by Prof. Jennifer Trahan, New York City Center for Global Studies.