

The International Criminal Court - Information for Human Rights Defenders

“I want you to know that our court, the ICC, is your court. It was set up and it was brought to birth by people like you and your NGOs who had the energy, the faith and the will to push the politicians into finally creating the Rome Treaty” - Maureen Harding Clarke, Judge of the International Criminal Court speaking at Steps to Protection, The Second Dublin Platform for Human Rights Defenders

A. About the Court

The ICC is a permanent international criminal tribunal that can try the most heinous international crimes. It was established after the Rome Summit in 1998 and entered into force on 1st July 2002 after sixty states ratified the Rome Statute.

The Rome Statute provides for the establishment of a permanent Court with the jurisdiction to try cases of genocide, crimes against humanity and war crimes. Previously, tribunals set up to prosecute such crimes were established after the crimes were committed and this meant that they had no deterrent value. It is a court with much greater jurisdiction over such crimes than the previous tribunals. However the court's jurisdiction is not yet global (see discussion on jurisdiction below).

[Click here for full text of the Rome Statute \(html version\)](#)

[Click here for full text of the Rome Statute \(.pdf version\)](#)

The Rome Statute of the International Criminal Court enters into force in a country when that country formally ratifies, accepts, approves of or accedes to the Statute. Mere signature of the statute is not enough for the statute to enter into force in the signatory state. Once the Statute has entered into force in a country that country is known as a State Party

[To see if the country you are interested in is a State Party click here](#)

On February 3rd - 7th 2003 the Assembly of States Parties elected the Court's eighteen judges: three judges from African States, three from Asian States, one from Eastern European States, four from Latin America and Caribbean States, and seven from Western Europe and Other States. Of the elected judges, 10 have competence in criminal law and 8 have competence in international law. Seven of the 18 judges are women.

[Click here for a full list of the Judges of the Court](#)

The Court is a fully functioning institution. All the senior officials are now in place. However as of mid-2004 it had not yet prosecuted any cases.

How does a case get to the International Criminal Court?

The court can take on a case in one of three situations:

- If a state party refers a situation to the court
- If the United Nations Security Council refers a situation to the court
- If the Prosecutor initiates an independent investigation

Under Article 15 of the Rome Statute the Prosecutor has the power to undertake an independent investigation into crimes alleged to have occurred within the jurisdiction of the court. The Office of the Prosecutor can therefore receive complaints about cases of genocide, crimes against humanity and war crimes. If it has jurisdiction and the State Party is unwilling or unable to investigate, the Office of the Prosecutor can step in, investigate, prosecute and convict those responsible for the crimes.

The current Chief Prosecutor of the International Criminal Court is [Mr. Luis Moreno-Ocampo](#)

Sentencing

If a prosecution is successful, the Court has the option to sentence the guilty party along the guidelines set out in Article 77. These allow for the prison sentences up to 30 years and, in certain cases, when “justified by the extreme gravity of the crime and the individual circumstances of the convicted person”, the Court may decide to impose a life sentence.

In addition to prison sentences, the Court can also impose a fine or confiscate assets derived from the crimes.

B. Conditions on the Operation of the Court

All three of the following conditions must be met in order for the Court to be able to exercise its powers in a given case: 1. The crime alleged must be one of the crimes listed in Article 5 of the Rome Statute

2. The court must have jurisdiction over the place where the act was committed or the person who committed it

3. The court must have had jurisdiction on the date the crime was committed

Unfortunately crimes that do not meet these conditions cannot be tried by the International Criminal Court, except in certain, very limited, circumstances. (See Section C. Below)

1. Crimes within the court's jurisdiction

It would be impractical to have an international criminal court which had responsibility to try minor offences, which can more easily be dealt with at a national level. Therefore the court has only been given jurisdiction for the most serious international crimes. These are laid out in Article 5. The court has the power to prosecute individuals for Genocide, Crimes Against Humanity, and War Crimes. Each is defined in articles 6, 7 and 8 of the Rome Statute respectively. Article 5 of the Statute also gives the Court jurisdiction for the Crime of Aggression but this jurisdiction has been suspended until such time as the States Parties agree on a definition of the Crime of Aggression. This is not expected to happen for a number of years.

2. Territories and Individuals within the Court's jurisdiction

The court derives its jurisdiction from its constituent sovereign states parties. Therefore in order for the Court to have jurisdiction over a particular criminal act a State Party must have some connection with that act. This connection can be established in one of two ways (Established in Article 12 of the Rome Statute):

- The ICC has jurisdiction over crimes which are committed within the territory of a State Party by a perpetrator of any nationality. (this is called "Territorial Jurisdiction")
- The ICC has jurisdiction over crimes which are committed by nationals of a State Party, regardless of where these crimes were committed. (this is called "Personal Jurisdiction")

3. Temporal jurisdiction (timeline jurisdiction)

It is important to note that crimes committed before a country becomes a State Party cannot be tried. That is, until the Statute has entered into force in a country the court has no jurisdiction there.

As the Court only came into existence on 1st July 2002 it only has jurisdiction over crimes committed since 1st July, 2002. This means the Court cannot try any crime by any person in any territory before that date.

For countries that ratify the Statute after the 1st July, 2002, the Court only has jurisdiction from after the entry into force of the statute in that country. The Statute enters into force for a new state party on the first day of the month, 60 days after the state ratified, accepted, acceded to or approved of the Statute For example, if State X ratified the statute on 10th September the Court's jurisdiction over the territory and nationals of State X would begin on 1st December. (10th September + 60 Days = 9th November. First day of the month after that = 1st December)

The Principle of Complementarity

The Court will only start a prosecution if the State Party is not making bona fide efforts to discover the truth and to hold accountable those responsible for genocide, crimes against humanity and war crimes. The principle - that the Court will only step in as a last resort when a state is unable or unwilling to prosecute – is called the principle of complementarity. It is laid out in Article 17 of the Rome Statute.

C. What if your country is not a state party to the Rome Statute?

If the court does not have territorial or personal jurisdiction over a crime, there are two other circumstances in which the ICC can exercise limited jurisdiction on a case by case basis. They are:

- The government of country that is not a State Party may make a declaration under Article 12(3) that it is going to accept the Court's jurisdiction over its territory and its nationals in relation to a particular incident. However, this requires those in power in a given country to voluntarily give the court jurisdiction in a given case. As the Crimes covered by the Rome Statute tend to be crimes of the powerful, this may be very difficult to bring about.
- The Security Council of the United Nations may deem a particular situation to be a threat to international peace and security under Chapter VII of the UN Charter. If it does this, it may decide to refer the situation to the ICC so that it can prosecute individuals involved. (Note that this requires consensus among the five permanent members of the Security Council (China, USA, Russia, United Kingdom and France) and so may be very difficult to bring about.)

The best way to ensure that serious breaches of international criminal law in a country do not go unpunished is to lobby the government to ratify the Rome Statute. If you are working on human rights in such a country, the Coalition for the International Criminal Court website has useful materials for those lobbying governments to ratify the Rome Statute.

[Click here to go to ratification materials webpage](#)

D. How You can Use the Court

Prosecution of Genocide, Crimes Against Humanity and War Crimes

Under the Rome Statute, a State Party is obliged to prosecute ICC crimes at national level. States Parties are expected to implement national legislation to allow for the successful prosecution of war crimes, crimes against humanity and genocide within their national judicial system. (To check where a country is with regard to this process, see the [Amnesty International ICC Implementation webpage](#).)

The ICC itself will only step in to prosecute if the States Party with appropriate jurisdiction is unwilling or unable to prosecute the offence appropriately.

Getting Cases Prosecuted

Anyone may report an alleged case of genocide, crime against humanity or war crime which falls under the jurisdiction of the Court. This is an important fact for human rights defenders to

remember. As Judge Maureen Harding Clarke, the Irish judge at the Court, said at Front Line's Second Dublin Platform for Human Rights Defenders,

"The ICC will work, when you, as Mary Robinson described you, 'the eyes and the ears of the international community', observe, defend, report and inform the rest of the world about what is happening."

If you are aware of a Crime Against Humanity which is not being prosecuted appropriately, or at all, you can send a communication to the Prosecutor. In order to do so, prepare a file containing all relevant information and evidence for the Office of the Prosecutor in The Hague. The Prosecutor can then decide if it is possible to bring an independent investigation. To do this, send your communication to the address below. In some regions, posting it may be inefficient or unsafe, it may be important to try and send it by courier. It is important that all evidence gets to the Prosecutor in the best possible condition for analysis.

The Prosecutor's address is: International Criminal Court Office of the Prosecutor Information and Evidence Unit Post Office Box 19519 2500 CM The Hague The Netherlands

Fax: +31 70 5158555 Email: otp.informationdesk@icc-cpi.int

Human Rights Defenders can also find further information in Human Rights Watch's [How Nongovernmental Organizations Can Contribute To the Prosecution of War Criminals](#).

Reparation for Victims

The Court has gone beyond solely penal aspects of justice in its approach to war crimes, crimes against humanity and genocide. As well as prison sentences, the Court may order a convicted person to provide reparation in the form of compensation, restitution, rehabilitation, satisfaction, guarantees of non-repetition and any other type of reparation the Court deems appropriate.

The International Criminal Court is the first international criminal tribunal to include special provisions for victims. Victims may be represented in the Court proceedings and the Rome Statute also establishes a Victims Trust Fund, which provides a financial resource to support victims directly, or those working with victims. The Fund is supported by States Parties, individual donors and from assets confiscated from those convicted by the Court.

Getting Reparation for Victims

The Victims Trust Fund has recently established its Board of Directors. One of their first tasks is to establish criteria on how the Fund should make its decisions. Once that has been established, it will be in a position to distribute funds to victims.

Victims Trust Fund Maanweg, 174 2516 AB The Hague The Netherlands

Telephone: + 31 70 515 8515 Fax: +31 70 5158555

Email: trust.fund@icc-cpi.int Or vpru@icc-cpi.int

[Click here to go to the Victims Trust Fund Webpage](#)

Further Information

Further information about the International Criminal Court and how to use it can be found at:

[The International Criminal Court Website](#)

[The Coalition for the International Criminal Court Website](#)

[Amnesty International's International Criminal Court Website](#)

[Human Rights Watch's International Criminal Court Website](#)

[Victim's Trust Fund Campaign Website](#)

In addition to the Rome Statute the Court is bound by its own rules on Procedure and Evidence:

[Click here for the full text of the Rules of Procedure and Evidence \(html version\)](#)

[Click here for the full text of the Rules of Procedure and Evidence \(.pdf version\)](#)

Appendix

Relevant Provisions of the Rome Statute

Article 6

Genocide For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

Article 7

Crimes against humanity 1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c)

Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1: (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack; (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

(f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; (i) “Enforced disappearance of persons” means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

Article 8

War crimes 1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes. 2. For the purpose of this Statute, “war crimes” means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages. (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; (xii) Declaring that no quarter will be given; (xiii) Destroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war; (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party; (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent’s service before the commencement of the war; (xvi) Pillaging a town or place, even when taken by assault; (xvii) Employing poison or poisoned weapons; (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123; (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations; (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities. (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) Taking of hostages; (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (v) Pillaging a town or place, even when taken by assault; (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; (vii)

Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; (ix) Killing or wounding treacherously a combatant adversary; (x) Declaring that no quarter will be given; (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict; (f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups. 3. Nothing in paragraph 2 (c) and (e) shall affect the responsibility of a Government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.

Article 77

Applicable penalties 1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute: (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. 2. In addition to imprisonment, the Court may order: (a) A fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.