

## Q&A: What Is the International Criminal Court?

### 1. What is the International Criminal Court (ICC)?

The ICC is an independent, permanent court that will investigate and bring to justice individuals who commit the worst crimes known to humanity – genocide, crimes against humanity, and war crimes – when nations themselves are unwilling or unable.

It is based on a treaty called the Rome Statute, which has been ratified by 97 nations. The Court is located in The Hague, the Netherlands. The ICC is not part of the United Nations, and its costs are paid by the member states.

### 2. What crimes will the ICC prosecute?

The ICC will prosecute individuals responsible for the most egregious and widespread acts of **genocide, crimes against humanity, and war crimes** that occur after July 1, 2002 (the date the Rome Statute came into force).

War crimes, crimes against humanity and genocide are defined in the Rome Statute and carefully explained in the supplemental Elements of Crimes. The Rome Statute does not create any new crimes, but simply reflects existing international law, such as the Genocide Convention, the Convention Against Torture, and the Geneva Conventions

The ICC judges are required to strictly construe these definitions, leaving no room for ambiguity or arbitrary decisions. Some examples of acts covered by the ICC include widespread rape and sexual slavery, the use of child soldiers, apartheid, enforced disappearances, and torture.

### 3. Doesn't the ICC cover the crime of aggression? What about terrorism and drug trafficking?

The crime of aggression is mentioned in the Rome Statute, but the Court cannot exercise jurisdiction over the crime of aggression until the member states agree on a definition of aggression. The earliest that this could happen is at the seven-year review conference in 2009; States Parties that do not agree with the eventual definition of aggression can opt out of its coverage.

When debate about the ICC began in earnest in the early 1990s, proponents hoped that the crimes of terrorism and drug trafficking would be included. However, consensus over the definition of terrorism could not be reached, and some countries worried that investigating drug offenses could overextend the ICC's resources. These crimes might be reconsidered at a later review conference; however, any State Party that did not agree with the definitions could opt out of their coverage.

### 4. Why is the ICC necessary?

Even though the international community has spent the last fifty years establishing basic human rights norms, we have no effective means of enforcing them. As a result, even as international commitment to human rights has grown, perpetrators of mass atrocities have little to fear when they plan and execute their crimes. The ICC can:

- deter future crimes through the threat of accountability;
- prompt national courts to hold their own citizens accountable;
- improve truth, justice, and reconciliation efforts for victims and their families; and
- help end impunity for the world's worst crimes.

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## **5. With the World Court, the ad hoc tribunals, and truth commissions, why do we still need an ICC?**

The **International Court of Justice (ICJ)** (also known as the **World Court**) and the ICC are complementary. The ICJ is a civil court that hears disputes between countries. It cannot hold individuals accountable for crimes. The ICC is a criminal court that can only try individuals.

**The ad hoc tribunals for the Former Yugoslavia and Rwanda** were established by the Security Council to deal only with crimes committed in specific regions during specific periods of time. It takes an enormous amount of time and money to set up ad hoc tribunals, and the delay in their creation means that evidence gets destroyed and those responsible remain at large. The politics and cost of establishing these tribunals means that not all conflicts will have tribunals, leaving many perpetrators unaccountable for the atrocities they have committed. The ICC, however, will be able to respond to crimes as they occur, and its permanence will deter future criminals.

**Truth and Reconciliation Commissions (TRCs)**, such as the one established in South Africa, can play an important role in the reconstruction of a society: they allow people to speak about atrocities, create a historical record, apologize, and establish communal forgiveness. Formal trials and TRCs are not mutually exclusive, and in some places (like Sierra Leone) both are used to reestablish peace and justice. However, formal trials, like those provided by the ICC, do have important functions that TRCs cannot fulfill as easily. They express the community's abhorrence of the atrocities committed, they can placate a victim's desire for vengeance, and they can reestablish a sense of law and order in the community, among other benefits. In addition, the ICC incorporates some elements of TRCs. Victims and witnesses are encouraged to testify under safe and non-threatening circumstances, and convicted criminals will sometimes be required to pay reparations to the people they hurt as a form of redress.

## **6. Will the ICC infringe on the jurisdiction of national courts?**

No. The ICC is not meant to replace national courts, but rather to strengthen and complement them. The ICC will only investigate and prosecute a case if the relevant national jurisdiction cannot or will not hold the individual accountable. This encourages member states to strengthen their legal codes so that they can adequately prosecute criminals in domestic courts. Unfortunately in some countries, as a result of conflict and social and political collapse, courts are not capable of dealing with these types of crimes or of providing a fair trial. Often after atrocities, local and national judicial infrastructure has been destroyed: courts have been burned, judges and lawyers murdered or forced to flee, police officers corrupted. The ICC can provide justice when a recovering society cannot.

## **7. How are cases brought before the ICC?**

The ICC will have jurisdiction to prosecute individuals in four situations:

- When the crime was committed in the territory of a State Party,
- When the crime was committed by a citizen of a State Party,
- When a state which has not ratified the Rome Statute voluntarily accepts the Court's jurisdiction over a particular situation (which means citizens of that state can also be investigated), or
- When the UN Security Council refers a case to the ICC.

Only if the UN Security Council refers a case can the ICC exercise jurisdiction over a situation in which neither the State in whose territory the crimes have been committed nor the State of nationality of the accused is a member of the ICC.

## **8. What can prevent a case from coming before the ICC?**

The ICC is not meant to replace national courts, but rather to strengthen and complement them. The ICC will only investigate and prosecute a case if the relevant national jurisdiction cannot or will not

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hold the individual accountable. If a country conducts a legitimate investigation of criminal allegations (rather than simply a cover-up), then the ICC will never have jurisdiction over those allegations, even if the investigation concludes that no crimes have occurred.

If the UN Security Council is worried that a criminal case might disrupt other international security efforts, it can vote to suspend an investigation or prosecution for renewable, one-year periods.

Before a case comes to trial at the ICC, there are multiple opportunities for all concerned – the accused or any country with jurisdiction – to challenge the jurisdiction of the Court or the admissibility of the case. In addition, the Pre-Trial Chamber of judges must approve many actions taken by the Prosecutor, such as an independent decision to initiate an investigation or the issuing of arrest warrants.

## **9. Who can be tried by the ICC?**

The ICC only tries individuals, not countries or governments.

As long as the ICC has jurisdiction over a situation, no one is immune from its reach. In fact, the Rome Statute explicitly refuses to recognize the traditional immunity of heads of states. In addition, military and civilian leaders who knew that soldiers under their command were about to commit a crime but did not try to prevent it may be held responsible.

Citizens of countries that have not ratified the Rome Statute can still be held accountable by the ICC under limited circumstances. For this to happen, the atrocity must occur on the territory of a State Party, the country where the crime occurred must accept the Court's jurisdiction for that situation, or the UN Security Council must refer the case to the ICC.

However, any nation can choose to try its citizens in its own domestic courts rather than the ICC if it wishes to do so. The ICC would step in only if that nation was unable or unwilling to investigate or prosecute the crime.

## **10. How will those indicted be brought before the Court?**

The ICC does not have an independent police force. It relies on countries to extradite suspects to The Hague. State Parties to the Rome Statute are expected to comply with the ICC's requests for extradition, as long as they don't conflict with other treaty obligations.

## **11. What protections are afforded to those put on trial before the ICC?**

The Rome Statute includes extensive due process provisions, including all the rights of the accused guaranteed by the International Covenant on Civil and Political Rights (of which the US is a party). These include the presumption of innocence, the right to counsel, the right to confront one's accusers, the right to a speedy trial, protection against double jeopardy, and prohibition of trial *in absentia*. In fact, defendants at the ICC are guaranteed all of the same due process provisions as are present in U.S. courts, with the single exception of trial by jury. Further, checks and balances among the Prosecutor, the judges, the Assembly of States Parties, the defendant, and interested States will ensure that prosecutors and judges who do not act impartially or otherwise fail in their duties are excused from the case or removed from their position.

## **12. What will happen to people found guilty by the Court?**

The ICC will not impose a death penalty. Those found guilty will be held in a prison in The Hague. The Court can also order convicted criminals to pay reparations to the people and communities they harmed. Victims can participate in sentencing and sentence reduction hearings.

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## **13. What is the structure of the ICC?**

The ICC is composed of three branches: the judiciary (composed of 18 judges, who are assigned to either the trials or the appeals division), the independent Office of the Prosecutor, and the Office of the Registrar (which runs the administration of the Court). The Assembly of States Parties, composed of one representative from every country that has ratified the Rome Statute, oversees the management of the Court and votes on changes to the Court's structure and jurisdiction. This includes the election of judges and prosecutors, their removal if they fail to meet the high standards of performance mandated by the Rome Statute, and the debate and adoption of amendments, budgets, and procedures.

## **14. Why is there an independent Prosecutor? Won't that increase the chance of politically motivated trials?**

The inclusion of an independent Prosecutor is a giant step towards ending impunity for the world's worst criminals. Because the Prosecutor can evaluate evidence from any source, the Court will not have to wait for states to find it politically expedient to refer cases. With an independent Prosecutor, victims themselves or non-governmental organizations that work with victims can submit testimony and information directly to the Court.

There are many safeguards built into the ICC to ensure that the Prosecutor does not misuse his or her independence. The Prosecutor must get approval from a three-judge panel before initiating an investigation or issuing an indictment. States can, at any point, agree to investigate and prosecute the crime in their own courts (thereby depriving the ICC of jurisdiction). The accused and interested States can also challenge the Prosecutor's request for investigation or indictment, the jurisdiction of the Court, or the admissibility of the case. The defendant can request that the Prosecutor (or Deputy Prosecutor) be disqualified from the case if the Prosecutor's impartiality is doubted. If necessary, the Assembly of States Parties can remove any Prosecutor who abuses his or her office to seek politically motivated trials.

There are also checks to ensure that judges on a case remain impartial. Judges can be disqualified from a case if their impartiality is doubted, a request that can be initiated by the defendant or Prosecutor and is decided by a majority of the other judges. Judges can also be removed by the Assembly of States Parties if they fail to maintain impartiality.

## **15. Who are the Judges and the Prosecutor?**

The Rome Statute mandates that the judges be "of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judiciary offices." All 18 current judges hail from free and democratic countries that are friendly to the U.S. They represent every region of the world, include experts on both criminal and international law, and consist of 7 women and 11 men. They include Supreme Court justices, prosecutors and defense attorneys, law professors, military lawyers, and former judges from the ad hoc tribunals for Yugoslavia and Rwanda. Each judge received a two-thirds majority vote from the Assembly of States Parties. They were sworn in and assumed their duties on March 11, 2003. Judges will serve non-renewable nine-year terms.

The Prosecutor and Deputy Prosecutors must also "be persons of high moral character" who have extensive experience and competence in the prosecution of criminal cases. They must all be of different nationalities. They are elected by an absolute majority of the Assembly of States Parties and will appoint legal advisers with expertise in sexual and gender violence and violence against children. The first Prosecutor, Luis Moreno Ocampo of Argentina, was elected unanimously in April 2003 and sworn into office on June 16, 2003. The first Deputy Prosecutor, Serge Brammertz of Belgium, was

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elected in September 2003. The Prosecutor and Deputy Prosecutors will serve non-renewable nine-year terms.

## **16. What is the relationship between the ICC and the UN Security Council?**

The Security Council can refer cases to the ICC for investigation and prosecution. The Security Council can also request that the ICC suspend investigations for 12 months at a time if it feels that ICC proceedings might interfere with the Security Council's responsibility to maintain peace and security.

## **17. How will the ICC affect peacekeeping? Won't it discourage non-state parties from participating in UN missions?**

The ICC increases the protection of peacekeepers by outlawing attacks against soldiers or UN personnel involved in humanitarian assistance or peacekeeping.

Peacekeeping missions are governed by agreements between troop-contributing countries and the countries in crisis. These Status of Mission Agreements (SOMAs) allow troop-contributing countries to retain criminal jurisdiction over their own soldiers, an arrangement that would take precedence over the Rome Statute.

## **18. How will changes be made to the ICC?**

Starting in 2009, States Parties can propose amendments to the Rome Statute. First the Assembly of States Parties must vote on whether or not to consider the amendment. Then, if consensus cannot be reached on the issue, a two-thirds majority vote in the Assembly is needed to pass an amendment. In most cases, seven-eighths of the States Parties must ratify the amendment before it can take effect. If a State Party objects to this change, it can withdraw fully from the Statute.

In cases where the amendment redefines a crime, or creates a new crime, each country must individually ratify the amendment. If a country has not ratified the amendment, the Court cannot operate its jurisdiction over the crime in regards to that country. For example, if a definition of aggressive war is agreed upon after seven years, and at least two-thirds of the members of the Assembly of States Parties vote to accept the definition, and at least seven-eighths of the States Parties ratify the amendment domestically, a State Party could still opt out of its coverage simply by not ratifying the amendment.

## **19. Where did the ICC come from? Where is it heading?**

The UN General Assembly first recognized the need for such a court in 1948, following the Nuremberg and Tokyo trials after WWII, and it has been under discussion at the UN ever since. More recently, the horrors committed in the former Yugoslavia and Rwanda spurred the Security Council to create ad hoc tribunals and rekindled interest in creating a permanent court. Some, such as the president of Trinidad and Tobago, also emphasized how international crimes like terrorism and drug trafficking posed a serious threat to global security. After four years of intense, consensus-based negotiations, 160 nations sent delegates to Rome for a final five-week conference. On July 17, 1998, the conference adopted the Rome Statute for a new, permanent International Criminal Court.

Over the next four years, consensus-based negotiations continued through the Preparatory Commission to finalize the details of the court: the budget, the Elements of Crimes, the Rules of Procedure and Evidence, and other important annexes to the Rome Statute. At the same time, countries around the world signed and ratified the Statute rapidly. In a special ceremony at the UN on April 11, 2002, ten countries deposited their ratifications at the same time, bringing the total number of States Parties to more than 60, the threshold for the Rome Statute to enter into force. Because of this achievement, the Rome Statute took effect on July 1, 2002, ending impunity for the world's worst crimes.

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