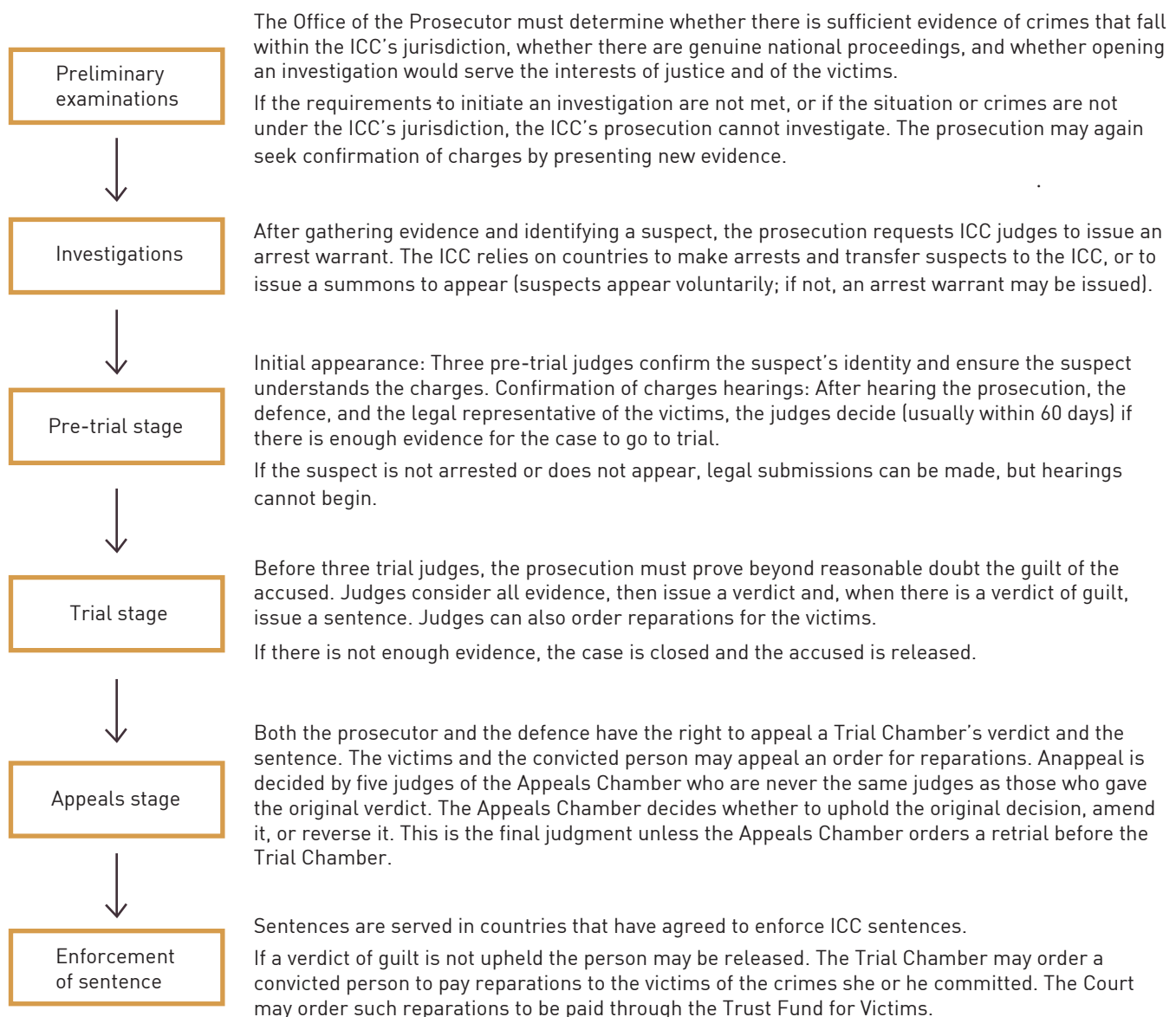


The Legal Process of the International Criminal Court (ICC)

After crimes occur



Principle of complementarity

- The ICC seeks to complement, not replace, national courts. It prosecutes cases only when states are unable or unwilling to carry out proceedings. This provides an incentive for states to provide justice at the domestic level.
- All states parties should bring their laws into conformity with the Rome Statute and build capacity to investigate and prosecute war crimes, crimes against humanity, and genocide at the domestic level.
- Even if the motivation of domestic courts is to avoid the ICC, the pursuit of domestic criminal justice conducted to an international standard and the development of new domestic capacities should be seen as overall gains.
- More effective pursuit of international crimes at the domestic level will alleviate some concerns that the ICC targets only crimes in certain locations, such as the African continent. Domestic justice, if enforced to certain standards, can carry a high degree of legitimacy, can escape some limitations to the ICC's jurisdiction, and can be better suited to the local context. The expansion of domestic legislation may also result in extra-territorial options that serve to "tighten the net" in respect to perpetrators.
- International prosecutions are expensive and limited by constraints on resources. The focus has increasingly been on those bearing the greatest responsibility. More cases on the domestic level may make it possible to encompass mid-level perpetrators. On the other hand, domestic courts tend to have even fewer resources. Other transitional justice mechanisms are needed to ensure that redress is available for a large number of victims.
- Building better connections, or complementarity, between international and domestic justice actors entails refocusing international justice efforts away from international tribunals and toward rebuilding domestic justice systems.

Forms of criminal responsibility

Individual criminal responsibility: International criminal law allows for individuals to be held criminally responsible not only for committing genocide, crimes against humanity, and war crimes, but also for attempting, facilitating, or aiding and abetting the commission of such crimes. Individuals may also be held criminally responsible for planning and instigating the commission of such crimes.

Command responsibility: Violations of international criminal law can also result from a failure to act. Armed forces or groups are generally under a command that is responsible for the conduct of its subordinates. In order to make the system effective, superiors in the chain of command should be held to account when they fail to take proper measures to prevent their subordinates from committing serious international crimes. Therefore, they may be held criminally responsible for criminal activities they did not directly do or order, but that they did not prevent or stop.

Sources

- Rome Statute of the International Criminal Court, 1998, <https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf>
- "About ICC", International Criminal Court, <<https://www.icc-cpi.int/about>>

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