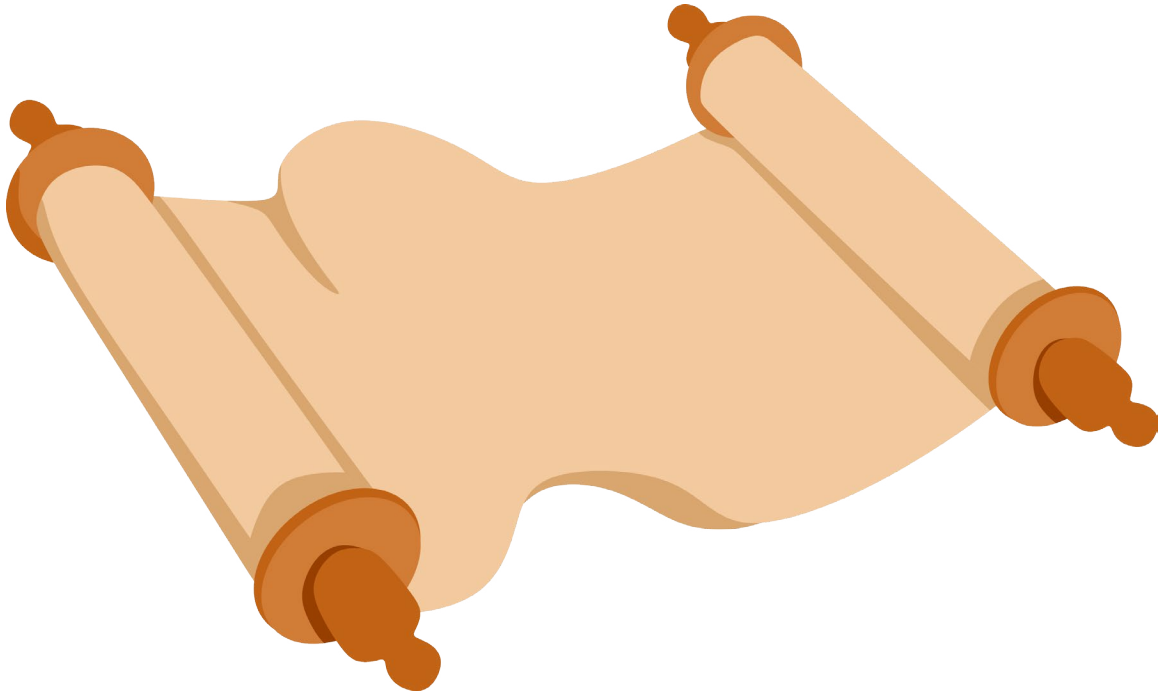


THE LEGAL PROCESS OF THE INTERNATIONAL CRIMINAL COURT (ICC)



After Crimes Occur

Preliminary examinations

The Office of the Prosecutor must determine whether there is sufficient evidence of crimes that fall within the ICC's jurisdiction, whether there are genuine national proceedings, and whether opening an investigation would serve the interests of justice and of the victims.

If the requirements to initiate an investigation are not met, or if the situation or crimes are not under the ICC's jurisdiction, the ICC's prosecution cannot investigate. The prosecution may again seek confirmation of charges by presenting new evidence.

Investigations

After gathering evidence and identifying a suspect, the prosecution requests ICC judges to issue an arrest warrant. The ICC relies on countries to make arrests and transfer suspects to the ICC, or to issue a summons to appear (suspects appear voluntarily; if not, an arrest warrant may be issued).

Pre-trial stage

Initial appearance: Three pre-trial judges confirm the suspect's identity and ensure the suspect understands the charges. **Confirmation of charges hearings:** After hearing the prosecution, the defence, and the legal representative of the victims, the judges decide (usually within 60 days) if there is enough evidence for the case to go to trial.

If the suspect is not arrested or does not appear, legal submissions can be made, but hearings cannot begin.

Trial stage

Before three trial judges, the prosecution must prove beyond reasonable doubt the guilt of the accused. Judges consider all evidence, then issue a verdict and, when there is a verdict of guilt, issue a sentence. Judges can also order reparations for the victims.

If there is not enough evidence, the case is closed and the accused is released.

Appeals stage

Both the prosecutor and the defence have the right to appeal a Trial Chamber's verdict and the sentence. The victims and the convicted person may appeal an order for reparations. An appeal is decided by five judges of the Appeals Chamber who are never the same judges as those who gave the original verdict. The Appeals Chamber decides whether to uphold the original decision, amend it, or reverse it. This is the final judgment unless the Appeals Chamber orders a retrial before the Trial Chamber.

Enforcement of sentence

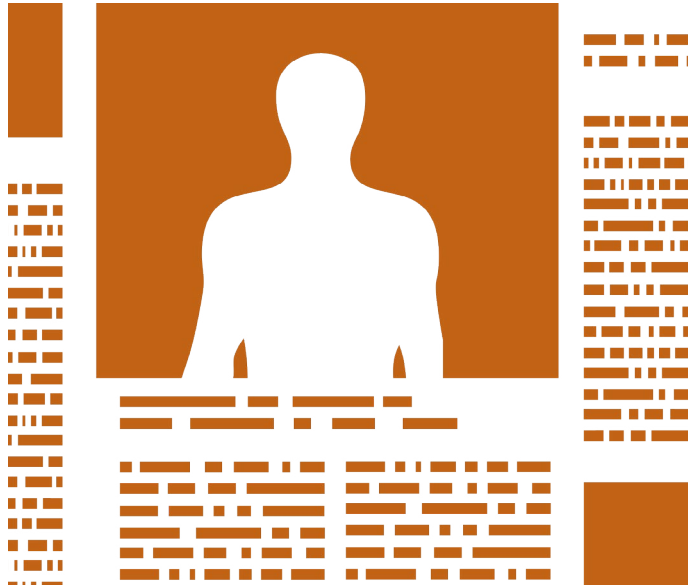
Sentences are served in countries that have agreed to enforce ICC sentences.

If a verdict of guilt is not upheld the person may be released. The Trial Chamber may order a convicted person to pay reparations to the victims of the crimes she or he committed. The Court may order such reparations to be paid through the Trust Fund for Victims.

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 extraterritorial 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

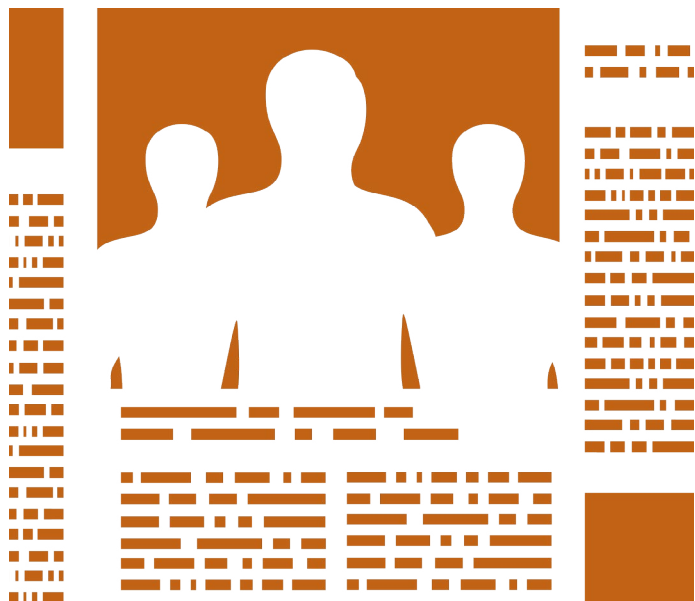


Individual criminal responsibility

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/o/rome_statute_english.pdf>
- "About ICC", International Criminal Court, <<https://www.icc-cpi.int/about>>



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