

## FACT SHEET

# THE INTERNATIONAL CRIMINAL COURT

### 1. What is the International Criminal Court?

The International Criminal Court (ICC) is the first permanent, independent court capable of investigating and bringing to justice individuals who commit the most serious violations of international humanitarian law, namely war crimes, crimes against humanity, and genocide. The Court is seated in The Hague, The Netherlands and was established in accordance with the Rome Statute, the ICC's founding treaty, on 1 July 2002. To date, the ICC treaty has been ratified by 105 States Parties, with representation from every region of the world.

### 2. What was the role of Caribbean States in the Establishment of the ICC?

The Caribbean region was historically a critical contributor in the development of the ICC. In 1989, Trinidad and Tobago, on behalf of CARICOM, called upon the 44<sup>th</sup> General Assembly to reconsider the establishment of an International Criminal Court. By the end of that year, and with the support of a number of other countries including all CARICOM members, a motion was piloted through the United Nations General Assembly which launched the historic process resulting in the 1998 adoption of the Rome Statute.

### 3. How many Caribbean states are State Parties to the Court?

Eight CARICOM states including Antigua and Barbuda, Barbados, Belize, Dominica, Guyana, St. Kitts and Nevis, St. Vincent and the Grenadines and Trinidad and Tobago have ratified the Rome Statute, bringing participation in the ICC to almost half of the CARICOM membership. Furthermore, Dominican Republic, a fellow Caribbean State, has also ratified the Statute. With 105 States Parties to the Statute, the Coalition considers it to be an auspicious moment to explore possibilities for additional ratifications and increased dialogue on these issues with other states in the Caribbean.

### 4. Why is the International Criminal Court needed?

Over the past century, we have witnessed the worst violence in the history of humankind. In the past 50 years alone, more than 250 conflicts have erupted around the world; more than 86 million civilians, mostly women and children, died in these conflicts; and over 170 million people were stripped of their rights, property and dignity. Most of these victims have been simply forgotten and few perpetrators have been brought to justice. The United Nations General Assembly first recognized the need for a permanent mechanism to prosecute mass murderers and war criminals in 1948, following the Nuremberg and Tokyo trials after World War II. Since that time, numerous laws, treaties, conventions and protocols have defined and forbidden everything from war crimes to poison gas and chemical weapons, yet no system was proposed to enforce these norms by holding individuals criminally responsible for the most serious violations of international law until the adoption of the Rome Statute of the International Criminal Court in 1998. In addition to bringing justice to victims of such atrocities, the ICC hopes to serve as a deterrent to the future Hitlers, Milosevics and Pol Pots, bringing an end to the culture of impunity.

**The Coalition for the International Criminal Court is a global network of over 2,000 civil society organizations supporting a fair, effective and independent International Criminal Court.**

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## **5. How does the ICC differ from the International Court of Justice and the ad hoc tribunals for former Yugoslavia and Rwanda?**

The International Court of Justice (ICJ), the principal judicial organ of the United Nations, was designed to deal primarily with disputes between States. It has no jurisdiction over matters involving individual criminal responsibility. The two ad hoc tribunals for the former Yugoslavia and Rwanda differ from the International Criminal Court in geographic jurisdiction and temporal scope. Created by the UN Security Council, the ad hoc tribunals are mandated to deal only with crimes committed in those regions during specific periods of time. In contrast, the International Criminal Court is a permanent and independent institution capable of addressing the crimes identified in the Rome Statute which have been committed by individuals since 1 July 2002.

## **6. What crimes does the ICC address?**

The Court has jurisdiction over the most serious crimes committed by individuals: genocide, crimes against humanity, war crimes and once defined, aggression. The first three crimes are carefully defined in the Statute to avoid ambiguity or vagueness. The crime of aggression will be dealt with by the Court when the Assembly of States Parties has agreed on the definition, elements and conditions under which the Court will exercise jurisdiction; this cannot happen until the Review Conference which will be held in 2009, seven years after entry into force of the Rome Statute. It is important to note that the Rome Statute does not identify any new categories of crimes, but rather reflects existing conventional and customary international law.

*Genocide* covers those specifically listed prohibited acts (e.g. killing, causing serious harm) committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

*Crimes against humanity* cover those specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population. Such acts include murder, extermination, rape, sexual slavery, the enforced disappearance of persons and the crime of apartheid, among others. Genocide and crimes against humanity are punishable irrespective of whether they are committed in time of "peace" or of war.

*War crimes* cover grave breaches of the Geneva Conventions of 1949 and other serious violations of the laws of war, committed on a large scale in international as well as internal armed conflicts. The inclusion of internal conflicts is consistent with customary international law and reflects the reality that in the past 50 years, the most serious violations of human rights have occurred not in international conflicts but within States. The definitions of the crimes in the Statute are the product of years of hard work involving many delegations and their experts. The judges of the Court are required to strictly construe the definitions and are not to extend them by analogy. The aim is to establish objective international standards, leaving no room for arbitrary decisions. In cases of ambiguity, the definitions are to be interpreted in favor of the suspect or accused.

## **7. When does the ICC have jurisdiction over crimes?**

Since the entry into force of the Rome Statute on 1 July 2002, the ICC has jurisdiction over crimes committed by nationals of States that have ratified the ICC statute, as well as over crimes

committed on the territory of States that have ratified the treaty. The ICC is designed to complement existing national judicial systems, however, the Court can exercise its jurisdiction if national courts are unwilling or unable to investigate or prosecute such crimes. Therefore, the Court also serves as a catalyst to States' investigating and prosecuting such crimes committed either within their territories or by their nationals. The ICC's jurisdiction is not retroactive, but its very existence serves as a deterrent to future architects of genocide, war crimes and crimes against humanity by sending a strong signal that never again will such acts be met with impunity. Matters can be referred to the Court by a State Party to the Rome Statute, by the Prosecutor, and by the UN Security Council. The Court may then exercise its jurisdiction over the matter if either the State in whose territory the crime was committed, or the State of the nationality of the accused, is a party to the Statute. Non-States Parties may accept the Court's jurisdiction on an ad hoc basis. When a matter is referred by the Security Council, the Court will have jurisdiction regardless of whether the State concerned is a party to the ICC treaty.

**8. Can a citizen from a country that is not party to the Rome Statute be prosecuted?**

Yes, citizens of any country fall within the jurisdiction of the Court under one of the following conditions: 1) the country where the alleged crimes occurred is a State Party to the ICC treaty; 2) that country accepted the ICC's jurisdiction on an ad hoc basis; or 3) the UN Security Council referred the situation to the Court. However, under the principle of complementarity, the Court will act only if the national court of the accused does not initiate investigations and prosecution, if appropriate.

**9. Can high-level government officials or military commanders be prosecuted by the ICC?**

Yes. Criminal responsibility will be applied equally to all persons without distinction as to whether he or she is a Head of State or government, a member of a government or parliament, an elected representative or a government official. It will also not be possible for such official capacity to constitute a ground for reduction of sentence. The fact that a crime has been committed by a person on the orders of a superior will not normally relieve that person of criminal responsibility. A military commander may be held criminally responsible for crimes committed by forces under his/her command and control. Criminal responsibility may also arise when a military commander knew or should have known that the forces were committing or were about to commit such crimes, but nevertheless failed to prevent or repress their commission. In addition, civilians effectively acting as military commanders may be held criminally responsible when they knew of or consciously disregarded information clearly indicating that crimes were being or were about to be committed.

**10. Does the ICC violate international law by having jurisdiction over members of national forces or of peacekeeping missions?**

Under existing international law, the State in whose territory genocide, war crimes or crimes against humanity have allegedly been committed, or whose nationals are victims of such crimes, has the right to and is often legally obligated to investigate and prosecute persons accused of committing such crimes. The ICC Statute does not violate any principle of treaty law and has not created any entitlements or legal obligations not already existing under international law. The cooperation of a non-State Party is purely voluntary and no legal obligation is imposed on a non-State Party. The ICC Statute provides for special protection of peacekeepers by including among its punishable crimes intentional attacks against personnel,

installations, material units or vehicles involved in humanitarian assistance or peacekeeping missions. Such violations constitute war crimes or crimes against humanity under certain circumstances. The Statute does not otherwise affect existing arrangements with respect to UN peacekeeping missions since troop-contributing countries retain criminal jurisdiction over their members of such missions.

**11. Where does the funding for the ICC come from? How much does a State have to contribute to be a part of the Court?**

The Court is an independent organ funded by its States Parties. The United Nations can provide funds for the ICC, but this will only occur when the Security Council submits a situation to the Court. States Parties to the Court are responsible for determining and contributing to the budget. Amounts for each State Party are calculated on a proportional basis similar to that of the UN System which considers factors such as GNP. However, due to differences in membership between the UN and the ICC as well as other criteria, there are other indicators which are also taken in account when determining budgetary contributions by states.

**12. Does the International Criminal Court infringe on the jurisdiction of national courts?**

No. The International Criminal Court will complement, not supercede, the jurisdiction of national courts. National courts will continue to have priority in investigating and prosecuting crimes within their jurisdiction. Under the principle of complementarity, the ICC will act only when national courts are unable or unwilling to exercise jurisdiction. If a national court is willing and able to exercise its jurisdiction, the ICC cannot intervene and no nationals of that State can be brought before it. The grounds for admitting a case to the Court are specified in the Statute and the circumstances that govern inability and unwillingness are carefully defined so as to avoid arbitrary decisions. In addition, the accused and interested States, whether they are parties to the Statute or not, may challenge the jurisdiction of the Court or admissibility of the case. They also have a right to appeal any related decision.

**13. Can a State Party submit a case to the ICC before exhausting all local remedies?**

The International Criminal Court is not a human rights court like the Inter-American Court of Human Rights or the European Court of Human Rights. Should a State Party to the Court choose to submit a situation to the ICC, it will only be possible for the gravest violations; namely genocide, crimes against humanity and war crimes.

In Latin America and the Caribbean the principle of exhaustion of local remedies which requires that a case exhaust local remedies before being considered is widely known and practiced, as this is the principle applicable to the regional human rights mechanism. The ICC does not operate under this principle; in fact, the Court can only initiate investigations into situations if a state is unwilling or unable to do so through its own domestic legal system. This principle is termed "complementarity" under the Rome Statute.

The complementarity system is explained in the Rome Statute.

Article 17 (2) of the Rome Statute establishes that the criteria to determine unwillingness be the following:

- a. the proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;

- b. There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- c. The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice;

To determine inability in a specific case, the Court would evaluate whether because of a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the evidence and testimony necessary to carry out the proceedings.

According to the Statute, if a State Party submits a situation to the ICC, States Parties have the opportunity to question the admissibility of the case based on, among other things, that the facts in question have been or are already being investigated nationally. Challenges to admissibility should occur as early as possible in proceedings. Once the ICC has reached a verdict, a State Party can no longer invoke complementarity.

The ICC will not be bound by the outcome of the national process if it is demonstrated that the intention of the investigations or trial were inconsistent with the intention of bringing the accused before justice as established by the Rome Statute.

Moreover, Article 20 of the Rome Statute establishes the ICC specifics in relation to ne bis in idem and provides some guidelines to determine when a person can be tried even if the case has been dealt with at the national level.

1. Except as provided in this statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5<sup>1</sup> for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct proscribed in articles 6<sup>[2]</sup>, 7<sup>[3]</sup>, or 8<sup>[4]</sup> shall be tried by the Court with respect to the same conduct unless the proceedings in the court:
  - a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
  - b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.

#### **14. How strong has the support been for the creation of the International Criminal Court?**

One hundred and sixty States participated in the United Nations Diplomatic Conference (held in Rome from 15 June to 17 July 1998), which led to the adoption of the Rome Statute of the

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<sup>1</sup> Defines Crimes Under ICC Jurisdiction

<sup>[2]</sup> Defines Genocide

<sup>[3]</sup> Defines Crimes Against Humanity

<sup>[4]</sup> Defines War Crimes

International Criminal Court. The draft text submitted to the Diplomatic Conference was fraught with competing options, with over 1,400 brackets indicating disagreement on the text. Through working groups, informal negotiations and open debates, a delicately balanced text emerged and a generally agreed solution was found for the many politically sensitive and legally complex issues. The Statute and the Final Act were put forward as a complete "package" for adoption. This package was the product of intense negotiations and judicious compromises designed to reach widespread agreement. The most dissidence came from India and the United States, which both tried to amend the final package. In each case, a "no-action motion" – a procedural device for not considering these amendments – was adopted by an overwhelming majority. The package was thus maintained and then agreed on in its entirety by those delegations in attendance on the final day, by a vote of 120 in favor and 7 against, with 21 abstentions. Article 125 of the Rome Statute called for the Statute to remain open for signature at the United Nations headquarters until 31 December 2000. On 31 December 2000, the United States, Iran and Israel were the last to sign the Rome Statute, bringing the total number of signatures to 1391. Although many predicted that it would take decades to obtain the 60 ratifications needed for the Statute to enter into force and the Court to be created, this landmark was reached on 11 April 2002, within four years of the adoption of the treaty.

**15. Will the ICC prosecute crimes of aggression, terrorism and drug trafficking?** Support was widespread from both States and the NGO community at the Rome Conference for the inclusion of aggression as a crime under the ICC's jurisdiction. However, there was not time to reach a definition of aggression that was acceptable to all. As a result, the Statute includes this crime but provides that the Court may not exercise jurisdiction over the crime of aggression until agreement is reached by States Parties at the Review Conference on the definition, elements, and conditions under which the Court may exercise jurisdiction with respect to this crime. Under the United Nations Charter, the Security Council has competence to determine whether an act of aggression has been committed. It is provided in the Statute that the final text on the crime of aggression must be consistent with the relevant provisions of the UN Charter. Although there was also considerable interest in including terrorism and drug crimes in the ICC's mandate, countries could not agree in Rome on a definition of terrorism, and some countries felt investigation of drug offences would be beyond the Court's resources. A consensus resolution was passed recommending that States Parties consider inclusion of such crimes at a future review conference.

**16. Will the ICC prosecute sexual crimes? How will the ICC address the needs of victims and witnesses?**

Yes. The Statute includes crimes of sexual violence such as rape, sexual slavery, enforced prostitution and forced pregnancy as crimes against humanity when they are committed as part of a widespread or systematic attack directed against a civilian population. They are also considered war crimes when committed in either international or internal armed conflict. In Rwanda and the former Yugoslavia, rape and gender-based violence were widely used as weapons to inflict terror and to humiliate and degrade the women of a particular ethnic group as well as the entire community to which they belonged. In prosecuting cases of rape and other gender-based violations, the ad hoc tribunals found that victims were often afraid to come forward with their stories and even feared being victimized by the process. To help victims and witnesses face the judicial process, the International Criminal Court has created a Victims and Witnesses Unit within the Registry, to provide protective measures and security arrangements,

counseling and other assistance for witnesses and victims, while fully respecting the rights of the accused. The Court must also take appropriate measures to protect the privacy, the dignity, the physical and psychological well-being and the security of victims and witnesses, especially when the crimes involve sexual or gender violence.

**17. Will victims be entitled to compensation?**

The ICC has established a Victims Trust Fund to provide reparations to victims and their families, including restitution, compensation and rehabilitation. The Court is empowered to determine the scope and extent of any damage, loss and injury to victims, and to order a convicted person to make specific reparation. Sources for the Fund may include money and other property collected through fines and forfeiture imposed by the Court. States and individuals are encouraged to contribute to the Victims Trust Fund, the first ever reparations mechanism set up by an international tribunal.

**18. What sentence can the ICC impose? Can the ICC impose the death penalty?** The International Criminal Court has no competence to impose a death penalty. The Court can impose lengthy terms of imprisonment of up to 30 years or life imprisonment when so justified by the gravity of the case. The Court may, in addition, order a fine, forfeiture of proceeds, property or assets derived from the committed crime. Many states could not agree to include the death penalty; other states, including some Caribbean nations worried that not including the death penalty in some way could be used to argue that the death penalty is an illegitimate penalty even at the national level.

To address this concern, the Statute includes Article 80 which explicitly states: “Nothing in this part affects the application by States of penalties prescribed by their national law, nor by the law of States which do not provide for penalties prescribed in this part”.