Understanding the International Criminal Court

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"(…) the most serious crimes of concern to the international community as a whole must not go unpunished (…)"

Preamble to the Rome Statute of the International Criminal Court

On 17 July 1998, 120 States adopted a statute in Rome - known as the Rome Statute of the International Criminal Court ("the Rome Statute") - establishing the International Criminal Court. For the first time in the history of humankind, States decided to accept the jurisdiction of a permanent international criminal court for the prosecution of the perpetrators of the most serious crimes committed in their territories or by their nationals after the entry into force of the Rome Statute on 1 July 2002.

The International Criminal Court is not a substitute for national courts. According to the Rome Statute, it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes. The International Criminal Court can only intervene where a State is unable or unwilling genuinely to carry out the investigation and prosecute the perpetrators.

The primary mission of the International Criminal Court is to help put an end to impunity for the perpetrators of the most serious crimes of concern to the international community as a whole, and thus to contribute to the prevention of such crimes.

A well-informed public can contribute to guaranteeing lasting respect for and the enforcement of international justice. The purpose of this booklet is to promote a better understanding of the International Criminal Court by providing answers to the most frequently asked questions about the Court.

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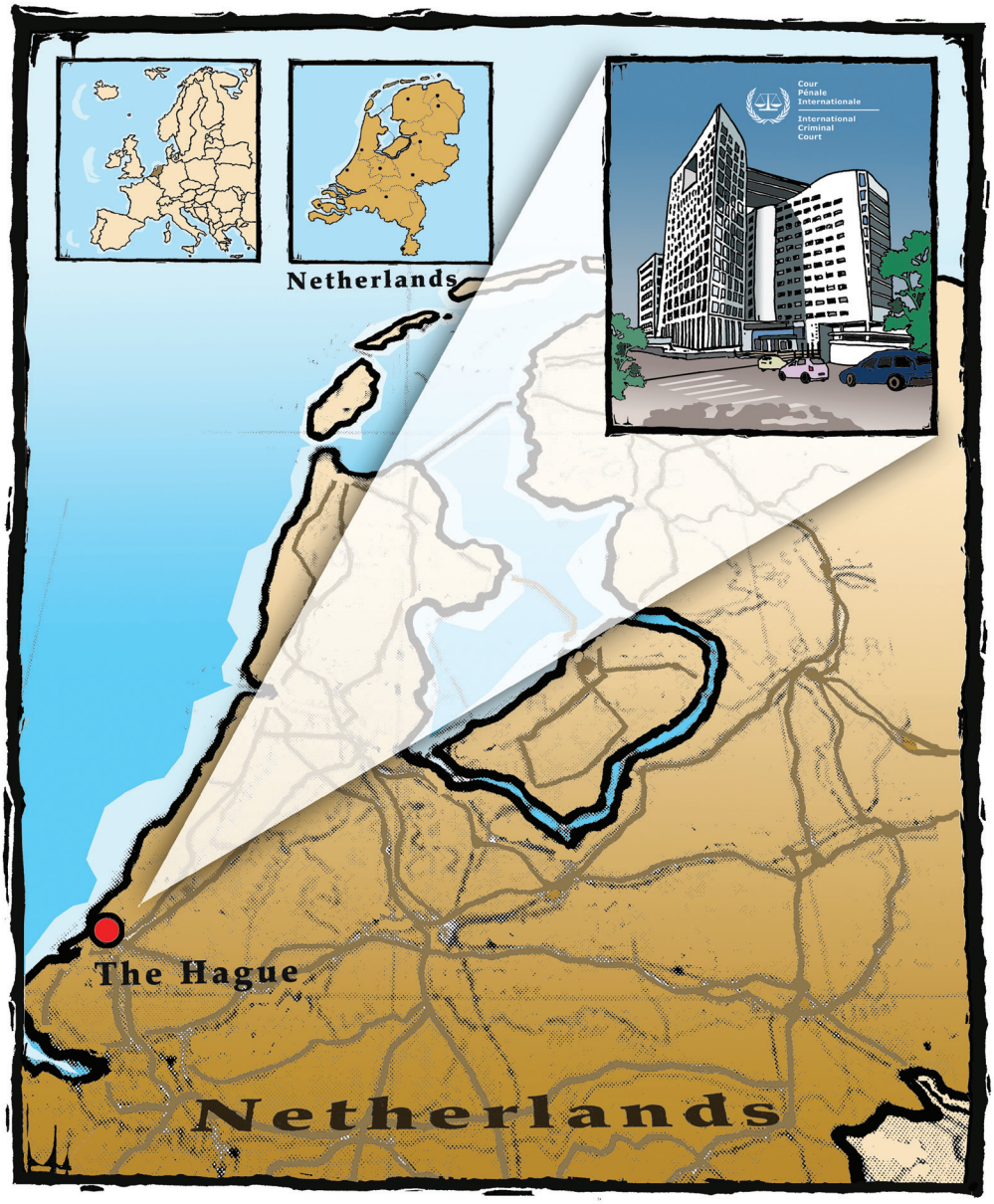

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I. The International Criminal Court at a glance

1. What is the International Criminal Court?

The International Criminal Court ("the ICC" or "the Court") is a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

2. Why was the ICC established?

Some of the most heinous crimes were committed during the conflicts which marked the twentieth century. Unfortunately, many of these violations of international law have remained unpunished. The Nuremberg and Tokyo tribunals were established in the wake of the Second World War. In 1948, when the Convention on the Prevention and Punishment of the Crime of Genocide was adopted, the United Nations General Assembly recognised the need for a permanent international court to deal with the kinds of atrocities which had just been perpetrated.

The idea of a system of international criminal justice re-emerged after the end of the Cold War. However, while negotiations on the ICC Statute were underway at the United Nations, the world was witnessing the commission of heinous crimes in the territory of the former Yugoslavia and in Rwanda. In response to these atrocities, the United Nations Security Council established an *ad hoc* tribunal for each of these situations.

These events undoubtedly had a most significant impact on the decision to convene the conference which established the ICC in Rome in the summer of 1998.

3. What is the Rome Statute?

On 17 July 1998, a conference of 160 States established the first treaty-based permanent international criminal court. The treaty adopted during that conference is known as the Rome Statute of the International Criminal Court. Among other things, it sets out the crimes falling within the jurisdiction of the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC. The countries which have accepted these rules are known as States Parties and are represented in the Assembly of States Parties.

The Assembly of States Parties, which meets at least once a year, sets the general policies for the administration of the Court and reviews its activities. During those meetings, the States Parties review the activities of the working groups established by the States and any other issues relevant to the ICC, discuss new projects and adopt the ICC's annual budget.

4. How many countries have ratified the Rome Statute?

As of 1 February 2012, 120 countries are States Parties to the Rome Statute. Of these, 33 are from Africa, 18 from the Asia-Pacific, 18 from Eastern Europe, 26 from Latin America and the Caribbean and 25 from Western European and North America.

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5. Where is the seat of the Court?

The seat of the Court is in The Hague in the Netherlands. The Rome Statute provides that the Court may sit elsewhere whenever the judges consider it desirable. The Court has also set up offices in the areas where it is conducting investigations.

6. How is the Court funded?

The Court is funded by contributions from the States Parties and by voluntary contributions from governments, international organisations, individuals, corporations and other entities.

7. How does the ICC differ from other courts?

The ICC is a permanent autonomous court, whereas the ad hoc tribunals for the former Yugoslavia and Rwanda, as well as other similar courts established within the framework of the United Nations to deal with specific situations only have a limited mandate and jurisdiction. The ICC, which tries individuals, is also different from the International Court of Justice, which is the principal judicial organ of the United Nations for the settlement of disputes between States. The ad hoc tribunal for the former Yugoslavia and the International Court of Justice also have their seats in The Hague.

8. Is the ICC an office or agency of the United Nations?

No. The ICC is an independent body whose mission is to try individuals for crimes within its jurisdiction without the need for a special mandate from the United Nations. On 4 October 2004, the ICC and the United Nations signed an agreement governing their institutional relationship.

9. Is the ICC meant to replace national courts?

No. The ICC does not replace national criminal justice systems; rather, it complements them. It can investigate and, where warranted, prosecute and try individuals only if the State concerned does not, cannot or is unwilling genuinely to do so. This might occur where proceedings are unduly delayed or are intended to shield individuals from their criminal responsibility. This is known as the principle of complementarity, under which priority is given to national systems. States retain primary responsibility for trying the perpetrators of the most serious of crimes.

10. Under what conditions does the ICC exercise its jurisdiction?

When a State becomes a party to the Rome Statute, it agrees to submit itself to the jurisdiction of the ICC with respect to the crimes enumerated in the Statute. The Court may exercise its jurisdiction in situations where the alleged perpetrator is a national of a State Party or where the crime was committed in the territory of a State Party. Also, a State not party to the Statute may decide to accept the jurisdiction of the ICC. These conditions do not apply when the Security Council, acting under Chapter VII of the United Nations Charter, refers a situation to the Prosecutor.

11. Is the ICC's jurisdiction time bound?

The ICC has jurisdiction only with respect to events which occurred after the entry into force of its Statute on 1 July 2002. If a State becomes a party to the Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of the

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Statute for that State, unless that State has made a declaration accepting the jurisdiction of the ICC retroactively. However, the Court cannot exercise jurisdiction with respect to events which occurred before 1 July 2002. For a new State Party, the Statute enters into force on the first day of the month after the 60th day following the date of the deposit of its instrument of ratification, acceptance, approval or accession.

12. Who can be prosecuted before the ICC?

The ICC prosecutes individuals, not groups or States. Any individual who is alleged to have committed crimes within the jurisdiction of the ICC may be brought before the ICC. In fact, the Prosecutor's prosecutorial policy is to focus on those who, having regard to the evidence gathered, bear the greatest responsibility for the crimes, and does not take into account any official position that may be held by the alleged perpetrators.

13. If those who bear the greatest responsibility hold high political or military office, are they not exempt from prosecution? Can they not be granted immunity or amnesty?

No one is exempt from prosecution because of his or her current functions or because of the position he or she held at the time the crimes concerned were committed. (…)

Acting as a Head of State or Government, minister or parliamentarian does not exempt anyone from criminal responsibility before the ICC.

In some circumstances, a person in a position of authority may even be held responsible for crimes committed by those acting under his or her command or orders.

Likewise, amnesty cannot be used as a defence before the ICC. As such, it cannot bar the Court from exercising its jurisdiction.

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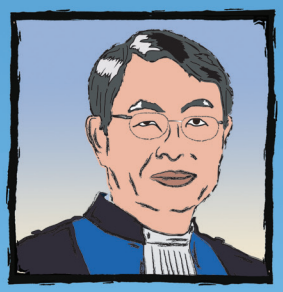

President:
Sang-Hyun Song

Prosecutor:
Luis Moreno-Ocampo

Registrar:
Silvana Arbia

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II. Structure of the ICC

The ICC is composed of four organs: the Presidency, the Chambers, the Office of the Prosecutor and the Registry. Each of these organs has a specific role and mandate.

14. What does the Presidency do?

The Presidency consists of three judges (the President and two Vice-Presidents) elected by an absolute majority of the 18 judges of the Court for a maximum of two, three-year terms.

The Presidency is responsible for the administration of the Court, with the exception of the Office of the Prosecutor. It represents the Court to the outside world and helps with the organisation of the work of the judges. The Presidency is also responsible for carrying out other tasks, such as ensuring the enforcement of sentences imposed by the Court.

15. What do the Chambers do?

The 18 judges, including the three judges of the Presidency, are assigned to the Court's three judicial divisions: the Pre-Trial Division (composed of seven judges), the Trial Division, (composed of six judges), and the Appeals Division (composed of five judges). They are assigned to the following Chambers: the Pre-Trial Chambers (each composed of one or three judges), the Trial Chambers (each composed of three judges) and the Appeals Chamber (composed of the five judges of the Appeals Division).

16. How are the judges elected?

The judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity.

The judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights. They have extensive expertise on specific issues, such as violence against women or children.

The election of the judges takes into account the need for the representation of the principal legal systems of the world, a fair representation of men and women, and equitable geographical distribution.

The judges ensure the fairness of proceedings and the proper administration of justice.

17. What is the role of the Pre-Trial Chambers?

The Pre-Trial Chambers, each of which is composed of either one or three judges, resolve all issues which arise before the trial phase begins. Their role is essentially to supervise how the Prosecutor carries out his or her investigatory and prosecutorial activities, to guarantee the rights of suspects, victims and witnesses during the investigatory phase, and to ensure the integrity of the proceedings. The Pre-Trial Chambers then decide whether or not to issue warrants of arrest or summons to appear at the Prosecutor's request

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and whether or not to confirm the charges against a person suspected of a crime. They may also decide on the admissibility of situations and cases and on the participation of victims at the pre-trial stage.

18. What is the role of the Trial Chambers?

Once an arrest warrant is issued, the alleged perpetrator arrested and the charges confirmed by a Pre-Trial Chamber, the Presidency constitutes a Trial Chamber composed of three judges to try the case.

A Trial Chamber's primary function is to ensure that trials are fair and expeditious and are conducted with full respect for the rights of the accused and due regard for the protection of the victims and the witnesses. It also rules on the participation of victims at the trial stage.

The Trial Chamber determines whether an accused is innocent or guilty of the charges and, if he or she is found guilty, may impose a sentence of imprisonment for a specified number of years not exceeding a maximum of thirty years or life imprisonment. Financial penalties may also be imposed. A Trial Chamber may thus order a convicted person to make reparations for the harm suffered by the victims, including compensation, restitution or rehabilitation.

19. What are the main functions of the Appeals Chamber?

The Appeals Chamber is composed of the President of the Court and four other judges. All parties to the trial may appeal or seek leave to appeal decisions of the Pre-Trial and Trial Chambers. The Appeals Chamber may uphold, reverse or amend the decision appealed from, including judgments and sentencing decisions, and may even order a new trial before a different Trial Chamber.

It may also revise a final judgment of conviction or sentence.

20. What does the Office of the Prosecutor do?

The Office of the Prosecutor is an independent organ of the Court. Its mandate is to receive and analyse information on situations or alleged crimes within the jurisdiction of the ICC, to analyse situations referred to it in order to determine whether there is a reasonable basis to initiate an investigation into a crime of genocide, crimes against humanity, war crimes or the crime of aggression, and to bring the perpetrators of these crimes before the Court.

In order to fulfil its mandate, the Office of the Prosecutor is composed of three divisions: (i) the Investigation Division, which is responsible for the conduct of investigations (including gathering and examining evidence, questioning persons under investigation as well as victims and witnesses). In this respect, for the purpose of establishing the truth, the Statute requires the Office of the Prosecutor to investigate incriminating and exonerating circumstances equally. (ii) The Prosecution Division, which has a role in the investigative process, but whose principal responsibility is the litigation of cases before the various Chambers of the Court. (iii) The Jurisdiction, Complementarity and Cooperation Division, which, with the support of the Investigation Division, assesses information received and situations referred to the Court, analyses situations and cases to determine their admissibility and helps secure the cooperation required by the Office of the Prosecutor in order to fulfil its mandate.

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21. What does the Registry do?

The Registry helps the Court to conduct fair, impartial and public trials. The core function of the Registry is to provide administrative and operational support to the Chambers and the Office of the Prosecutor. It also supports the Registrar's activities in relation to defence, victims, communication and security matters. It ensures that the Court is properly serviced and develops effective mechanisms for assisting victims, witnesses and the defence in order to safeguard their rights under the Rome Statute and the Rules of Procedure and Evidence.

As the Court's official channel of communication, the Registry also has primary responsibility for the ICC's public information and outreach activities.

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III. Crimes within the jurisdiction of the ICC

22. Which crimes fall within the jurisdiction of the ICC?

The mandate of the Court is to try individuals rather than States, and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, crimes against humanity, and the crime of aggression, when the conditions for the exercise of the Court's jurisdiction over the latter are fulfilled.

23. What is genocide?

According to the Rome Statute, "genocide" means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

24. What are crimes against humanity?

"Crimes against humanity" include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of population;
- imprisonment;
- torture;
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds;
- enforced disappearance of persons;
- the crime of apartheid;
- other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.

25. What are war crimes?

"War crimes" include grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts "not of an international character" listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale. These prohibited acts include:

- murder;

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- mutilation, cruel treatment and torture;
- taking of hostages;
- intentionally directing attacks against the civilian population;
- intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals;
- pillaging;
- rape, sexual slavery, forced pregnancy or any other form of sexual violence;
- conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities. (…)

26. What is a crime of aggression?

As adopted by the Assembly of States Parties during the Review Conference of the Rome Statute, held in Kampala (Uganda) between 31 June and 11 May 2010, a "crime of aggression" means the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State.

The act of aggression includes, among other things, invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts, if it is considered being, by its character, gravity and scale, a manifest violation of the Charter of the United Nations.

The perpetrator of the act of aggression is a person who is in a position effectively to exercise control over or to direct the political or military action of a State.

27. When will the Court have jurisdiction over the crime of aggression?

The Court may exercise jurisdiction over the crime of aggression, subject to a decision to be taken after 1 January 2017 by a two-thirds majority of States Parties and subject to the ratification of the amendment concerning this crime by at least thirty States Parties.

28. Under which conditions would the Court be able to exercise its jurisdiction over the crime of aggression?

The Court will be able to exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction.

Except when the situation is referred to the Court by the United Nations Security Council, the Court has no jurisdiction over crimes of aggression committed in the territory of a State which is not party to the Rome Statute or by its citizens.

The Court will have jurisdiction only over crimes of aggression committed one year after thirty States Parties ratify or accept the amendments of the Rome Statute in relation with the crime of aggression, which were adopted by the Assembly of States Parties in June 2010.

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29. How would an investigation into a crime of aggression be opened?

If the United Nations Security Council made a determination that an act of aggression has been committed, the ICC Prosecutor can decide to open an investigation, under the conditions mentioned above.

Otherwise, the Prosecutor may examine the situation and, based on his/her assessment, may notify the United Nations Secretary General of the situation.

In situations where the United Nations Security Council did not made a determination on whether or not an act of aggression has been committed, within six months after the date of notification, and subject to authorisation by the Pre-Trial Division of the ICC, the Prosecutor may proceed with an investigation into a crime of aggression.

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IV. How does the ICC operate?

A. Referrals, analyses and investigations

30. How do cases come before the Court?

Any State Party to the Rome Statute can request the Prosecutor to carry out an investigation. A State not party to the Statute can also accept the jurisdiction of the ICC with respect to crimes committed in its territory or by one of its nationals, and request the Prosecutor to carry out an investigation. The United Nations Security Council may also refer a situation to the Court.

31. Can the Prosecutor decide on his own initiative to open an investigation?

Yes, if the Office of the Prosecutor receives reliable information about crimes involving nationals of a State Party or of a State which has accepted the jurisdiction of the ICC, or about crimes committed in the territory of such a State, and concludes that there is a reasonable basis to proceed with an investigation. Such information can be provided by individuals, intergovernmental or non-governmental organisations, or any other reliable sources. The Prosecutor must, however, obtain the permission of the judges of the Pre-Trial Chamber before initiating an investigation under such circumstances. For example, on 26 November 2009, the Prosecution sought authorisation to open an investigation with regard to the post–election violence in Kenya. Pre-Chamber II granted the Prosecutor's request on 31 March 2010. On 3 October 2011, the Prosecutor was also authorised by Pre-Trial Chamber III to open an investigation on his own initiative in the situation in Côte d'Ivoire.

32. Has any State or the Security Council requested that the Prosecutor carry out an investigation?

To date, five situations have been referred to the Prosecutor. Three States Parties have requested the Prosecutor to conduct an investigation: the Democratic Republic of the Congo, Uganda, and the Central African Republic. The Security Council, acting under Chapter VII of the United Nations Charter, has also requested the Prosecutor to investigate the situation in Darfur, Sudan, and the situation in Libya.

In addition, the Republic of Côte d'Ivoire, which is under investigation by the Office of the Prosecutor, and Palestine, which is under preliminary examinations by the Office of the Prosecutor, have both declared accepting the jurisdiction of the Court over crimes allegedly committed in their territories.

33. What happens when a situation is referred to the ICC for investigation?

The Prosecutor determines whether, in his opinion, the Court has jurisdiction with respect to the alleged crimes. Following a thorough analysis of the available information, he decides whether there is a reasonable basis to proceed with an investigation. Thus, he must establish whether the crime of genocide, crimes against humanity or war crimes may have been committed and, if so, whether they were committed after 1 July 2002. The Prosecutor must also ascertain whether any national authorities are conducting a genuine investigation or trial of the alleged perpetrators of the crimes. Lastly, he must notify the States Parties and other States which may have jurisdiction of his intention to initiate an investigation.

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34. There are allegations that ICC is only targeting African countries. Is that true?

No. The International Criminal Court is an independent judicial institution that it is not subject to political control. As an independent court its decisions are based on legal criteria and rendered by impartial judges in accordance with the provisions of its founding treaty, the Rome Statute and other legal texts governing the work of the Court.

The ICC is concerned with countries that have accepted the Court's jurisdiction and these are in all continents, including Africa. Three of the seven situations currently under investigation were referred by African states themselves. Between 2003 and 2005 the Democratic Republic of the Congo, Uganda, and the Central African Republic referred situations on their own territory to the ICC. The situations in Darfur and in Libya were referred by the United Nations Security Council by two resolutions under Chapter VII of the UN Charter, as provided for by article 13 of the Rome Statute.

African countries made great contributions to the establishment of the Court and influenced the decision to have an independent Office of the Prosecutor. In 1997, the Southern African Development Community (SADC) was very active in supporting the proposed Court and its declaration on the matter was endorsed in February 1998, by the participants of the African Conference meeting in Dakar, Senegal, through the 'Declaration on the Establishment of the International Criminal Court'. At the Rome Conference itself the most meaningful declarations about the Court were made by Africans. Without African support the Rome Statute might never have been adopted. In fact 43 African countries are currently signatories of the Rome Statute, of which 31 are parties to the Statute, making Africa the most heavily represented region in the Court's membership. The trust and support comes not only from the governments, but also from civil society organisations.

The Court has also benefited from the professional experience of Africans. Five out of the 18 current judges of the Court are African. A number of Africans occupy high-level positions at the Court, such as the positions of the Deputy Prosecutor and the Deputy Registrar.

Lastly, eight situations in countries on four continents are under preliminary examinations by the Office of the Prosecutor: Afghanistan, Colombia, the Republic of Korea, Georgia, Guinea, Honduras, Nigeria and Palestine.

35. What implications does the issuing of the arrest warrant against Omar Al Bashir, a sitting head of state, mean for the already fragile peace process in Sudan?

The Court is aware of developments in the peace process, but is not a party to that process. The ICC is a judicial institution with an exclusively judicial mandate. Peace and justice are not antithetical.

In fact, the situation in Darfur was referred to the Court by resolution 1593 adopted by the United Nations Security Council under Chapter VII of the UN Charter. The preamble of the resolution states "that the situation in Sudan continues to constitute a threat to international peace and security." By adopting this determination the Security Council re-affirmed not only that justice and peace are compatible, but that justice is an important factor in restoring peace and security.

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It is necessary to make a distinction between a political process and a judicial one. The ICC does not have a humanitarian mandate and has no jurisdiction with respect to peace negotiations. Its role in helping to bring peace into Darfur shall be done by holding fair judicial proceedings.

36. How is an investigation conducted?

The Office of the Prosecutor sends its investigators to collect evidence in areas where crimes are alleged to have been committed. The investigators must be careful not to create any risk to the victims and witnesses. The Office of the Prosecutor also requests the cooperation and assistance of States and international organisations. The investigators look for evidence of a suspect's guilt or innocence.

37. How many investigations are ongoing and where?

The Office of the Prosecutor is currently conducting investigations on crimes allegedly committed in seven states: Sudan (for the situation in Darfur), the Democratic Republic of the Congo, Uganda, the Central African Republic, Kenya, Libya and Côte d'Ivoire.

In addition, the Office of the Prosecutor is currently conducting preliminary analysis in eight situations: Afghanistan, Colombia, the Republic of Korea, Georgia, Guinea, Honduras, Nigeria and Palestine.

38. Will the ICC prosecute all persons suspected of committing the most serious crimes?

No. The Court will not be able to bring to justice every person suspected of committing crimes of concern to the international community. The prosecutorial policy of the Office of the Prosecutor is to focus its investigations and prosecutions on those who, having regard to the evidence gathered, bear the greatest responsibility for such crimes.

39. Can other courts try the perpetrators that the ICC does not prosecute?

Under the principle of complementarity, national judicial systems retain their responsibility for trying perpetrators of crimes.

40. Can the ICC try children?

The Court has no jurisdiction with respect to any person who was under the age of 18 when the crimes concerned were committed.

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B. Arrests

41. Who has the power to issue a warrant of arrest or a summons to appear?

After the initiation of an investigation, only a Pre-Trial Chamber May at the request of the Prosecutor, issue a warrant of arrest or summons to appear if there are reasonable grounds to believe that the person concerned has committed a crime within the jurisdiction of the ICC.

42. What information do the judges need from the Prosecutor before they can issue a warrant of arrest or a summons to appear?

When the Prosecutor requests the issuance of a warrant of arrest or summons to appear, he must provide the judges with the following information:

- the name of the person;
- a description of the crimes the person is believed to have committed;
- a concise summary of the facts (the acts alleged to be crimes);
- a summary of the evidence against the person;
- the reasons why the Prosecutor believes that it is necessary to arrest the person.

43. What reasons may justify the issuing of a warrant of arrest?

The judges will issue a warrant of arrest if it appears necessary to ensure that the person will actually appear at trial, that he or she will not obstruct or endanger the investigation or the Court's proceedings, or to prevent the person from continuing to commit crimes.

44. What happens after a warrant of arrest is issued?

The Registrar transmits requests for co-operation seeking the arrest and surrender of the suspect to the relevant State or to other States, depending on the decision of the judges in each case.

Once the person is arrested and the Court is so informed, the Court ensures that the person receives a copy of the warrant of arrest in a language which he or she fully understands and speaks.

45. Does the ICC have the power to arrest suspects?

The Court does not have its own police force. Accordingly, it relies on State co-operation, which is essential to the arrest and surrender of suspects.

According to the Rome Statute, States Parties shall cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

46. Who has to execute the warrants of arrest?

The responsibility to enforce warrants of arrest in all cases remains with States. In establishing the ICC, the States set up a system based on two pillars. The Court itself is the judicial pillar. The operational pillar belongs to States, including the enforcement of Court's orders.

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States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. When a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter for further action to the Assembly of States Parties.

When the Court's jurisdiction is triggered by the Security Council, the duty to cooperate extends to all UN Member States, regardless of whether or not they are a Party to the Statute. The crimes within the jurisdiction of the Court are the gravest crimes known to humanity and as provided for by article 29 of the Statute they shall not be subject to any statute of limitations. Warrants of arrest are lifetime orders and therefore individuals still at large will sooner or later face the Court.

47. What happens after a person is arrested?

An arrested person is brought promptly before the competent judicial authority in the custodial State, which determines whether the warrant is indeed for the arrested person, whether the person was arrested consistently with due process and whether the person's rights have been respected. Once an order for surrender is issued, the person is delivered to the Court, and held at the Detention Centre in The Hague, The Netherlands.

48. What are the conditions of detention at the Detention Centre in The Hague?

The ICC Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated.

At the ICC Detention Centre, the daily schedule affords the detainees the opportunity to take walks in the courtyard, to exercise, receive medical care, to take part in manual activities and to have access to the facilities at their disposal for the preparation of their defence. Additionally, the centre has multimedia facilities and offers a series of training, leisure and sports programmes. ICC detainees also have access to computers, TV, books and magazines. Those who are indigent have the right to call their Defence Counsel free of charge during official working hours. Each 10m^2 cell is designed to hold one person only. A standard cell contains a bed, desk, shelving, a cupboard, toilet, hand basin, TV and an intercom system to contact the guards when the cell is locked.

The Court provides three meals per day, but the detainees also have access to a communal kitchen if they wish to cook. A shopping list is also available to detainees so that they can procure additional items, to the extent possible.

All detainees may be visited by their families several times a year and, in the case of detainees declared indigent, at the Court's expense, to the extent possible.

Persons convicted of crimes under the jurisdiction of the ICC do not serve their sentence at the ICC Detention Centre in The Hague as the facility is not designed for long-term imprisonment. Convicted persons are therefore transferred (…) to a prison outside The Netherlands, in a State designated by the Court from a list of States which have indicated their willingness to allow convicted persons to serve their sentence there.

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C. The rights of suspects

49. Are detainees deemed to have been convicted by virtue of their transfer to the Court?

No. Everyone is presumed innocent until proven guilty before the Court. The Prosecutor must prove the guilt of the suspect and a Trial Chamber will convict someone only if it is satisfied that the charges have been proven beyond reasonable doubt.

50. What rights do suspects have?

Suspects are presumed innocent. They are present in the courtroom during the trial, and they have a right to a public, fair and impartial hearing of their case. To this end, a series of guarantees are set out in the Court's legal documents, including the following rights, to mention but a few:

- to be defended by the counsel (lawyer) of their choice, present evidence and witnesses of their own and to use a language which they fully understand and speak;
- to be informed in detail of the charges in a language which they fully understand and speak;
- to have adequate time and facilities for the preparation of the defence and to communicate freely and in confidence with counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- to have the Prosecutor disclose to the defence evidence in his possession or control which he believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

51. What happens if a suspect does not have the means to pay for legal assistance?

Suspects have the right to legal assistance in any case where the interests of justice so require and, if the suspect does not have the means to pay for it, to legal assistance assigned by the Court.

52. Can detainees obtain interim release pending trial?

All detainees are entitled to apply for interim release pending trial. In the event of rejection, the decision is periodically reviewed by the competent chamber, at least every 120 days, and may be reviewed at any time at the request of the detained person or the Prosecutor.

53. What is the role of the Office of Public Counsel for the Defence (OPCD)?

The OPCD promotes, represents and researches the rights of the defence, raises the profile of substantive defence issues, and endeavours to achieve equality of arms for the defence at all stages of an investigation and trial.

The Office is independent in terms of its substantive functions, but falls within the remit of the Registry solely for administrative purposes.

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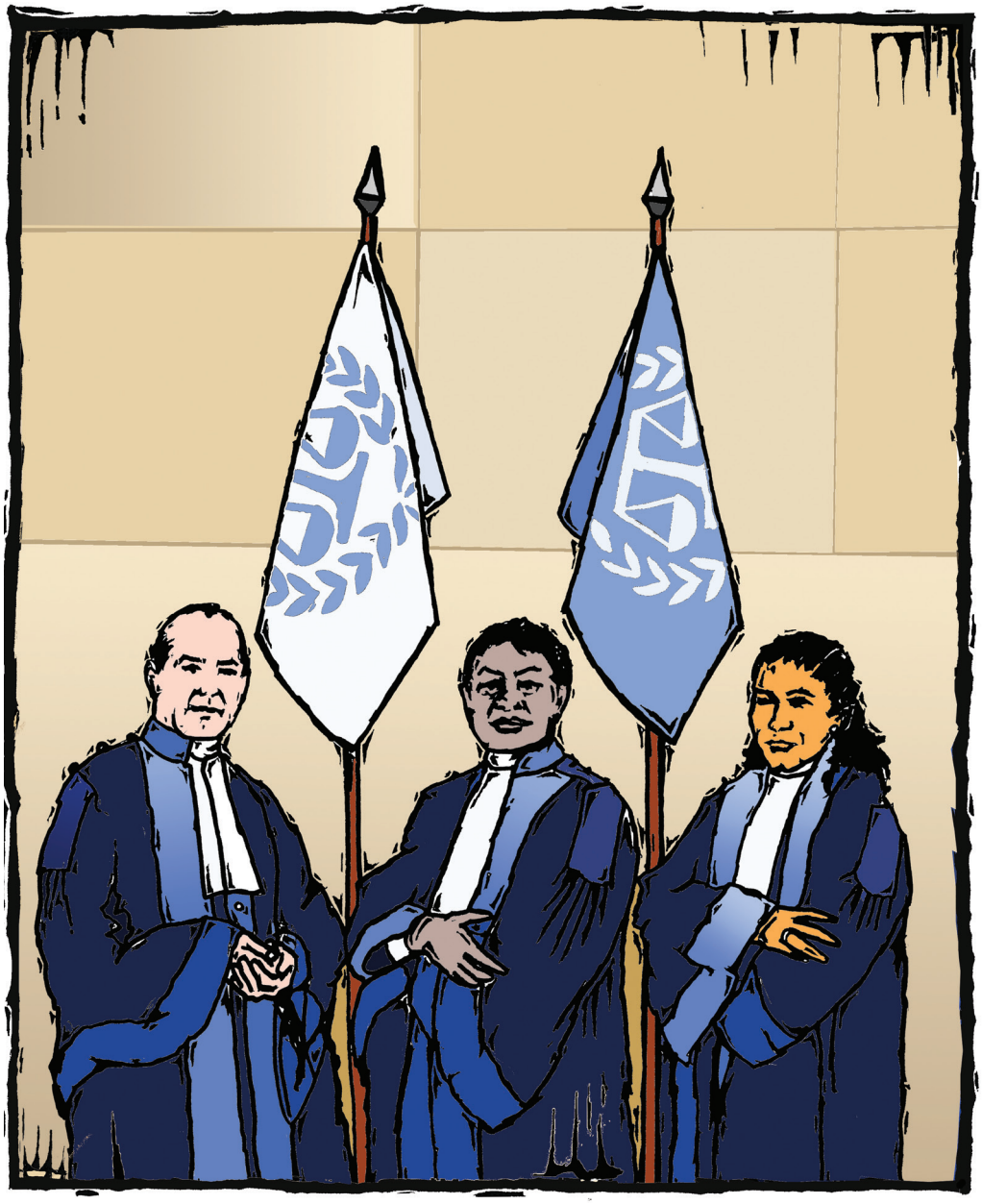

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D. Confirmation of charges before trial

54. Do suspects appear before the Court as soon as they arrive in The Hague?

Yes. Within a reasonable time after the suspect's surrender or voluntary appearance before the Court, a Pre-Trial Chamber holds a hearing to confirm the charges, the date of which is set at the suspect's first appearance hearing, which takes place immediately after his or her arrival in The Hague.

The confirmation hearing is held in the presence of the Prosecutor, the person being prosecuted, and his or her counsel. As provided by article 61 of the Statute, the suspect can waive his or her right to be present at this hearing.

At the hearing - which is not a trial - the Prosecutor must present to the judges sufficient evidence to satisfy them that there are substantial grounds to believe that the person has committed the crimes for which he or she stands accused. The person may object to the charges, challenge the Prosecutor's evidence and also present evidence.

55. What decisions can a Pre-Trial Chamber issue following a confirmation hearing?

Following a confirmation hearing, a Pre-Trial Chamber may:

- decline to confirm the charges; such a decision does not prevent the Prosecutor from presenting a subsequent request for confirmation of the charges on the basis of additional evidence;
- adjourn the hearing and request the Prosecutor to consider providing further evidence or conducting further investigation, or amending the charges because the available evidence shows that a different crime was committed;
- confirm the charges and commit the case for trial; upon confirmation, the Presidency of the Court constitutes a Trial Chamber responsible for the subsequent phase of the proceedings: the trial.

56. Does the confirmation of charges prejudge the suspect's guilt?

No. The purpose of the confirmation hearing is to safeguard the rights of suspects by preventing proceedings with insufficient legal basis from being brought against them. In the pre-trial phase, the Prosecutor must support each of the charges with sufficient evidence to establish substantial grounds to believe that the person committed the crimes charged.

57. What happens after the confirmation of charges?

After the confirmation of charges, the Pre-Trial Chamber commits the case for trial before a trial chamber, which will conduct the subsequent phase of the proceedings: the trial.

Before the commencement of the trial, the judges of the Trial Chamber consider procedural issues that may be submitted to them by the parties and hold hearings to prepare for trial and to resolve procedural matters in order to facilitate the fair and expeditious conduct of the proceedings.

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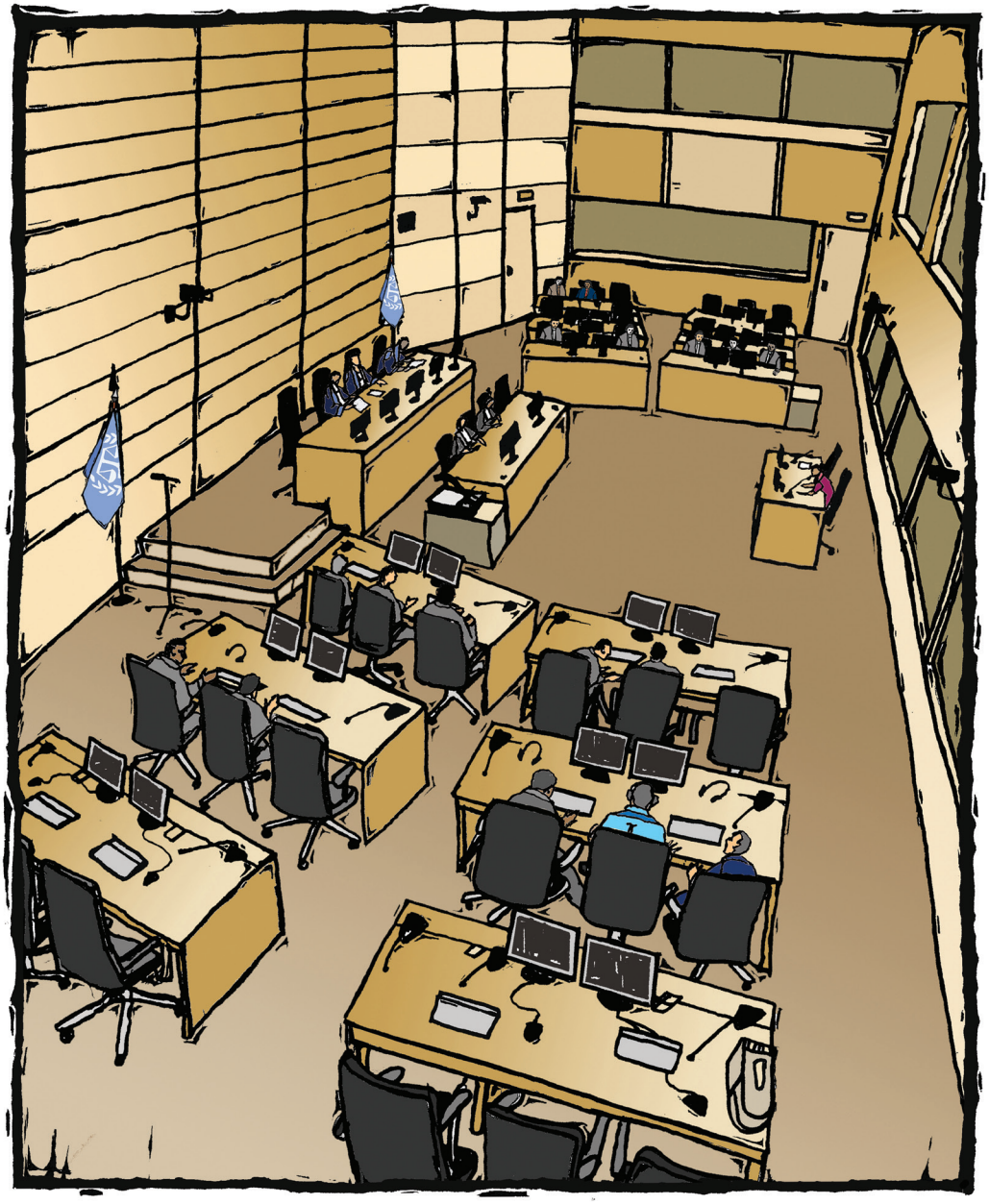

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E. The trial

58. Where does the trial take place?

Unless otherwise decided, the trial takes place at the seat of the Court in The Hague. The accused must be present at his or her trial, which is held in public, unless the Chamber determines that certain proceedings be conducted in closed session in order to protect the safety of victims and witnesses or the confidentiality of sensitive evidentiary material.

59. What happens at the commencement of the trial?

At the commencement of the trial, the Trial Chamber causes the charges against the accused to be read out to him or her and asks whether he or she understands them. The Chamber then asks the accused to make an admission of guilt or to plead not guilty.

60. What happens if the accused makes an admission of guilt?

First, the Trial Chamber ensures that the accused understands the nature and consequences of the admission of guilt, that the admission is voluntarily made by the accused after sufficient consultation with his or her lawyer and that the admission of guilt is supported by the facts of the case that are contained in the evidence and charges brought by the Prosecutor and admitted by the accused. Where the Trial Chamber is satisfied that these conditions have been met, it may convict the accused of the crime charged. If it is not satisfied that the conditions have been met, the Chamber shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued.

61. How is the trial conducted?

At trial, the Prosecutor and Counsel for the Defence have the opportunity to present their case. The Prosecutor must present evidence to the Court to prove that the accused person is guilty beyond all reasonable doubt. This evidence may be in the form of documents, other tangible objects, or witness statements. The Prosecutor must also disclose to the accused any evidence which may show that he or she is innocent.

The Prosecutor presents his case first and calls his witnesses to testify. When the Prosecutor has finished examining each witness, the Counsel for the Defence is given the opportunity to also examine the witness.

Once the Prosecutor has presented all his evidence, it is the turn of the accused, with the assistance of his or her counsel, to present his or her defence.

62. Who can present evidence?

All parties to the trial may present evidence relevant to the case. Everyone is presumed innocent until proven guilty according to law. The Prosecutor has the burden of proving that the accused is guilty beyond all reasonable doubt. The accused has the right to examine the prosecution witnesses, and to call and examine witnesses on his or her own behalf under the same conditions as prosecution witnesses.

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When the personal interests of victims are affected, the Court allows their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Their views and concerns may be presented by their legal representatives.

In a judgment rendered on 11 July 2008, the Appeals Chamber granted victims the right to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of evidence, although this right lies primarily with the parties, namely the Prosecutor and the Defence. This right is subject to stringent conditions, namely proving that the victims have a personal interest in doing so, and to the request's consistency with the rights of the defence and the requirements of a fair trial. Victims must also comply with disclosure obligations, notify the request to the parties, and comply with the Court's orders on the protection of certain persons. Lastly, the appropriateness of the victims' request is subject to the judges' assessment.

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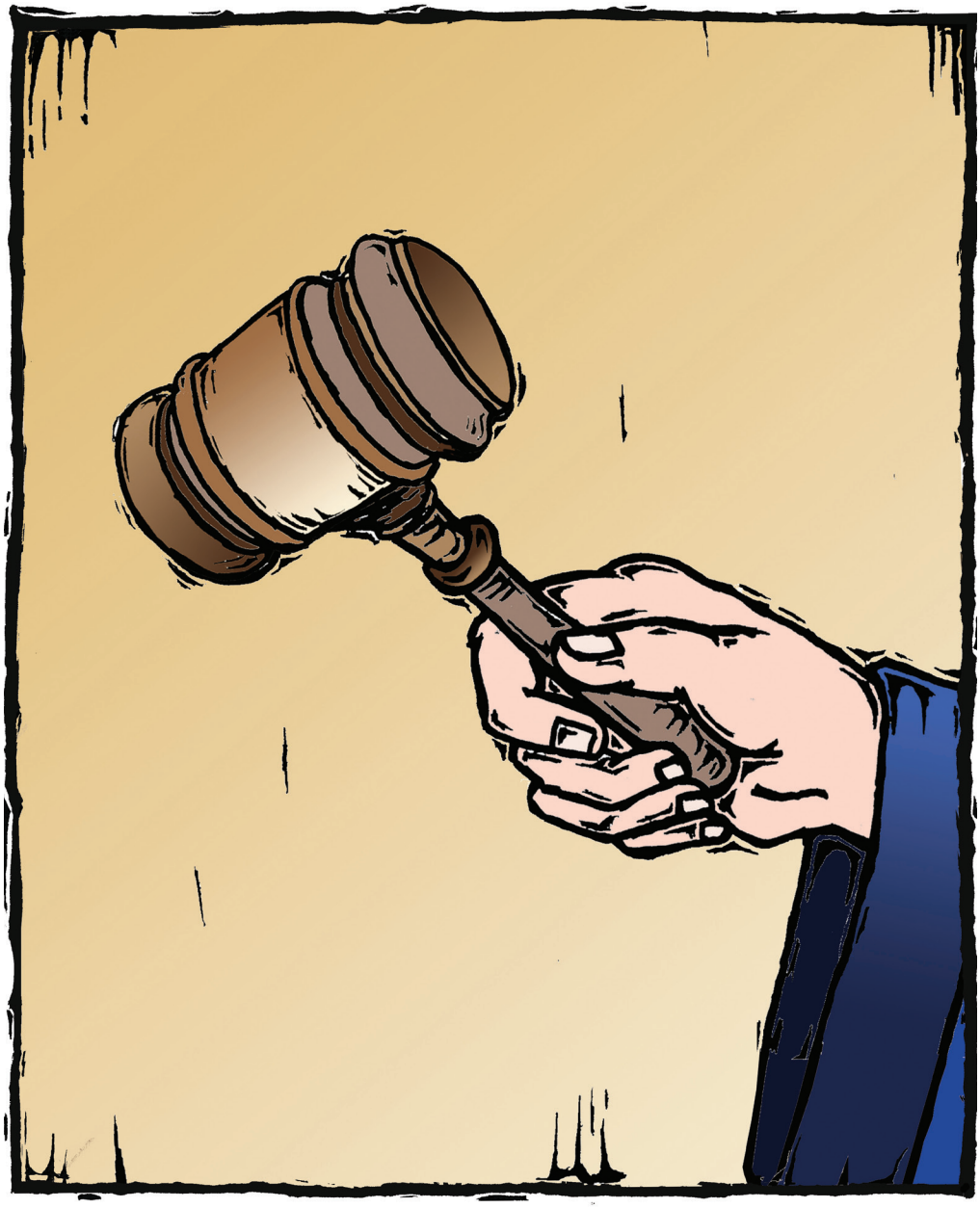

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F. Judgment and sentence

Once the parties have presented their evidence, the Prosecutor and the Defence are invited to make their closing statements. The Defence always has the opportunity to speak last. The judges may order reparations to victims, including restitution, compensation and rehabilitation. To this end, they may make an order directly against a convicted person.

63. When is the sentence pronounced by the Court?

After hearing the victims and the witnesses called to testify by the Prosecutor and the Defence and considering the evidence, the judges decide whether the accused person is guilty or not guilty.

The sentence is pronounced in public and, wherever possible, in the presence of the accused, and victims or their legal representatives, if they have taken part in the proceedings.

64. What penalties may be imposed by the Court?

The judges may impose a prison sentence, to which may be added a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The Court cannot impose a death sentence. The maximum sentence is 30 years. However, in extreme cases, the Court may impose a term of life imprisonment.

65. Where are the sentences served?

Convicted persons serve their prison sentences in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept convicted persons.

The conditions of imprisonment are governed by the laws of the State of enforcement and must be consistent with widely accepted international treaty standards governing the treatment of prisoners. Such conditions may not be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

G. Appeals and revision

66. When may a decision be appealed?

Any party may appeal the decisions of a Pre-Trial or Trial Chamber. The Prosecutor may appeal against a conviction or acquittal on any of the following grounds: procedural error, error of fact or error of law.

The convicted person or the Prosecutor may also appeal on any other ground that affects the fairness or reliability of the proceedings or the decision, in particular on the ground of disproportion between the sentence and the crime.

The legal representatives of the victims, the convicted person, or a bona fide owner of property adversely affected by an order for reparations to the victims may also appeal against such an order.

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The Appeals Chamber may reverse or amend the decision or conviction or order a new trial before a different Trial Chamber.

67. Does the convicted person remain in custody pending an appeal?

Unless otherwise ordered by the Trial Chamber, a convicted person remains in custody pending an appeal. However, in general, when a convicted person's time in custody exceeds the sentence of imprisonment imposed, the person is released. In addition, in the case of an acquittal, the accused is released immediately unless there are exceptional circumstances.

68. When can a decision be revised?

The convicted person or the Prosecutor may apply to the Appeals Chamber to revise a final judgment of conviction or sentence where:

- new and important evidence has been discovered;
- it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
- one or more of the judges has committed an act of serious misconduct or serious breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under the Rome Statute.

69. What happens if someone has been the victim of unlawful arrest or detention?

Anyone who has been the victim of unlawful arrest or detention has an enforceable right to compensation. The Court can award compensation if a grave and manifest miscarriage of justice is conclusively shown.

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V. Victims and witnesses

70. Who is considered a victim before the ICC?

Victims are individuals who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC. Victims may also include organisations or institutions that have sustained harm to any of their property which is dedicated to religion, education, art, science or charitable purposes.

The judges of the ICC determine the types of harm to be taken into account, such as bodily harm, psychological harm, that is, where a person's mind has been affected by what he or she has experienced or witnessed, or material harm, which consists of loss of or damage to goods or property.

71. What is the difference between a victim and a witness?

A victim is a person who has suffered harm as a result of the commission of a crime within the jurisdiction of the ICC. A witness is a person who testifies before the Court.

Victims may be witnesses (but have no obligation to testify) and witnesses may also be victims.

72. What are the rights of victims before the ICC?

Victims before the ICC have rights that have never before been granted before an international criminal court. Victims may be involved in the proceedings before the ICC in various ways:

- victims can send information to the Prosecutor and ask him to initiate an investigation;
- at a trial, a victim may voluntarily testify before the Court, if called as a witness for the Defence or the Prosecution or other victims participating in the proceedings;
- victims are also entitled to participate in proceedings; during proceedings, victims may participate by presenting their views and concerns to the judges; such participation is voluntary and enables victims to express an opinion independently of the Prosecutor or the Defence and offers them the opportunity to present their own concerns and interests;
- victims participating in proceedings may also, in some circumstances, lead evidence pertaining to the guilt or innocence of the accused; they may also challenge the admissibility or the relevance of evidence presented by the parties;
- lastly, victims can seek reparation for the harm that they have suffered.

73. How can victims participate in the proceedings?

If the Court considers it appropriate, victims may present their point of view directly to the judges at various stages in the proceedings. Such participation is generally through a legal representative (that is, a lawyer) who presents their views and concerns to the Court, since criminal proceedings are quite complex.

To make it easy for victims to participate, they are required to fill out an application for participation form. Victims may obtain a copy of the application for participation forms from the Court's website or from the Victims Participation and Reparations Section in The Hague. The forms must be returned

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to the Victims Participation and Reparations Section in The Hague by fax, email or post, using the information provided below.

Victims who wish to be assisted in filling out the form and sending it to the Court may contact that same section.

The Victims Participation and Reparations Section at The Hague may be contacted at:

International Criminal Court
Victims Participation and Reparations Section
P.O. Box 19519
2500 CM, The Hague
The Netherlands
Fax: +31 (0) 70 515 9100
Email: vprsapplications@icc-cpi.int

74. Can all victims in a situation participate in the proceedings?

The judges review applications on a case-by-case basis and decide whether or not the applicant is entitled to participate in proceedings before the ICC and at what stages.

75. How can victims find a legal representative?

Victims may freely choose their legal representative as long as the representative has the necessary qualifications: he or she must possess ten years' experience as judge, prosecutor or lawyer in criminal proceedings and fluency in at least one of the working languages of the Court (English or French). The ICC Registry helps victims to find a legal representative by providing a list of qualified lawyers. At the Court, there is also an Office of Public Counsel for Victims (OPCV) which can represent victims and provide them and their legal representative with legal assistance.

If there are a large number of victims, the judges may ask them to choose one or more common legal representatives. This is called common legal representation, and its purpose is to ensure the effectiveness of the proceedings.

76. Do victims have to travel to the seat of the Court in The Hague?

Generally, victims do not have to travel to the seat of the Court if they do not wish to do so. Their legal representatives present their views and concerns to the Court.

77. What happens if the victims cannot afford a legal representative?

Although the Court has limited resources for legal assistance, it may be able to provide some financial assistance. The Office of Public Counsel for Victims can also provide legal assistance to victims without charge.

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78. What is the role of the Office of Public Counsel for Victims?

The Office of Public Counsel for Victims provides legal support and assistance to victims and their legal representatives at all stages of the proceedings, thus ensuring their effective participation and the protection of their rights.

The OPCV falls within the remit of the Registry solely for administrative purposes, but operates as a wholly independent office.

79. Does the Court protect all victims participating in proceedings?

The Victims and Witnesses Unit within the Registry may advise the Prosecutor and the Court on appropriate protective measures and security arrangements for witnesses, victims who appear before the Court and others who are at risk on account of testimony given by witnesses. The Victims and Witnesses Unit implements protective and security measures and arrangements for the above-mentioned persons.

In the course of their field work, all of the Court's organs must adhere to good practices in order to ensure their security and that of individuals who interact with them. Protective measures May for example, include anonymity for victims participating in proceedings, the use of pseudonyms, the redaction of documents or the prohibition of disclosure thereof and the use of audiovisual techniques which can disguise the identity of persons appearing before the Court.

The Court also ensures that all these persons are provided with adequate protective and security measures through long and short-term protection programmes.

80. What decisions may the judges take concerning reparations for victims at the end of a trial?

At the end of a trial, the Trial Chamber may order a convicted person to pay compensation to the victims of the crimes of which the person was found guilty. Reparations may include monetary compensation, return of property, rehabilitation or symbolic measures such as apologies or memorials.

The Court may award reparations on an individual or collective basis, whichever is, in its opinion, the most appropriate for the victims in the particular case. (…) An advantage of collective reparations is that they provide relief to an entire community and help its members to rebuild their lives, such as the building of victim services centres or the taking of symbolic measures. Furthermore, States Parties to the Rome Statute have established a Trust Fund for Victims of crimes within the jurisdiction of the ICC and for their families in order to raise the funds necessary to comply with an order for reparations made by the Court if the convicted person does not have sufficient resources to do so.

81. What is the role of the Trust Fund for Victims?

The Rome Statute created two independent institutions: the International Criminal Court and the Trust Fund for Victims.

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While it is impossible to fully undo the harm caused by genocide, war crimes, crimes against humanity and the crime of aggression, it is possible to help survivors, in particular, the most vulnerable among them, rebuild their lives and regain their dignity and status as fully-functioning members of their societies.

The Trust Fund for Victims advocates for victims and mobilises individuals, institutions with resources, and the goodwill of those in power for the benefit of victims and their communities. It funds or sets up innovative projects to meet victims' physical, material, or psychological needs. It may also directly undertake activities as and when requested by the Court.

The Trust Fund for Victims can act for the benefit of victims of crimes, regardless of whether there is a conviction by the ICC. It cooperates with the Court to avoid any interference with ongoing legal proceedings.

82. Do victims have to first participate in the proceedings before they are entitled to reparations?

No. A victim who has not participated in the proceedings may make an application for reparations. The two applications are independent of each other. The Court may even decide on its own to make an award for reparations.

83. Who can be a witness?

The Office of the Prosecutor, the Defence or victims participating in the proceedings can ask experts, victims or any other person who has witnessed crimes to testify before the Court. In this regard, the Court provides them with protection, counselling and other appropriate assistance.

84. What criteria does the Office of the Prosecutor use to select witnesses?

The Office of the Prosecutor selects witnesses based on the relevance of their testimony, their reliability and their credibility.

85. How are witnesses protected?

In order to ensure the safety of witnesses who come to testify before the Court, the Court provides administrative and logistical support and ensures that the experience of testifying does not result in further harm, suffering or trauma for the witnesses. Protection is not limited to physical protection of witnesses, but extends to the protection of their psychological well-being, dignity and privacy, inasmuch as it is not prejudicial to or inconsistent with the right of the accused to a fair trial.

For example, the Court May on an exceptional basis, choose not to reveal their identity to the press and public by holding part of the proceedings in closed session or by using electronic or other special means to conceal the evidence in the courtroom. Special attention is given to the particular needs of children, the elderly, persons with disabilities and victims of sexual or gender violence.

Any measure proposed to protect a witness and, often, his or her family, must be proportional to

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the risk and the least intrusive with respect to the well-being of the witness. The protection system, regardless of the measure taken, is based on the principle of limiting the exposure of a witness to threats, providing an appropriate response if required and, as a last resort, shielding him or her from the threats. The very foundation of this system relies on the adherence to established practices by all representatives of the Court who interact with witnesses. These practices are meant to conceal a witness's contact with the Court from his or her family and friends, potential sources of threats and the public. These practices are enhanced by an initial response system which enables the Court to extract witnesses who are afraid of being targeted immediately or who have been targeted and take them to a safe location in the field. A protective measure of last resort is placement in the Protection Programme and subsequent relocation of the witness and his or her close relations away from the source of the threat. With respect to the latter measure, the Registrar has to enter into agreements with States which agree that persons under the Court's protection may be relocated to their territory.

86. Are other persons eligible for protection by the Court?

The ICC also ensures the security of persons mentioned in testimony and May for example, redact their names from witness statements.

While the texts governing the ICC do not impose any legal obligation on the Court to ensure the protection of intermediaries as such, the Registry takes all possible and reasonable preventive measures to ensure that its interaction with individuals in the field (victims or persons assisting them) does not put them at risk. This is done by implementing "good practices" in all activities carried out by Court staff in the field and by advising and training individuals and intermediary organisations which play an important and crucial role in helping victims, with regard to protection practices that they themselves can implement to mitigate risks. In the event of risk, Court documents may be redacted in order to keep the intermediaries' names confidential.

87. Are witnesses compelled to testify?

No. The Court does not compel a witness to appear before it to testify without his or her consent.

88. How does the Court know that witnesses are not lying?

Various measures have been put in place to prevent false testimony. Before testifying, each witness makes an undertaking to tell the truth. The judges have the authority to freely assess all evidence submitted in order to determine its relevance or admissibility.

If a witness gives false testimony, the Court may sanction him or her by a term of imprisonment not exceeding five years and/or by imposing a fine.

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VI. Further information about the ICC

89. Where can I find further information about the ICC?

Further information about the Court can be found on its website at www.icc-cpi.int. The site contains legal texts, Court rulings, situation and case related decisions, specific information about the functions and mandates of the organs of the Court and about their activities, hearing schedules, press releases and information for media representatives, employment opportunities, internships and information about visiting programmes organised by the Court.

In addition to the ICC's live web-streaming provided through the official website, which allows users to follow the hearings directly, the Court launched in March 2010 its official YouTube channel at: www.youtube.com/user/IntlCriminalCourt, to bring the Court and its activities closer to the general public. Among other things, the video channel allows viewers to follow the various cases before the ICC, in several languages, through the weekly postings of summaries of the proceedings entitled "In the Courtroom". Other audio-visual programmes are also available on the ICC YouTube channel, including outreach programmes and summaries of activities and events.

Following the launch of the ICC YouTube channel, the Court opened a Twitter account to share relevant news and last minute information in real-time, at: http://twitter.com/IntlCrimCourt. The use of this social media platform is part of the Court's efforts to guarantee more accessible information in a diverse and transparent way.

90. In what languages is the information available?

In general, the information provided on the ICC's website is available in English and French, which are the working languages of the Court. Most of the documents related to the Situation in Darfur are also available in Arabic. Some essential documents on the ICC's website are available in Arabic, Chinese, Russian and Spanish which, together with English and French, are the official languages of the Court.

91. How can I visit the ICC for a briefing or attend a hearing?

The International Criminal Court welcomes to its seat in The Hague anyone who is interested in its structure, its operations and the nature of its work.

To attend a briefing about the Court:

Individuals and groups wishing to attend a briefing about the Court are requested to fill out the appropriate application form, which is available on the Court's website at www.icc-cpi.int/Menus/ICC/visits. Applications should be sent by email to visits@icc-cpi.int, or faxed to +31 (0)70 515 8567, at least three weeks in advance for groups and two weeks in advance for individual visits.

To attend a hearing:

ICC hearings are generally open to the public, unless the Chamber orders a closed session. Interested

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persons are invited to go to the entrance of the Court (there is no need to fill out a form beforehand). Any person entering the Court building will have to undergo security checks and present valid identification (passport, identity card or driver's licence).

In addition, all public hearings are broadcast on the Court's website with a half-hour delay. They can be accessed at www.icc-cpi.int/Menus/ICC/schedule.

For further information, please consult the hearing schedule. Also note that in the interests of public order, minors under the age of sixteen are not allowed in the Court building.

To contact us:

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The Netherlands
Telephone: +31 (0) 70 515 8108
Fax: +31 (0) 70 515 8567
Email address: PublicAffairs.Unit@icc-cpi.int

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