

# Frequently asked questions

## **What is the International Criminal Court (ICC)?**

The International Criminal Court (ICC) in The Hague, the Netherlands, is a permanent independent judicial institution created by the international community of states to try individuals responsible for the most serious international crimes: genocide, crimes against humanity and war crimes. The ICC shall exercise jurisdiction over the crime of aggression once a provision is adopted defining the crime and setting out the conditions under which the ICC shall exercise jurisdiction with respect to it.

## **When was the ICC established?**

In July 1998 a diplomatic conference adopted the Rome Statute of the ICC (Rome Statute) by an overwhelming vote of 120 in favour and only seven against including China, Libya, Iraq, and the United States (21 abstained). The Rome Statute defines the crimes, how the court will work and what states must do to cooperate with it. The 60th ratification necessary to establish the ICC was deposited on 11 April 2002 and the Rome Statute entered into force starting its jurisdiction on 1 July 2002. In February 2003, the first 18 judges of the ICC were elected and the first Prosecutor was elected in April 2003.

## **Why is the ICC necessary?**

Although, over the past century the international community has created international and regional systems of human rights protection it nevertheless has seen some of the worst atrocities in the history of humanity. Shamefully, only a handful of those responsible for these crimes have ever been brought to justice by national courts -most perpetrators have therefore committed these crimes in the knowledge that it was extremely unlikely they would be brought to justice for their actions. The ICC therefore serves the following purposes:

- It is a major step towards ending impunity
- It acts as a deterrent to people planning to commit grave crimes under international law
- It prompts national prosecutors—who have the primary responsibility to bring those responsible for these crimes to justice—to do so;
- Victims and their families will have the chance to obtain justice and truth, and begin the process of reconciliation;

## **When can the ICC prosecute individuals suspected of genocide, crimes against humanity and war crimes?**

The ICC has jurisdiction to prosecute individuals when :

- Crimes have been committed in the territory of state which has ratified the Rome Statute;
- Crimes have been committed by a citizen of a state which has ratified the Rome Statute;
- A state which has not ratified the Rome Statute has made a declaration accepting the court's jurisdiction over the crime;
- Crimes have been committed in a situation which threatens or breaches international peace and security and the UN Security Council has referred the situation to the ICC

### **Who can be brought to trial before the ICC?**

The ICC will have jurisdiction over crimes committed by the nationals of governments that ratify the Rome Statute, or in the territories of governments that ratify. It can try any individual responsible for such crimes, regardless of his or her civilian or military status or official position.

### **What guarantee is there that accused will receive due process and a fair trial?**

The Rome Statute of the ICC created a truly international criminal justice system as it reflects input from all major legal systems and traditions. The Rome Statute recognizes a detailed list of rights of the accused, and even extends the standards embodied in major international human rights instruments. It will provide impartial and qualified judges, due process and fair trials to individuals accused of crimes falling within the jurisdiction of the Court.

### **Why is it essential that as many countries as possible ratify the Rome Statute**

The Prosecutor can only initiate an investigation where the crime has been committed in the territory of a state party to the Rome Statute or the accused person is a citizen of a state party to the Rome Statute, unless the UN Security Council refers a situation to the Court. The reluctance of the UN Security Council to establish *ad hoc* international criminal tribunals for situations other than the former Yugoslavia and Rwanda suggests that it is not likely to refer many situations to the ICC. Therefore, to a great extent, the court's effectiveness will be measured by how many states ratify the Rome Statute.

### **How will national courts and the ICC work together?**

The Rome Statute gives the ICC jurisdiction that is complementary to national jurisdictions. This "principle of complementarity," gives states the primary responsibility and duty to prosecute the most serious international crimes, while allowing the ICC to step in only as a "last resort" if the states fail to implement their duty. Thus the ICC cannot act unless the state is unwilling or unable genuinely to investigate or prosecute. A state may be determined to be "unwilling" if it is clearly shielding someone from responsibility for ICC crimes. A state may be "unable" when its legal system has collapsed. Bona fide national efforts to discover the truth and to hold accountable those responsible for any acts of genocide, crimes against humanity, or war crimes will bar the ICC from proceeding. Indeed, the possibility of an ICC proceeding may encourage national prosecutions.

### **How is the ICC different from the International Criminal Tribunals for the former Yugoslavia and Rwanda ?**

The ICC is the product of a multilateral treaty, whereas the International Criminal Tribunals for the former Yugoslavia and Rwanda were created by the United Nations Security Council. These Tribunals were created in response to specific situations and will be in existence for a limited time period. The ICC is a permanent international criminal tribunal and will avoid the delays and costs of creating *ad hoc* Tribunals.

### **How is the ICC different from the International Court of Justice?**

The International Court of Justice (ICJ) does not have criminal jurisdiction to prosecute individuals. It is a civil tribunal that deals primarily with disputes between States. The ICJ is the principle judicial organ of the United Nations, whereas the ICC is independent of the UN.