

« *Lawyers for Lawyers* »

CRIS 2008 165-110 EuropeAid/126412/C/ACT/Multi

TRAINING MANUAL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 24: THE INTERNATIONAL CRIMINAL COURT

➤ **What is the International Criminal Court ?**

On 11 April 2002, the 60th ratification required for the entry into force of the Statute of Rome (of the ICC) was deposited simultaneously by several States. The treaty became effective on 1st July 2002. The ICC is a permanent and independent court established by the international community of States (and not by the UN Security Council, unlike the international criminal tribunals for the former Yugoslavia and Rwanda) to judge the most serious crimes under international law, namely genocide, other crimes against humanity, war crimes and the crime of aggression. It constitutes an unprecedented instrument in combatting impunity. To date, 111 States have ratified the Statute of Rome.

➤ **Where is the International Criminal Court ?**

The Court sits in The Hague in the Netherlands, in accordance with article 3 of the Statute. However, it is also specified that the Court may sit in another State.

➤ **What is the difference between the ICC and the international criminal tribunals for the former Yugoslavia and Rwanda ?**

- **The ICC : general and permanent jurisdiction**

The special criminal tribunals for the former Yugoslavia and Rwanda are tribunals whose jurisdiction is restricted to a given conflict. Their work is temporary, unlike the ICC which is permanent.

- **The ICC : a complementary body for national criminal courts**

In contrast to the special criminal tribunals for the former Yugoslavia and Rwanda, the ICC is not intended to replace national courts. The obligation to prosecute crimes under the Court's jurisdiction falls as a matter of priority to national courts : this is referred to as the principle of complementarity. The ICC is entitled to carry out investigations and bring actions, only in the event of a State is in default.



Lawyers for Lawyers

➤ **Which crimes come under the jurisdiction of the ICC ?**

Under article 5 of the Statute of Rome, the ICC has jurisdiction with regard to crimes against humanity, war crimes and the crime of aggression.

The exercise of jurisdiction with regard to the crime of aggression was subject to the adoption of a definition (the drafting of a new article conforming to the United Nations Charter, and with the intention of being assimilated into the statute by means of an amendment, was entrusted to a preparatory committee). The definition was adopted on 1 June 2010 (cf file n° 17 on crime of aggression), however the Court may not exercise its jurisdiction before a decision has been taken to enable its jurisdiction, by two thirds of States Parties, as from 1st January 2017.

➤ **Why have other crimes not been included ?**

During the Rome Conference, certain States were in favour of including crimes of another nature, such as terrorism and drug trafficking. There is no question that these acts are condemnable, however, they do not cause harm in the same manner and to the same degree as the four major crimes against the peace and security of humanity as a whole.

The community of States therefore opted for a limited list of crimes. However, this list may be reviewed at a review conference.

The first Review Conference for the Statute of Rome was held in Kampala (Uganda) from 31 May to 11 June 2010. The Review Conference, which differs from the Assembly of States Parties held on an annual basis, is an important meeting for States Parties to the ICC, as it is an opportunity to examine amendment proposals to the Statute of Rome, as well as to carry out an assessment of the application and impact of the Statute.

➤ **Who can be judged by the International Criminal Court ?**

The ICC has jurisdiction which is limited to physical persons, perpetrators, co-perpetrators, accomplices and instigators of acts of genocide, other crimes against humanity, and war crimes. The Statute does not contain any provisions which enable it to criminally prosecute legal persons, whether public or private.

To date, 16 persons have been indicted or an arrest warrant has been issued against them.

➤ **When is the ICC competent to institute legal proceedings against individuals ?**

The ICC has jurisdiction in cases where :

- The crimes have been committed on the territory of a State which has ratified the Statute of Rome ;
- The crimes have been committed by a national from a State which has ratified the Statute of Rome ;
- A State which has not ratified the Statute of Rome has made a declaration whereby it acknowledges the jurisdiction of the Court for the crime committed ;
- Crimes which have been committed in circumstances which endanger or harm international peace and security, and the Security Council has referred the case to the Court in accordance with Chapter 7 of the United Nations Charter.

➤ **From which date does the Court have jurisdiction?**

The ICC has jurisdiction for crimes committed after 1st July 2002 (for crimes of aggression, those committed one year following ratification or acceptance of the Statute amendments (introduced by *Resolution RC / Res. 6 of 11 June 2010* – cf file n°17 on crime of aggression). The Court has no retroactive jurisdiction.

➤ **How can a case be referred to the ICC?**

The Statute of Rome sets out three procedures for referring a case before the Court :

1. The Court Prosecutor may open an investigation when one or more crimes have been committed, on the basis of information from any source, including from victims or their relatives, but only in the event that the Court has jurisdiction to judge the crime committed and its perpetrator.
2. States which have ratified the Statute of Rome may request the Prosecutor to open an investigation in the event that one or more crimes have been committed, but only if the Court has jurisdiction.
3. The UN Security Council may request the Prosecutor to open an investigation in the event that one or more crimes have been committed. In contrast to the procedures set out in paragraphs 1 and 2, the Court has jurisdiction when a case has been referred by the Security Council, even if the crimes have been committed on the territory of a State which has not ratified the Statute of Rome, or by a national of such a State.

However, in all these cases, it is the responsibility of the Prosecutor, and not States or the Security Council, to decide upon the appropriateness of opening an investigation and, in the light of its conclusions, to institute legal proceedings subject to the agreement of the legal authorities.

➤ **Who may be considered a victim ?**

Rule 85 of the Rules of Procedure and Evidence defines two categories of victim :

- *Physical persons* : a person who has sustained damage owing to a crime being committed which falls within the jurisdiction of the Court. There must therefore be a causal link between the crime and the damage, which may be direct or indirect.
- *Legal persons* : an organisation or institution whose property, devoted to religion, education, the arts, sciences or charity, an historical monument, a hospital or any other place used for humanitarian purposes has suffered direct damage. This therefore concerns harm to property, and there must be a causal link between the crime and the damage.

Victims have the status of participant and not that of civil party.

➤ **What role do victims have before the International Criminal Court ?**

The Statute of the ICC recognises the rights of victims to participate at all stages of the procedure, and in a manner which is not detrimental or contrary to the right to defence and the requirements for an impartial and fair trial.

Thus, victims may :

- Send information to the Prosecutor concerning crimes which, according to them, have been committed,
- Submit observations to the Court when the admissibility of a case is contested, when the Prosecutor decides not to open an investigation or prosecute following a referral by a State, or when the pre-trial chamber confirms the charges brought against the accused,
- Testify before the Court, when they are called as a witness,
- Present, whenever their personal interest is concerned, their views and concerns to the Court, at all stages of the procedure. Victims who wish to participate in the procedure must make a request to do so with the competent chamber,
- Benefit from specific protection measures in their regard.

- **Can victims claim reparations ?**

Article 75 of the Statute of Rome, as well as rules 94 to 98 of the Rules of Procedure and Evidence permit victims to claim reparations. Three forms of reparation are possible : restitution, compensation and rehabilitation.

- **Can victims be represented ?**

To facilitate their participation, victims are at liberty to select a representative of their choosing, but where there are a large number of victims, the Court may request them to select a common legal representative.

➤ ***How to practise before the International Criminal Court ?***

For more information, please refer to the web site of the International Criminal Court at the following address : <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Defence/Counsel/>

To follow the activities of the International Criminal Court :

<http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>

Sources :

- Web site of the International Criminal Court : <http://www.icc-cpi.int>
- Web site of the International Coalition for the ICC : <http://www.iccnw.org/?lang=en>

Last updated : 25th February 2011