



# International Criminal Court

## 1. Remit

The International Criminal Court (ICC) is responsible for trying persons accused of the most serious crimes which affect the international community as a whole: genocide, crimes against humanity, and war crimes. The legal foundation for this permanent court, which has its seat in The Hague, is the Rome Statute which was adopted in 1998 and came into force in 2002. The ICC is an expression of the determination of the 122 States Parties (as at 1 May 2013) to "put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes".

The ICC does not replace national criminal justice systems, neither is it an international court of appeal that reviews national judgments as a court of last resort. Rather, the ICC is a complement to national criminal justice systems. It is brought in only where the national authorities responsible for criminal prosecutions are themselves unwilling or unable to prosecute crimes committed within their own jurisdictions or by their own nationals. This may be the case, for example, where the national authorities are controlled by individuals who are themselves partly responsible for committing the crimes in question, or if the national criminal justice system has collapsed as a result of war. The ICC ensures that the gaps in the prosecution of these particularly abhorrent crimes can be closed.

With its long humanitarian tradition and in its capacity as the depositary state for the Geneva Conventions, Switzerland provided significant support for the establishment of a strong and independent court. It ratified the Rome Statute in 2001, and at the same time enacted the legislative amendments that were immediately necessary to allow cooperation with the ICC.

## 2. Cooperation between Switzerland and the ICC

States Parties have a duty to cooperate fully with the ICC. Since the Court does not have its own investigative police force, in conducting its proceedings it is largely reliant on cooperation with States Parties. Switzerland enacted the necessary legal foundation for this

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cooperation with the *Federal Act on Cooperation with the International Criminal Court* (ICCA). A central office, with wide-ranging powers, has been created within the Federal Office of Justice (FOJ) to ensure that cooperation is as smooth as possible. The central office receives requests from the Court and decides on the scope and details of cooperation.

### **Transfer**

The FOJ receives the formal requests for arrest from the ICC and determines whether or not the conditions for transfer to the ICC are met. If this is the case, it will order the arrest of the person who is being sought. It will issue a transfer warrant and notify the ICC. Providing the request for transfer is received by the FOJ within the set deadline (no later than 60 days after the person's arrest), the person concerned will, as a general rule, remain in custody until the end of the transfer procedure. They may appeal against their detention to the Federal Criminal Court.

The person being sought may waive ordinary proceedings by agreeing to their transfer to the ICC. In such cases, the FOJ may approve the transfer immediately and order its completion. In all other cases, it is the FOJ which decides on transfer to the ICC. The person being sought has no right of appeal against the FOJ's transfer decision. They can only dispute the jurisdiction of the ICC when they appear in front of it.

If a Swiss citizen is transferred by Switzerland to the ICC, once the proceedings have concluded the FOJ will request the return of the person concerned, so that they can serve their sentence in Switzerland.

### **Other forms of cooperation**

The FOJ receives applications for other forms of cooperation (the recording of evidence, including witness statements, hearing of suspects, searches and seizures, service of documents, etc.). It will decide whether or not cooperation is permissible, order the necessary action, and mandate a cantonal or federal authority to carry out the request. Individuals who are accused in proceedings before the ICC are not entitled to any legal remedy. Only the other individuals who are affected by international legal assistance measures are entitled to lodge an appeal against the final FOJ ruling.

The FOJ may also authorise ICC prosecutors to conduct independent investigations (such as the taking of witness statements) on Swiss sovereign territory.

The rule on the voluntary provision of information and evidence that a Swiss authority has

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collected during its own criminal investigation goes above and beyond the standard required by the Rome Statute. The FOJ may volunteer information and evidence to the ICC to enable investigations to commence or to assist in pending legal proceedings.

### **Custodial sentences**

Since the ICC is not able itself to execute custodial sentences, it depends on the support of the host state and the other States Parties. At the request of the ICC, Switzerland may take charge of executing a final and absolute judgment if the convicted individual is a Swiss citizen or is ordinarily resident in Switzerland. The FOJ will decide in consultation with the competent cantonal authority about whether or not to take on this executive function. The sentence handed down by the ICC is binding upon the Swiss authorities.

### **3. Amendment to Swiss criminal law**

Following the enactment of the ICCA, Switzerland took the second step of amending its criminal law in line with the Rome Statute, to ensure the effective, transparent and gap-free prosecution of genocide, crimes against humanity and war crimes. Specifically, the revised Swiss Criminal Code and Military Criminal Code, both of which came into force in 2011, instituted "crimes against humanity" as a new offence, and defined "war crimes" in considerable detail:

- *Crimes against humanity* are deemed to be offences such as premeditated murder, extermination, enslavement, enforced disappearances, torture, sexual offences or forced displacement, which are committed as part of extended or systematic attacks on the civilian population. These offences were essentially already covered by Swiss criminal law before the statutes were revised. However, there was no provision to allow Switzerland adequately to play its part in punishing these offences, made particularly abhorrent by the additional factor that they are committed against the civilian population.
- *War crimes* – such as attacks against the civilian population, the recruitment of children or the use of banned weapons – are no longer penalised by a blanket reference to international humanitarian law, but are now defined in detail in Swiss criminal law.

The following authorities are responsible for conducting criminal proceedings: In times of peace, it is the Office of the Attorney General which conducts proceedings on the grounds of genocide, crimes against humanity and war crimes. The jurisdiction of the military justice system is limited to those cases in which members of the Swiss armed forces are the perpetrators or the victims. By contrast, the military judicial authorities bear sole responsibility

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for prosecuting such crimes during wartime.

Switzerland is also responsible for *prosecuting offences committed abroad* if the perpetrator is located in Switzerland and cannot be extradited or transferred to an international criminal court. This ensures that Switzerland cannot be abused – either now or in the future – as a "safe haven" by the world's most serious criminals. At the same time, a provision in Switzerland's code of procedure also ensures that no prosecuting authority need commence complex and costly *in absentia* proceedings that have no connection with Switzerland, or have to conduct proceedings that have no prospect of success because evidence is unavailable.

### **4. Ad-hoc tribunals and successor courts**

In the wake of conflicts in the former Yugoslavia and in Rwanda, Switzerland laid down the rules of cooperation with the ad-hoc tribunals in the Hague and Arusha (Tanzania) in 1995 in the *Federal Act on Cooperation with the International Tribunals Prosecuting Serious Violations of International Humanitarian Law*. In 2003, the scope of the Act was extended to cover cooperation with the special court of justice in Sierra Leone. Once these ad-hoc tribunals had succeeded in completing a large proportion of pending war crimes proceedings, the UN Security Council established a successor court to conduct the final trials. In 2012, Switzerland extended the scope of the aforementioned Act once again to include cooperation with this successor court.

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### Links:

Rome Statute: [www.un.org/icc/](http://www.un.org/icc/)

Federal Act on Cooperation with the International Criminal Court (ICCA) (German, French and Italian):

[http://www.admin.ch/ch/d/sr/c351\\_6.html](http://www.admin.ch/ch/d/sr/c351_6.html)

Federal Act on the Amendment of the Criminal Code and the Military Criminal Code (Jurisdiction-Related Offences Before International Courts) (German):

<http://www.admin.ch/ch/d/ff/2001/2906.pdf>

International Criminal Court: <http://www.icc-cpi.int>

Federal Act on Cooperation with the International Tribunals Prosecuting Serious Violations of International Humanitarian Law (German, French, Italian):

[http://www.admin.ch/ch/d/sr/c351\\_20.html](http://www.admin.ch/ch/d/sr/c351_20.html)

# Cooperation with the ICC

