
INTERNATIONAL JUSTICE Q&A

What is international justice?

International justice is a relatively recent concept, whereby alleged perpetrators of the most serious crimes of international concern – such as genocide, crimes against humanity and war crimes – are held *personally* accountable in a court of law. It includes cases brought before the courts of the affected country, before the courts of other countries, and before international or hybrid (a mix of international and national) courts and tribunals.

What does universal jurisdiction mean?

The principle of universal jurisdiction allows states to investigate and prosecute persons suspected of serious international crimes committed outside the territory of the prosecuting state regardless of the alleged perpetrator's or the victims' nationality, or where the crimes were committed. Universal Jurisdiction recognizes the global impact of mass atrocities, and helps to ensure human rights abusers cannot escape accountability for their actions no matter where they go.

How does this differ from “transitional justice”?

Transitional justice is a related and broader term which includes these kinds of trials as well as complementary approaches to justice such as local justice mechanisms, truth and reconciliation commissions and commemorations.

What is the International Criminal Court (ICC) and how is it different from the International Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR)?

The international treaty known as the *Rome Statute* created the International Criminal Court in 2002. The role of the ICC, considered the central pillar of the international justice system, is to complement national courts. The ICC can only proceed when national courts are unwilling or unable to carry out the investigation and prosecution of a person accused of crimes defined in the Rome Statute. These crimes include genocide, war crimes and crimes against humanity.

Unlike the ICTY and the ICTR that are time-limited tribunals established by the United Nations Security Council, the ICC is a permanent and independent body supervised by the countries that have ratified the Rome Statute. There is no time limit on the ICC's jurisdiction except for the principle of non-retroactivity. This means it cannot prosecute crimes that were committed before 2002.

What is the difference between genocide, crimes against humanity and war crimes?

While there is some overlap between the crimes contained in each of the definitions, what distinguishes the criminal acts are the intent and context within which they are carried out.

International law defines **genocide** as occurring when one of a list of specific acts -- such as killing or causing serious bodily harm -- is carried out with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.

Crimes against humanity do not require the “intent to destroy” a group, but occur when such acts are carried out on a widespread or systematic basis. This applies whether the acts occurred during times of war or peace.

War crimes are acts that are prohibited during an armed conflict – whether between or within states – such as the murder or ill-treatment of prisoners of war, targeting of civilians, rape, pillaging and use of child soldiers, to name just a few.

Often an accused will be charged with more than one of these categories of crimes simultaneously, and with more than one count in each category. Genocide is the most difficult to prove.

What has been Canada’s contribution to international justice?

Canada played an important leadership role in building the international justice system. A Canadian diplomat, Philippe Kirsch, chaired the UN negotiations to create the ICC treaty, and later became a judge and the first President of the Court. Canada was a key member of the group of like-minded countries that pushed for the establishment of the Court, and was the first country to bring into force domestic legislation to clarify the ability of our national courts to try war criminals present in Canada. In May 2009, a Canadian court used this law, the *Crimes against Humanity and War Crimes Act*, to convict a Rwandan living in Canada for his role in the Rwandan genocide.

What else can the Canadian government and courts do?

In order to support the success of the international mechanisms Canada helped to create, the most important contribution now is to use our national courts for cases with a connection to Canada. To fulfill its international commitment in this regard, the Government of Canada must increase the budget allocation for the federal War Crimes Program, or at a minimum re-allocate funding within the Program to increase the priority given to investigations and prosecutions of alleged war criminals. According to government statistics, there are as many as 1500 suspected war criminals living with impunity in Canada. Having at least a few criminal prosecutions on-going at any given time is critical to supporting the international justice movement.

Second, the Government of Canada should amend its *State Immunity Act* to ensure that individuals are able to seek compensation in Canadian courts against foreign government officials and their agents implicated in torture and other atrocities. The few cases that have attempted to obtain some form of redress have faced significant challenges because this law gives foreign governments immunity from lawsuits in Canada, even for the commission of acts as serious as torture.

The case in Montreal being brought by the family of Zahra Kazemi, an Iranian-Canadian photojournalist tortured and killed in an Iranian prison, will be an important new test of the limits of this law and a bill seeking this amendment is expected to be introduced in Parliament shortly. Please see the CCIJ website (www.ccij.ca) for more information about the Kazemi case and the effort to amend the *State Immunity Act*.

Why try war criminals in Canada, why not deport them?

In fact, the main emphasis of Canada's War Crimes Program is to prevent suspected war criminals from entering Canada, to exclude them from refugee proceedings or to remove them if they are already in the country. Approximately 93% of the funding is said to be allocated to these purposes, with the remainder for criminal investigations and prosecutions.

More balance is needed to allow more cases to proceed to trial in Canadian courts for several reasons. Government figures indicate that there are at least 1500 alleged war criminals and human rights abusers currently living in Canada. Although cases involving human rights abuses can ideally proceed in the country where the crimes occurred (and some do), this is often not a viable option if the abuses are being committed by those in power. In addition, national-level trials may not meet international standards of fairness, detainees may be held in unbearable conditions, or the accused themselves may be subject to persecution. Canada has an obligation to prosecute an accused present in Canada in these situations. The national courts may also be overloaded, as they are currently in Rwanda, where some 800,000 people are awaiting trial in cases related to the genocide.

In addition to contributing to the international justice system, this also serves the needs of the approximately one million immigrants and refugees in Canada who are said to have experienced torture and war trauma. Most continue to suffer enormously and many describe the value of simply knowing that justice is possible in the face of these experiences even if not related to their own particular case.

Are other countries undertaking such trials?

Yes. The courts of the countries in which such abuses occurred are increasingly changing their laws and addressing their history through justice processes. Criminal cases have gone to trial in Latin America, Asia, Africa and Eastern Europe.

In recent years such trials have also taken place using the principle of universal jurisdiction in 13 European countries, resulting in over 50 charges and many convictions. In the United States the son of former Liberian President Charles Taylor was recently convicted for torture.

How do war criminals get into Canada in the first place?

War criminals are not likely to declare themselves as such when entering Canada. The likely entry routes are as an immigrant, a visitor, or refugee claimant.

What Canadian government departments are responsible for war crimes?

The federal War Crimes Program consists of four federal government departments: Canada Border Services Agency; Citizenship and Immigration Canada; the Department of Justice; and the Royal Canadian Mounted Police. The first two departments attempt to bar alleged war criminals from entering Canada and to deport those who do; the latter are responsible for investigations and prosecutions.

Can a Canadian be tried in Canada for war crimes?

Yes, a Canadian can be tried for alleged war crimes committed in Canada or anywhere in the world.

What kind of redress are survivors of atrocities looking for?

The answer to this is very individual, just as the victims of “ordinary crimes” have different views of what will give them a sense that justice has been served. However, many victims of both ordinary crimes and international atrocities indicate that the establishment of responsibility and the enforcement of law is important to them in their attempt to come to terms with their traumatic experiences. Other forms of redress sought by survivors may include public acknowledgement and apology, memorials and other opportunities for commemoration, the establishment of a historical record of the crimes, monetary compensation for the harm suffered, and the opportunity to engage in activities that promote community and national healing.

What should be done with information about an alleged war criminal in Canada?

The Canadian Centre for International Justice (CCIJ) can provide preliminary information and assistance in understanding the domestic and legal options for justice. After an initial investigation has been completed, if a client wishes to pursue a case in Canada or internationally, the CCIJ can provide referrals and support throughout the process.

More information about the justice options that may be available, and the kind of support offered by the CCIJ, is available in many languages in the Resources section of the CCIJ web site.

How does the CCIJ’s work differ from that of Amnesty International (AI), Canadian Centre for Victims of Torture (CCVT) or other organizations like these?

The CCIJ’s central mission is to work with survivors of genocide, torture and other atrocities to explore legal options and bring perpetrators to justice. There is no other organization in Canada with the mandate to focus on the legal issues arising from human rights abuses. Amnesty International (AI) cannot name individual perpetrators, and torture treatment centres like the Canadian Centre for Victims of Torture (CCVT) do not provide legal services. For this reason, many Canadian organizations concerned with justice and human rights issues supported the call for the creation of the CCIJ at a meeting in 2000 and both AI and CCVT have representatives on the CCIJ’s Board of Directors.

How does the CCIJ, based in Canada, investigate crimes that took place abroad?

The CCIJ works collaboratively with domestic and international organizations as well as with experts from a variety of fields in carrying out or facilitating research and investigations. When necessary, CCIJ legal staff also travel to gather information and evidence.

Who decides to lay charges against war criminals in Canada?

Under the *Crimes against Humanity and War Crimes Act*, only the federal Attorney General or his/her deputy can lay criminal charges, usually upon the recommendation of the War Crimes Section of the Department of Justice. The CCIJ provides support to government initiatives

leading to the criminal prosecution in Canada of torturers, war criminals and perpetrators of other severe human rights abuses.

Civil cases do not require the involvement of the government, and the CCIJ finds lawyers who will provide free legal services to the client and then supports the client throughout the legal process.

What can a survivor do if the Crown decides not to lay criminal charges?

The CCIJ serves as a resource centre to provide information to its clients about their options for pursuing justice and help them assess the most favourable avenues. If the Crown decides not to lay charges, the CCIJ may assist in follow-up communications and in understanding the other options that may be available in each case.

What are the best ways to support or become involved in international justice issues in Canada?

The CCIJ's website, www.ccij.ca, contains information on a number of opportunities for volunteers, students, legal and health professionals to support international justice work in Canada. In particular, we are seeking involvement in our Working Groups across the country.

Donating to CCIJ's work is also an important form of support since the organization relies on voluntary contributions and the support of a few foundations. Significant in-kind contributions to the CCIJ's work, including rent and much of its overhead expenses, mean that donations to the CCIJ are geared as directly as possible to programming and activities that make a difference.