




THE ROAD TO ACCESSION TO THE INTERNATIONAL CRIMINAL COURT

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ICC main features

- the 1st permanent international court to try individuals for genocide, crimes against humanity and war crimes
- complementary to national courts when they are unable or unwilling to do so
- The situations are:
 - Where the state, for whatever reason, chooses not to exercise its jurisdictional competence, or
 - Where the state's legal and administrative structures have completely broken down

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- fully recognizes the doctrine of non-retroactivity
 - has a wider jurisdiction than International Criminal Tribunal for Yugoslavia & International Criminal Tribunal for Rwanda
 - protects victims and witness




Indonesia's Legal-political commitment...

- The Presidential Regulation no. 23 of 2011 on the National Action Plan on Human Rights has declared, among others, that The Rome Statute is going to be acceded in 2013
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Why Ratify ICC

- ❑ The GOI has committed to the protection and promotion of human rights, including processing serious violations of human rights
- ❑ The National Action Plan on HR has already stipulates that ICC would be ratified in 2008
- ❑ Strengthening the national justice system
- ❑ The ICC adhere to the principle of complementarity, hence, applicable in cases where national mechanism is unable or unwilling to process those crimes
- ❑ Many of the stipulations of ICC have been incorporated into Law No. 26 of 2000 on Human Rights Court

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- It would not have concurrent jurisdiction with or primary jurisdiction over national court.
 - ICC would exercise its jurisdiction for persons only
 - With the principle of legality, the ICC *ratione temporis* is limited to those most serious crimes committed after Indonesia completed the accession process, and not before (said crimes occurring after the Statute's entry into force)
 - Hence, it does not have a retroactive character
 - In order to have an effective enforcement, state cooperation is needed



**INCORPORATIONS OF ICC
STIPULATIONS IN THE HUMAN
RIGHTS COURT LAW
NO. 26 OF 2000**

Jurisdiction

- Ratione Materiae:
 - Both address the issue of the justice system dealing with gross violation of human rights,
 - But the Human Rights Court's Law is limited to
 - Genocide and
 - Crimes against Humanity(does not address war crimes)




Victim & Witness

- Both laws contain stipulations providing protection of victims and witness
- Supporting measures:
 - Law No. 13 of 2006 on Witness and Victim Protection
 - Establishment of The Witness and Victim Protection Agency

Rights of victims and witnesses in Law no. 13/2006:

- To be protected and to security of person, family and property against any threats related to his/her testimony
- To participate in determining protection and security measures
- To provide testimony without pressures
- To have a translator
- To be free from entrapping questions
- To be informed of case progress
- To be informed of court's disposition

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- To be informed when the perpetrator is released from prison
 - To obtain a new identity
 - To relocation of residence
 - To transportation expenses
 - To legal advice
 - To living expenses when he or she is under protection
 - Right to not to be present physically in the court when providing testimony (affidavit or tele-/video conference), and
 - Not to be brought to court for testimony given in the legal process (provided it is not a false testimony)

Criminal Law principles adhered to by The ICC & IHRC Law

- *Nullum crimen sine lege*
- *Nulla poena sine lege*
- Non retroactivity (in IHRC this is subject to exception)
- *Ne bis in idem* (in ICC this is *subject to exception*)
- Individual criminal responsibility
- Command responsibility
- Crimes by omission
- *Non applicability of statute of limitation*

ICC vs IHRC

ICC

- International mechanism
- Permanent international tribunal
- Complementary to the national mechanism
- non-retroactive
- No double jeopardy, with exception

IHRC

- National mechanism
- Permanent, but it is possible to establish ad-hoc court
- Non-retroactive, with exception
- No double jeopardy

Prosecutors

ICC

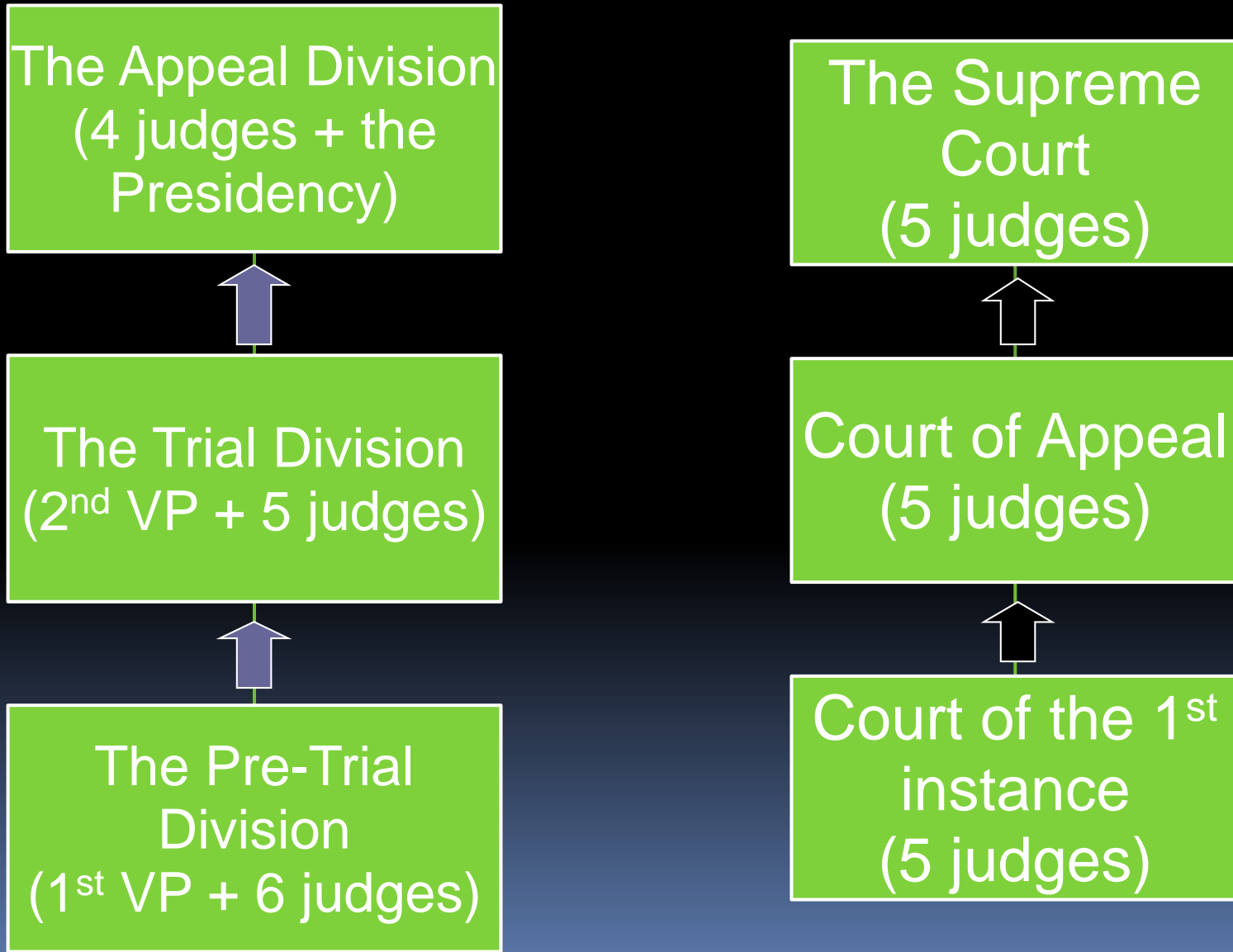
The Prosecutor Office:

- The Investigation Division
- The Prosecutor Division
- The Jurisdiction, Complementarity & Cooperation Division

IHRC

- The Attorney General functions as the investigator and prosecutor

ICC v IHRC Structure



The Punishments...

ICC

- Life imprisonment
- Imprisonment
- Fine
- Forfeiture of proceeds of crime



IHRC

- Capital punishment
- Life imprisonment
- 25 years of imprisonment
- Minimum sentence of 10 years of imprisonment
- Fine
- Restitution for victims



Measures taken

- Official translation of ICC
- Public dissemination of ICC contents
- Inter-departmental meeting to achieve common understanding on the ICC
- Drafting of an Academic Draft
- Drafting of the Bill (taking into account the eight principles of legislation)
- Inter-departmental workshops
- Consultation with civil society

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- Harmonization of the Bill (might need further revision and adjustment of relevant national laws)
 - Public debates on the Bill
 - Submission to the Parliament
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Content of Academic Draft

- Chapter I : Background
- Chapter II : Theoretical Framework and Fact Analysis
- Chapter III: Analysis and Evaluation on Existing Legislation
- Chapter IV: The Scope of the Bill
- Chapter V: Closing Notes

Thank You