



PRIMERS FOR INTERNATIONAL ACCOUNTABILITY IN ASIA: 'CRIMES AGAINST HUMANITY'

What Is A 'Crime Against Humanity'?

A 'crime against humanity' is one type of international crime. Other international crimes include war crimes and genocide. Crimes against humanity are sometimes called 'atrocities crimes'.

There is no dedicated treaty in international law that addresses crimes against humanity. However, the *Rome Statute*, which establishes and governs the International Criminal Court, provides a list of specific acts that create the crime. These acts include, but are not limited to, the crimes against humanity of murder, deportation or forcible transfer of a population, torture, enforced disappearance, and other inhumane acts. The large scale of violence in a crime against humanity makes it different from similar domestic crimes such as simply 'murder.'

This large scale is described in the *Rome Statute* by requiring that crimes against humanity are crimes that are 'widespread' or 'systematic'. 'Widespread' means that crimes against humanity may have a large number of victims and/or the victims are spread across a large geographic area. 'Systematic' means that crimes against humanity may include conduct that is methodical or has structure or plan by an organization or government.

The perpetrator in a crime against humanity must be acting to implement a policy or plan. This policy or plan does not have to be written down. Instead, this policy or plan can be inferred from the pattern of violence. Such a pattern can be inferred regarding types of victims, numbers of victims, locations of violence or other circumstances.

All crimes against humanity are directed at civilians.

How Are Crimes Against Humanity Different From Other International Crimes?

Crimes against humanity are different from 'genocide' because they do not require the intent to destroy, in whole or in part, a particular group. They also differ because the victims do not need to be from a particular racial, ethnic, religious, or national identity. Crimes against humanity are different from 'war crimes' because they do not have to take place related to an armed conflict.

Can Someone Who Does Not Directly Participate In Violence Be Held Responsible For A Crime Against Humanity?

Under international criminal law, it is possible to find a superior—such as a leader—responsible for a crime against humanity, even if she/he did not actually participate directly in the violence. The legal concept of 'command responsibility' allows a court to hold responsible someone who gives orders or fails to take action to prevent a particular crime. This is important in a crime against humanity because of the large scale of violence—an individual perpetrator may commit only one act in accordance with the organizational policy or plan, but a leader may be directing such a plan.

Who Can Investigate Or Prosecute Crimes Against Humanity?

Prosecutors in courts can prosecute crimes against humanity. States have the primary responsibility to investigate and prosecute crimes against humanity. The International Criminal Court can hear cases regarding crimes against humanity when a State is unwilling or unable to prosecute.

Currently, the International Criminal Court can investigate crimes that were committed, at least in part, on the territory of Bangladesh or any other member of the International Criminal Court. Myanmar is not a member of the International Criminal Court.

However, if related to Myanmar, the Independent Investigative Mechanism for Myanmar (Myanmar Mechanism) can *collect information* to be used in court proceedings. This information can then be shared with the International Criminal Court, if it expands its jurisdiction, or with another national, regional, or international court that hears cases regarding international crimes committed within Myanmar.

The Myanmar Mechanism *is not a court itself*, but is a body established by the United Nations Human Rights Council in September 2018. The Myanmar Mechanism can collect information and documentation to prepare case files on all serious international crimes committed in Myanmar. Once compiled, these case files can be shared with courts.

The Myanmar Mechanism can collect information from open sources—such as news reports and social media—as well as information from witnesses. News from the Myanmar Mechanism can be found at its website iimm.un.org or official Facebook page (facebook.com/MyanmarMechanism). The Myanmar Mechanism can be contacted at +41 76 691 12 08 via Signal or at iimm@un.org by email.

Providing information to the Myanmar Mechanism is *voluntary*. It is best to contact the Mechanism *before* sharing any information so that you can discuss how any information might be used and how your identity might be protected. **Exercise discretion in sharing any information with any entity—consider any potential repercussions for yourself or others, particularly regarding identity or physical safety.**

What Is Needed By A Court To Convict Someone Of A Crime Against Humanity?

To result in a conviction in a court, like all other crimes, a crime against humanity must be proven beyond a reasonable doubt. This is the highest standard of proof in law.

For example, regarding the crime against humanity of *murder*, a prosecutor will need, amongst other things:

- Evidence of the physical act of the killing of an individual;
- Evidence that indicates that this killing occurred in the context of other killings or in a pattern of killing; and
- If showing the criminal responsibility of a superior or leader, evidence that shows the relationship between the direct perpetrator and the superior.

What If I Want To Document What Is Happening?

If you are a witness to violence, ensure your safety first.

If it is safe to do so, take note of the time, your location, and what you have witnessed. Do this even if you have recorded on a phone or camera; this is because the settings on your electronic device may not store this information accurately.

If collecting information from others, recognize that doing so may put yourself, others, or any official investigation at risk. Information collected for international accountability processes will almost always be collected by expert investigators. Conflicting statements from witnesses can jeopardize criminal prosecutions.

Nevertheless, if collecting information with the intention to provide it to a court, maintain the ability as far as possible to trace the information to the information provider. Try to ask questions such as ‘who was involved?’, ‘what happened?’, ‘where?’, ‘when?’ and ‘why do you think...?’, leaving it open to them to tell their story.

Remember, those collecting information bear the duty to ‘do no harm’. This includes informing those providing information how their information may be used and whether it can be kept safe. This also includes recognising that any international justice processes are long and their outcomes are uncertain.

For further information, please see the Asia Justice Coalition's resource on [civil society documentation](#).

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