

## PRIMERS FOR INTERNATIONAL ACCOUNTABILITY IN ASIA: 'DOMESTIC JUSTICE FOR ATROCITY CRIMES'

### What Are 'Atrocity Crimes' And What Does It Mean To Seek 'Domestic Justice'?

'Atrocity crimes' are a group of 'core crimes' that include war crimes, [crimes against humanity](#), and [genocide](#). They are also called 'international crimes' along with crimes of [aggression](#), [torture](#), and [enforced disappearance](#). These are considered 'international crimes' because States have agreed, under international treaties and in practice, that they should be prohibited.

Different courts can prosecute atrocity crimes—the most familiar court may be the [International Criminal Court](#) (ICC) established as 'a court of last resort' by an international treaty i.e., the [Rome Statute](#) (see also [here](#)). Additionally, some States also allow their courts to prosecute these crimes in their domestic legal systems. This is referred to here as 'domestic justice'.

### If Atrocity Crimes Are 'International', How Can They Be Heard In Domestic Courts?

Every court has rules under law that provide authority to hear cases brought before itself—this is called 'jurisdiction'. There are many types of jurisdictions—these include jurisdiction based on the type of crimes ('subject matter'), who the victim or accused person is ('personal'), or where the crime took place ('territorial'). In general, cases regarding alleged atrocity crimes will need to meet the requirements of multiple types of jurisdictions to be heard in a domestic court.

In order to give jurisdiction to their courts to hear cases involving atrocity crimes, many States have added war crimes, crimes against humanity, and genocide into their domestic law (see, for example, [Bangladesh](#) and [the Republic of Korea](#)). To hear cases regarding crimes that took place *outside* of the State's territory, but where the accused or the victim is a national of that State, States may permit their criminal code to apply '[extraterritorially](#)'. And, recognising that atrocity crimes are [so serious they should be able to be prosecuted anywhere](#), some States give their courts '[universal jurisdiction](#)'—the ability to hear a case regarding an alleged crime committed by a (1) non-national (2) against another non-national (3) outside of the State's territory.

### But If We Have The International Criminal Court, Is 'Domestic Justice' Still Important?

Domestic justice is important for several reasons.

First, following the [principle of complementarity](#), national courts retain primary jurisdiction to investigate and prosecute atrocity crimes under the Rome Statute. The ICC only has jurisdiction where a State Party is 'genuinely unwilling or unable' to do so. The Court recognises that the pursuit of justice for core crimes through national courts is actually *preferred*.

Second, the [ICC's jurisdiction is limited](#) to investigating and prosecuting atrocity crimes only in cases where: (1) the alleged crimes were committed within a State Party's territory; (2) the alleged perpetrators are nationals of a State Party; or (3) where a State has accepted the jurisdiction of the Court; and (4) where a case is referred to the ICC by the United Nations Security Council.

Third, and **most importantly**, bringing atrocity crimes cases to domestic courts may be more accessible to survivors, victims, and their families. This could be because a domestic court's jurisdiction may not be limited in the same manner as the ICC—as in the [universal jurisdiction case in Argentina](#) regarding crimes against the Rohingya that took place wholly within Myanmar. Or, a domestic court may be geographically closer to victims and witnesses—potentially reducing the cost and time it takes for survivors to 'have their day in court'. Or, a domestic court and legal process may be more familiar and less distant for the victims.

To provide greater opportunities to advance domestic justice, States are sharing resources and tools for the investigation and prosecution of atrocity crimes. This includes establishing [joint investigation teams](#), [providing mutual legal assistance](#), bolstering inter-State cooperation, and contributing to the sustainability of [evidence-collecting independent investigative mechanisms](#). Together, this sends a strong message that atrocity crimes anywhere will not go unpunished, and impunity will not be tolerated.