

Every day, in every region of the world, men, women and children are subjected to torture. In the great majority of cases, there is no investigation of these crimes and no one is prosecuted for them. Torture is committed with impunity.

Impunity sends the message to torturers that they will get away with it. Impunity denies the victims and their relatives the right to have the truth established, the right to see justice done and the right to reparation.

This report highlights the shameful fact that most torturers commit their crimes safe in the knowledge that they will never face arrest, prosecution or punishment. However, the tide is turning. Public awareness is greater than ever before. More and more governments are willing to bring torturers to justice, at least those from other countries. As part of Amnesty International's worldwide campaign against torture, this report shows how governments can take the next steps to overcome impunity.



End impunity

Justice for the victims of torture

End impunity

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AMNESTY INTERNATIONAL



STAMP OUT
TORTURE



End impunity

Justice for the victims of torture

This report is one of a series of publications issued by Amnesty International as part of its worldwide campaign against torture. Other reports issued as part of the campaign, which was launched in October 2000, include:

Take a step to stamp out torture (AI Index: ACT 40/013/2000);

Hidden scandal, secret shame — Torture and ill-treatment of children (AI Index: ACT 40/038/2000);

Broken bodies, shattered minds — Torture and ill-treatment of women (AI Index: ACT 40/001/2001);

Stopping the torture trade (AI Index: ACT 40/002/2001);

Crimes of hate, conspiracy of silence — Torture and ill-treatment based on sexual identity (AI Index: ACT 40/001/2001);

Racism and the administration of justice

(AI Index: ACT 40/020/2001).

The campaign aims to galvanize people around the world to join the struggle to end torture.

- ***Take a step to stamp out torture*** – join Amnesty International’s campaign against torture
- Join Amnesty International and other local and international human rights organizations which fight torture
- Make a donation to support Amnesty International’s work
- Tell friends and family about the campaign and ask them to join too
- Register to take action against torture at ***www.stoptorture.org*** and campaign online. Visitors to the website will be able to appeal on behalf of individuals

Cover: A Chilean human rights activist and relative of a victim of abuse is escorted by police out of a Congress meeting in Valparaiso on 21 June 2000. The meeting was interrupted when human rights activists started to shout slogans demanding that those responsible for violations during the rule of President Augusto Pinochet between 1973 and 1990 be brought to justice.

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at risk of torture.

Amnesty International (AI) is a worldwide movement of people who campaign for human rights. AI works towards the observance of all human rights as enshrined in the Universal Declaration of Human Rights and other international standards. It seeks to promote the observance of the full range of human rights, which it considers to be indivisible and interdependent, through campaigning and public awareness activities, as well as through human rights education and pushing for ratification and implementation of human rights treaties.

AI's work is based on careful research and on the standards agreed by the international community. AI is a voluntary, democratic, self-governing movement with more than a million members and supporters in more than 140 countries and territories. It is funded largely by its worldwide membership and by donations from the public. No funds are sought or accepted from governments for AI's work in documenting and campaigning against human rights violations.

AI is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of the victims whose rights it seeks to protect. It is concerned solely with the impartial protection of human rights.

AI takes action against some of the gravest violations by governments of people's civil and political rights. The focus of its campaigning against human rights violations is to:

- free all prisoners of conscience. According to AI's statute, these are people detained for their political, religious or other conscientiously held beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status – who have not used or advocated violence;
- ensure fair and prompt trials for all political prisoners;
- abolish the death penalty, torture and other ill-treatment of prisoners;
- end political killings and “disappearances”.

AI calls on armed political groups to respect human rights and to halt abuses such as the detention of prisoners of conscience, hostage-taking, torture and unlawful killings.

AI also seeks to support the protection of human rights by other activities, including its work with the United Nations (UN) and regional intergovernmental organizations, and its work for refugees, on international military, security and police relations, and on economic and cultural relations.

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Justice for the victims of torture

Amnesty International Publications

Please note that readers may find some of the photographs and case histories contained in this report disturbing.

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INTRODUCTION

Five Kurdish women from eastern Turkey, members of the Peace Mothers Initiative, were arrested together with a male interpreter by Turkish gendarmes at the Iraqi border on 4 October 2000. They were interrogated throughout the night by three men in plain clothes and one soldier. The next morning they were brought to the gendarmerie headquarters in Silopi. One of the women, Azize Yildiz, said: "After they sprayed something into the cell, we started to vomit and bleed from our noses. They put pressure on us in particular to accuse our interpreter Murat Batgi. We heard him screaming as he was tortured." Murat Batgi was reportedly beaten, had his testicles squeezed and was threatened with death. The women said that during their interrogations they were blindfolded, stripped naked, beaten around the head and neck and strangled with their headscarves. Soldiers took nude photos of Azize Yildiz, telling her that they would send them to a daily newspaper.

The women tried to raise their treatment with the authorities. According to Azize Yildiz, they told a prosecutor what had happened at the gendarmerie. "But he didn't care about it and told us 'be quiet about it'."

On 7 October 2000, while Azize Yildiz and the other detained Peace Mothers were being brought before a prosecutor in Turkey, Kikuni Masudi was being arrested in the Democratic Republic of the Congo (DRC) by security service agents from the *Agence nationale de renseignements* (ANR), National Intelligence Agency. It appears that the sole reason for his arrest was that the ANR thought he belonged to the Tutsi ethnic group, although in fact, he did not. Tutsi have frequently been persecuted by the DRC authorities because they were believed to support the Tutsi-dominated armed opposition groups waging war in northern and eastern parts of the country.

Kikuni Masudi was taken to an ANR detention centre where, according to reports, he was whipped, covered in palm oil and made to sit on a hot brazier. His feet were crushed by hammer blows. It seems that the torture continued until at least 13 October 2000.

On the day of Kikuni Masudi's arrest, in Wamena town, Papua, Indonesia, around 80 detainees, some of them children, were reportedly tortured in police custody. They had been arrested on 6 October during clashes which began when police and soldiers tried to remove pro-independence flags. Most of those arrested were released shortly afterwards, and several then told local human rights monitors that they had been kicked and beaten by the police. One man, reportedly a member of the pro-independence militia group, the Papua Taskforce (*Satgas Papua*), said that he and several others were ordered to strip to their underwear and were then kicked and beaten with rifle butts and canes. The police forced them to drink urine and put guns in their mouths, threatening to kill them if they did not renounce their support for Papuan independence.

Yohanes Udin was one of those arrested in Wamena. He had apparently photographed the security forces' operations to take down Papuan flags on 6 October and was arrested the following day. Other detainees said they witnessed Yohanes Udin being kicked and beaten by police officers, who caused serious injuries. He was taken to hospital, but was pronounced dead on arrival.

Indonesia's National Commission on Human Rights publicly criticized the government's repressive approach in Papua and a delegation from the National Commission and the National Commission on Violence against Women visited Wamena to investigate the violence. No report was published of their findings and no other steps appear to have been taken to prosecute and punish those responsible for the torture and death of Yohanes Udin and the torture of other detainees.

In each of these cases, Amnesty International (AI) sent out urgent action appeals calling for investigations into the reports of torture and ill-treatment and for those responsible to be brought to justice. In each of these cases, the authorities failed to investigate the incident or to prosecute those responsible. Serious torture allegations were ignored, concealed, dismissed or denied by police, military, prosecutors and other state officials.

October 2000 was not an exceptional month, and 7 October was not an exceptional day. In every region of the world, in

every month and on every day, people are tortured and ill-treated by those in power. On an even wider scale, but largely unreported, is the violence and abuse that women, children and members of disadvantaged groups suffer at the hands of relatives, employers and members of their community. In the great majority of cases, there is no investigation of these crimes and no one is prosecuted for them. Torture – one of the most serious crimes possible – is committed with impunity.

October 2000 was also the month in which AI launched a major worldwide campaign against torture. In its report *Take a step to stamp out torture*,¹ AI reminded states of their obligations under international law to bring those responsible for torture to justice. AI members in sections around the world also campaigned in their countries for courts to be allowed to exercise universal jurisdiction, so that suspected torturers in their territory can be prosecuted or extradited to stand trial elsewhere. The campaign also seeks to support and strengthen international mechanisms of justice such as the International Criminal Court.

About this report

This is a report about impunity for torture. It highlights the shameful fact that most of those who torture, order torture or fail to intervene in torture escape without ever being investigated, prosecuted, tried or punished. It demonstrates the widespread failure to give victims of torture the rehabilitation, compensation and other forms of reparation they need and deserve. However, this report also shows that progress is being made in the effort to overcome impunity. Public awareness of the issue is greater than ever before, and ground-breaking measures have been taken to ensure that alleged torturers who escape justice in their own country can be held to account internationally. Efforts to hold alleged torturers to account in foreign courts have inspired and strengthened action in the states where the crimes were committed. Although impunity for torture remains the norm in many countries of all political persuasions, the seemingly impregnable shield protecting the torturer from justice is beginning to be pierced.

Crimes such as torture, crimes against humanity and war crimes are so serious that they concern the international community as a whole. This report provides an analysis of the prohibition of torture in international law and the rights of torture victims to reparation. It explores the barriers to justice in national laws and practices and stresses that the struggle against impunity must be waged primarily at the local and national level. The report records the welcome developments in the quest for justice internationally, and concludes with a series of recommendations aimed at governments to promote the fair and effective prosecution of those alleged to be responsible for a crime of torture or a related crime.

The understanding of what constitutes torture is not fixed for all time. In particular, there is growing acceptance of the responsibility of states for protecting people not only against torture by their own agents, but also against similar practices by private individuals ("non-state actors").

The state may be accountable in a number of different ways: it is responsible for abuses by private individuals or entities to whom it delegates responsibilities; it shares responsibility for acts of violence by private individuals when it supports or tolerates them; it can also be held responsible when it fails in other ways to provide effective protection against torture or ill-treatment. Under international human rights law, states have an obligation to act with due diligence to prevent, investigate and punish abuses of human rights, including acts by private individuals. This basic principle of state responsibility is established in all the core human rights treaties.

This report, however, concentrates on impunity for torture by agents of the state or by armed political groups. This is

Protesters in the USA accompany a mock coffin during a march demanding justice for Abner Louima, a Haitian immigrant who suffered severe internal injuries after New York police officers tortured him at a Brooklyn police station in August 1997. Despite elaborate attempts by officers to lie about their involvement, one was sentenced in December 1999 to 30 years' imprisonment, and three others were convicted in March 2000 of conspiring to cover up the incident. Abner Louima received record compensation in July 2001. Public pressure was an important element in overcoming impunity in this case.

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the area of AI's expertise, although it is increasingly working to combat torture by non-state agents. In this report, therefore, the term "torture" is used to refer to the deliberate infliction of severe pain or suffering by state agents, or similar acts by private individuals for which the state bears responsibility through consent, acquiescence or inaction. Torture also refers to deliberate pain or suffering inflicted by members of armed political groups.

Overcoming impunity: a vital step towards stamping out torture

The opinion polling company Gallup International interviewed more than 50,000 people in 60 countries in late 1999 for their Millennium Survey. Among many other questions, the respondents were asked what measures they thought would be

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"very effective" or "quite effective" in reducing or eliminating torture. A total of 77 per cent of the respondents answered that more prosecutions would be.² Public opinion is joined by such experts as the UN Special Rapporteur on torture, who wrote that "impunity continues to be the principal cause of the perpetuation and encouragement of human rights violations and, in particular, torture."³

Despite public opinion and expert advice, governments around the world rarely investigate, prosecute, try and punish torture as a serious crime under criminal law. However, torture is nothing less than that: a serious crime against the person, like murder, manslaughter or grievous bodily harm.

Torture has a further dimension – that of betrayal by the authorities responsible for protecting people from harm. Whether the perpetrator is an agent of the state or whether the state has failed to take the necessary measures to provide protection from torture and ill-treatment, the victim has been let down by the very people and institutions who have a legal duty to ensure their safety.

Impunity sends the message to torturers that they will get away with it. Bringing the culprits to justice not only deters them from repeating their crimes, it also makes clear to others that torture and ill-treatment will not be tolerated. However, when the institutions responsible for upholding the law routinely flout it when dealing with their own members, they undermine the whole criminal justice system.

Impunity must also be overcome because it denies justice to the victims, robbing them a second time of their rights. Impunity itself can be seen as a multiple human rights violation, denying the victims and their relatives the right to have the truth established and acknowledged, the right to see justice done and the right to an effective remedy to obtain reparation. It prolongs the original hurt by seeking to deny that it ever took place – a further affront to the dignity and humanity of the victim.

Many of those who suffer torture come from already disadvantaged groups – women, children, members of ethnic minorities and, overwhelmingly, the poor. These are the very people who find access to redress difficult if not impossible. They may lack the know-how, the contacts or the finances to

pursue a complaint against those who have tortured them. They may find that those in authority are unlikely to believe them, and they may suffer further abuse for daring to complain. Members of groups that face widespread hostility, such as street children, political suspects or people who express their sexuality in non-traditional ways, are both more vulnerable to torture and less able to gain justice.

The links between torture, impunity and discrimination are complex and deep-rooted. They can be seen whenever a police officer assaults a criminal suspect without fear of retribution; whenever a combatant rapes a woman from an "enemy" group; whenever a racist gang attacks an asylum-seeker. In each case, the torturer is manifesting and reinforcing unequal power relations. In each case, those unequal power relations make it unlikely that the abuser will be held to account. When impunity for torture is used as an instrument of social control, powerful forces have an interest in maintaining it.

The legal and procedural mechanisms for investigating and prosecuting torturers are essential, but on their own they are not enough to overcome impunity. What is needed is the political will to bring in the necessary reforms to laws and institutions, to maintain permanent vigilance, to combat discrimination and to take action on each and every case of torture.

Chapter 1: No lasting reconciliation without justice

The toll of impunity

Solid country-by-country statistics about the crime of torture are not available. It is impossible to say how many people were tortured in the last century, the last decade or the last year. We do know that from the beginning of 1997 until mid-2000, AI received reports of torture or ill-treatment committed by state officials in more than 150 countries. In more than 70 countries, such torture and ill-treatment appeared to be widespread or persistent. In more than 80 countries, people reportedly died as a result.

Whatever the truth about the incidence of torture, official statistics and the reports of non-governmental organizations show that the number of criminal investigations and subsequent prosecutions and convictions bears no relation to the frequency of the crime. In Turkey, for example, investigations of 577 security officials accused of torture between 1995 and 1999 resulted in only 10 convictions, while in the same period 2,851 investigations into cases of ill-treatment led to 84 convictions.⁴

Reports of rape and sexual assault by members of the Turkish security forces continued through 2000. The methods of sexual violence included electric shocks and beatings on the genitals and women's breasts, and rape. By November 2000, 132 women had sought help from a legal aid project in Istanbul, claiming to have been raped or otherwise sexually assaulted by police officers, gendarmes, soldiers or village guards. The perpetrators were rarely brought to justice.⁵

In Brazil, the use of torture is widespread and systematic to extract confessions, to dominate, humiliate and control those in detention, or to extort money. Since the introduction of a new Torture Law in April 1997, only 16 cases of torture have been brought to trial, and few of those have resulted in conviction. The majority of torture victims are criminal suspects held in detention, predominantly poor, undereducated, and often of Afro-Brazilian descent. Most have no opportunity to lodge complaints about the torture they suffer, or access to the

necessary medical and legal assistance. The few complaints that are made are rarely fully investigated, and even more rarely do they lead to prosecutions under the Torture Law. The systematic use of torture and ill-treatment by police and prison guards has come to be regarded as the acceptable price of an increasingly repressive public security policy, looking to combat rapidly rising crime figures at any cost.⁶

In Mexico, despite hundreds of complaints of torture being submitted to the National Human Rights Commission, there were no more than seven convictions between 1990 and 1996 for torture or homicide resulting from torture.⁷ The Committee against Torture (the expert body that monitors compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – the UN Convention against Torture) blamed "the ineffectiveness of efforts to put an end to the practice of torture" squarely on "the continuing impunity of torturers".

The protracted conflict in Sierra Leone has shown the human price of allowing torture to be committed with impunity. A peace agreement concluded between the government and the armed opposition in July 1999 provided an amnesty for the many combatants who had raped and maimed unarmed civilians. The agreement provided for a general amnesty for all acts committed in pursuit of the armed conflict which began in March 1991 when forces of the Revolutionary United Front (RUF) entered Sierra Leone in an attempt to overthrow the government. Many thousands of atrocities had been committed by both rebel and government forces during eight years of conflict without anyone being called to account. Criminal investigation and prosecution of the perpetrators before national courts in Sierra Leone was an avenue closed by the peace agreement.

The Special Representative of the UN Secretary-General for Sierra Leone, when signing the peace agreement, added that the UN did not recognize the amnesty as applying to genocide, crimes against humanity, war crimes and other serious violations of international humanitarian law. However, the UN subsequently did little or nothing to address the blatant negation of justice in the July 1999 peace agreement. The

warring parties absolved themselves and each other alike. Serious human rights abuses continued, although for a short while on a lesser scale; even though the amnesty only covered the period up to July 1999, impunity continued.

In mid-2000 the peace agreement broke down and intense fighting resumed between government and rebel forces, again accompanied by serious abuses of human rights and international humanitarian law. The international community was forced to reconsider the peace agreement and the provision of the amnesty.⁸ In October 2000 the UN Secretary-General delivered a report on the establishment of a Special Court for Sierra Leone to the UN Security Council, which included a draft agreement between the UN and the government of Sierra Leone to set up a mixed international and Sierra Leonean court which would exercise jurisdiction over crimes against humanity, war crimes and serious violations of international humanitarian law, committed since 30 November 1996. However, although this would partially revoke the general amnesty provided for in the 1999 peace agreement, those responsible for torture and other abuses committed between 1991 and November 1996 would not be prosecuted before the Special Court. With the amnesty incorporated into Sierra Leonean law and the collapse of the national criminal justice system as a result of the conflict, there appeared to be virtually no prospect of their being prosecuted in national courts either.

Russian federal forces have been involved in widespread torture, "disappearances" and unlawful killings of civilians during the continuing conflict in Chechnya. The Russian federal government has shown no commitment to an independent process of establishing accountability, but has created instead dependent bodies with limited powers (for example, with no mandate to initiate investigations). By September 2000, according to a senior official, 517 criminal cases had been initiated against Russian servicemen, but only 20 of these concerned crimes committed against the civilian population, although several thousand complaints from civilians had been received. AI knows of no case in which criminal charges have been brought in relation to torture of civilians by Russian forces in Chechnya. A case which was being heard at the end of June

2001 concerned an army colonel accused of abducting and murdering an 18-year-old Chechen woman. Additional rape charges originally levelled against him were reported to have been redirected against one of his soldiers and then dropped under the terms of a general amnesty.

Impunity for human rights violations in Chechnya mirrors a pattern only too visible in peacetime in other parts of the Russian Federation. The dismissal in October 1995 of the Minister of Internal Affairs of the Republic of Mordovia, and subsequent sentencing of six police officers to prison terms ranging from three to nine and a half years, was a rare instance of officials being brought to account. Police officers had beaten criminal suspects on the genitals, kidneys, face and other parts of the body and had nearly suffocated them using gas masks, in order to obtain confessions. In one case a young man, Oleg Igonin, died. The convictions were obtained as a result of the actions of one judge, who suffered threats and intimidation.

Allegations of ill-treatment by law enforcement officials are regularly received from all parts of the Russian Federation by AI. The authorities' response is usually a failure to investigate the case at all. In the few instances where an investigation is launched into the activities of law enforcement officials, it is usually conducted inadequately and leads to the case being closed for lack of evidence. It is rare for a case to reach the court.

Official Chinese statistics reveal that every year, hundreds of cases of torture and ill-treatment are investigated by the Chinese authorities. However, for every case investigated, there are countless others which are ignored or covered up by officials.⁹

In a recent report on torture in China, AI stated that "official responsibility has often been denied in the face of compelling evidence of torture... In other cases, police have taken care to destroy what they know to be increasingly important evidence to substantiate criminal charges. For example, police have cremated bodies in the absence of any consent from families, they have offered compensation to families who sign agreements not to carry out an autopsy, they



have put families under extreme pressure to cremate a body before an examination can be carried out by a recognized hospital.”¹⁰

In Bangladesh, more than 50 people reportedly died in custody as a result of torture during 2000. In the same year many more people were subjected to beatings, rape, electric shocks and other torture. The authorities have rarely acted to bring the perpetrators to justice. The normal practice has been to wait until there is an outcry in the country before ordering an official inquiry. Rarer still have been the occasions in which criminal charges have been brought against law enforcement personnel.

In Egypt, torture remained widespread in 2000 with electric shocks, beatings and suspension by the wrists or ankles among the most common methods. Several people died in custody in circumstances suggesting that torture or ill-treatment may have caused or contributed to their deaths. Hundreds of complaints of torture have been filed over the last 10 years; most have never been investigated.

Victims of torture and ill-treatment have a right to see justice done, to have the truth about what happened to them acknowledged and to receive compensation and other reparations for the harm they have suffered. Society as a whole also has a right to know the truth. Bringing alleged torturers to justice should be routine in every state, just as for ordinary criminals, because every state should be accountable

Supporters of the Tiananmen Mothers demonstrate during Chinese President Jiang Zemin's visit to Hong Kong, May 2001. Placards demanded an end to impunity and a full and public account for the massacre in Beijing on 4 June 1989 when soldiers opened fire on unarmed civilians, killing hundreds and injuring thousands.

for its actions and its omissions. It should be accountable both to its own citizens and to the international community. In reality, many torturers get away with their crimes and some carry on committing them. The toll of impunity is the continuing suffering of victims, the continuing use of unlawful violence and the undermining of the rule of law in national and international affairs alike. It is in the interest of all states that promote the rule of law to fight impunity for torture, at home and abroad. The toll of impunity is, simply, the continued repetition of the crime.

Sierra Leone: gross human rights abuses go unpunished

On 22 December 1995, several civilians were ambushed by a group of armed rebels near the village of Gbaama in Bo District, Southern Province. The rebels threatened to kill their captives, but told one, an electrical engineer in his forties, that he was going to be given a message for Gondama, some 11 kilometres south of Bo, the site of a large displaced people's camp. They then cut off his hand with a machete. They put his hand into a bag and told him to go to Gondama and say that the rebels were in control of the area.¹¹

This incident is just one of thousands of atrocities committed by rebel forces of the Revolutionary United Front, who have been responsible for widespread and systematic torture of civilians. Women and girls have been raped. Victims have been mutilated, often by having their hands cut off.

Government forces have also been responsible for torture. In the village of Bongor, Bo District, a young man suspected of being a rebel because he let off a hand grenade in late September 1994, was arrested by soldiers. He was interrogated and beaten. When he refused to talk, his face, chest and abdomen were cut with a knife. He was held during the night and the following day was left to lie in the sun; no one was allowed to assist him. He subsequently died. Two of his friends and an elderly man in whose house he had been staying were also reported to have been beaten and then taken away by soldiers. Their fate is unknown.

Those responsible for these and many other atrocities will not be punished by the UN-sponsored Special Court for Sierra Leone, because they were committed before November 1996. The Special Court's jurisdiction will be limited to crimes committed since 30 November 1996. AI has called for the Special Court to have the jurisdiction to try crimes against humanity, war crimes and other serious violations of international humanitarian law committed since the conflict began in 1991.¹²

Bringing perpetrators to justice

Impunity is the failure to bring to justice and punish those responsible for serious violations of human rights and international humanitarian law. This is often due to a lack of political will, since the state itself, or a particular arm of the state such as the police or military, is frequently directly responsible or indirectly complicit. Impunity can also result

from a government's failure to prioritize human rights on its domestic political agenda, or from an overt agreement between two sides in an armed conflict not to investigate and punish perpetrators of human rights abuses. Whatever the cause, impunity means a denial of justice for the victims and creates a climate where individuals can continue to commit violations without fear of arrest, prosecution or punishment.

A state's failure to bring those responsible for torture to justice often goes hand in hand with a refusal to investigate the facts of the matter and an unwillingness to provide reparations for victims. In such a case the result is often a threefold breach of international obligations on the part of the state, because under international law victims have the right to know the truth about what happened to them, to see justice done and to have their harm repaired to the extent possible. (See Chapter 3.)

In October 2000, at the start of its campaign *Take a Step to Stamp Out Torture*, AI issued a 12-Point Program for the Prevention of Torture by Agents of the State (see Appendix 1). In Point 6 of the 12-Point Program, AI urges that all complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. In Point 7, AI calls for those responsible for torture to be brought to justice in fair trials.

At the very least, imprisoning a torturer ensures that he or she will not continue or repeat the crime for at least a certain period of time. Perhaps more important is the example set. By bringing perpetrators to justice a government sends a clear message that torture and other serious violations of human rights and humanitarian law will not be tolerated and that those who commit such crimes will be held accountable before a court of law. This helps to ensure that individual acts of torture perpetrated by some do not degenerate into a widespread or systematic occurrence of the crime perpetrated by many.

Punishing perpetrators is essential to give justice to the victims. A criminal trial is well suited to establishing the truth, at least with respect to the guilt or innocence of the suspected torturer. It is also a forum that enables victims to have their story heard, which can contribute to their rehabilitation. A criminal verdict is often an important element in attempts by

victims or their dependants to obtain compensation and other reparations. However, bringing perpetrators to justice does not only mean justice for the victims, it also satisfies the rightful claim of the community at large for accountability on the part of those who govern society and for the right to know the truth about serious crimes.

From a legal point of view, bringing perpetrators of torture to justice is of the utmost importance in upholding the rule of law. When state agents are implicated in serious crimes it is crucial that they do not get away with it. Governments can only promote respect for the rule of law if they show a determination to uphold the law at all times. Under international law, bringing perpetrators of torture to justice is a state obligation. States that do not honour their international obligations make a mockery of international justice and international law.

In many countries, torture is intimately linked to discrimination against particular ethnic, racial, religious or other social groups, and in times of internal armed conflict or civil strife torture may be used as a weapon of war. The attribution of individual responsibility for serious crimes such as torture can help to prevent intensifying sectional hatred by eliminating collective attribution of guilt to groups. Furthermore, without truth and justice there will be no effective and lasting reconciliation.

Allowing widespread or systematic torture and other serious violations to go unpunished, even after political transitions or peace agreements, stands in the way of true reconciliation. As the UN Secretary-General has declared: "...the granting of amnesties to those who committed serious violations of international humanitarian and criminal law is not acceptable. The experience of Sierra Leone has confirmed that such amnesties do not bring about lasting peace and reconciliation."¹³

Over the past decade, truth commissions have become a standard part of the repertoire of regime change, conflict resolution and peace building in situations involving a past legacy of massive human rights violations. Truth commissions are distinct from courts of law and do not normally determine individual criminal liability or order criminal sanctions. They focus not on just one event but on past abuses over a specified



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Amal Farouq Mohammad al-Maas adds her signature to the millions pledging to do everything in their power "to ensure that the rights in the Universal Declaration of Human Rights become a reality throughout the world" as part of A l's campaign in 1998. Amal Farouq Mohammad al-Maas was interrogated and tortured by officers of the State Security Investigations Department (SSI) in Cairo, Egypt, in 1993 and 1996. In 1999 she was invited to participate in a UK television interview about her treatment in detention but was unable to continue after SSI officers installed surveillance equipment in her home and threatened her with arrest.

period of time (often using a select range of cases to highlight broader patterns). Truth commissions have a temporary lifespan, usually concluding with a report. In a number of instances, sweeping amnesties have been granted to perpetrators following the publication of the report.

Truth commissions often play an important role in establishing an authoritative record of the past and in providing the victims with a platform to tell their stories and obtain redress. But truth commissions are not a substitute for justice in the form of full and fair prosecutions; they generally cannot subpoena witnesses or punish perjury; they are inherently vulnerable to politically imposed limitations and manipulation; their structure, mandate, resources, access to information, willingness or ability to take on sensitive cases – even the wording of the final report – are often determined by the political forces that created them.

AI generally recommends that where truth commissions are established, they should respect due process, establish the truth, facilitate reparations to victims and make recommendations

designed to prevent a repetition of crimes. However, truth commissions cannot be used as an alternative to bringing the perpetrators of human rights violations to justice.

A number of states have given those responsible for torture impunity through amnesties, pardons and similar measures. Such measures are not only prohibited under international law, but are inconsistent with the state's duty to bring to justice those responsible for such violations. AI has consistently opposed amnesties, pardons and similar measures of impunity that prevent the emergence of the truth, a final judicial determination of guilt or innocence and satisfactory reparations to victims and their families.

The 1993 UN World Conference on Human Rights declared that "[s]tates should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations, thereby providing a firm basis for the rule of law."¹⁴ Amnesties, pardons and similar measures of impunity have also been rejected at the international level by the UN Secretary-

"They raped me a thousand times. I am not the one who should be standing here. It is the policemen that rape that should be here." Nazli Top, *centre*, is one of 19 people charged with "insulting the Turkish army and police" for describing sexual torture in custody at a conference. Their trial began in Istanbul in March 2001. Seven police officers accused of torturing Nazli Top were cleared of charges against them. The father of a young torture victim, N.C.S., was accused of slander for reading a message to the conference from his daughter who had been sexually abused in a police station in March 1999, with her friend Fatma Deniz Polattas. Both young women are now in prison.

General, the Security Council, the General Assembly, the UN Commission on Human Rights, the International Criminal Tribunal for the former Yugoslavia (Yugoslavia Tribunal), the Committee against Torture and the Human Rights Committee.

Providing reparations to victims

Holding perpetrators to account is vitally important, but it is only one element in doing justice to victims. They are also entitled to reparations. There are five types of reparation: financial compensation; medical care and rehabilitation; restitution (seeking to restore the victim to his or her previous situation); guarantees of non-repetition; and forms of satisfaction such as restoration of their dignity and reputation and a public acknowledgement of the harm they have suffered. The harm done must, as far as possible, be repaired.

The consequences of torture on the individual victim and their immediate family are both profound and long-lasting. Sometimes victims need long-term or expensive medical treatment or therapy. Sometimes their expectations of life have been changed dramatically by their terrible experience. It would be grossly unfair to make them or their dependants pay the price for the harm they have suffered. A related argument holds that governments and state agents should not profit from their crimes. This argument holds not only that reparations should be made to the victims, but also that such reparations should come from those responsible. In any event, victims are entitled to compensation for the harm inflicted, regardless of its long-term consequences. If states or their agents inflict torture or allow it to take place, they commit a serious human rights violation and they should, therefore, adequately compensate the victims. A just scheme of redress should take into account both the harm done and its longer-term consequences.

The legal arguments for providing adequate reparations to victims of torture are essentially the same as for bringing perpetrators to justice. When state agents are implicated in serious human rights violations it is crucial that the financial, medical, social and other consequences of such violations are carried by those responsible. Governments can only promote

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respect for the rule of law seriously if they show a clear willingness to uphold the law if state agents violate it. Governments are under several international and regional obligations to ensure that victims of torture have an enforceable right to fair and adequate reparation.¹⁵ Again, states that do not honour their international obligations make a mockery of international justice and international law.

The turning tide

Non-governmental organizations, AI among them, have been campaigning for many years to end impunity for torturers and other perpetrators of serious violations of human rights. Although in many countries impunity is still the rule and justice the exception, the tide seems to be turning, however slowly. More and more governments recognize the importance of bringing perpetrators to justice, if not at home, then abroad.

The arrest of Augusto Pinochet in October 1998 in the United Kingdom transformed public awareness of the possibilities for overcoming impunity, both within Chile and internationally. After former President Pinochet was returned to Chile in March 2000 from the United Kingdom, which, for medical reasons, decided not to extradite him to Spain, the Santiago Court of Appeals ruled that his parliamentary immunity should be lifted. In early 2001 Augusto Pinochet was taken into custody to stand trial on charges connected with the "Caravan of Death" in October 1973. The number of lawsuits in which Augusto Pinochet was named as a suspect for crimes committed during his presidency had risen to 241 by the end of February 2001 (see Chapter 5). Although the Santiago Court of Appeals decided in July 2001 to suspend proceedings on all charges as he was deemed unfit to stand trial, the Pinochet case continues to inspire all those fighting against impunity.

Victims of torture in many countries have organized to pursue the people responsible for their suffering through the courts. In Argentina, years after amnesty laws put a stop to prosecutions for atrocities committed during the "dirty war" of the late 1970s and early 1980s, senior officials are in custody in connection with the "disappearance" of babies born to mothers in secret custody. Several international human rights bodies

have ruled that the anguish of relatives of the "disappeared" can constitute torture. A judge has recently ruled the amnesty laws unconstitutional (see below).

During 2000 in Suriname and the Netherlands, investigations were ordered into allegations that former army commander and head of state Desiré Delano Bouterse was involved in torturing and extrajudicially executing 15 people in Fort Zeelandia, Suriname, in December 1982.

There have been concerted efforts to prosecute former president Hissène Habré both in Senegal (his country of exile) and in Chad, where he ruled between 1982 and 1990. His regime was characterized by systematic human rights violations including torture. Although so far unsuccessful, this was the first time in the 10 years since Hissène Habré left power that any steps towards serious criminal proceedings had been taken in Chad (see Chapter 5).

The Cambodian parliament agreed in January 2001 to a law allowing for the prosecution of some former "Khmer Rouge" leaders before a panel of both national and international judges. The Government of Democratic Kampuchea (Khmer Rouge) ruled over Cambodia between April 1975 and January 1979, years in which millions of Cambodians were victims of crimes against humanity, including torture and political killings. A similar approach is under way for Sierra Leone.

These efforts to bring perpetrators to justice, even when the crimes were committed many years ago, have been encouraged by, and reflected in, moves towards international justice.

The principle of universal jurisdiction allows states to investigate and try people suspected of serious crimes under international law, irrespective of the nationality of the perpetrator, the nationality of the victim and the place where the crime was committed. The most widely known criminal proceedings in the exercise of universal jurisdiction have been triggered against former heads of government, but there have been a number of other cases of the exercise of universal jurisdiction in recent years. For example, in Belgium, four Rwandese nationals were convicted in 2001 of war crimes committed in the context of the 1994 genocide in Rwanda. In Switzerland, in May 2000, a Rwandese citizen was sentenced to

14 years' imprisonment for war crimes. In Denmark, a Bosnian Muslim seeking asylum was sentenced to eight years' imprisonment in 1994 for having murdered and tortured detainees in a concentration camp in Bosnia-Herzegovina. Between May 1997 and December 1999, four people were convicted in Germany on charges of genocide, severe ill-treatment of Muslims and being an accessory to murder in Bosnia-Herzegovina.

Argentina: reversing the denial of justice?

On 29 December 1990, Argentine President Carlos Menem released the imprisoned former leaders of the military governments which had ruled Argentina between March 1976 and December 1983. Other high-ranking officers who were serving prison terms for their part in serious human rights violations such as "disappearances", torture and extrajudicial executions were also freed.

The leaders of the military juntas had been tried in 1985 and convicted of homicide, torture or illegal detention by a Federal Appeal Court in Buenos Aires. Their trial lasted from April until December 1985 and more than 800 people testified. It called the trial "unique in modern Latin American history" because at that time it was "the only case of leading government figures who had presided over a period of gross violations of human rights being brought before a court of law to account for their misdeeds" in the courts of their own country.¹⁶ According to official records, during the period of military rule, 8,960 people "disappeared", although the true number is almost certainly higher and may never be known. Among them were about 200 children, born while their mothers were illegally detained, some of whom were given to childless couples connected to the security forces to raise as their own.

Soon after the trial of the junta leaders, the new government of Argentina under President Raúl Alfonsín raised barriers to further prosecutions. These included the *Punto Final* or "Full Stop" Law, which was passed in December 1986. The *Punto Final* Law set a 60-day deadline for the initiation of new prosecutions of members of the armed forces, police or prison services accused of crimes committed during the military rule. Despite the extremely short deadline, there were investigations and prosecutions under way against more than 300 officers. However, faced with several quickly suppressed military uprisings, President Alfonsín ended the prosecutions of those still in active service. In 1987 Congress passed the *Obediencia Debida Law*, Law of Due Obedience, which automatically granted immunity

from prosecution to all but senior officers on the presumption that other officers had just been following orders. Senior officers could still be prosecuted if, within 30 days of the new law coming into effect, a federal court decided that they had had decision-making capacity or had drafted orders to commit crimes. The Argentine Supreme Court upheld the constitutionality of the Law of Due Obedience, and charges against more than 300 people were dropped.

Isolated military uprisings continued between 1987 and 1990 in protest against the prosecutions that did continue even after the promulgation of the *Punto Final* Law and the Law of Due Obedience. These were relied on by Carlos Menem, who succeeded Raúl Alfonsín in June 1989, to justify releasing the former senior military officers and leaders of the military juntas. After a promising start in 1985, justice was in retreat.

In April 1995 the UN Human Rights Committee, mandated with monitoring the implementation of the International Covenant on Civil and Political Rights, found that the *Punto Final* Law and the Law of Due Obedience were inconsistent with Argentina's obligations under the Covenant. In addition, judicial investigations into the "disappearance" of more than 70 Italian and about 300 Spanish nationals in Argentina between 1976 and 1983 were pursued in Italy and Spain.

In 1997 a federal judge in Buenos Aires opened an investigation into the fate of children who "disappeared" with their parents or were born while their mothers were held in illegal detention. The Grandmothers of the Plaza de Mayo, a non-governmental human rights organization, provided the federal judge with the names of about 200 "disappeared" children. The abduction of children had been excluded from the *Punto Final* Law and the Law of Due Obedience, as well as from the presidential pardons. In 1998, three former senior officers were arrested on charges related to cases of "disappeared" children. Among them were Jorge Raphael Videla, president of the military junta between 1976 and 1981, and Emilio Massera, a former navy commander-in-chief and former member of the junta. They were among those who had been released eight years earlier.

In March 2001 federal Judge Gabriel Cavallo ruled, in connection with a case of murder and kidnapping in 1978, that the *Punto Final* Law and the Law of Due Obedience were unconstitutional. Many hoped that this ruling would have far-reaching consequences for other cases of "disappearance", torture and extrajudicial execution that had gone unpunished for up to 25 years. After sustained campaigning by Argentine and international human rights organizations, clearly stated opinions from international human rights bodies and initiatives in foreign courts, justice seemed to be back on track.

As well as the exercise of universal jurisdiction by national courts, the international community is putting into place international mechanisms to overcome impunity and enforce international law when national justice fails or torturers flee.

During the 1990s the UN created two international tribunals to prosecute those responsible for genocide, crimes against humanity and war crimes – including the systematic or widespread use of torture – committed in Rwanda and the former Yugoslavia. Despite problems of under-resourcing and lack of cooperation from individual states, the tribunals have indicted and convicted a number of people on torture-related charges.

The transfer of former president Slobodan Milošević to the custody of the International Criminal Tribunal for the former Yugoslavia (Yugoslavia Tribunal) marked another step towards ending the impunity enjoyed by senior political figures suspected of responsibility for massive violations of international law in the conflict in the former Yugoslavia.

In 1998 the international community voted overwhelmingly in Rome to establish a permanent international criminal court with jurisdiction over perpetrators of torture when it constitutes genocide, a crime against humanity or a war crime. The International Criminal Court will come into being when 60 states have ratified the Rome Statute. By 28 June 2001, 37 states had already ratified and 139 states had signed the Statute. It was generally expected that the Court would be established before 2003.

Although most torturers in most countries escape without investigation, prosecution or punishment, there is a growing international momentum to bring to justice those responsible for gross human rights violations. The climate is changing, and the goal of overcoming impunity comes a step closer with every successful prosecution.

Chapter 2: The crime of torture and related crimes under international law

Every act of torture is a crime under international law. If committed in the context of an armed conflict, whether international or internal, such acts constitute a war crime. If committed as part of a systematic or a widespread pattern of criminal conduct, whether in peace or war, acts of torture constitute a crime against humanity. Although the core concepts of these crimes are very similar, they nonetheless differ from each other in important respects. For purposes of international criminal law, there is no single definition of torture. As the enforcement of international criminal law in most instances still falls to states and national jurisdictions, governments must ensure that they define torture in their national criminal law in such a way that it covers the independent crime of torture, the war crime of torture and the crime against humanity of torture.

Silence is a principal accomplice of torture. When the perpetrator is a police officer or soldier, other officers frequently witness the crime but remain silent. Their failure to report what they saw or heard is an often insurmountable obstacle to combating torture and a crucial contribution to continuing impunity. Therefore not only torture, but also assistance and participation in the independent crime, the war crime and the crime against humanity of torture are criminal offences under international law. They, too, must be made criminal offences under national law in every state.

Sometimes the 1984 UN Convention against Torture is considered to be the primary source of the obligation of states to investigate, prosecute, try and punish acts of torture. However, the prohibition of torture under international law can be traced back much further than the Convention against Torture, and the obligation of states to make torture and related crimes criminal offences under national law stems from a variety of sources in conventional international law, as well as customary international law, which applies to all states regardless of treaty obligations.

Sources in international law of the prohibition of torture

The Convention against Torture, which was adopted on 10 December 1984 by the UN General Assembly, provides not the sole, but certainly an authoritative, definition of torture in international law. The Convention came into force on 25 June 1987, after being ratified by 20 states. As at 1 August 2001, 125 states are parties to the Convention against Torture.

The definition of torture in Article 1 of the Convention against Torture states:

"1. For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

"2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."

The primary aim of the Convention against Torture is to strengthen a pre-existing prohibition of torture under international law. Torture was outlawed long before 1984, as evidenced by the prohibition of torture in the Additional Protocols to the Geneva Conventions (adopted in 1977); the UN Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Declaration against Torture) (adopted in 1975); the American Convention on Human Rights (adopted in 1969); the International Covenant on Civil and Political Rights (adopted in 1966); the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted in 1950);

the Geneva Conventions (adopted in 1949); and the Universal Declaration of Human Rights (adopted in 1948). The prohibition of torture in these instruments is usually considered to be a statement of customary international law as it stood at the time, rather than being itself a primary source of the prohibition.

The Charter of the International Military Tribunal at Nuremberg (the Nuremberg Charter, 1945) can be added to this list of international instruments prohibiting torture. Article 6(b) of the Nuremberg Charter gave the tribunal jurisdiction over the war crimes of ill-treatment of a civilian population and ill-treatment of prisoners of war. Torture is a form of ill-treatment. Article 6(c) of the Charter gave the tribunal jurisdiction over "other inhumane acts committed against any civilian population", besides the crimes against humanity of murder, extermination, enslavement and deportation. "Torture was not specifically referred to in Article 6(c) but it falls within the meaning of 'other inhumane acts'."¹⁷ According to the UN International Law Commission, the tribunal held that the war crimes in its jurisdiction "were already recognized as crimes under international law" before the Second World War started.¹⁸

The 1945 Allied Control Council Law No. 10 (which formed the legal basis for many prosecutions of German war criminals in Germany after the prosecution of the major war criminals before the Nuremberg Tribunal) expressly identifies torture as a crime against humanity. In 1950, the UN International Law Commission formulated the principles of international law as recognized in the Nuremberg Charter and included the war crime of torture and the crime against humanity of torture as punishable crimes under international law.

In international humanitarian law, the body of law governing the conduct of states, armies and soldiers in armed conflicts, we can trace back the prohibition of torture even further. For example, Article 16 of the Instructions for the Government of the Armies of the United States in the Field (Lieber Code) of 1863, the source of most subsequent treaties prohibiting war crimes, prohibited torture to extract confessions. Similarly, the 1907 Regulations Respecting the Laws and Customs of War on Land¹⁹ state in Article 4 that prisoners of war "must be humanely

treated" and in Article 46 that the life of persons as well as private property must be respected. It may safely be assumed that Article 46 also intends to ensure the physical integrity of persons.²⁰

Today there is no doubt that, as a rule of customary international law, any single act of torture, whether committed in time of peace or armed conflict, is prohibited in every country. Treaty-based prohibitions only strengthen this customary rule. The prohibition of torture is even considered to carry a special status in customary international law: it is a rule of *jus cogens*, a "peremptory norm" of customary international law. This means not only that it is binding on all states, but also that it cannot be overruled by treaty law, by other rules of customary law, or by local (regional) custom. States are not allowed to "contract out of" peremptory norms of customary international law, whereas rules of customary law that are not *jus cogens* can be set aside by treaty law.²¹ The view that the prohibition of torture is a rule of *jus cogens* was expressed by the UN Special Rapporteur on torture in 1986. It was supported by the Human Rights Committee (the body of experts monitoring state party compliance with the International Covenant on Civil and Political Rights) in 1994 and reaffirmed by the International Criminal Tribunal for the former Yugoslavia in 1998.²²

The prohibition of torture is absolute, meaning that it is in no way conditional upon circumstances or attributes such as the status of the victim, for instance being a prisoner of war or being a citizen or national of a certain state. The prohibition is also non-derogable, meaning that it cannot be set aside in special circumstances, such as a state of siege, a state of war or a state of emergency. Under no circumstance is torture justified, even if the treatment is authorized by national law or a superior's order.

Every criminal act is prohibited, but not every prohibited act is criminal. Apart from being a prohibited act, torture has also been acknowledged to be a crime under international law since long before the adoption of the Convention against Torture. This is especially clear for the war crime of torture and the crime against humanity of torture.

Commenting on the Nuremberg trial which took place under the terms of the London Agreement of 8 August 1945 between

the USA, France, the United Kingdom and the Soviet Union,²³ one scholar wrote:

"While there might have been some room for argument, it was fairly well established that such breaches [of the 1907 Hague Convention (No. IV) Respecting the Laws and Customs of War on Land, the 1929 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field or the 1929 Geneva Convention relative to the Treatment of Prisoners of War] gave rise to individual criminal responsibility, and the Tribunal spent little time on such analysis."²⁴

Commenting on developments since the Nuremberg trials, another authority has concluded:

"some acts of individuals that are prohibited by international law constitute criminal offenses, even when there is no accompanying provision for the establishment of the jurisdiction of particular courts or a scale of penalties. Whether international law creates individual criminal responsibility depends on such considerations as whether the prohibitory norm in question, which may be conventional or customary, is directed to individuals, states, groups or other authorities and/or to all of these. The extent to which the prohibition is addressed to individuals, whether the prohibition is unequivocal in character, the gravity of the act, and the interests of the international community are all relevant factors in determining the criminality of various acts."²⁵

In the case of torture, the prohibitory norm is unequivocal in character and directed at least to states and individuals. The gravity of the act is hardly ever questioned by states and the international community has long displayed an interest in its suppression. Therefore, not only international conventional law or treaty law, such as the Convention against Torture, but also international customary law creates individual criminal responsibility for torture.

The four Geneva Conventions of 1949 (ratified by 189 states as of May 2001) confirmed that torture committed in an international armed conflict is a war crime and even subject to

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universal jurisdiction. (See Chapter 5.) For example, Article 147 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, lists among grave breaches of the Convention torture or inhuman treatment, including biological experiments and also wilfully causing great suffering or serious injury to body or health.²⁶ Article 146 of the same Convention obliges states parties to "enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention".²⁷ It also provides that states parties to the Convention "shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts". In accordance with Article 146, a state party may also hand over a person accused of having committed a grave breach of the Convention to another state party to stand trial.

Nazi leader Hermann Goering in the witness box at the Nuremberg Tribunal, where he was convicted of war crimes and crimes against humanity. In the Nuremberg trials, the victorious allied nations – the USA, United Kingdom, France and the Soviet Union – prosecuted 22 German leaders for war crimes, and for planning and carrying out the war in Europe. The acts subject to the jurisdiction of the Nuremberg Tribunal included "inhumane acts committed against any civilian population".

In armed conflicts which are not international in character, such as civil wars or rebellions, Article 3 (common to the four Geneva Conventions) prohibits cruel treatment and torture in all circumstances, as well as outrages upon personal dignity, in particular humiliating and degrading treatment. Although these acts are not defined as grave breaches of any of the four Conventions, because they were not committed in an international armed conflict, they are, nonetheless, to be made criminal acts under the national law of states parties to the Conventions. For example, Article 146 of the Fourth Geneva Convention obliges states parties to "take measures necessary for the suppression of all acts contrary to the provisions of the present Convention *other than the grave breaches...*" [emphasis added]. In its authoritative commentary the International Committee of the Red Cross wrote:

"[t]his shows that all breaches of the Convention should be repressed by national legislation. The Contracting Parties [states parties] who have taken measures to repress the various grave breaches of the Convention and have fixed an appropriate penalty in each case should at least insert in their legislation a general clause providing for the punishment of other breaches."²⁸

The criminal nature of violations of Article 3 common to the Geneva Conventions was unequivocally reiterated in 1994 when the UN Security Council established the International Criminal Tribunal for Rwanda (Rwanda Tribunal) and expressly made violations of common Article 3 part of the Tribunal's jurisdiction.²⁹

In 1950, as noted above, the UN International Law Commission formulated the principles of international law recognized in the Nuremberg Charter. The International Law Commission included not just the war crime of torture, but also the crime against humanity of torture, as punishable crimes under international law. The Nuremberg Charter and the Nuremberg Judgment limited the jurisdiction of the Nuremberg Tribunal over crimes against humanity to those closely linked to war crimes. However, in its 1950 report to the UN General Assembly, the International Law Commission omitted the link between crimes against humanity and war crimes or situations

of war and acknowledged that crimes against humanity can also be "committed by the perpetrator against his own population".³⁰ In 1993 and 1994 the crime against humanity of torture was incorporated in the jurisdiction of the Yugoslavia Tribunal and of the Rwanda Tribunal. In 1998, the crime against humanity of torture was explicitly defined in Article 7 of the Rome Statute of the International Criminal Court.

In December 1975 the UN General Assembly adopted the Declaration against Torture. Article 7 of the Declaration provides that states shall ensure that all acts of torture, whether committed in times of armed conflict or in times of peace, and whether committed as single acts or as part of a systematic or widespread commission of the crime, "are offences under its criminal law". Nine years later this requirement was incorporated in the Convention against Torture. Article 4(i) of the Convention states: "Each State Party shall ensure that all acts of torture are offences under its criminal law." Article 6 of the Inter-American Convention to Prevent and Punish Torture, which entered into force in 1987, provides that "States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature".

In 1998 a Trial Chamber of the Yugoslavia Tribunal stated that "it would seem one of the consequences of the *jus cogens* character bestowed by the international community upon the prohibition of torture is that every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction." This opinion of the Trial Chamber affirms that the independent act of torture is a crime, not only under treaty law, but also under customary international law, and moreover that it is a crime subject to universal jurisdiction.³¹ (See Chapter 5.)

Torture as an independent crime

Article 4 of the Convention against Torture obliges states parties to ensure that all acts of torture are offences under their criminal law and that offences are punishable by appropriate penalties, which take into account the gravity of the crime. The

Convention in no way limits this obligation to torture committed as part of a large-scale or systematic pattern of crimes against humanity. It also does not limit the protection to acts of torture committed in an armed conflict. Article 4 unconditionally obliges states parties to make the independent crime of torture a criminal offence under national law.

In many, if not all, national jurisdictions, some individual acts of torture will also amount to aggravated assault, intentionally inflicting grievous bodily harm,³² or another serious offence against the person. Since such acts are criminal offences, some argue that torture can be considered to be a criminal act in those jurisdictions already. There are several problems with failing to define torture as an independent crime and relying on these other crimes, as the Committee against Torture has noted. First, they do not reflect the gravity of the crime as a crime under international law – a crime which is an attack on the fundamental values of the international community. Second, such ordinary crimes fail to incorporate all aspects of the definition of torture in Article 1 of the Convention against Torture.

The Convention against Torture covers acts perpetrated "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". Definitions of such ordinary crimes as aggravated assault or grievous bodily harm do not always take this factor into account (for example, they may recognize official immunities for ordinary crimes). From the perspective of criminal law, the official capacity of the person responsible for torture is highly relevant. Article 4 of the Convention against Torture obliges states parties to make acts of torture punishable "by appropriate penalties which take into account their grave nature". Being a representative of the state or acting in the capacity of a law enforcement official, and thus having a professional duty to serve and to protect other people, may count as an aggravating circumstance. Consequently, this factor should be reflected in the penalty for the crime of torture under national law.

Under national law, the prosecution of crimes like inflicting grievous bodily harm or committing aggravated assault may be conditional upon a formal complaint by the alleged victim.

Without a victim complaining to the police, no investigation or prosecution will be initiated. However, under Article 12 of the Convention against Torture, the state is obliged to investigate whenever there is reasonable ground to believe that an act of torture has been committed, irrespective of whether there has been a formal complaint by the victim or by anyone else.

Under many national criminal justice systems, ordinary crimes are subject to statutes of limitation, which set a time within which a prosecution must be started. The Convention against Torture implicitly prohibits the application of statutes of limitation to the crime of torture. The requirement to submit a case for prosecution or to extradite alleged torturers is absolute. There are no exceptions. Other international instruments, such as the 1998 Rome Statute of the International Criminal Court (Article 29) and the 1968 UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, expressly provide that all war crimes and all crimes against humanity shall not be subject to any statutes of limitations.

There might also be differences in jurisdiction over the crime of torture and other crimes against the person. The Convention against Torture obliges each state party to vest jurisdiction over perpetrators not only if the crime of torture was committed in the state party's territory, but also if the alleged offender is a national of that state party or is present in any territory under its jurisdiction. Under the national criminal law of many states, the latter form of jurisdiction (universal jurisdiction) does not exist for grievous bodily harm and other offences against the person. Even in those states which have universal jurisdiction over ordinary crimes, there are many restrictions on the scope of such jurisdiction which make it impossible for them to fulfil their obligations under Articles 5 and 7 of the Convention against Torture. For example, they may require that the act also be a crime in the place where it occurred (double criminality), or prohibit a prosecution where the person has previously been tried in another state (even if the trial was a sham or the person received a sentence which did not reflect the severity of the crime).

Recognizing a separate crime of torture as an offence under national criminal law is the best guarantee that states

can fulfil their obligations under the Convention against Torture to bring perpetrators to justice.

By August 2001, 125 states were a party to the Convention against Torture. Unfortunately, not all of them lived up to their treaty obligation to vest criminal jurisdiction over torture as defined by the Convention. Italy ratified the Convention against Torture in 1989, but has still not introduced a criminal offence of torture into its criminal law. In Sri Lanka, the Torture Act makes torture punishable by imprisonment for seven to 10 years, but uses a more restrictive definition of torture than that in the Convention. In Indonesia, legislation on human rights tribunals adopted by parliament in November 2000 was inconsistent with the definition of torture in Article 1 of the Convention.

The crime against humanity of torture

The reasons for making torture a separate crime under national law also apply to the crime against humanity of torture – torture committed as part of a widespread or systematic pattern of crimes against humanity. In addition, there are differences in the scope of the crime against humanity of torture as against the independent crime of torture, and possible differences in jurisdiction over these crimes under national law, especially when it comes to the exercise of universal jurisdiction.

The Convention against Torture is applicable not only to the independent crime of torture, but also when torture amounts to a crime against humanity or a war crime, since according to Article 2(2) of the Convention no exceptional circumstances such as public emergencies may be invoked as a justification of torture. However, Article 1(2) of the Convention reads: "This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application". The Rome Statute of the International Criminal Court contains exactly such provisions.

The Rome Statute defines the jurisdiction of the International Criminal Court over the crime against humanity of torture and the war crime of torture, not the national criminal jurisdiction of states over these crimes. However, the

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definitions are highly relevant for national criminal jurisdictions. The Rome Statute affirms that "the most serious crimes of concern to the international community as a whole should not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation". It also states that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" and that the International Criminal Court "shall be complementary to national criminal jurisdictions". The text clearly recognizes that national criminal jurisdictions have the primary responsibility to exercise their powers of legislation, adjudication and enforcement over the crimes within the jurisdiction of the International Criminal Court. Therefore, states should ensure that the definitions of the crime against humanity of torture and the war crime of torture under their national criminal law cover these crimes as defined in the Rome Statute.

Passers-by in Belgrade, Yugoslavia, look at posters of former President Slobodan Milošević which read "Who is to blame?", published by the Serbian student pro-democracy group OTPOR ("Resistance"). Slobodan Milošević was arrested in April 2001 on charges of corruption and fraud, and transferred to the Yugoslavia Tribunal in June 2001 to face charges of crimes against humanity and war crimes.

What are the main differences between the independent crime of torture as defined in the 1984 Convention against Torture and the crime against humanity of torture as defined in the 1998 Rome Statute of the International Criminal Court?

All crimes against humanity are acts that occur as part of a widespread or systematic pattern of similar acts directed against a civilian population. It is this element of magnitude, of being part of a whole, instead of being an independent, singular or stand-alone act, that distinguishes the crime against humanity of torture from the independent crime of torture.

Article 7 of the Rome Statute defines crimes against humanity as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; enforced disappearance of persons. There is no requirement that torture itself be widespread or systematic, only that it be part of a widespread or systematic attack (the term does not require use of military force) against a civilian population.

The Rome Statute affirms that crimes against humanity can be perpetrated in times of peace: there is no link with armed conflict, whether of an international or non-international character. The Yugoslavia Tribunal noted in its decision on jurisdictional questions in the *Tadić* case:

"It is by now a settled rule of customary international law that crimes against humanity do not require a connection to international armed conflict. Indeed, ... customary international law may not require a connection between crimes against humanity and any conflict at all."³³

The "threshold" requirement that makes an act a crime against humanity is formulated alternatively: certain acts are crimes against humanity because they are part of a widespread *or* systematic attack against any civilian population. The attack need not be widespread *and* systematic.

It might seem that the difference between the independent crime of torture and the crime against humanity of torture is solely an issue of scale. Being a crime against humanity seems only to add a further element to the crime, namely being part of a pattern or multitude of comparable offences. However, the definition of the crime against humanity of torture in the Rome Statute also brings acts under the definition of this crime which might not come under the definition in Article 1 of the Convention against Torture.

Article 7(2)(e) of the Rome Statute defines the crime against humanity of torture as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions." Two important elements of the definition in Article 1 of the Convention against Torture have been deliberately omitted. These are the (non-exhaustive) list of purposes and the reference to a public official or other person acting in an official capacity, "thus making it clear that article 7 [of the Rome Statute] includes random, purposeless or merely sadistic infliction of severe pain or suffering" and that "torture in peacetime by members of armed political groups not connected to any State would be included".³⁴ It is in these aspects that the scope of the crime against humanity of torture is broader than the independent crime of torture as defined in the Convention against Torture.

Besides differences of substance, there might also be jurisdictional differences between the crime against humanity of torture and the independent crime of torture, at least as perceived by national courts. This became apparent in November 2000 when the Amsterdam Court of Appeal in the Netherlands ordered the prosecution of the ex-leader of the former Dutch colony, Suriname, for committing crimes against humanity of torture in December 1982. The Court did not seem certain about the status of the independent crime of torture under international law in 1982, but it was satisfied that the crime against humanity of torture was a crime under international law at that time.

Crimes against humanity in Suriname and universal jurisdiction in the Netherlands

In a decision of 20 November 2000, the Amsterdam Court of Appeal ordered the Dutch Office of the Prosecution to prosecute former Suriname head of state and commander of the armed forces Desiré Delano Bouterse for offences of torture committed in Suriname on 8 or 9 December 1982.

Suriname, a former Dutch colony, had achieved independence from the Netherlands in November 1975. In February 1982 the civilian government of President Chin A. Sen was dismissed by Lieutenant Colonel Desiré Delano Bouterse, commander-in-chief of the Suriname armed forces. A new civilian government was appointed in April 1982, but Lieutenant Colonel Bouterse, aided by a military committee, retained control. In October 1982 the *Moederbond*, Suriname's largest trade union confederation, organized a series of strikes demanding a return to civilian rule. The strikes ended after the military authorities agreed to negotiate with Cyril Daal, chairman of the *Moederbond*. On 8 December 1982, a number of prominent civilians, including Cyril Daal, were arrested by the military authorities following alleged disturbances in the capital, Paramaribo. Fifteen people were extrajudicially executed, at least some after being tortured. Among them were journalists, lawyers, university lecturers and politicians. Lieutenant Colonel Bouterse stated on Suriname television that Cyril Daal and the others were arrested on suspicion of plotting a coup and that they had been shot while trying to escape. However, according to eyewitnesses the victims' bodies bore signs of torture and the victims were shot through the front of their heads or chests.³⁵

Relatives of the victims tried, for a long time unsuccessfully, to persuade the authorities to investigate and prosecute Lieutenant Colonel Bouterse and his alleged accomplices in the "December killings". In 1997, two relatives filed a complaint at the Amsterdam Court of Appeal in the Netherlands because the Dutch prosecutor refused to prosecute Lieutenant Colonel Bouterse for his alleged role in the events of December 1982. The complaint resulted in the Amsterdam Court of Appeal decision of 20 November 2000, which for the first time asserted extraterritorial jurisdiction of a Dutch court over crimes against humanity perpetrated outside the context of an armed conflict.

The Amsterdam Court of Appeal considered that the crimes of which Lieutenant Colonel Bouterse is suspected can be considered as crimes against humanity because the acts were committed systematically according to a previously devised plan by the military authorities, of which Lieutenant Colonel Bouterse was in charge. The acts were directed against a group of civilians

with the aim of securing confessions or to intimidate or coerce members of the civilian population.

The Amsterdam Court of Appeal concluded that, although in 1982 the Convention against Torture was not yet in existence, there was sufficient ground to believe that the systematic and planned multiple torture of civilians at that time was considered a crime against humanity under customary international law. The Court also held that under international law in 1982, a state was authorized to exercise universal jurisdiction over a non-citizen suspected of such a crime.³⁶

The Court considered the 1989 Dutch Convention against Torture Implementation Act to be the legal basis enabling the prosecution of crimes of torture which were crimes under international law before the Implementation Act became effective. The Court distinguished between retrospective and retroactive application of the Implementation Act. Retroactive application of the Act would make an act punishable that was not punishable at the time it was committed. This would be a violation of the principle of legality, meaning that no act is criminal without it being a criminal offence at the time it was committed. Retrospective application means, in this case, that the Implementation Act is not used to criminalize certain acts, but is only used to provide Dutch courts with criminal jurisdiction over acts that were already recognized as crimes under international law at the time they were committed.

The Office of the Prosecution in Amsterdam appointed a prosecutor to start an investigation into the “December killings”, but later decided to seek a decision of the Dutch Supreme Court on the issue of jurisdiction. As of 30 May 2001 the Supreme Court had not handed down a decision.

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Khiam detention centre, south Lebanon. De Gaulle Boutros stands by an electricity pylon from which he was suspended with a hood over his head, doused with water, given electric shocks and beaten with electric cables. In May 2000 the gates of Khiam detention centre were forced open and the last 144 prisoners released. Detainees at the centre run by the South Lebanon Army (SLA) militia in cooperation with the Israeli army were routinely tortured. The main perpetrators of torture in Khiam, whether Israeli or SLA officials, have not been brought to justice.

The war crime of torture

The war crime of torture differs in several respects from the crime against humanity of torture. It does not require the torture to have been committed as part of a large number of criminal acts of comparable gravity in a widespread or systematic manner. A single and isolated act of intentionally inflicted severe pain or suffering for certain purposes upon a person not taking part in hostilities by an agent of an adverse party is a war crime of torture when committed in the context of an armed conflict.

According to Article 8 of the Rome Statute of the International Criminal Court, the war crime of torture can be committed in an international armed conflict against a person protected by one or more of the 1949 Geneva Conventions³⁷ and in an armed conflict not of an international character against people who are *hors de combat* or are civilians, medical personnel or religious personnel taking no active part in hostilities.³⁸

The war crime of torture under the Rome Statute covers acts that are committed for certain purposes, such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind.³⁹

This requirement for the war crime of torture that the act be committed for certain purposes does not mean that the same physical acts committed without the perpetrator having a clear purpose in mind will go unpunished under the Rome Statute. Article 8 of the Statute contains several crimes that cover the same (and more) physical acts as the war crime of torture, but which do not require a certain purpose on the part of the perpetrator. Examples are the war crime of inhuman treatment (applicable in international armed conflicts if committed against a person protected by one or more of the 1949 Geneva Conventions)⁴⁰ and the war crime of cruel treatment (applicable in non-international armed conflicts if committed against people who are *hors de combat* or are civilians, medical personnel or religious personnel taking no active part in hostilities).⁴¹ Other examples are the crime of wilfully causing

great suffering or serious injury to body or health,⁴² crimes of mutilation⁴³ and crimes of outrages upon personal dignity.⁴⁴

Insofar as they constitute grave breaches under the Geneva Conventions, the war crimes of torture, inhuman treatment and wilfully causing great suffering are subject to mandatory universal jurisdiction or extradition in states parties to these Conventions.

The war crime of torture as defined in the Rome Statute can be committed by people who are not agents of the state or acting with the consent or acquiescence of state agents. Therefore, the scope of this crime as to perpetrators is broader than torture as defined in the Convention against Torture. In this respect the war crime of torture is comparable to the crime against humanity of torture as defined in Article 7 of the Statute.

Definitional and jurisdictional differences between the independent crime of torture, the crime against humanity of torture and the war crime of torture means that states should make these different crimes of torture under international law separate criminal offences under their national systems of criminal law. In doing so, they should give due respect to their obligations under such international instruments as the Geneva Conventions, the Convention against Torture and the Rome Statute.

Ancillary crimes

Torture and other grave human rights violations committed by agents of the state are usually not the result of the actions of just one police officer or soldier who is out of control. On the contrary, they are often the product of a deliberate policy, implemented by organs of the state and overseen or at least tolerated by other state officials. Even when torture is not the product of a policy, it is often a common practice in which officials with command responsibility acquiesce. Other police officers or security force members are usually present or close enough to know what is happening, and they have chosen not to intervene and not to report the crime.

Article 7 of the Declaration against Torture calls upon states to criminalize "participation in, complicity in, incitement to or

an attempt to commit torture". The Convention against Torture, the Geneva Conventions and the Rome Statute make assisting others in the commission of the crime of torture a criminal act under international law. However, there are differences in the way these treaties criminalize acts of assistance in torture.

Article 4 of the Convention against Torture obliges states parties to make complicity and participation punishable by appropriate penalties. Article 25 of the Rome Statute gives the International Criminal Court jurisdiction over those who order, solicit or induce the war crime of torture or the crime against humanity of torture. It also gives the International Criminal Court jurisdiction over those who aid, abet or otherwise assist or intentionally contribute in any other way to the commission of such crimes. Article 4 of the Convention against Torture and Article 25 of the Rome Statute make clear that there are two main categories of collusion under international criminal law. In the first category are acts which aim to trigger the crime (such as ordering, soliciting or inducing the criminal offence), while in the second are acts which help in actually carrying out the crime (aiding and abetting and assisting in the criminal offence).

Under Article 28 of the Rome Statute, commanders can be held criminally responsible for crimes committed by subordinates if they knew or should have known that these crimes were being perpetrated or about to be committed, and if they failed to take all necessary and reasonable measures to prevent or repress the crimes or submit the cases to prosecutors. Civilian superiors are held to a similar standard. The failure to prevent torture is also explicitly made a crime by the 1985 Inter-American Convention to Prevent and Punish Torture. Article 3 states that "[a] public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, *being able to prevent it, fails to do so*" [emphasis added] shall be held guilty of the crime of torture.

The Convention against Torture and the Rome Statute are more explicit in attributing international criminal responsibility for the war crime of torture than the 1949 Geneva Conventions. Article 49 of the First Geneva Convention, which substantially is common to all four Geneva Conventions,⁴⁵ obliges states parties

"to enact any legislation necessary to provide effective penal sanctions for persons committing, *or ordering to be committed*, any of the grave breaches of the present Convention..." [emphasis added]. The war crime of torture and related war crimes are among the grave breaches listed in Article 50 and referred to in Article 49 of the First Geneva Convention.⁴⁶ The Geneva Conventions are silent on forms of assistance other than ordering the war crime of torture. Since the Rome Statute provides the more comprehensive system of criminal responsibility for ancillary crimes, and since the future International Criminal Court is to be complementary to national courts, it should be regarded by states as setting out most of the ancillary crimes that should be criminalized in national criminal law.

What is on the accessory's mind?

When it pronounced judgment on Anto Furundzija on 10 December 1998, the Yugoslavia Tribunal considered the question of how to distinguish perpetrating torture from aiding and abetting torture. The Tribunal summarized its view as follows:

To be guilty of torture as a perpetrator or co-perpetrator of torture the accused must:

- participate in an integral part of the torture, and
- partake of the purpose behind the torture, that is the intent to obtain information or a confession, to punish or intimidate, humiliate, coerce or discriminate against the victim or a third person.

To be guilty of torture as an aider or abettor of torture the accused must:

- assist in some way which has a substantial effect on the perpetration of the crime, and
- have knowledge that torture is taking place.⁴⁷

This distinction between perpetrating and aiding or abetting follows the general structure of a criminal act: a bad act committed with a guilty mind. The distinction drawn by the Tribunal has two aspects. First, the act of the perpetrator differs from that of the aider or abettor. A perpetrator participates in

an integral part of the torture. This means that torture can be committed by two or more perpetrators (co-perpetrators), as long as all of them act in a way which contributes substantially to the act of torture. Usually, depending on the circumstances, standing guard outside the room where torture is committed will not be considered a *substantial* contribution; handling torture equipment while it is actually used to torture a person will. Second, the Tribunal made clear that for criminal liability, the aider or abettor does *not* have to have the same intention as the torturer (to obtain information or a confession, to punish or intimidate, humiliate, coerce or discriminate against the victim or a third person). All that is necessary to establish criminal liability is that the aider or abettor knew that someone else was committing torture, and that the assistance provided had a substantial effect on the commission of the crime.

Rape and other sexual crimes

"Rape by soldiers has of course been prohibited by the law of war for centuries, and violators have been subjected to capital punishment under national military codes, such as those of Richard II (1385) and Henry V (1419)."⁴⁸ Rape was also prohibited by the Lieber Code in 1863 in the American Civil War. Nonetheless, rape is widespread in armed conflicts.

In Guatemala, for example, during the civil war of the 1970s and 1980s, massacres of Mayan villagers were preceded by the rape of women and girls. In one case in December 1982, Guatemalan soldiers entered the village of Dos Erres, La Libertad, in the northern department of Petén. By the time they left three days later, it is estimated that more than 350 people – men, women and children – had been killed. The women and girls had been subjected to mass rape before being slaughtered. The investigation into this massacre has been hampered by repeated death threats and acts of intimidation against relatives of the victims and members of forensic teams. Nineteen years later, no one has been brought to justice, despite detailed eye-witness accounts.

However, rape by agents of the state is not confined to times of war, as evidenced in AI's report *Broken bodies, shattered*

minds — *Torture and ill-treatment of women*, published in March 2001 as part of the organization's Campaign against Torture. The report states that acts of sexual violence by government agents are a common method of torture or inhuman treatment inflicted on women. Such acts include rape and other forms of sexual abuse, virginity testing, sexually offensive language and touching. From January to September 2000 alone, AI documented cases of torture and ill-treatment of women in custody in countries including Bangladesh, China, Democratic Republic of the Congo, Ecuador, Egypt, France, India, Israel, Kenya, Lebanon, Nepal, Pakistan, Philippines, Russia, Saudi Arabia, Spain, Sri Lanka, Sudan, Tajikistan, Turkey and the USA.⁴⁹

Rape and other sexual crimes are criminal offences under national law in most states. Under international law, in certain circumstances they also amount to torture. In the case of *Aydin v. Turkey*⁵⁰ the European Court of Human Rights stated:

"Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence."⁵¹

The European Court of Human Rights also stated that in this case the victim was subjected to a series of terrifying and humiliating experiences while in custody, such as being kept blindfolded, beaten and forced to parade naked in humiliating circumstances. The Court concluded:

"Against this background the Court is satisfied that the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amount to torture in breach of Article 3 of the Convention".⁵²

International law has long prohibited rape and other forms of sexual assault but until recently it has provided no definition of these crimes.⁵³ The international criminal tribunals for former Yugoslavia and Rwanda have started to fill this gap. The Rwanda Tribunal stated, in its decision in the *Akayesu* case:

"Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person. Like torture, rape is a violation of personal dignity, and rape in fact constitutes torture when inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Chamber defines rape as a physical invasion of a sexual nature, committed on a person under circumstances which are coercive."⁵⁴

In its decision in the *Furundzija* case, the Yugoslavia Tribunal relied heavily on the *Akayesu* decision, handed down only a few months earlier. It held that "the central elements of the crime of rape cannot be captured in a mechanical description of objects or body parts".⁵⁵ The Tribunal found that the following may be accepted as the objective elements of rape:

- (i) the sexual penetration, however slight:
 - (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
 - (b) of the mouth of the victim by the penis of the perpetrator;
- (ii) by coercion or force or threat of force against the victim or a third person.⁵⁶

The Yugoslavia Tribunal added:

"international criminal rules punish not only rape but also any serious sexual assault falling short of actual penetration. It would seem that the prohibition embraces all serious abuses of a sexual nature inflicted upon the physical and moral integrity of a person by means of coercion, threat of force or intimidation in a way that is degrading and humiliating for the victim's dignity. As both these categories of acts are criminalised in international law, the distinction between them is one that is primarily material for the purposes of sentencing".⁵⁷

In defining torture in armed conflict, the Yugoslavia Tribunal stated:

"International case law, and the reports of the United Nations Special Rapporteur evince a momentum towards

addressing, through legal process, the use of rape in the course of detention and interrogation as a means of torture and, therefore, as a violation of international law. Rape is resorted to either by the interrogator himself or by other persons associated with the interrogation of a detainee, as a means of punishing, intimidating, coercing or humiliating the victim, or obtaining information, or a confession, from the victim or a third person. In human rights law, in such situations the rape may amount to torture.”⁵⁸

In July 1998, the Rome Statute of the International Criminal Court expressly criminalized rape and other forms of sexual assault (including sexual slavery,⁵⁹ enforced prostitution, forced pregnancy and enforced sterilization) as crimes against humanity and war crimes.⁶⁰ States must ensure that their national criminal legislation covers these crimes too.⁶¹

Ill-treatment: a crime under international law

The Convention against Torture does not treat torture and other forms of cruel, inhuman and degrading treatment or punishment (ill-treatment) in the same way. Although torture is expressly defined in Article 1 of the Convention, ill-treatment remains undefined; although the Convention obliges states parties to provide their courts with universal jurisdiction over torture, it does not require the same in relation to ill-treatment, although, in Article 16, it does require states parties to take a number of measures to prevent ill-treatment. On first sight, this might lead to the conclusion that unlike torture, other forms of ill-treatment are not considered to be crimes under international law. Such a conclusion would not be correct.

In times of international armed conflict, ill-treatment (in the terminology of the Geneva Conventions: “inhuman treatment” and “wilfully causing great suffering, or serious injury to body or health”) are prohibited and criminalized as grave breaches of the 1949 Geneva Conventions. They are therefore subject to mandatory universal jurisdiction in the 189 states parties to the Geneva Conventions. These grave breaches are also

incorporated in the jurisdiction of the Yugoslavia Tribunal and of the future International Criminal Court.

Common Article 3 of the Geneva Conventions, which applies to non-international armed conflicts, prohibits “violence to life and person”, in particular “mutilation, cruel treatment and torture” and also prohibits “outrages upon personal dignity, in particular humiliating and degrading treatment”. These terms include “other forms of cruel, inhuman and degrading treatment or punishment”. The drafters of common Article 3 avoided a detailed list of prohibited acts in order to ensure that it had the broadest possible reach, leaving no loophole. As the official commentary by the International Committee of the Red Cross explained,

“It is always dangerous to go into too much detail – especially in this domain. However great the care taken in drawing up a list of all the various forms of infliction, it would never be possible to catch up with the imagination of future torturers who wished to satisfy their bestial instincts; the more specific and complete a list tries to be, the more restrictive it becomes. The form of wording adopted is flexible, and, at the same time, precise.”⁶²

It is by now clear that prohibited acts under common Article 3 are also criminal acts and, therefore, should be repressed by states through their criminal law.

Article 7 of the Rome Statute criminalizes both the crimes against humanity of torture, rape and other forms of sexual violence, and the crime against humanity of “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” This brings many acts which may not amount to torture under the Rome Statute or the Convention against Torture, but which do amount to other forms of ill-treatment, into the jurisdiction of the future International Criminal Court. Such acts should, therefore, also be criminalized at the national level, if they occur as part of a widespread or systematic attack directed against any civilian population.

Does ill-treatment also constitute an independent crime under international law? According to the Inter-American Convention to Prevent and Punish Torture, it does. Article 6 of

this Convention provides that states parties "shall take effective measures to prevent and punish other cruel, inhuman or degrading treatment or punishment within their jurisdiction."

The Convention against Torture is less explicit on the matter, but the 1975 UN Declaration against Torture states in Article 10: "If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings." There is no reason to doubt that the appropriateness of the proceedings should correspond to the seriousness of the acts.

Chapter 3: Victims' right to reparations

An act of torture is a breach of the state's obligations under international law. This breach creates new obligations for the state. The state must investigate the act of torture, bring perpetrators to justice in fair and effective criminal proceedings and punish them appropriately. The state must also award appropriate reparations to the victim, including compensation, rehabilitation, restitution (restoring the victim to the previous situation), satisfaction (such as restoration of reputation and public acknowledgement of the harm suffered) and measures to ensure non-repetition. Like the other obligations that follow from an act of torture, the duty to provide reparations rests with the state, not a particular government. "In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims."⁶³

The right to reparations includes individual measures and general, collective measures.

Individually, victims – including relatives or dependants – must have an effective remedy. They are entitled to:

- restitution (seeking to restore the victim to his or her previous situation);
- compensation (for physical or mental injury, including lost opportunities, defamation and legal aid costs);
- rehabilitation (medical care, including psychological and psychiatric treatment).

Collective measures include public recognition by the state of its responsibility, and measures to ensure that the crime will not be repeated. These include repealing laws which facilitate torture and ill-treatment (such as emergency provisions allowing prolonged incommunicado detention), disbanding armed political groups and removing from office senior officials implicated in serious violations.

The right to an effective remedy

Victims of torture have a right to an effective remedy – the right to enforce their rights, if need be by judicial means. The right to such an effective remedy is of paramount importance when a state fails to take action on its own initiative to investigate, prosecute and provide redress when torture is alleged. As one expert on the International Covenant on Civil and Political Rights wrote:

"In practical terms, whatever the nature of the situation with respect to the theoretical existence of the rights and freedoms recognized in the Covenant, their true enjoyment ultimately depends on securing the existence of an 'effective remedy' for anyone who claims that there has been a violation of his [or her] rights and freedoms."⁶⁴

The right to an effective remedy is recognized in several human rights standards. For example, Article 8 of the Universal Declaration of Human Rights states:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

This right is enshrined in Article 2(3) of the International Covenant on Civil and Political Rights:

"Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted."

Similarly, the European Convention on Human Rights provides in Article 13:

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In May 2000, hundreds of people demonstrated in Sierra Leone against the armed opposition Revolutionary United Front (RUF) which had been responsible for many thousands of atrocities including mutilations and systematic rape. Some 20 people were killed and dozens of others injured outside the home of the RUF leader, Foday Sankoh, when his forces opened fire on the crowd. Foday Sankoh was later arrested in Freetown. In a significant move to end impunity, the UN Security Council resolved in August 2000 to establish a Special Court for Sierra Leone.

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The American Convention on Human Rights contains provisions on the right to judicial protection in Article 25:

"1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

- "2. The States Parties undertake:
- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b. to develop the possibilities of judicial remedy; and
 - c. to ensure that the competent authorities shall enforce such remedies when granted."

The 1981 African Charter on Human and Peoples' Rights provides in Article 7(i) that every person shall have the right to have his or her cause heard, which comprises:

"the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force".

The right to an effective remedy comprises several issues. The UN Special Rapporteur on the question of the impunity of perpetrators of human rights violations (civil and political)⁶⁵ wrote:

"[The right to justice] implies that all victims shall have the opportunity to assert their rights and receive a fair and effective remedy, ensuring that their oppressors stand trial and that they obtain reparations."⁶⁶

Restitution, compensation and rehabilitation

Point 10 of AI's 12-Point Program for the Prevention of Torture by Agents of the State states that victims of torture and their dependants should be entitled to obtain prompt reparations from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

The right to reparations, including restitution, compensation and rehabilitation, is enshrined in several international standards. The Convention against Torture provides in Article 14:

"1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In

the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."

The Inter-American Convention to Prevent and Punish Torture provides in Article 9:

"The States Parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture."

The 1998 Rome Statute of the International Criminal Court contains elaborate provisions on reparations to victims in Article 75:

"1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

"2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

"3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States."

The set of principles for the protection and promotion of human rights through action to combat impunity, annexed to the 1997 report of the Special Rapporteur on the question of impunity,⁶⁷ Louis Joinet, are known as the Joinet Principles.

These principles divide victims' rights into three categories:

- the right to know, containing principles on the inalienable right to know the truth about past human rights violations, principles on extrajudicial commissions of inquiry and principles on the preservation of and access to information regarding human rights violations;

- the right to justice, containing principles on the distribution of (criminal) jurisdiction between national, foreign and international courts;
- and the right to reparation containing principles on reparation procedures, the scope of the right to reparation and principles on non-recurrence of violations.⁶⁸

In 2000, the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights,⁶⁹ M. Cherif Bassiouni, submitted his final report to the UN Commission on Human Rights. To the report he attached draft basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law (the Van Boven-Bassiouni Principles). In these basic principles and guidelines the following forms of reparation are acknowledged: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁷⁰

According to these basic principles and guidelines, restitution includes restoration of liberty, legal rights, social status, family life and citizenship, return to one's place of residence and restoration of employment and return of property. Rehabilitation includes medical and psychological care, as well as legal and social services. Compensation should be provided for any economically assessable damage resulting from the violation, including physical and mental harm, lost opportunities, material damages and loss of earnings, harm to reputation or dignity and costs required for legal or expert assistance, medicines and medical services and psychological and social services. The basic principles and guidelines recommend that states develop means of informing the general public and victims of violations of these rights and remedies and of all available legal, medical and other services to which victims may have a right of access.

States often fail to fulfil their obligation to ensure appropriate reparations for victims, and even where they do provide compensation and other forms of reparations, the findings in civil procedures often do not lead to criminal prosecutions.

In Egypt, over the past decades, hundreds of torture victims have been awarded compensation by civil courts' yet criminal

prosecutions for torture are rare.⁷¹ According to official figures, between January 1993 and September 1998, civil courts awarded compensation ranging from 500 to 50,000 Egyptian pounds (about US\$150 to US\$15,000) in 648 cases. A typical example is the case of Ahmad 'Assim Yusuf Isma'il. He was detained from 6 July until 23 November 1995, during which time he was stripped and beaten and whipped on sensitive parts of his body by officers of the State Security Investigations Department (SSI). On

The Joint Principles: the right to reparation

The set of principles for the protection and promotion of human rights through action to combat impunity⁷² contains the following general principles on the right to reparation:

- *Principle 33. Rights and duties arising out of the obligation to make reparation*
Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.
- *Principle 34. Reparation procedures*
All victims shall have access to a readily available, prompt and effective remedy in the form of criminal, civil, administrative or disciplinary proceedings ... In exercising this right, they shall be afforded protection against intimidation and reprisals. Exercise of the right to reparation includes access to the applicable international procedures.
- *Principle 35. Publicizing reparation procedures*
Ad hoc procedures enabling victims to exercise their right to reparation should be given the widest possible publicity by private as well as public communication media. Such dissemination should take place both within and outside the country, including through consular services, particularly in countries to which large numbers of victims have been forced into exile.
- *Principle 36. Scope of the right to reparation*
The right to reparation shall cover all injuries suffered by the victim; it shall include individual measures concerning the right to restitution, compensation and rehabilitation, and general measures of satisfaction... In the case of forced disappearances, when the fate of the disappeared person has become known, that person's family has the imprescriptible right to be informed thereof and, in the event of decease, the person's body must be returned to the family as soon as it has been identified, whether the perpetrators have been identified, prosecuted or tried or not.

6 September 1997 a court awarded Ahmad 'Assim Yusuf Isma'il 5,000 Egyptian pounds (about US\$1,500), accepting eyewitness testimony of his torture and acknowledging that members of the SSI were responsible. However, his torturers were never prosecuted.⁷³

In India, monetary compensation has been granted to a number of victims of torture and the relatives of those who have died in custody by both the courts and by the National Human Rights Commission. The Commission has taken a leading role in calling for victims and their relatives to be provided promptly with monetary compensation, commonly recommending "interim" payment of Rs.200,000 (about US\$4,300) for deaths in custody. In several cases the Commission has pressed state governments who have failed to implement such recommendations. However, in 1995 the Commission suggested that monetary compensation for victims of police abuse should be taken from the individuals responsible, and state governments have reportedly accepted this proposal. In AI's view this would incorrectly imply that the state is not responsible for the illegal actions of individual law enforcement officials.

Civil actions in foreign courts

Forms of international justice are necessary to complement national criminal justice systems because some states are unwilling or unable to bring torturers to justice. The same is true for reparations to victims: international justice is often needed as a last resort and may (as in the case of criminal proceedings) become a catalyst for justice at home.

States must permit suits to be lodged against anyone found in their territory or jurisdiction who is accused of responsibility for torture or other serious violations of human rights or international humanitarian law. States must ensure that victims can use national criminal or civil procedures to obtain reparations from anyone responsible for torture who is in their territory or jurisdiction at the time of criminal or civil proceedings, even if that person is only there temporarily. No person responsible for torture can expect immunity from civil

jurisdiction in another state, because the courts of that state act on behalf of the entire international community in implementing international, rather than national, law.

States must cooperate with each other with a view to halting and preventing torture and other violations of human rights and international humanitarian law. This principle was spelled out more than a quarter century ago in the 1973 UN Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity. The duty on states is not limited to criminal cases. Principle 3 provides:

"States shall co-operate with each other on a bilateral and multilateral basis with a view to halting and preventing war crimes and crimes against humanity, and shall take the domestic and international measures necessary for that purpose."

This means that states should also ensure that victims (wherever they are located) can enforce judgments, awards and protection orders (such as those requiring the tracing, freezing, seizing and forfeiture of property). This applies whether the judgment or award is obtained in civil (or criminal) courts in other states, in international criminal courts or in other international procedures, such as arbitration. AI, together with other non-governmental organizations, is working for the adoption of an international treaty to ensure that victims can enforce such judgments anywhere in the world. However, states must not enforce sham or unfair judgments.⁷⁴

Chapter 4: Injustice at home

There are many barriers to the investigation, prosecution and punishment of torture. In most countries where torture is committed with impunity, the problem is not a lack of appropriate legislation, but a lack of political will to address crimes committed by state officials or others who wield power. When the political will exists to pursue those responsible for torture and other violations, and the legal tools are available, other obstacles can be overcome.

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Thousands of Bangladeshi women attend a rally in Dhaka on 3 February 2001 to protest against *fatwas* (religious edicts) which result in the imposition of floggings and stonings, often until death. These edicts are issued by the Muslim clergy, mostly against women who assert themselves in village life. In January 2001 a landmark decision by the High Court ruled that such edicts were illegal and must be made punishable by an act of parliament, but the ruling was subsequently stayed and is still being considered. However, the judgment has highlighted the failure of the government to protect women against the practice of *fatwa*.

Barriers to criminal investigations, prosecutions and convictions

International law is clear that all states are obliged to prohibit torture and to bring to justice perpetrators of torture and related crimes. Yet successful prosecutions for torture are still rare and torture persists in many countries around the world. There are several reasons for this gap between the requirements of international law and the reality on the ground.

In some jurisdictions, domestic law does not prohibit torture in line with the Convention against Torture or other relevant international standards. The specific crime of torture may not exist and crimes such as "assault" may have a lesser sanction. Where the crime of torture is recognized in national law, it may be defined or interpreted too narrowly. In addition, when prosecutions for serious human rights violations are pursued many years later, statutes of limitation in national law – which set a time within which a prosecution must be started – may pose a serious problem.

There are many other flaws in the legal framework of certain countries which can contribute to impunity. The accused may escape conviction solely by pleading that they were only following orders, even though this ground is expressly prohibited as a defence in the Convention against Torture. The superior officers

responsible for ordering or condoning an act of torture may not be held criminally liable.

In some cases, courts fail to convict despite the existence of convincing evidence which would establish the suspect's guilt beyond reasonable doubt. Even where a conviction is secured, impunity may persist if the sentence is grossly disproportionate to the gravity of the crime or in the case of a pardon.

The most blatant of obstacles to investigations and prosecutions is formed by national amnesty laws and provisions intended to shield perpetrators from justice. In past decades such amnesty laws have been introduced, then restricted, in countries including Argentina, Chile and Sierra Leone. In Peru attempts to annul two 1995 amnesty laws have been unsuccessful, at least as at March 2001.

Many people have in the past been granted immunity from prosecution, based either on such specific amnesty laws or on the presumption of immunity because of their official capacity. The *Pinochet* case shed welcome light on such categorical exclusions from prosecution. In the United Kingdom the House of Lords decided on 24 March 1999 that the former President did not enjoy immunity from prosecution for torture and conspiracy to commit torture, even though at the time he had immunity for these crimes in Chile because of his status as senator for life. Immunity from prosecution was subsequently lifted in Chile.

Often, laws granting immunity from prosecution for torturers have been introduced in periods of political transition, for example following a period of military rule or as part of negotiations ending an armed conflict. Under these laws people known to have committed torture have been shielded from prosecution, ostensibly to promote national reconciliation. The argument that such measures are needed in order to guarantee the stability of the transition and in order for society's wounds to heal may seem powerful. However, experience has shown that where justice is denied in the name of national reconciliation, a heavy price is paid by society as a whole, as well as by the victims and their relatives. In order to build a new social and legal order founded on strong human rights principles and the rule of law, the needs of justice and reconciliation must be recognized as complementary, rather than mutually exclusive.

In some countries, although national legislation does not allow torture or ill-treatment, confessions extracted under torture are regularly used to gain convictions, positively encouraging the use of torture and ill-treatment by law enforcement officers. In many countries justice is hampered or obstructed through a lack of prompt, independent, impartial and thorough investigations.

Torture is normally carried out in secret and considerable efforts are often made to conceal or destroy evidence vital to the successful prosecution and conviction of the torturer. Investigations – where they occur – are often stalled because of the inaction, ineffectiveness or complicity of the investigating body. Even where complaints of torture are pursued, only a tiny proportion of officers prosecuted are eventually convicted. The "code of silence" which operates in many police and security forces may dissuade officers from giving vital evidence against colleagues accused of torture.

Sometimes victims are intimidated into keeping silent about what happened. Those who do present a complaint may be threatened, attacked or prosecuted on criminal counter-charges such as defamation. Victims from poor and marginalized sectors of the community are often unable to call on the support of lawyers or non-governmental organizations, and may be unaware of the legal remedies available to them. Some victims of violence against women, including rape and other forms of serious sexual abuse, face such social stigma that fear and shame make them reluctant to come forward to testify.

Flaws in the national legal framework

Under the Convention against Torture, states parties are obliged to make torture as defined in Article 1 of the Convention a criminal offence under their national law. Many states parties have done this, although some only after pressure from non-governmental organizations and the persistent recommendation of international bodies such as the Committee against Torture. Others, such as Italy, have not. In India, which signed the Convention against Torture in 1997, but had still not ratified it by March 2001, the criminal law lacks a provision which

criminalizes torture and even the Constitution does not contain an express prohibition of torture.

Although torture is prohibited under the Armenian Constitution, a major obstacle in bringing alleged perpetrators to justice is the lack of a specific offence of torture in the Criminal Code of Armenia.⁷⁵ Armenia's latest report to the Committee against Torture states that the new criminal code, still in draft form as of February 2001, will define torture as an

Nepal: a constitutional prohibition of torture, but no offence under the criminal law

Nepal's Constitution prohibits torture, but the Torture Compensation Act (TCA), which allows victims of torture to apply for compensation, does not define torture in line with the Convention against Torture. Furthermore, the TCA does not criminalize torture, but merely gives judges the power to direct the relevant authorities to take disciplinary action against the officers involved.

The Nepalese Constitution of 1990 prohibits "physical or mental torture" and "cruel, inhuman or degrading treatment" and states that any person so treated shall be compensated "in the manner determined by the law". The TCA was enacted by Parliament in 1996 to give effect to this constitutional provision. However, more than a decade after ratification of the Convention against Torture in 1991, torture is not defined as a specific criminal offence in Nepalese law. On occasion, government officials have commented that the Treaty Act of 1993 provides that the provisions of international treaties prevail even if they contradict national law, so that the Convention against Torture is fully in force in Nepal. In practice, however, there are no legal provisions which make torture *per se* an offence and it is therefore impossible for the authorities to prosecute individuals responsible for torture. AI does not know of a single prosecution in Nepal for the crime of torture.

At the moment, the only provisions that could be used to bring alleged perpetrators of torture to justice are contained in the *Muluki Ain* (Civil Code) of 1962 which prohibits acts such as mutilation, beating and physical assault. These carry penalties ranging from a maximum of eight years (for mutilation) to a maximum of two years (for physical assault) and one year's imprisonment and a fine for beating. Under the *Muluki Ain*, victims of crimes such as assault by police or others can file a case directly against the alleged perpetrator as a civil suit in a local court. Contrary to its obligations under Article 12 of the Convention against Torture, the state has no power to initiate an action.⁷⁶

offence, but it remains unclear whether torture will be specified in full in the terms required by the Convention against Torture.

Some states parties to the Convention against Torture have only partially incorporated torture as defined in the Convention in their national legislation. In May 1996 the Committee against Torture observed with concern that China, a state party to the Convention since 1988, still failed to "incorporate the crime of torture into its domestic legal system, in terms consistent with the definition contained in Article 1 of the Convention".⁷⁷ In 1997 a revised Criminal Law became effective in China, which, in Articles 247 and 248, criminalizes torture to coerce confessions and extorting testimony by violence as well as the ill-treatment of prisoners. The wording of Article 247 seems to suggest that this article only applies to judicial officers who have committed torture and only if they committed torture on criminal suspects or defendants and only for these two limited purposes. Article 248 is applicable to "custody or supervisory personnel", but these terms are left undefined in the Criminal Law and its scope is under debate. "Many commentators assert, for example, that armed police who guard detention facilities are not included."⁷⁸ In May 2000, the Committee against Torture reiterated its recommendation that China incorporate in its domestic law a definition of torture that fully complies with the definition contained in Article 1 of the Convention against Torture.

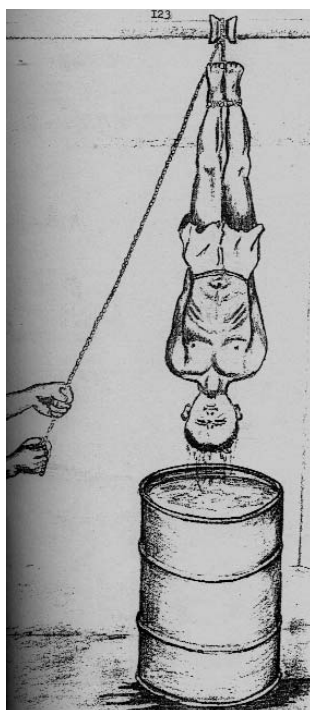
The criminal offence of torture was introduced into the Pakistan Penal Code in 1990 in the form of a presidential ordinance, the *Qisas and Diyat Ordinance*; in 1998 parliament passed this ordinance into law. Under the law, the causing of hurt by any person to extort "any confession or any information which may lead to the detection of any offence or misconduct", or to compel the restoration of property or the fulfilment of a claim or demand, is one of the crimes that may be punishable by *qisas* (defined as "punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim"), or *diyat* (compensation).

This means, for example, that if the relevant rules of evidence are fulfilled and the accused is found guilty of having severed the victim's finger, the victim has a right to have the *qisas* punishment inflicted on the offender – which in this case

would be severance of the offender's finger. Such a punishment would itself be contrary to international law, as it would constitute torture or cruel, inhuman or degrading treatment. The victim may also waive the right to *qisas* punishment in favour of the victim paying compensation. In either case, the perpetrator could also be sentenced to imprisonment. The judge cannot increase or decrease the severity of the *qisas* punishment as it follows mandatorily from the nature of the offence.

All *qisas* punishments are inflicted in exercise of the right of the victim or the victim's heir. This means that the punishment and prosecution itself are subject to the victim or heir opting for criminal prosecution. Torture is not an offence against the legal order of the state but against the person of the victim; in Pakistani legal terminology, it is a compoundable offence, an offence which can be brought and withdrawn at the will of the victim, in return for compensation. In practice this has meant that in cases of torture, the perpetrator may exert pressure on the victim or victim's family to forgo or withdraw criminal prosecution and accept compensation instead. The law thus allows impunity from prosecution and punishment, particularly for those in a position of power and with money. The law also permits the state to escape its legal obligation to investigate allegations of torture and bring the perpetrators to justice.

All states must ensure that torture is a crime under their national law and is defined fully in line with their obligations under international law. Additionally, they should ensure that the crime against humanity of torture and the war crimes of torture and related crimes as defined in the Rome Statute of the International Criminal Court are made crimes under their national law too.



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Drawing showing a torture method common in Chad during the presidency of former President Habré. The victim was suspended by a pulley and lowered into a container filled with water until he or she almost drowned.

Statutes of limitation

Statutes of limitation (also known as periods of limitation or rules of prescription) specify the time period within which people may be prosecuted for their crimes or within which victims, their dependants or others can take legal action. In most national jurisdictions, there are different time periods for different crimes or categories of crime. Usually that period is much longer for serious crimes than for lesser offences, but there is a wide variety between different national jurisdictions. In some countries periods of limitation do not apply to serious crimes such as war crimes, crimes against humanity, genocide and murder.

The Convention against Torture is silent on statutes of limitation, but implicitly prohibits them. Article 29 of the Rome Statute and Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity clearly state that no statutes of limitation shall apply to crimes against humanity and war crimes.

Article 29 of the Rome Statute is not only relevant for the future International Criminal Court. Since the Court is meant to be a court of last resort, complementary to national courts, states should ensure that national courts have the power to try the same cases as the future International Criminal Court. Therefore, not only should courts have jurisdiction over the same crimes as the International Criminal Court, but also the exercise of such jurisdiction by national courts should not be barred by rules which do not apply to the International Criminal Court itself. States should ensure that the crime against humanity of torture, the war crimes of torture and related crimes are not subject to statutes of limitation.

The UN Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms⁷⁹ has stated that "statutes of limitations shall not apply for prosecuting violations of international human rights and humanitarian law norms that constitute crimes under international law". In addition, he said that "statutes of limitations for prosecuting other violations or pursuing civil claims should not unduly restrict the ability of a

victim to pursue a claim against the perpetrator, and should not apply with respect to periods during which no effective remedies exist for violations of human rights and international humanitarian law".⁸⁰

One international law scholar recently expressed two principal reasons why the independent crime of torture is not subject to statutory limitations. The first is that it would be "ridiculous to permit statutory limitation in respect of acts of torture characterized as an independent international crime while at the same time prohibiting such limitations where the acts are characterized as crimes against humanity".⁸¹ The second reason relates to the *jus cogens* nature of the prohibition of torture, "which excludes statutory limitations".⁸² This view was also taken by the Yugoslavia Tribunal which stated that "it would seem that other consequences [of the *jus cogens* character of the prohibition of torture under international law] include the fact that torture may not be covered by a statute of limitations".⁸³

Statutes of limitation may especially hamper investigations and prosecutions if acts of torture are dealt with as other offences, such as inflicting (grievous) bodily harm, and therefore covered by statutes of limitations applicable to such crimes. This would, for example, have happened in Suriname if no investigation into the "December killings" had been opened before December 2000, because the statute of limitations for murder under Suriname criminal law is 18 years.

Statutes of limitation may apply not only to prosecutions proper, but also to criminal investigations and even disciplinary investigations. In cases of complaints about police misbehaviour, disciplinary investigations are often the start of a chain of official investigations which may lead to prosecutions. In New York City, USA, the statute of limitations on police disciplinary action was reduced in 1993 from three years to 18 months. A backlog of cases and delays in investigations by the Civilian Complaint Review Board has led to cases reaching this limit before officers have been subject to disciplinary action, and the cases therefore being dropped. A one-year statute of limitations applying to Los Angeles Police Department disciplinary action had caused similar problems.⁸⁴

In some parts of India, the law unduly restricts the period in which complaints must be brought in order to be subjected to official investigation. For example, according to section 53 of the Tamil Nadu Police Act, actions against the police must be started within three months of the act giving rise to the complaint.⁸⁵

Impunity through legislation facilitating torture

Torture may be forbidden in a state's criminal law while at the same time another law facilitates torture, for instance if it allows for incommunicado detention (detention without access to lawyers, doctors, relatives or friends). The law may not prohibit the use of statements extracted under torture as evidence in criminal proceedings. Laws which unduly restrict the investigation and prosecution of torture cases also facilitate torture, because they increase the chance of impunity for the perpetrators.

In Israel, the use of physical violence during interrogation was officially permitted when in 1987 the Israeli government endorsed a Commission of Inquiry report which justified the use of "moderate physical pressure" during interrogation. Methods such as violent shaking and prolonged shackling in contorted positions had been used routinely by the security services against Palestinian detainees; both the practice and the harm caused, including deaths, were well known. The decision prompted intense debate within Israel about the use of torture and a national and international campaign to overturn the decision. Human rights activists argued that the use of torture could never be justified, either legally or morally, and that its effectiveness in preventing violent attacks by armed political groups had never been proved.

In September 1999 the Israeli High Court ruled that such methods were unlawful and should be banned. The High Court judgment appears to have been followed, although police brutality at checkpoints continues to be recorded. However, in the judgment there was some leeway for interrogators. The judges suggested that, if there was need to use such interrogation methods to save lives, investigators "may avail

themselves of the defence" of necessity. Finally, they suggested that parliament might legislate to allow torture:

"If it will nonetheless be decided that it is appropriate for Israel, in light of its security difficulties, to sanction physical means in interrogations... this is an issue that must be decided by the legislative branch which represents the people."

A private member's bill to allow the use of "physical pressure" during interrogation was brought before parliament later that year, but partly because of the strength of the national and international movement against the legalization of torture in Israel, this draft law has so far failed to gain enough support.

Since the second *intifada* which started in September 2000, there have been a number of cases of Palestinians who have been tortured by methods similar to those practised before. The use of these methods appears to be sanctioned on a case-by-case basis using the "defence of necessity".

Article 15 of the Convention against Torture obliges states parties to ensure that "any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made". Despite this clear requirement, in numerous countries around the world judges admit into evidence statements which the accused try to retract on the grounds that they were extracted under torture, and fail to investigate their allegations of torture.

In Morocco, national law does not prevent confessions or statements obtained under torture being admissible in court. On the contrary, Articles 291-294 of the Code of Criminal Procedure provide that *procès-verbaux* (records of testimony) stand until they are proved false, and that witnesses can contradict them only on grounds of forgery. These provisions are often used by judicial authorities to justify not investigating allegations of torture or ill-treatment.

Consistent and long-standing failures by Moroccan judicial authorities to investigate breaches of procedure during pre-trial investigation, mean that, whatever the safeguards technically in place, they do not protect the rights of the accused in practice

nor ensure the proper administration of justice.⁸⁶ In February 1997, 14 students were arrested after a demonstration at the University of Marrakesh. During their trial, both the court of first instance and the appeal court rejected the defence's request to call witnesses ready to testify that some defendants were a considerable distance away from the demonstration when they were arrested. The defendants denied having taken part in the demonstration and rejected the "confessions" recorded in the files, asserting that they had been tortured and coerced into making them, and pointing out that there were thumb-prints rather than signatures on the documents. In April 1997 the appeal court held that, in accordance with Article 294 of the Code of Criminal Procedure, the files could only be challenged on the basis of forgery and upheld the convictions imposed by the court of first instance.

Achieving justice is particularly difficult where the permission of the political or administrative authorities is required before the judicial authorities can start investigations into allegations of torture. Such requirements exist, for example, in India, where the permission of the government is required before prosecution of a public servant (including police and army) can be initiated, and these provisions have been used to prevent prosecution. In Egypt, victims of torture and their relatives seeking to press for the criminal prosecution of alleged perpetrators also face legal constraints. According to Article 162 of the Egyptian Code of Criminal Procedure, it is possible to challenge a decision by a public prosecutor not to prosecute. However, there is an exception to this general rule: such a challenge is not allowed if the suspect is a civil servant, a public service employee or a law enforcement official and the offence took place in the performance of duty or was caused by it.

Impunity through obstruction of justice

Justice can be obstructed in many different ways. Police officers may obstruct justice by intimidating victims or witnesses of torture in order to try to persuade them not to file a complaint or to retract their testimony. Members of the security forces often refuse to come forward with evidence implicating fellow

Turkey: administrative control over judicial investigations

In Turkey, prosecutions of members of the security forces are authorized by administrative, not judicial, authorities. Until recently, the 1913 Law on the Prosecution of Civil Servants gave this power to local administrative councils established by the provincial governor. These administrative councils commonly delayed proceedings almost indefinitely. On 5 December 1999 a new law became effective. Unfortunately, this new law still requires the permission of an administrative authority to initiate prosecution of members of the security forces.

One example of an administrative authority blocking prosecution occurred after police officers beat people attending a hearing in Aydin Criminal Court No. 1 on 21 April 1998. The senior magistrate was about to announce the verdict on six officers prosecuted for the death in custody of Baki Erdogan in August 1993, when some 60 plainclothes police officers began beating people in the courtroom. Police officers lined the corridor from the courtroom to the exit of the courthouse and beat anyone who tried to leave. Two journalists and four spectators were treated in hospital, one for internal bleeding, another for a ruptured liver. Under the Law on the Prosecution of Civil Servants, the complaints of assault initiated by the local prosecutor were referred to the Aydin Provincial Administrative Board which decided in August 1998 that the police officers should not be prosecuted. The grounds given were “insufficient evidence”.

The new Law on the Prosecution of Civil Servants and Other Public Servants which came into force in December 1999 is barely an improvement. It still provides for the civil authorities responsible for policing to assess complaints before they are passed on to the prosecutor. Prosecutors receiving complaints are actually instructed not to proceed with investigations (other than to secure evidence which might be tampered with), but to send the file to the local governor.

officers in acts of torture or ill-treatment. Prosecutors can obstruct justice by ignoring evidence of torture or by blocking investigations, for instance by refusing independent medical investigations of alleged torture victims. Even judges can obstruct justice, for example by disregarding safeguards for suspects and defendants, or by allowing statements extracted under torture to be used in evidence.

In Brazil, torture victims are often held incommunicado for long periods until all visible signs of torture are gone. Those

victims who gain access to a doctor receive scant if any treatment, and cursory examinations. The forensic medical system is under-resourced and poorly trained, and in many states forensic doctors are directly linked to the police. AI has often received reports of negligence or complicity on the part of doctors examining torture victims.

In Kenya, very few cases of torture are adequately investigated by the government. Those that do reach the courts are not effectively prosecuted and are usually prone to numerous delays. The case of Isaac Mwaniki Gitari is illustrative. After being tortured at Eldoret Police Station in March 1999, Isaac Mwaniki Gitari slipped into a coma, and was rushed to hospital where he died several weeks later without regaining consciousness. A post-mortem found that his injuries were consistent with being beaten. During an inquest in April 2000, a magistrate blamed two policemen for Isaac Gitari’s torture and subsequent death. There was also evidence of a cover-up at the police station and that police witnesses had lied in court. The two police officers were subsequently arrested and charged with manslaughter. However, the hearing into the case was postponed at least twice, and AI fears a deliberate intent to delay the case and protect the two policemen from prosecution.

An all too common form of obstruction of justice is the harassment of victims, witnesses and their relatives. Article 13 of the Convention against Torture provides that states parties shall take steps “to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

All states should take effective security measures to protect victims, their families and witnesses from reprisals. These measures should encompass protection before, during and after the trial until that security threat ends. In developing an effective protection program, states should pay particular attention to the special needs of women and of children.

Peru has been a state party to the Convention against Torture since 1988. However, it took a further 10 years – until February 1998 – before Peru amended its criminal code and introduced torture as an independent crime. Despite a continuing problem of torture by police and the security forces,

prosecutions for torture have been rare and convictions very exceptional. In many cases, victims and relatives have been intimidated and harassed by the police, apparently attempting to make them withdraw their complaints or statements.⁸⁷

For example, Luis Beltrán Castillo was arrested by two policemen because he was drunk in the Plaza de Armas in the town of Vilcashuamán, Ayacucho department, on 21 October

Mexico: confessions extracted under torture invoked as evidence

Torture occurs across all 31 states and the Federal District of Mexico, in spite of the adoption of legislation aimed at its elimination. The victims of torture include criminal suspects, political detainees and members of indigenous communities in areas of significant military presence. Torture is frequently employed as a method of investigation to secure confessions which are later used in court as evidence to convict the accused.

One of many similar cases is that of Alfonso Martín del Campo Dodd, who was sentenced in May 1993 to 50 years' imprisonment for murder on the basis of a confession extracted under torture.

In May 1992 he was arrested in Mexico City after his sister and brother-in-law were found dead. According to his testimony, between 10 and 12 police officers tortured him in a basement room. They placed a plastic bag over his head and took turns kicking him in the testicles and beating him about the head, stomach and body with their hands and with wet towels. He was then forced to sign and fingerprint a pre-prepared confession to both murders.

Two official medical certificates recorded signs of bruising and facial injuries and in a hearing on 9 September 1992, the police officer responsible for the interrogation acknowledged that Alfonso Martín del Campo had been stripped, threatened, had his head covered with a plastic bag, and been beaten all over his body. Despite this evidence, the judge who convicted Alfonso Martín del Campo ruled that he could not prove that his injuries had been inflicted by the police. On 14 October 1994 the police officer was dismissed and banned from holding public office for three years for the arbitrary detention and beating of Alfonso Martín del Campo. However, by the end of May 2001 no one had been prosecuted for torture.

Alfonso Martín del Campo's "confession" has been upheld at three successive judicial levels on the grounds that the first statement made by a suspect should be considered more reliable than subsequent statements. He remains in prison.

1998. He was reportedly beaten until he lost consciousness. In December 1998, an examining judge formally opened investigations for the crime of torture against the two policemen and ordered their detention. However, according to reports, Luis Beltrán Castillo and his family were intimidated and harassed by the two policemen and consequently decided to withdraw the charges against them. The investigation was closed.

In Nepal victims of torture who filed complaints under the Torture Complaints Act (TCA) reported being threatened by the police and some were even rearrested.⁸⁸ During 1998, two years after the introduction of the Act, 12 people claimed compensation. Of these 12, six later withdrew their cases because of intimidation. In addition to intimidation and threats, poverty pushes victims to accept money offered by police out of court rather than go through the often protracted process in the courts. Some lawyers say that an inadequate legal aid scheme is a contributing factor. A case filed for compensation for the death as a result of torture of Suk Bahadur Lama in August 1999 was withdrawn after police allegedly bribed his family. The father and brother of Suk Bahadur Lama are believed to have received Rs100,000 (approximately US\$4,000) from the police officers involved; they withdrew the case in October 1999. As complaints under the TCA are civil complaints, the decision to file a complaint or to withdraw it lies entirely with the victim. This would not be the case if torture were defined as a criminal offence, the prosecution of which would be in the hands of the state authorities.

During the Israeli occupation of south Lebanon from 1978 to 2000, the Khiam detention centre became notorious for systematic torture and ill-treatment. Blindfolded detainees were repeatedly subjected to relentless interrogations, beatings, suspension from an electricity pylon, dousing with water and electric shocks. Interrogation was usually followed by detention in crowded, dark and filthy cells.

Khiam detention centre was closed down and its inmates freed after the Israeli withdrawal from south Lebanon in May 2000 and the collapse of the South Lebanon Army (SLA), Israel's proxy militia. Since then, more than 2,000 SLA members and alleged "collaborators" have been tried by the Lebanese

authorities. Although some of these were charged with torture, the trials before the Military Court of Beirut have so far been so summary, with barely seven minutes spent on each individual, that they neither allow the innocent to be acquitted nor ensure that those guilty of war crimes are convicted.⁹⁰ The main perpetrators of torture in Kham, whether Israeli or SLA officials,

Egypt: intimidation of complainants

Amal Farouq Mohammad al-Maas was interrogated and reportedly tortured by officers of the State Security Investigations Department (SSI) in Cairo in April 1993. After her release, Amal Farouq Mohammad al-Maas filed a complaint with the Prosecution Office in al-Doqqi district, Cairo, alleging that she had been tortured at the SSI branch in Gaber bin Hayan Street. A forensic medical report concluded that her injuries were consistent with her description of torture. In January 1996, when questioned by the Public Prosecution, SSI officers denied that Amal Farouq Mohammad al-Maas had been held by the SSI in April 1993.

In July 1996, SSI officers rearrested Amal Farouq Mohammad al-Maas and took her to an SSI branch in the al-Marsa district of Cairo to coerce her into withdrawing her complaint. She told AI that they slashed her arms, back and legs with a knife, blindfolded her, suspended her from the ceiling by one arm for around two hours, and subjected her to electric shocks. After 10 days' detention, the SSI officers dumped her, unconscious, in the street. Amal Farouq Mohammad al-Maas' attempts to file subsequent complaints have either been ignored or rejected by the Public Prosecutor's Office.

In October 1999 Amal Farouq Mohammad al-Maas was contacted by a foreign television company to interview her about her experiences in detention. The night before the interview was due to take place, SSI officers telephoned her to ask why she wanted to give the interview. They came to her flat early the next morning, "bugged" the rooms with surveillance equipment and threatened her with arrest. When the television crew arrived Amal Farouq Mohammad al-Maas declined to participate in the interview.

Ahmad Mahmud Mohammad Tamam, a 19-year-old student, died, reportedly as a result of torture in July 1999 in police custody in the 'Omrianiya district of Cairo. His family filed a complaint, and in the summer of 2000 received threats by telephone. A member of his family was approached near the family home by an unidentified person attempting to force him to withdraw the complaint. By May 2001 the Public Prosecutor had taken no decision as to whether to prosecute.⁹⁹

have not been brought to justice. Many former members of the SLA have sought asylum in Israel and other countries such as Canada. AI has written to the governments of these countries asking for the cases of those who might have been involved in war crimes to be investigated, and those suspected of war crimes brought to justice.

Lack of prompt and impartial investigations

Article 12 of the Convention against Torture obliges states to ensure that prompt and impartial investigations are initiated whenever there is reasonable ground to believe that torture has been committed. Article 13 obliges states to investigate complaints by alleged victims of torture promptly and impartially, and Article 16 obliges them to investigate other cruel, inhuman or degrading treatment or punishment. Many states parties to the Convention do not live up to these international obligations.

On 19 July 2000, Frederick Mason, a 31-year-old nurse's assistant with no criminal record, was arrested by the police in Chicago, USA, following an argument with his landlord. Frederick Mason claims that, at the police station, two unidentified officers took him to an interrogation room, where he was handcuffed by the elbows, and pinned to a wall. The arresting officer is alleged to have pulled down Frederick Mason's trousers and to have sprayed blue cleaning liquid on a billy club before ramming the baton into his rectum. A second unidentified officer is alleged to have witnessed the trousers being pulled down, but to have walked away during the assault. A doctor confirmed that he had been injured in the anal area. Frederick Mason contends that he was subjected to verbal abuse – including racist and anti-gay abuse – from the moment he was arrested, and that the arresting officer had covered up his badge when he committed the assault, to prevent subsequent identification.

By February 2001 the case was under investigation by the police department's Office of Professional Standards (OPS), the police complaints authority. However, local sources expressed

concern about attempts by police officers to cover up the incident. The police chief's initial reaction was to dismiss the allegations as completely unfounded, insisting that "even the most basic facts do not support Mr Mason's allegations". It was unclear whether the District Attorney was conducting its own criminal investigation into the incident. Allegations of systematic torture of suspects by Chicago police officers over a 20-year period came to light in the late 1980s and led to an inquiry and the dismissal of a police area commander. Although the department has undergone some reforms in recent years, allegations of brutality and excessive force – perpetrated mainly against members of racial minorities – continue to be reported.⁹¹

In many countries the police and the public prosecutors work together closely, and this may mean that prosecutors are not impartial and independent when it comes to investigations into complaints against the police. Another problem in ensuring prompt and impartial investigations is that even if prosecutors or other judicial authorities initiate or order investigations into torture or ill-treatment by the police, that very same police force is ordered to carry out the actual investigation. In many countries this undermines the integrity of such investigations and affects decisions on whether to pursue prosecutions.

The Czech Republic has been a state party to the Convention against Torture through succession since 1 January 1993. In May 1996, about 60 police officers wearing balaclavas and armed with guns and truncheons raided the "Propast" rock club in Prague, and indiscriminately beat dozens of young people who were attending a rock concert. The police forced many of the people outside, where the beatings continued. No action was taken against the officers responsible.

Two years later, following the "Global Street Party" demonstration on 16 May 1998 in Prague, dozens of people were beaten and ill-treated by police in Bartolomjska Street police station and the police hospital. Otokar Motejl, then Minister of Justice, told AI in November 1998 that no police officers had been indicted, although a final decision had been deferred in the case of the officers alleged to have ill-treated detainees taken to the police hospital. AI received a contrasting reply from Peter

Uhl, Government Commissioner for Human Rights, who acknowledged that police had used arbitrary force in the aftermath of the "Global Street Party". He stated that the Inspection of the Ministry of the Interior had concluded that several of the detainees were indeed brutally beaten by the police, but that it was impossible to identify the individual culpable police officers. Commissioner Uhl characterized the results of the Inspection's investigation as unsatisfactory, and stated that he had proposed a reform to improve the investigation of alleged police abuses. His recommendation was that such cases be investigated by a force independent of the Ministry of the Interior, such as the State Prosecutor's Office. However, no such reform has taken place.⁹²

In Turkey, prosecutors may have been more ready in recent years to open prosecutions against members of the security forces than before. Press reports suggest that this is so, although AI is not aware of any statistical information to confirm it. Nevertheless, prosecutors are still very reluctant to respond to complaints and evidence of torture and other serious violations of human rights. An important constraint, according to an AI report issued in 1999,⁹³ is the close working relationship between prosecutors and police, particularly State Security Court prosecutors and Anti-Terror Branch police. Since police officers are rarely suspended during the course of an inquiry, any prosecutor deciding to act on an allegation of torture has to continue working with the very same officers. This is a strong argument for mandatory suspension of officers under investigation for human rights violations, as recommended in point 6 of AI's 12-Point Program for the Prevention of Torture by Agents of the State, and for delegating prosecutors with special responsibility and an independent investigation body for such investigations.

In China, when a complaint of torture by the police reaches the authorities responsible for prosecutions, they usually refer the case to the police station in question for investigation. Often these investigations result in cover-ups, with the police ignoring or even destroying evidence. The authorities responsible for prosecutions are also responsible for police oversight and their dual function calls into question their

impartiality when they are confronted with complaints of torture or ill-treatment by police officers.⁹⁴

The Supreme Court of Sri Lanka, which has awarded compensation in scores of cases where people were found to have been tortured by agents of the state, has repeatedly expressed its frustration at the lack of follow-up by the relevant authorities (the Inspector General of Police and Attorney General) to its recommendations for further investigations and appropriate action against members of the security forces involved in acts of torture. The Supreme Court has also commented on the prevailing climate of impunity in relation to torture. For instance, in a 1995 judgment,⁹⁵ it commented that "the incidence of unlawful arrest and detention and torture by police officers has not declined, which situation is attributable to the failure on the part of authorities to impose prompt, adequate and effective sanctions against offending officers. The Court views this situation with dismay and hopes that it will be remedied forthwith."⁹⁶

AI recommends that all complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation and any trial.

Failure to prosecute

Impunity manifests itself in many different forms, which vary from country to country. Impunity can arise at any stage before, during or after a judicial process. In many cases, the judicial system fails to bring a prosecution, despite credible evidence that an act of torture or ill-treatment has been committed.

In the United Kingdom, David Adams was severely ill-treated by police upon his arrest in Belfast and at Castlereagh Holding Centre in Northern Ireland in February 1994. He suffered severe beating and kicking as well as verbal abuse.⁹⁷ David Adams spent three weeks in hospital receiving treatment for a fractured leg, two fractured ribs, a punctured lung and multiple cuts and bruises to his face and body. David Adams filed a suit in the High

Court against the police, seeking compensation. The High Court awarded David Adams £30,000 compensation in February 1998. The judge concluded that "at least most of the injuries suffered by David Adams were more likely to be the result of direct deliberate blows". The judge questioned the accuracy of the evidence of police officers at the scene, who denied that David Adams had been assaulted or verbally abused.

Following the conclusion of the High Court case, the case was investigated and a file was passed on to the Director of Public Prosecutions. However, despite the clear-cut nature of the physical evidence in the case and despite the fact that the judge in the compensation case had found that David Adams "was assaulted in Castlereagh much in the manner he has alleged", in August 1999 the Director of Public Prosecutions decided not to bring any criminal charges against the officers involved.⁹⁸

Convictions which disregard the seriousness of the crime

Article 4(2) of the Convention against Torture obliges states to punish crimes of torture "by appropriate penalties which take into account their grave nature". Although AI does not take a position on what punishments should be imposed for torture and other serious human rights violations, it both rejects the death penalty and other cruel, inhuman or degrading punishments and calls for states to ensure that judicial sentences do not disregard the seriousness of the crime.

In 1999, a court of appeal in Versailles, France, reduced the prison sentences on police officers convicted of assault from a maximum of four years to a maximum of 18 months. Ahmed Selmouni, of dual Dutch and Moroccan nationality, was arrested in November 1991 by five police officers of the Departmental Judicial Police Service in Bobigny (Seine-Saint-Denis). While in their custody he was repeatedly punched and kicked, beaten with a truncheon and baseball bat, and forced to do physical exercise. He also claimed that he had been sexually abused. Although Ahmed Selmouni had been arrested in 1991, the five officers involved were not examined by a judge until 1997. In

February 1999 the officers appeared before a Versailles court. Among the charges were assault and indecent assault committed collectively and with violence against Ahmed Selmouni. The five officers denied the charges of committing violence and sexual assault against Ahmed Selmouni and another man, Abdemajid Madi, and suggested that the two men had injured themselves or had perhaps watched too many films. The Versailles court convicted all five officers and sentenced them to between two and four years' imprisonment. All officers immediately appealed.

An unusually swift appeal, following protests and demonstrations by police union members, drastically cut the "exemplary" four-year prison term imposed on one of the officers to 18 months, of which 15 were suspended. The sentences of the four other officers were cut to suspended prison sentences of between 10 and 15 months. The prosecutor attached to the appeal court had herself controversially requested that the officers be "returned their honour" and declared not guilty of the offence of sexual assault and that, if they were to remain convicted of violent acts, they should benefit from an amnesty. The court upheld the convictions of the officers for violent acts but set aside the conviction for sexual assault. All five officers remained in or resumed service, pending a further appeal.

Amnesties and pardons

Wallace Gichere, a former photojournalist who claims he was thrown from a fourth floor window by police, protests against torture in Nairobi, Kenya, on 23 June 2000. A report in April 2000 by the UN Special Rapporteur on torture raised serious concerns about the widespread use of torture in Kenya by security officers.

The ultimate denial of the seriousness of the crime of torture is the provision of amnesties. Amnesties arrange for perpetrators to be excluded from investigations and prosecutions on the basis of a law prohibiting prosecutions for certain acts, against certain people (for instance those acting in an official capacity) or for certain acts committed during a specific period of time.

In a general comment on Article 7 of the International Covenant on Civil and Political Rights (ICCPR) prohibiting torture and ill-treatment, the Human Rights Committee said:

"The Committee has noted that some States have

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granted amnesty in respect of acts of torture. Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future. States may not deprive individuals of the right to an effective remedy, including compensation and such full rehabilitation as may be possible.”⁹⁹

In 1999, when it examined amnesty provisions in Chilean law, the Human Rights Committee reaffirmed its opinion:

“The Amnesty Decree Law, under which persons who committed offences between 11 September 1973 and 10 March 1978 are granted amnesty, prevents the State party from complying with its obligation under article 2, paragraph 3 [of the ICCPR], to ensure an effective remedy to anyone whose rights and freedoms under the Covenant have been violated.”¹⁰⁰

The Amnesty Law (Decree Law 2.191) was introduced in April 1978 by the military government of Chile led by General Augusto Pinochet. It prevents the prosecution of individuals implicated in certain criminal acts, including torture, committed between 11 September 1973 (the date on which a democratically elected government was overthrown in a military coup) and 10 March 1978 (the date on which the state of siege was formally lifted). Since then, Chilean courts have systematically closed judicial proceedings in hundreds of cases involving human rights violations that occurred during that time. Nonetheless, a number of cases remained open and by January 2001 there had been conflicting rulings on the applicability of the 1978 Amnesty Law. Human rights defenders and some judges held the view that the Amnesty Law should not be applied until the investigation was completed and the full criminal responsibility of any suspect was clearly established. This would mean that the Amnesty Law might allow freedom from punishment but not freedom from investigation. Unfortunately, in 1985 the Supreme Court of Chile confirmed that even in cases of “disappearances” where the facts had not been fully established, the Amnesty Law could be applied. Over the years, hundreds of cases in civil and military courts have been closed through the application of the 1978 Amnesty Law.

In July 1999 the Supreme Court reinterpreted the Amnesty Law in a ruling stating that it could not be applied in the case of 19 people who “disappeared” during the “Caravan of Death”, a military operation in northern Chile in October 1973 in which 75 people were killed or “disappeared”. Since the bodies of the 19 people who “disappeared” were never recovered, their death could not be legally established. The Supreme Court ruled that, as kidnapping is an ongoing offence until such time as the victim is found, the accused could not benefit from the Amnesty Law.

In El Salvador efforts to end impunity for past human rights violations suffered a serious setback when in October 2000 the Supreme Court of Justice declared the 1993 General Amnesty Law to be constitutional, despite the recommendations of international bodies, such as the UN Human Rights Committee. As far back as 1994 the Committee had expressed its concern about impunity for past violations, including torture, in El Salvador:

“The Committee expresses grave concern over the adoption of the Amnesty Law, which prevents relevant investigation and punishment of perpetrators of past human rights

Chile: case closed

One of the most recent cases closed through the application of the 1978 Amnesty Law is that of Carmelo Luis Soria Espinoza, of dual Spanish and Chilean nationality, who was an official of the UN Latin American Centre of Demography (CELADE). He was abducted and found dead in July 1976, in a canal in Santiago, the Chilean capital. The Chilean government’s National Commission for Truth and Reconciliation found in 1991 that he had been “executed by agents of the state”. The investigation into Carmelo Soria’s death had been closed and reopened and passed between different jurisdictions and judges on a number of occasions, and several attempts had been made to apply the Chilean 1978 Amnesty Law to it. In June 1996 a Supreme Court judge classified the crime as “homicide” and closed the case under the Amnesty Law. In August the verdict was upheld by the Supreme Court, which pronounced the case closed.

In November 1999, the Inter-American Commission on Human Rights of the Organization of American States concluded that Chile had violated its international obligations by applying the Amnesty Law in this case.¹⁰¹ AI believes that the 1978 Amnesty Law should be declared null and void.

violations and consequently precludes relevant compensation. It also seriously undermines efforts to re-establish respect for human rights in El Salvador and to prevent a recurrence of the massive human rights violations experienced in the past. Furthermore, failure to exclude violators from service in the Government, particularly in the military, the National Police and the judiciary, will seriously undermine the transition to peace and democracy."¹⁰²

In August 2000 the government of Uruguay established a special commission, the *Comisión para la Paz*, Peace Commission, to clarify the fate of all those who "disappeared" between 1973 and 1985. But whatever the outcome of the Commission's investigations, the 1986 Expiry Law appears to prevent perpetrators of grave human rights violations such as torture being brought to justice. The Expiry Law grants exemption from punishment to all police and military personnel who committed human rights violations for political motives or to obey orders before 1 March 1985.

The Inter-American Commission on Human Rights has concluded that the Expiry Law violates the American Convention on Human Rights, especially Articles 2 (on domestic legal effects of the Convention), 8 (on the right to a fair trial) and 25 (on the right to judicial protection).¹⁰³ In 1993 the Human Rights Committee noted:

"with deep concern that the adoption of the [Expiry] Law effectively excludes in a number of cases the possibility of investigation into past human rights abuses and thereby prevents the State party from discharging its responsibility to provide effective remedies to the victims of those abuses...Additionally, the Committee is particularly concerned that, in adopting the Law, the State party has contributed to an atmosphere of impunity which may undermine the democratic order and give rise to further grave human rights violations. This is especially distressing given the serious nature of the human rights abuses in question."¹⁰⁴

The Committee recommended that Uruguay should adopt legislation to correct the effects of the Expiry Law and to make its national law compatible with its international obligations. By May 2001 Uruguay had not done so.

Is your country a safe haven for alleged torturers?

Combating impunity for torture starts with ensuring that national courts have jurisdiction over the crime and over alleged perpetrators, and that national law is in conformity with a country's international obligations and international law. The following checklist might help non-governmental organizations and others to assess whether a country is a safe haven for alleged torturers.

- Has your country ratified the 1984 UN Convention against Torture? (Date of ratification and possible reservations?)
- If applicable: has your country ratified the 1985 Inter-American Convention to Prevent and Punish Torture? (Date of ratification and possible reservations?)
- Has your country ratified the 1949 Geneva Conventions and the 1977 Additional Protocols? (Dates of ratification and possible reservations?)
- Has your country ratified the Rome Statute of the International Criminal Court? (Date of ratification and any declaration under Article 124?)
- Are any of the above mentioned instruments directly applicable as a basis for criminal prosecution, or has there been any implementing legislation adopted after ratification?
- Does your legal system provide for a specific crime of "torture" or is torture considered under other headings (and if so, which)?
- Are the ancillary crimes of torture as recognized by international law (such as assistance and participation) also duly criminalized in national law?
- Can crimes of torture which have been committed within the territory of your country be tried in your country, irrespective of the nationality of the suspect or the victim (territorial jurisdiction)?
- If a national of your country is suspected of having committed torture, is it possible for him or her to be tried in your country, even if the alleged crime was committed abroad (principle of active personality)?

- If a victim of torture is a national of your country, is it possible for the perpetrator to be tried, even if the alleged crime was committed abroad (principle of passive personality)?
- Can crimes of torture which have been committed outside the territory of your country be tried irrespective of the nationality of the suspect or the victim or other link to your country (universal jurisdiction)?
- Have there been any prosecutions, investigations or convictions in court for torture by applying the above-mentioned principles?
- Can people suspected of torture be surrendered to an international court or tribunal or extradited to third countries asking for their extradition? (Under what conditions?)
- Are there any political or diplomatic immunities for people acting in an official capacity?
- Have there been amnesties granted to people prosecuted for or convicted of torture?
- Has AI documented unfair trials in cases of alleged torture? Is the death penalty available in your country and can it be imposed for the crime of torture?
- Is there an independent higher authority in your country to receive and investigate allegations of torture by victims or non-governmental organizations (such as a Committee on Torture or an Ombudsman)? Can victims or non-governmental organizations initiate criminal prosecutions?
- Have victims of torture the right to reparations in your country and have there been cases where victims actually received reparations from the perpetrator or some governmental agency?
- Are there any further conditions or circumstances that hamper effective investigations, prosecutions, trials or convictions of people responsible for torture?

In its first ever global report on torture in 1975, AI stated: "In international law, the doctrine of individual responsibility was firmly laid down a long time ago, at Nuremberg. Now the international community has to try to work out effective remedies for the prevention of torture."¹⁰⁵ Making torture a

crime under national and international law and actually investigating, prosecuting, trying and convicting perpetrators contribute to the general prevention of torture. But as long as justice at home is hard to get, the international community has to provide other venues where victims and their relatives can seek justice and through which the international community can contribute to the prevention of torture.

Chapter 5: Justice abroad

Serious violations of human rights and humanitarian law are often committed in order to fulfil official or unofficial policies of the government or certain state branches, departments or agencies. In many cases, therefore, state officials are neither willing nor able to investigate, prosecute, try and punish the perpetrators of these crimes. At the same time, crimes such as torture, crimes against humanity and war crimes are considered to be so serious that they concern the international community as a whole. In the words of the Preamble to the Rome Statute of the International Criminal Court, their "effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation."

At least in some cases, the exercise of universal jurisdiction has proved to be one way of achieving effective prosecution. However, it remains only part of a four-pronged effort at a national and an international level to end impunity for torture and other serious crimes under international law. The four methods are:

1. prosecution in the country where the crimes were committed;
2. prosecutions in *ad hoc* international criminal tribunals;
3. prosecutions in the (future) International Criminal Court;
4. prosecutions in national courts exercising universal jurisdiction.

The criminal prosecution of serious crimes under international law in the jurisdiction where they occurred is, in an ideal world, the form of prosecution to be preferred from the point of view of both effectiveness and justice. If it is done properly, it is the best way to demonstrate to civil society that justice is being done. It is usually the most efficient way to collect evidence and testimonies. It may be the best way for victims and witnesses to participate in criminal proceedings. Finally, it allows suspects to be tried in a legal system and in a language they and their lawyers know best.

Where justice at the place of the crime is not possible, other means to ensure justice need to be found. The last century saw

the first modern use of *ad hoc* international criminal tribunals in the fight against impunity to supplement national courts. Such tribunals were established after the Second World War at Nuremberg and Tokyo and later for the prosecution of genocide, war crimes and crimes against humanity committed in former Yugoslavia since 1991 and in Rwanda in 1994.

In November 2000 a variation on this theme of establishing *ad hoc* international tribunals was introduced when the UN Secretary-General proposed that the UN Security Council establish an *ad hoc* Special Court in Sierra Leone which would be of mixed national and international jurisdiction and composition. Its applicable law would include international, as well as Sierra Leonean, law. Its judges, prosecutors and staff would be composed of Sierra Leonean nationals and people of other nationalities.

This "mixed tribunal" approach is the format the UN is following in Cambodia, in an attempt to ensure that trials take place of those believed responsible for the grave violations of human rights that occurred during the period of the Government of Democratic Kampuchea ("Khmer Rouge") between 17 April 1975 and 7 January 1979. The Cambodian government had previously rejected the establishment of an *ad hoc* international criminal tribunal. In January 2001 a draft law to allow for these trials in Cambodian courts, with national and international judges, was passed by the Cambodian parliament. However, the Constitutional Council ruled in February 2001 that the law was unconstitutional and referred it back to the drafting committee, which had not made the requested changes by June 2001. Doubts about the mandates, resources and effectiveness of these proposed mixed tribunals remain.

The third method for prosecuting people suspected of serious crimes under international law, at least in the near future, will be the permanent International Criminal Court. Seated in the Hague, the Netherlands, this court will be a treaty-based body which will be established after 60 states have ratified the 1998 Rome Statute of the International Criminal Court. By 28 June 2001, 37 states had already ratified and 139 states had signed the Statute. It was generally

expected that the Court would be established before 2003. The Court will exercise jurisdiction over genocide, crimes against humanity and war crimes.

The scope of all these international courts is very limited and their ability to exercise their jurisdiction even more circumscribed. The *ad hoc* tribunals and courts have limited jurisdiction as to the time and place of the crimes they can consider. The future permanent International Criminal Court will only be able to exercise jurisdiction over crimes committed after its statute has entered into force. The crimes over which the *ad hoc* tribunals and the International Criminal Court have jurisdiction are also limited. For instance, they include the crime against humanity of torture and the war crime of torture, but not the independent crime of torture.

The jurisdictional limitations of international tribunals and courts, together with the failures of national courts in the countries where the crimes were committed, are an important reason to promote the fourth method: the exercise of universal jurisdiction by national courts.

Members of Cambodia's National Assembly vote on 2 January 2001 to approve legislation to try former leaders of the "Khmer Rouge" government. The law was approved unanimously after only two days of debate. AI believes that the Cambodian judiciary does not yet have the capacity to conduct such trials in accordance with international standards for fairness, and fully supports the UN Group of Experts' initial recommendations that an *ad hoc* international tribunal be established for this purpose.

The exercise of universal jurisdiction by national courts

The principle of universal jurisdiction allows, and in some instances requires, states to investigate and try people suspected of crimes, including serious crimes under international law, irrespective of the nationality of the perpetrator, the nationality of the victim and the place where the crime was committed. A state which exercises universal jurisdiction may not be the state of nationality of the perpetrator (the state of active personality); it may not be the state of nationality of the victim (the state of passive personality); it may not be the state in which the crime took place (the territorial state); and it may not be the state where the suspect is found (the custodial state).

AI favours the effective exercise of universal jurisdiction over the independent crime of torture, the crime against humanity of torture and the war crimes of torture and related crimes in trials which comply with international fair trial standards and which exclude the death penalty or other cruel, inhuman and degrading punishment. AI opposes trials *in absentia* (trials held without the accused being present), which would, for instance, occur if a trial (as opposed to the pre-trial investigation) were held in a state other than the custodial state. The only exception is if the accused has deliberately absented himself or herself from the proceedings after they have begun, or has been so disruptive that he or she has had to be removed temporarily.¹⁰⁶

The Convention against Torture obliges states parties to submit the cases of people accused of torture and ancillary crimes to the prosecuting authorities, if such people are on the territory of that state party and the state does not extradite them. This obligation is irrespective of where the crime was committed, the nationality of the victim and the nationality of the alleged perpetrator. The four Geneva Conventions require states parties to search for people alleged to have committed or ordered grave breaches such as torture and inhuman treatment and to bring them before their own courts.

States which are parties to both the Convention against Torture and the Geneva Conventions are, therefore, obliged to exercise universal jurisdiction. More precisely, they are obliged

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to investigate and, if there is sufficient admissible evidence, to prosecute a person suspected of torture, attempted torture, participation in torture or assistance in torture if that person is found in their territory and they do not extradite the suspect. In addition, they have a duty to search for people alleged to have committed or ordered the torture of people protected by one of the Geneva Conventions, if the crime occurred in the context of an international armed conflict, regardless of whether the alleged perpetrator is on their territory. They are therefore obliged to search for such people on the high seas and in areas under their jurisdiction or control, such as areas where their peace-keeping forces are operating. So under the Geneva Conventions the search and try obligation is without frontiers. The try or extradite obligation under the Convention against Torture applies to territories subject to the jurisdiction of the state party, which includes any territory over which it has factual control.

The Convention against Torture obliges states parties to exercise universal jurisdiction over attempted torture and participation and assistance in torture. The only ancillary crime subject to universal jurisdiction under the Geneva Conventions is ordering a grave breach to be committed such as torture, inhuman treatment and wilfully causing great suffering or serious injury to body or health.

The Inter-American Convention to Prevent and Punish Torture obliges every state party to try people found "within the area under its jurisdiction", regardless of where the crime was committed or the nationality of victim and alleged perpetrator, if it does not extradite the "alleged criminal".

States which are not bound by any of these conventions are still permitted to exercise universal jurisdiction if an alleged foreign perpetrator of torture is found on their territory. As seen in Chapter 2, international customary law permits the exercise of universal jurisdiction over torture. This was made clear in the 10 December 1998 judgment of the Yugoslavia Tribunal (see Chapter 2): "...every State is entitled to investigate, prosecute and punish or extradite individuals accused of torture, who are present in a territory under its jurisdiction."¹⁰⁷ In 1987 Nigel Rodley (who would later become the UN Special Rapporteur on

torture) wrote: "it is now hard to imagine a convincing objection to any state's unilateral choice to exercise jurisdiction [over torture] on a universal basis. Thus, permissive universality of jurisdiction is probably already achieved under general international law."¹⁰⁸

Despite the obligations of states under international law, many people responsible for torture have been able to travel outside their countries with complete impunity. They should be brought to justice in the states where they are found, extradited to a state able and willing to bring them to justice or surrendered to an international criminal court or tribunal. However, such people are rarely subjected to the exercise of universal jurisdiction by the states that they visit, or where they reside after going into voluntary or forced exile.

For example, South Africa allowed former Ethiopian head of state Mengistu Haile-Mariam to leave the country in December 1999 before any investigation into his possible prosecution in South Africa or extradition to another state could take place. South Africa has been party to the Convention against Torture since 1998. The government led by Mengistu Haile-Mariam was responsible for large-scale human rights violations, including torture, in Ethiopia between 1974 and 1991. Mengistu Haile-Mariam apparently visited South Africa from Zimbabwe, his country of exile, for medical treatment. According to reports, he left the country before the South African government received a formal request for his extradition to Ethiopia where he had been indicted for crimes including torture. He returned to Zimbabwe, where he has lived under President Robert Mugabe's protection since fleeing Ethiopia in 1991, and in March 2001 he and seven members of his family were granted permanent residence status in Zimbabwe.

However, there have also been more successful cases of the exercise of universal jurisdiction in recent years. A number of those cases are summed up in a recent report prepared for the International Law Association.¹⁰⁹ In Denmark, a Bosnian Muslim seeking asylum was sentenced to eight years' imprisonment in 1994 for having murdered and tortured detainees in a concentration camp in Bosnia. In 1999 a lieutenant in the Mauritanian army was arrested in Montpellier,

France. He was suspected of having tortured detainees in a prison in Mauritania in 1990 and 1991. He was provisionally released during the investigation, but fled back to Mauritania. He has since been indicted for torture. Between May 1997 and December 1999, four people were convicted in Germany on charges of genocide, severe ill-treatment of Muslims and being an accessory to murder in Bosnia and Herzegovina. In 1997 a Sudanese doctor was arrested and charged in the United Kingdom with having committed torture in Sudan, but the charges were dropped in 1999.

In April 1999 a Rwandese citizen, Fulgence Niyonteze, was found guilty by a Swiss military tribunal of murder, attempted murder and incitement to murder, as well as war crimes committed in Rwanda in 1994. "The tribunal refused to consider charges of genocide and crimes against humanity on the grounds that these crimes are not recognized as being subject to universal jurisdiction under Swiss law."¹¹⁰ In May 2000 a military appeal court set aside the charges of murder and incitement to murder, declaring that military jurisdiction was not competent to examine such offences when committed abroad by a civilian, but sentenced him to 14 years' imprisonment for war crimes. As in the first instance trial, there was concern that the witnesses were not adequately protected from public identification during the appeal hearings. In April 2001 the Military Court of Cassation confirmed the verdict and prison sentences.

These examples may appear to show that the exercise of universal jurisdiction only targets lower-ranking officials of states or armed political organizations. However, criminal proceedings in the exercise of universal jurisdiction were triggered not just against former president Augusto Pinochet of Chile, but also against other former heads of state and government and senior political figures such as Lieutenant Colonel Desiré Delano Bouterse, former head of the military government of Suriname.

Belgian legislation enacted in 1993 and 1999 makes specific provision for Belgian courts to exercise universal jurisdiction over war crimes in international and non-international armed conflict, genocide and crimes against humanity, including torture. Since 1998, in the context of this legislation, a number

of criminal complaints have been lodged with the Belgian courts. Criminal investigations have been initiated against leaders and prominent members of past and present administrations of various foreign states including Chile, Cambodia, Chad, Iran, Morocco, Democratic Republic of the Congo, Guatemala and Rwanda. In June 2001, following Belgium's first trial based on universal jurisdiction, the Brussels Court of Assizes convicted four Rwandese nationals, resident in the country, of war crimes committed in the context of the 1994 genocide in Rwanda.

On 12 January 2001, a former Dutch ambassador lodged a formal complaint against members of the 1976 to 1983 government of Argentina, including Jorge Zorreguieta, a civilian member of the government between 1976 and 1981. According to the complainant, the former members of the government were responsible for crimes of torture and crimes against humanity. The Dutch College of Prosecutors-General referred the complaint to the Office of the Prosecutor in Amsterdam, which decided on 23 March 2001 that it had no jurisdiction over crimes committed before 1989, when the Convention against Torture became effective in the Netherlands. An appeal against this decision was pending before the Court of Appeal in Amsterdam in April 2001.

Another and more well-known example is the initiative to bring to trial in Senegal former president Hissène Habré of Chad. Hissène Habré ruled Chad from 1982 to December 1990, and found refuge in Senegal after his government was overthrown. His one-party state was marked by widespread serious human rights violations including torture and extrajudicial executions. According to prisoners released after he was ousted from power, "hundreds of people had been secretly executed in 1987 and 1989, in many cases at President Habré's headquarters."¹¹¹ In May 1992 an official report was published by a Commission of Inquiry which concluded that some 40,000 people had been victims of extrajudicial execution or "disappearance" between 1982 and 1990 and that many of the victims were tortured or starved to death in detention. The Commission of Inquiry, set up in December 1990 after the change of power in Chad, recommended the prosecution of officials of the former government.

By May 2001 no one had been brought to justice in Chad for crimes committed when Hissène Habré was President, but in Senegal Hissène Habré himself had been the subject of a formal complaint. On 26 January 2000, seven individual Chadians, supported by a coalition of Chadian, Senegalese and international human rights organizations,¹¹² filed a formal complaint against him. Hissène Habré was accused of torture and crimes against humanity committed between 1982 and 1990. The complaint was brought before the Dakar Regional Court. The investigating judge forwarded the file to the State Prosecutor for advice. The State Prosecutor agreed that the criminal investigation could continue. The investigating judge heard testimony from six victims and indicted Hissène Habré on 4 February 2000 on charges of complicity in acts of torture and crimes against humanity. On the judge's order, Hissène Habré was placed under house arrest in Dakar.

On 16 May 2000, lawyers acting for Hissène Habré moved for dismissal of the charges, claiming that Senegal had no jurisdiction over crimes committed in Chad, that prosecution was barred by the statute of limitation and that Senegal did not incorporate the Convention against Torture into national law until 1996. After presidential elections (Abdoulaye Wade replaced Abdou Diouf as President of Senegal in March 2000) the defence lawyer for Hissène Habré became a special adviser on judicial matters to the new Senegalese President.

In July 2000, the *chambre d'accusation*, Indicting Chamber, of Dakar dropped the charges against Hissène Habré. It stated that it had no jurisdiction over the case. The UN Special Rapporteur on torture and the UN Special Rapporteur on the independence of judges and lawyers¹¹³ publicly expressed their concern about the fact that the charges were dismissed several days after the Chief Investigating Judge of the Dakar Regional Court, who was the judge responsible for the indicting of Hissène Habré, was removed from the case and transferred from his position to the Dakar Court of Appeals. The President of the Indicting Chamber, who delivered the judgment releasing Hissène Habré, was promoted to a higher judicial position in the Council of State while the matter was still before the court. In April 2001, the UN Committee against Torture called on Senegal not to allow Hissène Habré to leave the country.

The decision to drop the charges was appealed at the Court of Cassation, which ruled on 20 March 2001 that Senegalese courts have no jurisdiction to try Hissène Habré on charges of torture and crimes against humanity.

Senegalese human rights organizations announced that they would seek legislative changes to ensure that Senegal would not be a safe haven for other alleged perpetrators of serious violations of human rights and international humanitarian law in the future.

Justice abroad as a tool for justice at home

The exercise of universal jurisdiction in foreign courts has not only brought a few individuals to justice, it has also inspired action in the states where the crimes were committed. Chadian torture victims, backed by a coalition of human rights organizations, were instrumental in starting the case against former Chadian president Hissène Habré in Senegal in early 2000. Later that year in Chad, human rights organizations filed 17 cases against members of the Directorate of Documentation and Security (DDS). The DDS was identified by the official Commission of Inquiry as one of the main units responsible for serious human rights violations in Chad between 1982 and 1990. In November 2000, the investigating judge ruled that he did not have jurisdiction in the case against the DDS members, because a 1993 law provided for a special court to be established to try crimes perpetrated by the government of Hissène Habré. Unfortunately, the special court was never set up. An appeal against this ruling was still pending in March 2001. Although the ruling of the investigating judge was unfavourable to those seeking justice, this was the first time in the 10 years since Hissène Habré left power that any steps towards serious criminal proceedings had been taken in Chad.¹¹⁴

In Suriname it took almost 18 years before serious steps were taken to investigate the 1982 "December killings" (see page 39). By that time, proceedings in the Netherlands had been under way for several years. In 1996 relatives of two of the 15 victims tried to get a criminal investigation ordered on the ground that

Lieutenant Colonel Desiré Delano Bouterse, head of state in Suriname in 1982, had Dutch nationality. However, the court of Appeal in Amsterdam did not accept that in 1982 Lieutenant Colonel Bouterse had had Dutch nationality. Therefore, the court saw no ground to order an investigation into the "December killings". However, when in 2000 the relatives returned to the Court of Appeal in Amsterdam, claiming that a Dutch court could exercise universal jurisdiction and a court appointed expert agreed at least insofar as the crime against humanity of torture was concerned, the court ruled in favour of the complainants.

Only three weeks before that second ruling by the Court of Appeal in Amsterdam, the Suriname Court of Justice ordered the prosecution of Desiré Delano Bouterse and others allegedly involved in the 1982 "December killings". The criminal investigation in Suriname reportedly opened on 17 November 2000, exactly three weeks before a statute of limitations would have finally barred prosecution of those responsible for the torture and extrajudicial execution of 15 opposition activists.

In 2001 the Canadian authorities arrested and then deported to Honduras José Barrera Martínez, a former member of the Honduran armed forces who had been living in the country since 1987. The Canadian immigration service, after a two-and-a-half-year investigation, had concluded that allegations related to his participation in human rights violations in the 1980s were credible. In July 1987, while in Mexico, he had described many operations carried out by his former army unit, Battalion 3-16, in which civilians had been arrested, tortured and killed. His return to Honduras could provide an opportunity for investigations to be initiated into at least some of the scores of "disappearances" of trade union, peasant, student and community activists in the early 1980s, virtually none of which have ever been investigated. Many of the victims were tortured, and the agony suffered by relatives of the "disappeared", who do not know whether their loved ones are alive or dead, can be in itself a form of torture.

One of the clearest examples of the positive effects of the exercise of universal jurisdiction on the turning of the wheels of justice in the territorial state is that of former Chilean president Augusto Pinochet. He returned to Chile in March 2000, after a

period of house arrest in the United Kingdom, where he was arrested on 18 October 1998 following a request for his extradition by a Spanish investigating judge. The legal procedures surrounding this request took until March 2000 when he was allowed to return to Chile on the grounds that he was medically unfit to stand trial.

Upon his return to Chile, a warm welcome by his supporters awaited former President Pinochet, as well as more than 70 criminal complaints involving nearly 2,000 individual cases of serious human rights violations. Seven Chilean lawyers, working closely with the Association of Relatives of the Disappeared Detainees and other non-governmental organizations, requested the Santiago Appeals Court to lift Augusto Pinochet's parliamentary immunity from prosecution as a senator-for-life. In June 2000 the Court agreed, by 13 votes to nine, to lift his immunity. Senator Pinochet lost the appeal against this decision in August 2000, when the Supreme Court upheld the Court of Appeal's decision. Since then the former President has been under criminal investigation for his alleged part in the "disappearance" of 19 people during the so-called "Caravan of Death", an operation that started almost immediately after he seized power in 1973.

On 1 December 2000 the investigating judge in the "Caravan of Death" case ordered the house arrest of Augusto Pinochet, but this order was overturned by the Supreme Court later that month because the investigating judge had not interrogated Augusto Pinochet before ordering the arrest. Before interrogation could take place, medical tests had to be performed to see whether he was fit to stand trial. By December 2000, 202 criminal complaints had been filed against Augusto Pinochet. Three other former high-ranking officers were charged in connection with the "Caravan of Death" and more than 80 former members of the security forces were under criminal investigation for past human rights violations.

On 18 January 2001 medical tests were performed on Augusto Pinochet and the investigating judge subsequently concluded that "his present state does not prevent him from exercising his rights and defending himself". On 29 January 2001 the judge again ordered Augusto Pinochet to be taken into

preventive detention (this time after questioning him a few days earlier) in order for him to be brought to trial for kidnapping or aggravated homicide committed against 75 victims of the "Caravan of Death" in October 1973. The number of lawsuits in which Augusto Pinochet was named as a suspect for crimes committed during his presidency had risen to 241 by the end of February 2001.

In February 2001 the Chilean Minister of the Interior said that a proliferation of human rights complaints would be detrimental to the country's social peace. He declared that investigations should therefore be confined to the cases of the "disappeared" and the victims of extrajudicial executions. His statement came as a response to the announcement by human rights lawyers that a number of lawsuits for torture would be filed against Augusto Pinochet and Acting Commander-in-Chief of the Air Force, General Hernán Gabrielli, for their role in the "Caravan of Death". (The combined findings of two commissions created following the return to civilian rule recorded more than 3,000 cases of "disappearance", extrajudicial execution and death resulting from torture. This figure did not include the victims of torture who survived their ordeal.) On 8 March 2001 the Santiago Court of Appeals ruled that Augusto Pinochet could face trial in the case of the "Caravan of Death", but reduced the charges against him to being an accessory to murder and kidnapping. However, in July 2001 the Court decided to suspend proceedings on all charges "temporarily but indefinitely" as he was deemed unfit to stand trial.

In Argentina too, legal proceedings abroad, recommendations from international organizations and a campaign for justice at home have slowly brought the wheels of justice into motion (see Chapter 1).¹⁵ With Italian, French and Spanish courts exercising jurisdiction over crimes committed in Argentina between 1976 and 1983, an Argentine court, in October 2000, requested the extradition from Chile of Augusto Pinochet and six former members of the Chilean secret police for their alleged part in the killing in Buenos Aires in 1974 of former Chilean Army chief Carlos Prats and his wife. In November 2000, one former member of the Chilean secret police was found guilty of double homicide and sentenced to life imprisonment.

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Ricardo Miguel Cavallo, alleged to be Miguel Angel Cavallo, a former Argentine military officer, is informed of Spain's formal request to the Mexican authorities for his extradition, 11 October 2000. Ricardo Miguel Cavallo is wanted in Spain to face charges of genocide and torture during Argentina's 1976-1983 "dirty war".

As a theoretical legal concept universal jurisdiction has been around for centuries. As a state obligation under international law it is at least as old as the 1949 Geneva Conventions. Although it was expanded to crimes not constituting a war crime by the Convention against Torture in 1984, it remained a mainly dormant legal principle until the early 1990s. The principle slowly gained power in the wake of international justice, set in motion through the establishment of the *ad hoc* tribunals for Rwanda and former Yugoslavia. In its turn, the principle of universal jurisdiction now seems to be working not only as an independent force, but also as a catalyst for justice at home. In most cases crimes of torture should preferably be tried in national courts for reasons of evidence, effectiveness and fairness, provided the trials are neither sham nor unfair, and exclude the death penalty and other cruel, inhuman or degrading punishment.

14 Principles on the effective exercise of universal jurisdiction

In May 1999 Amnesty International launched a 14-Point Program on the effective exercise of universal jurisdiction (AI Index: IOR 53/01/99). Every state should ensure that its legislation, policies and practice are consistent with these principles.

1. *Crimes of universal jurisdiction.* States should ensure that their national courts can exercise universal and other forms of extraterritorial jurisdiction over grave human rights violations and abuses and violations of international humanitarian law.
2. *No immunity for people acting in an official capacity.* National legislatures should ensure that their national courts can exercise jurisdiction over anyone suspected or accused of grave crimes under international law, whatever the official capacity of the suspect or accused at the time of the alleged crime or any time thereafter.
3. *No immunity for past crimes.* National legislatures should ensure that their courts can exercise jurisdiction over grave crimes under international law no matter when they occurred.
4. *No statutes of limitation.* National legislatures should ensure that there is no time limit on the liability to prosecution of a person responsible for grave crimes under international law.
5. *Superior orders, duress and necessity should not be permissible defences.* National legislatures should ensure that people on trial in national courts for the commission of grave crimes under international law are only allowed to assert defences that are consistent with international law. Superior orders, duress and necessity should not be allowed as a defence.
6. *National laws and decisions designed to shield persons from prosecution cannot bind courts in other countries.* National legislatures should ensure that national courts are allowed to exercise jurisdiction over grave crimes under international law in cases where the suspects or accused were shielded from justice in any other national jurisdiction.
7. *No political interference.* Decisions to start or stop an investigation or prosecution of grave crimes under international law should be made only by the prosecutor, subject to appropriate judicial scrutiny which does not impair the prosecutor's independence, based solely on legal considerations, without any outside interference.
8. *Grave crimes under international law must be investigated and prosecuted without waiting for complaints from victims.* National legislatures should ensure that national law requires national authorities exercising universal jurisdiction to investigate grave crimes under international law and, where there is sufficient

admissible evidence, to prosecute, without waiting for a complaint by a victim or any other person with a sufficient interest in the case.

9. *Internationally recognized guarantees for fair trials.* National legislatures should ensure that criminal procedure codes guarantee those suspected or accused of grave crimes under international law all rights necessary to ensure that their trials will be fair and prompt in strict accordance with international law and standards for fair trials. All branches of government, including the police, prosecutor and judges, must ensure that these rights are fully respected.

10. *Public trials in the presence of international monitors.* To ensure that justice is not only done but also seen to be done, intergovernmental and non-governmental organizations should be permitted by the competent national authorities to attend and monitor the trials of persons accused of grave crimes under international law.

11. *The interests of victims, witnesses and their families must be taken into account.* National courts must protect victims, witnesses and their families. Investigation of crimes must take into account the special interests of vulnerable victims and witnesses, including women and children. Courts must award appropriate redress to victims and their families.

12. *No death penalty or other cruel, inhuman or degrading punishment.* National legislatures should ensure that grave crimes under international law are not punishable by the death penalty or any other cruel, inhuman or degrading punishment.

13. *International cooperation in investigation and prosecution.* States must fully cooperate with investigations and prosecutions by the competent authorities of other states exercising universal jurisdiction over grave crimes under international law.

14. *Effective training of judges, prosecutors, investigators and defence lawyers.* National legislatures should ensure that judges, prosecutors and investigators receive effective training in human rights law, international humanitarian law and international criminal law.

(See Appendix 2 for the full text of these 14 principles.)

International criminal tribunals and courts

On 27 June 2001, former president Slobodan Milošević was transferred to the custody of the International Criminal Tribunal for the former Yugoslavia in the Hague. He had been

in custody in Serbia under investigation for crimes including corruption and abuse of power since his arrest on 1 April 2001. The former president was indicted with four other former government officials on 24 May 1999 on charges of crimes against humanity and violations of the law and customs of war committed in Kosovo by forces acting under their command, with their encouragement and with their support.

In May 1993, the Yugoslavia Tribunal was set up to prosecute people responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. Its jurisdiction covers grave breaches of the 1949 Geneva Conventions, violations of the laws or customs of war, genocide and crimes against humanity. After a slow start, the first trial (the *Tadić* case) opened in May 1996. By 31 March 2001, the Tribunal had issued indictments against 66 people. Thirty-seven people were in custody in the Hague, the Netherlands, 14 of them in pre-trial detention. Arrest warrants for 26 other accused had been issued to particular states and as international arrest warrants. (Three people were provisionally released, one of whom died in 1997.) In six cases the proceedings were completed, five cases were pending before the Appeals Chamber, four cases were pending before the Trial Chambers and in two cases those found guilty were awaiting sentence. By 31 March 2001, the cases of 12 people had been concluded: two were acquitted on all counts; against three all charges were withdrawn; three people died before they were tried; four were sentenced to prison terms. Four others were awaiting sentence after trial.

The International Criminal Tribunal for Rwanda was established in November 1994 to prosecute people responsible for serious violations of international humanitarian law committed in the territory of Rwanda, and Rwandese citizens responsible for such violations in the territory of neighbouring states, between 1 January 1994 and 31 December 1994. The jurisdiction of this *ad hoc* tribunal covers genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and of Additional Protocol II to the Geneva Conventions.

Both the Yugoslavia Tribunal and the Rwanda Tribunal have been important for the development of international criminal law

and the enforcement of human rights and international humanitarian law standards through criminal justice systems. First, they confirmed that rape can amount to the crime against humanity of torture, as well as being a crime against humanity in its own right, if perpetrated on a large scale or systematically. Second, the Yugoslavia Tribunal concluded in its first case that "customary international law imposes criminal liability for serious violations of common Article 3 [of the 1949 Geneva Conventions]".¹¹⁶ The Statute of the Rwanda Tribunal itself provided that tribunal with criminal jurisdiction over violations of common Article 3, showing that states (at least the members of the UN Security Council) concurred with the view of the Yugoslavia Tribunal. The fact that the jurisdiction of both *ad hoc* tribunals covered war crimes committed in non-international armed conflict was an important consideration when in 1998 a UN Diplomatic Conference had to decide the jurisdiction of the future International Criminal Court. Recent international legal history made it impossible to exclude war crimes committed in internal armed conflicts, however hard some states participating in the diplomatic conference pushed for this outcome.

In 1998 the Rome Statute was adopted by a UN Diplomatic Conference with 120 states voting for and seven against the Statute. By 28 June 2001, 37 states had ratified or acceded to the Rome Statute, while 139 had signed it before or at 31 December 2000, the signature deadline. According to estimates, the Rome Statute will become effective in 2002 or early 2003. The Rome Statute contains many provisions which should be considered as setting the standard for national criminal law and criminal procedure law. For example, its provisions in substantive criminal law include definitions of crimes of torture and related crimes and provisions on individual criminal responsibility. Its provisions on procedural criminal law include the non-applicability of statutes of limitation. Therefore, states should, when implementing the Rome Statute in their national law, review their national law to ensure that their national courts can exercise jurisdiction over at least the same crimes and the same people as the International Criminal Court. States must ensure effective prosecutions of the most serious crimes of concern to the international community by taking measures at the national level. Only then will the future International Criminal Court truly be a court of last resort.

Chapter 6: Recommendations

AI believes that bringing torturers to justice is a vital part of the struggle to eradicate torture. Overcoming impunity for torture is essential to establish the truth, to send the message that torture is unacceptable and will not be tolerated, and to promote the rule of law. AI, therefore, makes the following recommendations to promote the fair and effective prosecution of those responsible for a crime of torture or a related crime.

These recommendations are based on AI's research and on AI's 12-Point Program for the Prevention of Torture by Agents of the State and AI's 14 Principles on the Effective Exercise of Universal Jurisdiction. They are also based on the recommendations in its reports:

Take a step to stamp out torture;
Broken bodies, shattered minds – Torture and ill-treatment of women;
*International Criminal Court: Checklist for Effective Implementation;*¹¹⁷
*International Criminal Court: Ensuring an effective role for victims – Memorandum for the Paris seminar*¹¹⁸
 and *Fair Trials Manual*.¹¹⁹

The criminalization of torture

1. Governments must ensure that they expressly define torture as a crime in their national criminal law in such a way that it covers the independent crime of torture, the crime against humanity of torture and the war crimes of torture and related crimes. They should ensure that these definitions conform fully to international and regional human rights treaties such as the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), the 1985 Inter-American Convention to Prevent and Punish Torture (Inter-American Convention), the 1998 Rome Statute of the International Criminal Court (Rome Statute) and the 1949 Geneva Conventions and the 1977 Protocol I and Protocol II Additional to the Geneva Conventions.
2. Governments must ensure that assistance and participation in torture (the independent crime, the crime against humanity and the war crime of torture) and related crimes, including forms of command and superior responsibility, are made criminal offences under national law. They should ensure that these definitions conform fully to international human rights treaties such as the Convention against Torture, the Inter-American Convention, the Rome Statute and the Geneva Conventions.
3. Governments must ensure that attempts to commit torture and related crimes are also made criminal offences under national law in conformity with such instruments as the Convention against Torture, the Inter-American Convention and the Rome Statute.
4. Governments must ensure that national courts can exercise jurisdiction over anyone suspected or accused of having committed torture (the independent crime, the crime against humanity and the war crime of torture) or a related crime. Any national law authorizing the prosecution of such crimes should apply equally to all people irrespective of any current or former official capacity.
5. Governments must ensure that there will be no immunity for past crimes. National courts should be able to exercise jurisdiction over torture (the independent crime, the crime against humanity and the war crime of torture) and related crimes whenever they have been committed. Impermissible defences, such as superior orders, should be excluded. In addition, laws or decrees granting pre-conviction amnesties, pardons or similar measures of impunity for torture and other serious human rights violations should be repealed or declared null and void.
6. Governments must ensure that there is no time limit on the liability to prosecution of a person responsible for torture and related crimes. Statutes of limitation should not be applied to such crimes.
7. Reports of torture should be promptly, independently, impartially and thoroughly investigated and, where there is sufficient admissible evidence, prosecuted without waiting for complaints of victims or others with a sufficient interest in the case.

8. Decisions to start or stop an investigation or prosecution in any case of alleged torture should be made only by an independent prosecutor, subject to appropriate judicial scrutiny which does not impair the prosecutor's independence, or by an investigating judge. These decisions should be based solely on legal considerations and neutral criteria, such as the sufficiency or admissibility of evidence, without any political or other outside interference.
9. People suspected or accused of bearing criminal responsibility for a crime of torture or a related crime must be brought to justice in trials that are fair and prompt in strict accordance with international law and standards for fair trials. They should not be tried *in absentia*. People found guilty of torture or a related crime should not be sentenced to death or any other cruel, inhuman or degrading punishment.

The rights of victims

10. Governments should ensure that the rights of victims to an effective remedy against torture are fully recognized in national law, in conformity with the Joinet and Van Boven-Bassiouni Principles and such instruments as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights and the Rome Statute of the International Criminal Court.
11. Victims of torture or their representatives should have the right to have complaints of torture or related crimes promptly, impartially, independently and thoroughly investigated by competent administrative and judicial authorities and, if there is sufficient admissible evidence, to have the alleged perpetrator or perpetrators prosecuted. Additionally, they should have the right to appeal against decisions not to prosecute to the competent judicial authorities.

12. Governments must ensure that, if needed, victims, witnesses and their families receive adequate protection, before, during and after trial. Since investigation and prosecution of torture and other serious crimes under international law is a responsibility of the entire international community, all states should assist each other in protecting victims and witnesses, including through effective witness protection and relocation programs and provision of adequate funding. The investigation and prosecution of crimes of torture must also take into account the special interests of vulnerable victims and witnesses, including women and children. Protection and other special measures must not, however, prejudice the rights of suspects and accused to a fair trial, including the right to cross-examine witnesses.
13. Victims of torture and their dependants should be entitled to obtain prompt reparation from the state, including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

International justice

14. Governments must ensure that the independent crime of torture, the crime against humanity of torture, war crimes of torture and related crimes, as well as crimes of assistance and participation in torture or a related crime and attempts to commit torture or a related crime, are made subject to universal jurisdiction and other forms of extraterritorial jurisdiction under their national law. They should meet in full their obligations under international and regional human rights treaties such as the Convention against Torture, the Inter-American Convention and the Geneva Conventions and their Protocols I and II, the 1973 UN Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, the Rome Statute of the International Criminal Court and general principles of international law.
15. Amnesty laws and other national laws and decisions designed to shield persons from prosecution cannot bind courts in other countries. Governments should ensure that national

courts are allowed to exercise jurisdiction over torture and related crimes in cases where the suspects or accused were shielded from justice in any other national jurisdiction.

16. Governments should ensure that the competent authorities are required under national law to assist the authorities of other states in investigations and prosecutions of torture and related crimes, promptly and to the greatest extent possible, provided that such proceedings are in accordance with international law and standards and exclude the death penalty and other cruel, inhuman or degrading punishment. Such assistance should include identifying and locating individuals, taking testimony and producing evidence, serving documents, arresting or detaining suspects and extraditing accused individuals.
17. To ensure that justice is not only done but also seen to be done, intergovernmental and non-governmental organizations should be permitted by the competent national authorities to attend and monitor trials of people accused of bearing criminal responsibility for crimes of torture or related crimes. They should also be allowed to obtain copies of all court documents not required to be kept confidential in accordance with international law and standards designed to ensure a fair trial and to protect victims and witnesses.
18. States should ratify the Rome Statute and enact the necessary national legislation to implement the Statute effectively, in accordance with AI's *Checklist For Effective Implementation*.¹²⁰
19. Governments should contribute generously on a regular basis to the United Nations Voluntary Fund for Victims of Torture and should, in the future, contribute to the Trust Fund for victims of crimes within the jurisdiction of the International Criminal Court and set up similar trust funds at the national level.

Appendix 1: Amnesty International's 12-Point Program for the Prevention of Torture by Agents of the State

Amnesty International

12-Point Program for the Prevention of Torture by Agents of the State

Torture is a fundamental violation of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law.

Yet torture persists, daily and across the globe. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

Amnesty International calls on all governments to implement the following 12-Point Program for the Prevention of Torture by Agents of the State. It invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and to work for its eradication worldwide.

1. Condemn torture

The highest authorities of every country should demonstrate their total opposition to torture. They should condemn torture unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture will never be tolerated.

2. Ensure access to prisoners

Torture often takes place while prisoners are held incommunicado — unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

In some countries torture takes place in secret locations, often after the victims are made to "disappear". Governments should

ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers and the courts. Effective judicial remedies should be available to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture in law

Governments should adopt laws for the prohibition and prevention of torture incorporating the main elements of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of

committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture must be brought to justice. This principle should apply wherever alleged torturers happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments must exercise universal jurisdiction over alleged torturers or extradite them, and cooperate with each other in such criminal proceedings. Trials must be fair. An order from a superior officer must never be accepted as a justification for torture.

8. No use of statements extracted under torture

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. Officials should be instructed that they have the right and duty to refuse to obey any order to torture.

10. Provide reparation

Victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture, including the UN Convention against Torture with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of international bodies and experts on the prevention of torture.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture. Governments must not forcibly return a person to a country where he or she risks being tortured.

This 12-Point Program was adopted by Amnesty International in October 2000 as a program of measures to prevent the torture and ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. Amnesty International holds governments to their international obligations to prevent and punish torture, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture by armed political groups.

Appendix 2: Amnesty International's 14 Principles on the Effective Exercise of Universal Jurisdiction

i. Crimes of universal jurisdiction. States should ensure that their national courts can exercise universal and other forms of extraterritorial jurisdiction over grave human rights violations and abuses and violations of international humanitarian law.

States should ensure that their national courts exercise universal jurisdiction on behalf of the international community over grave crimes under international law when a person suspected of such crimes is found in their territories or jurisdiction. If they do not do so, they should extradite the suspect to a state able and willing to do so or surrender the suspect to an international court with jurisdiction. When a state fails to fulfil this responsibility, other states should request the suspect's extradition and exercise universal jurisdiction.

Among the human rights violations and abuses over which national courts may exercise universal jurisdiction under international law are genocide, crimes against humanity, war crimes (whether committed in international or in non-international armed conflict), other deliberate and arbitrary killings and hostage-taking, whether these crimes were committed by state or by non-state actors, such as members of armed political groups, as well as extrajudicial executions, "disappearances" and torture.

In defining grave crimes under international law as extraterritorial crimes under their national criminal law, national legislatures should ensure that the crimes are defined in ways consistent with international law and standards, as reflected in international instruments such as the Hague Convention (IV) respecting the Laws and Customs of War on Land and the annexed Regulations concerning the Laws and Customs of War on Land (1907), the Charters of the Nuremberg and Tokyo Tribunals (1945 and 1946), Allied Control Council Law No. 10 (1945), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the four Geneva Conventions for the Protection of Victims of War (1949) and their two Additional Protocols (1977), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(Convention against Torture) (1984), the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (1989), the UN Declaration on the Protection of All Persons from Enforced Disappearance (1992), the draft Code of Crimes against the Peace and Security of Mankind (1996) and the Rome Statute of the International Criminal Court (1998). In defining these crimes national legislatures should also take into account the Statutes and jurisprudence of the Yugoslavia and Rwanda Tribunals.

National legislatures should ensure that under their criminal law persons will also be liable to prosecution for extraterritorial inchoate and ancillary crimes, such as conspiracy to commit genocide and attempt to commit grave crimes under international law, direct and public incitement to commit them or complicity in such crimes. National laws should also fully incorporate the rules of criminal responsibility of military commanders and civilian superiors for the conduct of their subordinates.

2. No immunity for persons in official capacity. National legislatures should ensure that their national courts can exercise jurisdiction over anyone suspected or accused of grave crimes under international law, whatever the official capacity of the suspect or accused at the time of the alleged crime or any time thereafter.

Any national law authorizing the prosecution of grave crimes under international law should apply equally to all persons irrespective of any official or former official capacity, be it head of state, head or member of government, member of parliament or other elected or governmental capacity. The Charters of the Nuremberg and Tokyo Tribunals, the Statutes of the Yugoslavia and Rwanda Tribunals and the Rome Statute of the International Criminal Court have clearly confirmed that courts may exercise jurisdiction over persons suspected or accused of grave crimes under international law regardless of the official position or capacity at the time of the crime or later. The Charter of the Nuremberg Tribunal provided that the official position of a person found guilty of crimes against humanity or war crimes could not be considered as a ground for mitigating the penalty.

The UN General Assembly unanimously affirmed in Resolution 95 (I) of 11 December 1946 "the principles of international law recognized in the Charter of the Nuremberg Tribunal and the judgment of the Tribunal". These principles have been applied by national, as well as international, courts, most recently in the decision by the United Kingdom's House of Lords that the former head of state of Chile, Augusto Pinochet, could be held criminally responsible by a national court for the crime under international law of torture.

3. No immunity for past crimes. National legislatures should ensure that their courts can exercise jurisdiction over grave crimes under international law no matter when they occurred.

The internationally recognized principle of *nullum crimen sine lege* (no crime without a prior law), also known as the principle of legality, is an important principle of substantive criminal law. However, genocide, crimes against humanity, war crimes and torture were considered as crimes under general principles of law recognized by the international community before they were codified. Therefore, national legislatures should ensure that by law courts have extraterritorial criminal jurisdiction over grave crimes under international law no matter when committed. As Article 15(2) of the International Covenant on Civil and Political Rights (ICCPR) makes clear, such legislation is fully consistent with the *nullum crimen sine lege* principle. That provision states that nothing in the article prohibiting retrospective punishment "shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations". Thus, the failure of a state where the crime under international law took place to have provided at the time the conduct occurred that it was a crime under national law does not preclude that state – or any other state exercising universal jurisdiction on behalf of the international community – from prosecuting a person accused of the crime.

4. No statutes of limitation. National legislatures should ensure that there is no time limit on the liability to prosecution of a person responsible for grave crimes under international law.

It is now generally recognized that time limits found in many national criminal justice systems for the prosecution of ordinary crimes under national law do not apply to grave crimes under international law. Most recently, 120 states voted on 17 July 1998 to adopt the Rome Statute of the International Criminal Court, which provides in Article 29 that genocide, crimes against humanity and war crimes "shall not be subject to any statutes of limitations". Similarly, the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968) states that these crimes are not subject to any statutes of limitation regardless of when they were committed. Neither the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions nor the Convention against Torture contain provisions exempting states from the duty to bring to justice those responsible for such crimes through statutes of limitation.

The international community now considers that when enforced disappearances are committed on a widespread or systematic basis, they are not subject to statutes of limitation. Article 29 of the Rome Statute of the International Criminal Court provides that crimes within the Court's jurisdiction, including enforced disappearances when committed on a widespread or systematic basis, are not subject to statutes of limitation, and Article 17 of the Statute permits the Court to exercise its concurrent jurisdiction when states parties are unable or unwilling genuinely to investigate or prosecute such crimes. Thus, the majority of states have rejected as out of date that part of Article 17(3) in the UN Declaration on the Protection of All Persons from Enforced Disappearance which appears to permit statutes of limitation for enforced disappearances. However, even to the limited extent that this provision still has any force, it requires that where statutes of limitation exist they shall be "commensurate with the extreme seriousness of the offence", and Article 17(2) states that when there are no effective remedies available, statutes of limitation "be suspended until these remedies are re-established". Moreover, the Declaration also clearly establishes that "[a]cts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate

and the whereabouts of persons who have disappeared and these facts remain unclarified." (Article 17(1)).

5. Superior orders, duress and necessity should not be permissible defences. National legislatures should ensure that persons on trial in national courts for the commission of grave crimes under international law are only allowed to assert defences that are consistent with international law. Superior orders, duress and necessity should not be permissible defences.

Superior orders should not be allowed as a defence. The Charters of the Nuremberg and Tokyo Tribunals and the Statutes of the Yugoslavia and Rwanda Tribunals all exclude superior orders as a defence. Article 33(2) of the Rome Statute of the International Criminal Court provides that "orders to commit genocide or crimes against humanity are manifestly unlawful", and, therefore, superior orders are prohibited as a defence with respect to these crimes. Article 33(1) provides that a superior order does not relieve a person of criminal responsibility unless three exceptional circumstances are present: "(a) The person was under a legal obligation to obey orders of the Government or superior in question; (b) The person did not know the order was unlawful; and (c) The order was not manifestly unlawful." Since subordinates are only required to obey lawful orders, most military subordinates receive training in humanitarian law and the conduct within the Court's jurisdiction is all manifestly unlawful, the number of situations where superior orders could be a defence in the Court to war crimes are likely to be extremely rare. In any event, this defence is limited to cases before the Court and does not affect current international law prohibiting superior orders as a defence to war crimes in national courts or other international courts.

Principle 19 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions states that "an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions". Article 6 of the UN Principles on the Protection of All Persons from Enforced Disappearance provides: "No order or instruction of any public

authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it." Similarly, Article 2(3) of the Convention against Torture states: "An order from a superior officer or a public authority may not be invoked as a justification of torture."

Duress or coercion (by another person) should also be excluded as a permissible defence. In many cases, and certainly in war crimes cases, allowing duress or coercion as a defence would enable defendants to assert the superior orders defence in disguise. In many national systems of criminal law duress or coercion is a permissible defence to ordinary crimes, if the harm supposedly inflicted by the defendant is less than the serious bodily harm he or she had to fear, had he or she withstood the duress or coercion. In cases such as genocide, crimes against humanity, extrajudicial executions, enforced disappearance and torture it is hard to conceive how committing such crimes could result in the lesser harm. However, duress or coercion can, in some cases, be considered as a mitigating circumstance when determining the appropriate sentence for such grave crimes.

No circumstances such as state of war, state of siege or any other state of public emergency should exempt persons who have committed grave crimes under international law from criminal responsibility on the ground of necessity. This principle is recognized in provisions of a number of instruments, including Article 2(2) of the Convention against Torture, Article 7 of the UN Declaration on the Effective Protection of All Persons from Enforced Disappearance and Article 19 of the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

6. National laws and decisions designed to shield persons from prosecution cannot bind courts in other countries.

National legislatures should ensure that national courts are allowed to exercise jurisdiction over grave crimes under international law in cases where the suspects or accused were shielded from justice in any other national jurisdiction.

The international community as a whole has a legitimate interest in the prosecution of grave crimes under international law in order to deter the commission of such crimes in the

future, to punish the commission of these crimes in the past and in order to contribute to the redress for victims. Indeed, each state has a duty to do so on behalf of the entire international community. Therefore, when one state fails to fulfil its duty to bring those responsible for such crimes to justice, other states have a responsibility to act. Just as international courts are under no obligation to respect decisions of the judicial, executive or legislative branch of government in a national jurisdiction aimed at shielding perpetrators of these crimes from justice by amnesties, sham criminal procedures or any other schemes or decisions, no national court exercising extraterritorial jurisdiction over such crimes is under an obligation to respect such steps in other jurisdictions to frustrate international justice.

Bringing perpetrators to justice who were shielded from justice in another national jurisdiction is fully consistent with the *ne bis in idem* principle (the prohibition of double jeopardy) that no one should be brought to trial or should be punished for the same crime twice in the same jurisdiction. As the Human Rights Committee, a body of experts established under the ICCPR to monitor implementation of that treaty has explained, Article 14(7) of the ICCPR "does not guarantee *non bis in idem* with regard to the national jurisdictions of two or more States. The Committee observes that this provision prohibits double jeopardy only with regard to an offence adjudicated in a given State." (*A.P. v. Italy*, No. 204/1986, 2 November 1987, 2 Selected Decisions of the Human Rights Committee under the Optional Protocol 67, UN Doc. CCPR/C/OP/2, UN Sales No. E.89.XIV.i) The International Law Commission, a body of experts established by the UN General Assembly to codify and progressively develop international law, has declared that "international law [does] not make it an obligation for States to recognize a criminal judgment handed down in a foreign State" and that where a national judicial system has not functioned independently or impartially or where the proceedings were designed to shield the accused from international criminal responsibility, "the international community should not be required to recognize a decision that is the result of such a serious transgression of the criminal

justice process.” (Report of the International Law Commission’s 48th session, 6 May to 26 July 1996, UN Doc. A/51/10, 1996, p. 67)

Provisions in the Statutes of the Yugoslavia and Rwanda Tribunals and the Rome Statute of the International Criminal Court which permit international courts to try persons who have been acquitted by national courts in sham proceedings or where other national decisions have shielded suspects or the accused from international justice for grave crimes under international law are, therefore, fully consistent with international law guaranteeing the right to fair trial.

7. No political interference. Decisions to start or stop an investigation or prosecution of grave crimes under international law should be made only by the prosecutor, subject to appropriate judicial scrutiny which does not impair the prosecutor’s independence, based solely on legal considerations, without any outside interference.

Decisions to start, continue or stop investigations or prosecutions should be made on the basis of independence and impartiality. As Guideline 14 of the UN Guidelines on the Role of Prosecutors makes clear, “Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.” Moreover, Guidelines 13 (a) and (b) provide that decisions to initiate or continue prosecutions should be free from political, social, religious, racial, cultural, sexual or any other kind of discrimination and should be guided by international obligations of the state to bring, and to help bring, perpetrators of serious violations of human rights and international humanitarian law to justice, the interests of the international community as a whole and the interests of the victims of the alleged crimes.

8. Grave crimes under international law must be investigated and prosecuted without waiting for complaints of victims or others with a sufficient interest.

National legislatures should ensure that national law requires national authorities exercising universal jurisdiction to investigate grave crimes under international law and, where

there is sufficient admissible evidence, to prosecute, without waiting for a complaint by a victim or any other person with a sufficient interest in the case.

The duty to bring to justice on behalf of the international community those responsible for grave crimes under international law requires that states not place unnecessary obstacles in the way of a prosecution. For example, there should be no unnecessary thresholds such as a requirement that an investigation or prosecution can only start after a complaint by a victim or someone else with a sufficient interest in the case. If there is sufficient evidence to start an investigation or sufficient admissible evidence to commence a prosecution, then the investigation or prosecution should proceed. Only in an exceptional case would it ever be in the interest of justice, which includes the interests of victims, not to proceed in such circumstances.

9. Internationally recognized guarantees for fair trials.

National legislatures should ensure that criminal procedure codes guarantee persons suspected or accused of grave crimes under international law all rights necessary to ensure that their trials will be fair and prompt in strict accordance with international law and standards for fair trials. All branches of government, including the police, prosecutor and judges, must ensure that these rights are fully respected.

Suspects and accused must be accorded all rights to a fair and prompt trial recognized in international law and standards. These rights are recognized in provisions of a broad range of international instruments, including Articles 9, 10 and 11 of the Universal Declaration of Human Rights, Articles 9, 14 and 15 of the ICCPR, the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Articles 7 and 15 of the Convention against Torture, the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of the Prosecutors and the UN Basic Principles on the Role of Lawyers. These rights are also recognized in the Rome Statute of the International Criminal Court and the Statutes and Rules of Procedure and Evidence of

the Yugoslavia and Rwanda Tribunals, as well as in the Geneva Conventions and their Protocols.

When a suspect or an accused is facing trial in a foreign jurisdiction it is essential that he or she receive translation and interpretation in a language he or she fully understands and speaks in every stage of the proceedings, during questioning as a suspect and from the moment he or she is detained. The right to translation and interpretation is part of the right to prepare a defence.

Suspects and accused have the right to legal assistance of their own choice at all stages of the criminal proceedings, from the moment they are questioned as a suspect or detained. When a suspect is detained in a jurisdiction outside his or her own country, the suspect must be notified of his or her right to consular assistance, in accordance with the Vienna Convention on Consular Relations and Principle 16(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The latter provision states that if the person is a refugee or is otherwise under the protection of an international organization, he or she must be notified of the right to communicate with the competent international organization.

To ensure that the right to be tried in one's presence, recognized in Article 14(3)(d) of the ICCPR, is fully respected and the judgments of courts are implemented, national legislatures should ensure that legislation does not permit trials *in absentia* in cases of grave crimes under international law. Neither the Rome Statute of the International Criminal Court nor the Statutes of the Yugoslavia and Rwanda Tribunals provide for trials *in absentia*.

10. Public trials in the presence of international monitors. To ensure that justice is not only done but also seen to be done, intergovernmental and non-governmental organizations should be permitted by the competent national authorities to attend and monitor the trials of persons accused of grave crimes under international law.

The presence of and the public reports by international monitors of the trials of persons accused of grave crimes under international law will clearly demonstrate that the fair

prosecution of these crimes is of interest to the international community as a whole. The presence and reports of these monitors will also help to ensure that the prosecution of these crimes will not go unnoticed by victims, witnesses and others in the country where the crimes were committed. The presence and reports of international monitors at a public trial serves the fundamental principle of criminal law that justice must not only be done, but be seen to be done, by helping to ensure that the international community trusts and respects the integrity and fairness of the proceedings, verdicts and sentences. When trials are fair and prompt, then the presence of international monitors can assist international criminal courts in determining that there will be no need to exercise their concurrent jurisdiction over such crimes. Therefore, courts should invite intergovernmental and non-governmental organizations to observe such trials.

11. The interests of victims, witnesses and their families must be taken into account. National courts must protect victims, witnesses and their families. Investigation of crimes must take into account the special interests of vulnerable victims and witnesses, including women and children. Courts must award appropriate redress to victims and their families.

States must take effective security measures to protect victims, witnesses and their families from reprisals. These measures should encompass protection before, during and after the trial until that security threat ends. Since investigation and prosecution of grave crimes under international law is a responsibility of the entire international community, all states should assist each other in protecting victims and witnesses, including through relocation programs. Protection measures must not, however, prejudice the rights of suspects and accused to a fair trial, including the right to cross-examine witnesses.

Special measures are needed to deal with the particular demands of investigating, prosecuting and judging crimes involving violence against women, including rape and other forms of sexual violence. Women who have suffered such violence may be reluctant to come forward to testify. Prosecutors must ensure that investigators have expertise in a sensitive manner. Investigations must be conducted in a manner

which does not cause unnecessary trauma to the victims and their families. Investigation and prosecution of crimes against children and members of other vulnerable groups also will require a special sensitivity and expertise.

Courts must award victims and their families with adequate redress. Such redress should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

12. No death penalty or other cruel, inhuman or degrading punishment. National legislatures should ensure that grave crimes under international law are not punishable by the death penalty or any other cruel, inhuman or degrading punishment.

Amnesty International believes that the death penalty violates the right to life guaranteed by Article 3 of the Universal Declaration of Human Rights and is the ultimate form of cruel, inhuman and degrading punishment prohibited by Article 5 of that Declaration. It should never be imposed for any crime, no matter how serious. Indeed, the Rome Statute of the International Criminal Court and the Statutes of the Yugoslavia and Rwanda Tribunals exclude this penalty for the worst crimes in the world: genocide, crimes against humanity and war crimes. National legislatures should also ensure that prison sentences are served in facilities and under conditions that meet the international standards for the protection of persons in detention such as the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. To ensure that the treatment in prison of those convicted for grave crimes under international law is in accordance with international standards on the treatment of prisoners, international monitors, as well as the consul of the convicted person's state, should be allowed regular, unrestricted and confidential access to the convicted person.

13. International cooperation in investigation and prosecution. States must fully cooperate with investigations and prosecutions by the competent authorities of other states exercising universal jurisdiction over grave crimes under international law.

The UN General Assembly has declared that all states must assist each other in bringing to justice those responsible for grave crimes under international law. In Resolution 3074 (XXVIII) of 3 December 1973 it adopted the Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, which define the scope of these responsibilities in detail. In addition, states parties under the Convention on the Prevention and Punishment of the Crime of Genocide, the Geneva Conventions for the Protection of Victims of War and their First Additional Protocol and the UN Convention against Torture are required to assist each other in bringing those responsible for genocide, war crimes and torture to justice. The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the UN Declaration on the Protection of All Persons from Enforced Disappearance require states to cooperate with other states by extraditing persons accused of extrajudicial executions or enforced disappearances if they do not bring them to justice in their own courts.

National legislatures should ensure that the competent authorities are required under national law to assist the authorities of other states in investigations and prosecutions of grave crimes under international law, provided that such proceedings are in accordance with international law and standards and exclude the death penalty and other cruel, inhuman or degrading punishment. Such assistance should include the identification and location of persons, the taking of testimony and the production of evidence, the service of documents, the arrest or detention of persons and the extradition of accused persons.

14. Effective training of judges, prosecutors, investigators and defence lawyers. National legislatures should ensure that judges, prosecutors and investigators receive effective training in human rights law, international humanitarian law and international criminal law.

They should be trained concerning the practical implementation of relevant international instruments, state

obligations deriving from these instruments and customary law, as well as the relevant jurisprudence of tribunals and courts in other national and international jurisdictions.

Judges, prosecutors, investigators and defence lawyers should also receive proper training in culturally sensitive methods of investigation and in methods of investigating and prosecuting grave crimes under international law against women, children and other persons from vulnerable groups.

Appendix 3: Amnesty International's Summary Checklist for the Implementation of the Statute of the International Criminal Court

Part 1. Complementarity:

I. Defining crimes, principles of criminal responsibility and defences

1. Legislation should provide that the crimes in the Rome Statute, including other crimes under international law, are crimes under national law.
2. National courts should be able to exercise universal jurisdiction in all cases of crimes under international law.
3. Principles of criminal responsibility in national legislation for crimes under international law should be consistent with customary international law.
4. Defences in national law to crimes under international law should be consistent with customary international law.

II. Elimination of bars to prosecution

5. No statutes of limitation are permitted.
6. No amnesties, pardons or similar measures of impunity by any state should be recognized.
7. Immunity of officials from prosecution for crimes under international law should be eliminated.

III. Ensuring fair trials without the death penalty

8. Trials must be fair.
9. Trials should exclude the death penalty.

Part 2. Cooperation:

I. Basic obligation to cooperate

10. National courts and authorities must cooperate fully with Court orders and requests.

II. Status of the Court in national law

11. The Court must be authorized to sit in the state.

12. The legal personality of the Court must be recognized.
13. The privileges and immunities of the Court, its personnel, counsel, experts, witnesses and other persons whose presence is required at the seat of the Court must be fully respected.

III. Nomination of candidates to be judges or prosecutor

14. States should ensure that they nominate candidates to be Judges and the Prosecutor in an open process with the broadest possible consultation.

IV. Facilitating and assisting Court investigations

15. When the Prosecutor has deferred an investigation, states shall comply without delay to requests for information.
16. States shall give effect to acts of the Prosecutor or warrants issued by the Court prior to an Article 19 challenge to jurisdiction or admissibility and to actions by the Prosecutor to preserve evidence or prevent an accused person absconding pursuant to Articles 18(6) and 19(8).
17. States should facilitate the ability of the Office of the Prosecutor and the defence to conduct investigations in the state without any hindrance.
18. National legislation should not contain grounds for refusal of requests for assistance by the Court in connection with investigations and prosecutions.
19. National authorities must provide a broad range of assistance to the Court, as outlined below:

A. Assistance related to documents and records, information and physical evidence

- a. Locating and providing documents and records, information and material evidence requested or ordered by the Court.
- b. Preserving such evidence from loss, tampering or destruction.
- c. Serving any documents requested by the Court.

B. Assistance related to victims and witnesses

- d. Assisting the Court in locating witnesses.
- e. Providing victims and witnesses with any necessary protection.

- f. Fully respecting the rights of persons questioned in connection with investigations of crimes within the Court's jurisdiction.

- g. Assisting the Court by compelling witnesses to testify, subject to any lawful privilege, at the seat of the Court or in the state.

C. Assistance related to searches and seizures

- h. Facilitating searches and seizures of evidence by the Court, including the exhumation of graves, and the preservation of evidence.

- i. Assisting in tracing, freezing, seizing and forfeiting assets of accused persons.

- j. Providing any other assistance requested or ordered by the Court.

V. Arrest and surrender of accused persons

20. States parties should ensure that there are no obstacles to arrest and surrender.

21. National courts and authorities must arrest accused persons as soon as possible after a request by the Court.

22. National courts and authorities must fully respect the rights of those arrested at the request or order of the Court.

23. National courts and authorities must surrender arrested persons promptly to the Court.

24. States should give priority to requests for surrender by the Court over competing requests by other states.

25. States must permit transfers of accused persons through their territory to the seat of the Court.

26. States must not retry persons acquitted or convicted by the Court for the same conduct.

VI. Ensuring effective reparations to victims

27. National courts and authorities must enforce judgments and decisions of the Court concerning reparations for victims and should provide for reparations in national law for all victims of crimes under international law in accordance with international standards, including the general principles established by the Court relating to reparations.

VII. Trying cases of offences against the administration of justice

28. Legislation must provide for punishment of offences against the administration of justice by the Court.

VIII. Enforcement of sentences

29. Legislation must provide for enforcement of fines and forfeiture measures.

30. Legislation should provide for the enforcement of sentences by the Court, in accordance with the requirements set forth below:

- a. Conditions of detention must fully satisfy the requirements of the Statute and other international standards.
- b. Legislation should provide for release of the convicted person on completion of sentence or on order of the Court.
- c. Legislation should provide for the transfer of persons on completion of sentence.
- d. Legislation should limit prosecutions and punishment for other offences.
- e. Legislation should address the question of escape.

IX. Public education and training of officials

31. States parties should develop and implement effective programs of public education and training for officials on implementation of the Statute.

The full text of this checklist is published in Amnesty International, *The International Criminal Court: Checklist for Effective Implementation*, August 2000 (AI Index: IOR 40/11/00).

ENDNOTES

1. AI Index: ACT 40/13/00. See www.stoptorture.org
2. Amnesty International, *Take a step to stamp out torture*, AI Index: ACT 40/13/00, October 2000, pp. 100-1.
3. 1999 Report to the UN General Assembly, UN Doc. A/54/426, 1 October 1999, para. 48.
4. Amnesty International, *Turkey: Torture – A major human rights concern in 1999*, AI Index: EUR 44/18/00, March 2000, pp. 7-8.
5. Amnesty International, *Amnesty International Report 2001*, AI Index: POL 10/001/2001, 2001, p. 248.
6. See: Amnesty International, *Brazil: Commentary on Brazil's first report to the UN Committee against Torture*, AI Index: 19/016/2001, 19 April 2001.
7. UN Doc. A/52/44, 2 May 1997, para. 164.
8. See Amnesty International, *Sierra Leone: Ending impunity – an opportunity not to be missed*, July 2000, AI Index: AFR 51/60/00.
9. See, for example, Amnesty International, *China: No One is Safe – Political repression and abuse of power in the 1990s*, AI Index: ASA 17/01/96, March 1996, p. 65. Amnesty International, *Amnesty International Report 1998*, AI Index: POL 10/01/98, 1998, p. 132.
10. Amnesty International, *Torture: A growing scourge in China – Time for Action*, AI Index: ASA 17/004/2001, p. 51.
11. See: Amnesty International, *Sierra Leone: Towards a future founded on human rights*, AI Index: AFR 51/05/96, September 1996.
12. See Amnesty International, *Sierra Leone: Recommendations on the draft Statute of the Special Court*, AI Index: AFR 51/83/00, November 2000, p. 3.
13. Report of the Secretary-General to the Security Council on the Protection of civilians in armed conflict., UN Doc. S/2001/331, 30 March 2001, para. 10.
14. Vienna Declaration and Programme of Action, para. 60.
15. See, for instance, Redress, *Promoting the right to reparation for survivors of torture: What role for a permanent international criminal court?*, 1997, pp. 13-8.
16. Amnesty International, *Argentina: The military juntas and human rights, Report of the trial of former Junta Members, 1985*, AI Index: AMR 13/04/87, p. 1.
17. M. Cherif Bassiouni, *Crimes Against Humanity in International Law* (2nd. rev. ed.), Kluwer Law International, 1999, p. 331.
18. See UN Doc. A/1316 (1950), *Report of the International Law Commission to the General Assembly*, 5 UN GAOR Supp. (No. 12), para. 119.
19. Annexed to the 1907 Hague Convention (No. IV) Respecting the Laws and Customs of War on Land.
20. The Regulations Respecting the Laws and Customs of War on Land were already adopted at the First Hague Peace Conference in 1899, but revised on some minor points at the Second Hague Peace Conference in 1907.
21. See, for example, Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (7th rev. ed.), Routledge, 1997, pp. 56-60.
22. See, for instance, *Prosecutor v. Anto Furundzija*, Judgment, Case No. IT-95-17/1-T, 10 December 1998, para. 153.
23. The Nuremberg Charter was also signed by Australia, Belgium, Czechoslovakia, Denmark, Ethiopia, Greece, Haiti, Honduras, India, Luxembourg, the Netherlands, New Zealand, Norway, Panama, Paraguay, Poland, Uruguay, Venezuela and Yugoslavia.
24. Roger Clark, "Nuremberg and Tokyo in Contemporary Perspective", in: Timothy L.C. McCormack, Gerry J. Simpson (eds.), *The Law of War Crimes – National and International Approaches*, Kluwer Law International, 1997, p. 174.

25. Theodor Meron, *War Crimes Law Comes of Age*, Oxford University Press, 1998, p.239.
26. Article 147 of the Fourth Geneva Convention corresponds to Article 50 of the First Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, Article 51 of the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea and Article 130 of the Third Geneva Convention relative to the Treatment of Prisoners of War.
27. Article 146 of the Fourth Geneva Convention corresponds to Article 49 of the First Geneva Convention, Article 50 of the Second Geneva Convention and Article 129 of the Third Geneva Convention.
28. Jean Pictet, *Commentary – IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*, (Geneva: International Committee of the Red Cross 1958).p. 594.
29. See UN Doc. S/Res./955 (Annex), 8 November 1994.
30. See UN Doc. A/1316 (1950), *Report of the International Law Commission to the General Assembly*, 5 UN GAOR Supp. (No. 12), para. 119.
31. See *Prosecutor v. Anto Furundzija*, Judgment, Case No. IT-95-17/1-T, 10 December 1998, para. 156. See Judgment in the case of Delalic et al ("Celebici") , Case No. IT-96-21, 16 November 1998, paras 476-497.
32. In some jurisdictions the concept of "bodily harm" may include serious mental harm. See, for instance, Andrew Ashworth, *Principles of Criminal Law* (3rd ed.), Oxford University Press, 1999, p. 322.
33. *Prosecutor v. Dusko Tadić*, Case No. IT-94-1-AR72, 2 October 1995, para. 141.
34. Christopher K. Hall in: Otto Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article*, Article 7, Nomos Verlagsgesellschaft, 1999, p.164.
35. See *Amnesty International Report 1983*, AI Index: POL 01/01/83, pp. 171-173 and *Amnesty International Report 1984*, AI Index: POL 01/01/84, pp. 192-194.
36. See Court of Appeal of Amsterdam, decision of 20 November 2000, numbers R 97/163/12 and R 97/176/12.
37. Article 8(2)(a)(ii).
38. Article 8(2)(c)(i).
39. This, at least, is suggested by the draft Elements of Crimes, elaborated by the Preparatory Commission for the International Criminal Court after the Rome Statute was adopted in 1998. See UN Doc. PCNICC/2000/INF/3/Add.2, 6 July 2000. Although still in draft form, the text will probably be adopted without significant changes when the Rome Statute enters into force. The Elements of Crimes will assist the future International Criminal Court in the interpretation and application of its jurisdiction as defined in Articles 6, 7 and 8 of the Rome Statute.
40. Article 8(2)(a)(ii).
41. Article 8(2)(c)(i).
42. Article 8(2)(a)(iii).
43. Article 8(2)(b)(x), Article 8(2)(c)(i) and Article 8(2)(e)(xi).
44. Article 8(2)(b)(xxi) and Article 8(2)(c)(ii).
45. Article 49 of the First Convention corresponds to Article 50 of the Second Convention, Article 129 of the Third Convention and Article 146 of the Fourth Convention.
46. Article 50 of the First Convention corresponds to Article 51 of the Second Convention, Article 130 of the Third Convention and Article 147 of the Fourth Convention. See also Article 85 of the First Additional Protocol to the Geneva Conventions.
47. See *Prosecutor v. Anto Furundzija*, Judgment, Case No. IT-95-17/1-T, 10 December 1998, para. 257.
48. Theodor Meron, *War Crimes Law Comes of Age*, Oxford University Press, 1998, pp.205-6.
49. Amnesty International, *Broken bodies, shattered minds – Torture and ill-treatment of women*, AI Index: ACT 40/001/2001, 8 March 2001, p. 43.
50. In this case, the prosecution of the alleged perpetrator in Turkey was only initiated years after the rape, and ended in 2001 with acquittal.
51. See the judgment of the European Court in the case of *Aydin v. Turkey* of 25 September 1997, application number 0023178/94.
52. Article 3 of the European Convention on Human Rights states: "No one shall be subjected to torture or degrading treatment or punishment."
53. For instance Article 27 of the Fourth Geneva Convention states that "[w]omen shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."
54. *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, 2 September 1998, para. 687.
55. *Ibid.*, para. 597.
56. *Prosecutor v. Anto Furundzija*, Judgment, Case No. IT-95-17/1-T, 10 December 1998, para. 185.
57. *Ibid.*, para. 186.
58. *Ibid.*, para. 163.
59. In the Foca judgments of February 2001, Cases No. IT-96-23 and IT-96-23/1 "Foca", it was made clear that sexual enslavement can be a crime against humanity.
60. Articles 7(1)(g), 7(2)(f), 8(2)(b)(xxii) and 8(2)(e)(vi).
61. As of June 2001, all three states that have enacted legislation implementing the Rome Statute have provided that rape and other crimes of sexual violence are crimes under national law.
62. Jean Pictet, *Commentary – IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*, (Geneva: International Committee of the Red Cross 1958), p.39.
63. UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), Principle 11.
64. Dominic McGoldrick, *The Human Rights Committee – Its role in the development of the International Covenant on Civil and Political Rights*, Oxford University Press, 1994, p. 279.
65. Appointed by the UN Sub-Commission on the Promotion and Protection of Human Rights to conduct expert studies in this area. Special Rapporteurs appointed by the Sub-Commission (unlike those appointed by the Commission on Human Rights) do not act on individual cases or deal with human rights abuses in specific countries.
66. UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997, para. 26.
67. Appointed by the UN Sub-Commission on the Promotion and Protection of Human Rights to conduct expert studies in this area. These Principles were originally drafted by the first Special Rapporteur, Theo Van Boven, and revised by the second Special Rapporteur, M. Cherif Bassiouni.
68. See UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997.
69. Appointed by the UN Sub-Commission on the Promotion and Protection of Human Rights to conduct expert studies in this area.
70. See UN Doc. E/CN.4/2000/62, 18 January 2000.
71. Article 57 of the Egyptian Constitution states that any assault on individual freedom or any other public rights and liberties guaranteed by the Constitution and the law shall be considered a crime. Article 57 also provides that the state shall grant a fair compensation to the victim of such an assault.
72. See UN Doc. E/CN.4/Sub.2/1997/20/Rev.1, 2 October 1997.
73. Amnesty International, *Egypt: Torture remains rife as cries for justice go unheeded*, AI Index: MDE 12/001/2001, 28 February 2001, pp. 13-14.

74. See Amnesty International, *Justice for Victims: Ensuring effective enforcement abroad of court decisions concerning reparations – Memorandum to the Hague Conference on Private International Law, Special Commission Meeting, 7 to 18 June 1999*, AI Index: IOR 53/02/99, June 1999.
75. See Amnesty International, *Armenia: Conclusions and Recommendations of the United Nations Committee against Torture*, AI Index: EUR 54/001/2001, February 2001. See UN Doc. CAT/C/XXV/Concl/1, 17 November 2000.
76. See Amnesty International, *Nepal: Make Torture a Crime*, AI Index: ASA 31/002/2001, March 2001 for further details on the lack of a specific offence of torture in Nepali law.
77. UN Doc. A/51/44, para. 149.
78. Amnesty International, *Torture: A growing scourge in China – Time for Action*, AI Index: ASA 17/004/2001, 12 February 2001, p. 39.
79. Appointed by the UN Sub-Commission on the Promotion and Protection of Human Rights to conduct expert studies in this area.
80. See UN Doc. E/CN.4/2000/62, p. 8.
81. See C.J.R. Dugard, *opinion In: Re Bouterse*, July 2000, p. 21.
82. *Ibid.*
83. *Prosecutor v. Anto Furundzija*, Judgment, Case No. IT-95-17/1-T, 10 December 1998, para. 157.
84. See Amnesty International, *United States of America: Rights for all*, AI Index: AMR 51/35/98, October 1998, p. 44.
85. See Amnesty International, *India: Words into action – recommendations for the prevention of torture*, AI Index ASA 20/003/2001, January 2001, p. 50.
86. See Amnesty International, *Morocco/Western Sahara: Turning the page, achievements and obstacles*, AI Index: MDE 29/1/99.
87. See Amnesty International, *Peru: Torture continues unabated*, AI Index: AMR 46/40/00, December 2000.
88. See Amnesty International, *Nepal: Make Torture a Crime*, AI Index: ASA 31/002/2001, March 2001.
89. See Amnesty International, *Egypt: Torture remains rife as cries for justice go unheeded*, AI Index: MDE 12/001/2001, 28 February 2001.
90. See Amnesty International, *Lebanon: Guilt and innocence blurred in summary trials*, 22 June 2000, AI Index: MDE 18/010/2000.
91. Amnesty International, *United States of America: Allegations of homophobic abuse by Chicago police officers*, AI Index AMR 51/002/2001, February 2001, pp. 1-3.
92. See Amnesty International, *The Czech Republic: Arbitrary detention and police ill-treatment*, AI Index: EUR 71/001/2001, March 2001, pp. 15-6.
93. See Amnesty International, *Turkey: The duty to supervise, investigate and prosecute*, AI Index: EUR 44/24/99, April 1999, pp. 6-12.
94. See Amnesty International, *Torture: A growing scourge in China – Time for action*, AI Index: ASA 17/004/2001, 12 February 2001, pp. 49-54.
95. Supreme Court judgment of 24 February 1995 (SC Applications 396 and 397/93).
96. See Amnesty International, *Sri Lanka: Torture in custody*, AI Index: 37/010/1999, 1 June 1999.
97. See Amnesty International, *United Kingdom: Ill-treatment of David Adams in Northern Ireland*, AI Index: EUR 45/10/98, May 1998.
98. See Amnesty International, *United Kingdom: End impunity for ill-treatment, the David Adams case*, AI Index: EUR 45/045/99, November 1999, pp. 1-2.
99. Human Rights Committee, General Comment 20/44, in UN Doc. CCPR/C/21/Rev.1/Add.3, 1992, para. 15.
100. Concluding Observations of the Human Rights Committee on Chile in UN Doc. CCPR/C/79/Add.104, 30 March 1999, para. 7.
101. See Amnesty International, *Chile: Legal Brief on the Incompatibility of Chilean Decree Law No 2191 of 1978 with International Law*, AI Index: AMR 22/002/2001, January 2001, pp. 3-4.
102. Concluding Observations of the Human Rights Committee on El Salvador in UN Doc. CCPR/C/79/Add.34, 1994, para. 4.
103. Inter-American Commission on Human Rights, Report No. 29/92, 82nd Sess., OEA/ser.L/II.82/Doc.25 (2 October 1992).
104. Concluding Observations of the Human Rights Committee on Uruguay in UN Doc. CCPR/C/79/Add.19, 1993, para. 7.
105. Amnesty International, *Report on Torture*, 2nd edition, Duckworth, in association with Amnesty International Publications, 1975, p. 242.
106. See Amnesty International, *Fair Trials Manual*, AI Index: POL 30/02/98, December 1998, p. 110.
107. See *Prosecutor v. Anto Furundzija*, Judgment, Case No. IT-95-17/1-T, 10 December 1998, para. 156.
108. Nigel Rodley, *The Treatment of Prisoners under International Law*, Oxford University Press, 1987, p. 107. He repeated this position in *The Treatment of Prisoners under International Law*, 2nd edition, Oxford University Press, 1999, p. 131.
109. Menno T. Kamminga, *Final Report on the Exercise of Universal Jurisdiction in Respect of Gross Human Rights Offences*, Committee on International Human Rights Law and Practice, International Law Association, London Conference 2000.
110. *Ibid.*, p. 28.
111. *Amnesty International Report 1991*, AI Index: POL 10/01/91, 1991, p. 60.
112. The members of the coalition that filed the complaint against Hissène Habré were: the Dakar-based African Assembly for the Defense of Human Rights (RADDHO); the Chadian Association for the Promotion and Defense of Human Rights; the Chadian League for Human Rights (LTDH); the National Organization for Human Rights (Senegal); Human Rights Watch, Interights, the International Federation of Human Rights Leagues (FIDH) and the French organization *Agir Ensemble pour les Droits de l'Homme*. Upon filing the complaint, representatives of these groups formed the International Committee for the Trial of Hissène Habré.
113. Appointed by the UN Sub-Commission on the Promotion and Protection of Human Rights to conduct expert studies in this area.
114. AI welcomes measures in Chad aimed at ending impunity for past human rights violations, but notes that it has serious fair trial concerns in Chad, including the continuing routine use of torture during interrogation. In addition, Chad retains the death penalty, which AI opposes unconditionally.
115. In December 2000, seven former Argentine military officers were sentenced by an Italian court to prison terms of 24 years to life. Their trial was held *in absentia*.
116. *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, Case No. IT-94-I-AR72, 2 October 1995, para. 134.
117. AI Index: IOR 40/11/00, July 2000.
118. AI Index: IOR 40/06/99, April 1999.
119. AI Index POL 30/02/98, December 1998.
120. See also Appendix 3.



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