

# AMNESTY INTERNATIONAL

## The International Criminal Court Fact sheet 3 Prosecuting the crime of genocide

*“[G]enocide constitutes the crime of crimes”.*

*Prosecutor v. Kambanda, Judgement and Sentence, Case No. ICTR 97-23-S (Trial Chamber 4 September 1998), para. 16*

### **What is the origin of the term “genocide”?**

The crime of genocide was first defined by Rafael Lemkin in 1944 in his book, *Axis Rule in Occupied Europe*, based on a proposal he made a decade earlier. The word is a hybrid consisting of the Greek word “genos”, meaning race, nation or tribe, and the Latin suffix, “cide”, meaning killing. Although it was never expressly identified as a crime in the 1945 Nuremberg Charter, it was cited in the indictment and opening speeches as a crime against humanity in the trial of senior Nazis before the International Military Tribunal at Nuremberg.

### **What is genocide?**

It is any one of a number of acts aimed at the destruction of all or part of certain groups of people; it is this intent that distinguishes genocide from other crimes against humanity.

Article 6 of the Rome Statute of the International Criminal Court (Statute) gives the International Criminal Court (ICC) jurisdiction over genocide as defined in Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention). That definition is considered part of international customary law, and, therefore, binding on *all* states - whether they have ratified the Genocide Convention or not. The Statutes of the International Criminal Tribunal for Rwanda and of the International Criminal

Tribunal for the former Yugoslavia use the same definition.

### **What acts of genocide will the ICC prosecute?**

The following five prohibited acts - if committed with the intention to destroy all or part of a national, ethnical, racial or religious group, as such - may constitute genocide:

- Killing members of the group;
- Causing serious bodily or mental harm to the members of a group;
- Deliberately inflicting on a group conditions of life calculated to bring about its physical destruction;
- Imposing measures intended to prevent births within a group;
- Forcibly transferring children of a group to another group.

Cultural genocide (deliberate acts taken with the intent of preventing members of a group from using their language, practicing their religion or carrying out the group’s cultural activities) does not fall within the definition of genocide as used in the Statute unless the acts were also one of the five prohibited acts and they were committed with the required intent. Similarly, ecocide (acts committed with the intention to disrupt or destroy the ecosystem in a particular area) by attacks upon the environment, has not been included in the definition, and would not constitute genocide unless the attacks involved one of the five prohibited acts with the necessary intent.

### **Can rape be an act of genocide?**

In the 1998 landmark *Akayesu* judgment, a Trial Chamber of the International Criminal Tribunal for Rwanda held that when rape was used as a method to destroy a protected group by causing serious bodily or mental harm to the members of

the group, it constituted genocide. In addition, it explained that rape also can be used as a way to prevent births within a group. For example, in societies where ethnicity is determined by the identity of the father, raping a victim to make her pregnant can prevent the victim from giving birth to a baby within her own group.

***Are those who encourage others to commit genocide guilty of the crime?***

Under Article 25 (3) (b) of the Statute, anyone who orders, solicits or induces someone to commit genocide (who carries it out or attempts to do) so is guilty of genocide. It is also a crime under the Article 23 (3) (e) if a person “directly and publicly incites others to commit genocide”.

***What about those who assist others in committing genocide or attempts to commit genocide?***

Article 25 (3) (c) states that anyone who aids, abets or otherwise assists someone to commit genocide or attempt to commit it is guilty of genocide. Article 25 (3) (f) provides that a person who attempts to commit genocide is guilty of the crime. Although, in contrast to Article III of the Genocide Convention, conspiracy to commit genocide is not expressly defined as a crime under the Statute, Article 23 (3) (d) provides that much the same conduct is a crime.

***Who can constitute a victim of genocide?***

Any member of a national, ethnical, racial or religious group of people can be the victims of genocide. The term “ethnical” was intended to include linguistic and cultural groups.

The Statute does not include social or political

groups within the definition of potential victims. However, many of the acts would fall within the Court’s jurisdiction as crimes against humanity if committed against members of such groups on a widespread or systematic basis and pursuant to a state or organizational policy (see Fact Sheet No. 3).

***Is destruction or intention to destroy an entire group or a substantial part of it required?***

There is no such requirement. It is sufficient for the accused to have intended to destroy a large number of the group in a particular community, such as a town or village, because of the group’s identity.

***Who can be tried for genocide?***

Anyone can be tried for genocide, no matter what the person’s position. This means that not only a head of state or government minister who planned or ordered the act, but those who committed the act, whether ordinary foot soldiers or next door neighbours can be guilty of the crime. Article 33 (2) expressly provides that following a superior’s orders is not a legitimate defence to genocide.

***What is necessary to prove genocide?***

As the intention to destroy all or part of a group, as such, is an essential element of the crime, it is crucial, and at the same time often very difficult, to find clear evidence of the motives and intentions that lie behind acts.

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