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Justice and the rule of law: the role of the United Nations Statement by Amnesty International

Secretary-General Kofi Annan has just told the General Assembly that the rule of law is at risk around the world. The most fundamental laws are badly disregarded, shaming us all. It is our daily business to tell you about those abuses perpetrated throughout the world, whether by governments or armed groups including those resorting to terror tactics in violation of principles of justice and the rule of law. The Secretary-General stressed that all of us have a duty to restore respect for the rule of law: that means foremost enforcing it at home, but also ensuring that the rule of law is respected abroad. There is a framework of fair rules and institutions but the gap in applying the rules fairly and impartially is huge.

We in Amnesty International thank Chile for organizing and the UK for painstakingly laying the groundwork for this debate. Justice is a crucial component of international law and peace. Truth and reconciliation bodies have tremendous value, as we stressed when Chile hosted its important Arria debate in January this year. We welcome the chance to speak to you today about what it means to put justice and the rule of law in practice and also about the crucial role we think the Council has to play in that process. The Council now has an excellent tool on which to base its work: the Secretary-General's report on the rule of law and transitional justice in conflict and post-conflict societies. We commend the report, especially its insistence that justice, peace and democracy are mutually reinforcing imperatives, that the international community should base its rule of law support on country-specific national needs assessments and national ownership - provided this meets international justice standards- and that there is a pertinent need to mobilize the necessary resources for a sustainable investment in justice. We endorse the report's recommendations addressed to the Council. Let me focus on several issues of particular concern to our organization.

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Recognizing the close links between peace and justice, Council resolutions increasingly stress that the perpetrators of crimes under international law - which include crimes against humanity, genocide and war crimes - should not benefit from impunity. Resolutions on the DRC and the Sudan are only the recent of many examples, some of which stressed individual responsibility, as the Council firmly did in its 1999 resolutions on the then East Timor. The Council is right to do so: we are dealing here with the worst possible crimes that are recognized as crimes against the international community as a whole. If left unaddressed, the lack of accountability endangers international peace, one reason why the Council must ensure persistent and long-term investment in the rule of law and justice.

Enormous progress has been made: the two *ad hoc* tribunals for the former Yugoslavia and Rwanda played a crucial and path-breaking role including by enforcing accountability even at head of state level. They have deepened our understanding of international criminal justice concepts in sexual violence and many other areas. Innovative creations of various mixed tribunals followed and have brought justice for crimes under international law closer to the victims. The International Criminal Court (ICC) is now starting its very important work capable of providing long-term deterrence. But all international courts and mixed tribunals will only try a handful of perpetrators. As the Secretary-General's report recognizes and if current approaches continue to be followed, 'the vast majority of perpetrators of serious violations of human rights and international humanitarian law will never be tried, whether internationally or domestically'.

In fact, there is an 'impunity gap'. Political agreements often still fail to address human rights and impunity in a meaningful way. The reasons also include a lack of funding for and a lack of trained and experienced staff who can investigate and prosecute these complex crimes under international law at the national level. States tend to devote much effort and plentiful resources to domestic crimes and those with an international dimension such as drug-trafficking and terrorism, but fail to do the same for the worst crimes in the world: genocide, war crimes and crimes against humanity. The problem is particularly acute in states where conflicts are raging or have just ended. Rwanda benefited from the best efforts of the International Criminal Tribunal for Rwanda, but only very few of the about 130,000 persons detained in connection with the genocide have been brought to justice before the international or the Rwandan courts. Many thousands were detained for years without trial in badly overcrowded conditions. The impunity gap needs to be closed.

In future, such situations should be addressed right at the beginning by fostering the creation of a single, nationally-owned and led strategic action plan for justice that will ensure that the truth is told, that justice is done, that those with no evidence against them are released within reasonable time and that a reparations program is provided to all the victims. All this should be done in the comprehensive and coordinated manner that the S-G addresses in his report. The long-term commitment of the international community is essential, because it is a shared responsibility to ensure justice for crimes under international law which are, after all, crimes against the international community as a whole. Amnesty International therefore welcomes the report's recommendation to create a roster of justice and transitional justice experts. We are especially supportive of the Justice and Rapid Response Initiative, now being considered by several states, which builds on rapid response criminal justice teams thoughtfully developed by some countries. This new initiative would give practical effect to the international community's responsibility to see that justice is done for crimes under international law by providing rapid, timely and effective assistance to willing states in this crucial area.

We also welcome that the report categorically rejects any endorsement of amnesty for genocide, war crimes, or crimes against humanity. While we appreciate that in fragile post-conflict settings a sensible sequencing of activities will be required, this should never be pursued at the cost of providing an effective amnesty to the perpetrators of international crimes. Charles Taylor was allowed to leave Liberia for Nigeria. There, he has now been granted refugee status even though the protection in the 1951 Refugee Convention does not apply to persons seriously believed to have committed crimes against humanity and war crimes. Those are precisely the crimes for which he has been indicted by the Special Court for Sierra Leone. We have filed an *amicus curiae* brief in the Nigerian courts demonstrating that those indicted by international criminal courts are not entitled to refugee status. On returning from its mission to West Africa the Security Council stressed that there could be no impunity and that 'as stability was assured, the case for bringing former President Taylor to justice would be very strong'. The Council must now put that commitment into practice without further delay. It must ensure that Charles Taylor is surrendered to face justice before the Sierra Leone Court whose judges have just started work. We also wish to underline the wisdom of the Secretary-General's recommendation that the funding of UN-sponsored tribunals - like the one in Sierra Leone - should at least in part come from assessed contributions. Without access to such stable resources, these tribunals cannot do an effective job.

Any state may - and sometimes must - exercise universal jurisdiction over crimes under international law, such as genocide, war crimes, crimes against humanity, torture or enforced disappearances. Only few states have taken the welcome step to exercise such jurisdiction under the important universality principle. Practical obstacles at the national level include the lack of laws defining those particular crimes as crimes under national law and of effective inter-state extradition and mutual legal assistance treaties for such crimes. We urge member states to work with the UN to develop new extradition and mutual legal assistance treaties to facilitate trials for crimes under international law, in strict compliance with international legal safeguards and the non-applicability of the death penalty.

We have great hope for justice. The Secretary-General describes the International Criminal Court as the new hope for permanent reduction in impunity. The ICC will only step in where national courts are unable or unwilling to do so. In adopting this important concept of complementarity, the ICC provides the best mechanism to strengthen both national and international legal systems in a mutually reinforcing manner. The court is now up and running. Testimony to the mounting confidence of states from all over the world in the ICC is that Burundi, Liberia and Guyana have just ratified the Rome Statute this month: a total of no less than 97 ratifications. Especially important for future deterrence is the ratification by Burundi and Liberia, two states where serious human rights violations have been committed on a massive scale. We therefore urge the Council to give the ICC its unequivocal support, including by calling in all appropriate resolutions on governments to fully cooperate with the ICC and with UN-authorized tribunals. We request the Council to encourage all state parties to the Rome Statute to pass the necessary implementing legislation.

The Council wisely decided in June not to proceed with a draft resolution which would have exempted UN peacekeepers from potential prosecution by the ICC for another year. Nor did the Council include such language in resolution 1561, renewing the Liberian peacekeeping mandate. This testifies to an emerging international rule of law which requires peacekeepers not to be exempt from accountability for crimes under international law. Indeed, Kofi Annan said in his report: 'if the rule of law means anything at all, it means that no-one, including peacekeepers, is above the law'. We urge the Security Council to stick to its decision this summer and never to reintroduce the illegal provisions of resolutions 1422, 1487 and 1497.

The Rome Statute provides the Council with a special responsibility: the power to refer situations to the ICC, even if the countries concerned are not a party to the Rome Statute. We call on the Council to consider such a referral in all appropriate situations, especially when dealing with situations under Chapter VII of the Charter.

One particularly important aspect of the fight against impunity is the need to prosecute those responsible for crimes relating to sexual and other violence against women and girls. Resolution 1325 addresses this and other aspects of gender justice in a comprehensive manner. Amnesty International is conducting a worldwide campaign to stop violence against women, highlighting that women all over the world are special targets in conflict and post conflict situations, that they suffer disproportionately, that they lack the same protection as men but remain often excluded from peace negotiations. The special needs and contribution of women in justice and transitional justice mechanisms have been recognized in theory but have rarely - except in situations such as East Timor - effectively been put in practice. Member states and the UN must now address what the Deputy Secretary-General calls the "gender deficit" when it comes to justice. We urge the Council to carefully consider the outcome of the recent important conference 'Peace needs Women and Women need Justice' organized by UNIFEM, and to take concrete and systematic action to ensure that the specific provisions of resolution 1325 are effectively operationalized in future country situations. In particular, the Council should highlight the gender dimensions in all future country resolutions and ensure that women fully participate in the planning and execution of all aspects of rule of law reform, restoring justice and mechanisms to provide redress in a gender-sensitive manner.

Accounting for the past and building the rule of law are long term processes. They require dedicated resources and long term and targeted development assistance. There is too little recognition that bringing the perpetrators of international crimes to justice can prevent their future occurrence. We endorse the call by the Secretary-General in his report to the international community to ensure a 'viable and sustainable funding mechanism' to provide adequate resources for restoring the rule of law and the establishment of transitional justice. It must have sufficient funds and could be supplemented by appropriate multi-lateral and bi-lateral funding approaches.

In view of the above considerations, we urge the Council, building on the excellent recommendations in his report, to request the Secretary-General to create a Global Action Plan for Justice with a focus on prevention and post-conflict situations. The Plan would be based on national needs assessments and domestic consultation as set out in the report. It would involve states, the UN, other intergovernmental organizations - especially the ICC- as well as civil society actors in an 'integrated and comprehensive approach'. It would aim to restore justice and the rule of law and an end to impunity for crimes under international law in a gender-sensitive manner. It would seek universal ratification of the Rome Statute and of the Agreement on Privileges and Immunities of the ICC. It would aim to ensure that every state has provided its courts with jurisdiction over crimes under international law and that the rights of victims and their families to full reparation are ensured with due regard to gender. Specific benchmarks with realistic schedules for achieving each of these goals would be set. Finally, states would agree to commit dedicated special funds commensurate with the scale of the problem - possibly in the form of a set percentage - to assist other states, especially in pre-conflict and post- conflict situations, to help build effective criminal justice, truth and national reconciliation mechanisms. All appropriate UN bodies and agencies, including the World Bank, would commit to cooperate in these comprehensive efforts.

Finally, we request you to give the most serious consideration to the pertinent recommendations made in the Secretary-General's report. Implementing them will require strengthened capacity in the Secretariat harnessing its capacity to deal with justice and the rule of law in a coordinated manner. We urge you in all your future resolutions to give priority attention to the restoration of and respect for the rule of law, especially where UN support for judicial and prosecutorial processes is required. That way durable peace and justice can be restored.