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Amnesty International

International justice now!
Time for an effective international criminal court

In the aftermath of the Second World War, humanity said: “never again”. Fifty years on, genocide and widespread human rights violations continue. Millions of people have been tortured, killed and made to “disappear”. Although much progress has been made in the protection of human rights worldwide, the disturbing reality is that people who have killed, tortured and raped systematically or on a massive scale are still likely to escape punishment. As we approach the new century it is time to send a clear message to those who think they are above the law — violations of human rights will not be tolerated. The world needs a just, fair and effective permanent international criminal court to bring human rights violators to justice.

After nearly four years of intense preparations, governments will meet from 15 June to 17 July 1998 in Rome, Italy, where they are expected to adopt the statute establishing a permanent international criminal court. This would be a fitting way to mark the 50th anniversaries of the Universal Declaration of Human Rights and the Genocide Convention.

Amnesty International has been lobbying since 1994 for the establishment of an effective international criminal court. In the half century since the end of the Second World War, most of those responsible for grave human rights violations, including those amounting to crimes against humanity, have escaped justice. National authorities have often been unwilling or unable to try perpetrators of these crimes and there has been no international criminal court to turn to. The Nuremburg and Tokyo war crimes tribunals, set up after the Second World War, raised hopes that a new system of international justice would be created. The newly founded United Nations began work on an international criminal court, but the Cold War intervened and the court was never set up. Now, more than half a century later, the world is about to try again. This time we must succeed. All 185 UN member states will be invited to the diplomatic conference in Rome. This is a unique opportunity for all to convince governments that we need a just, fair, and effective permanent international criminal court established by the year 2000. Those who commit serious crimes of international concern should not be able to do so with impunity. The international criminal court will have a deterrent effect, persuading at least some of those tempted to commit atrocities to think again. People planning truly terrible crimes will know that the international community will eventually hold them to account. Victims and their families will have an opportunity to put the past behind them more easily and enter a process of reconciliation in the knowledge that those who have committed atrocities will be brought to justice. The court should also effectively address grave human rights violations against women, including gender-based crimes, to ensure justice for women. It should take into account the special considerations in investigating and protecting crimes involving violence against women.

The proposed international criminal court will be a permanent judicial tribunal with a global jurisdiction to try individuals for the worst crimes in the world — genocide, other crimes against humanity and serious war crimes. It must have strong powers and an unwavering commitment to fairness, and should be a model of independence, effectiveness and justice.

The key question now is what kind of court will emerge from the diplomatic conference. Will it have the authority and independence to deliver justice and to punish the most heinous criminals? As we enter this crucial stage in the final preparations for the diplomatic conference, a bloc of developed and developing states called the “like-minded” group have become the leading force for an effective and independent court. The “like-minded” states have made significant gains in thwarting efforts to delay the creation of the international criminal court and in insisting on clear definitions of the crimes to ensure that the court can effectively exercise its jurisdiction. However, a minority of states are advocating positions that will seriously threaten the independence of the court and undermine its

effectiveness and credibility. Amnesty International believes that to deter the gravest international crimes the court must be able to fulfil the tasks for which it was created.

RWANDA: A gram of prevention worth a kilogram of cure

More than 3,000 people, most of them Tutsi but including Hutu members of opposition political parties, were killed in 1994 at Mukarange Roman Catholic parish in Kibungo prefecture's Rwamagana district in the east of Rwanda. The victims were first herded into the parish main hall and grenades were hurled at them through windows. An estimated 2,500 were killed there. Around 500 people tried to run but were mowed down with machine-gun fire in the church compound. About 1,000 were reportedly herded towards Lake Muhazi and the attackers continued to shoot them. Only an estimated 50 people survived by using banana stems as rafts to cross the lake. A journalist reported that he stopped counting when he reached 3,005 corpses. (Rwanda: Mass murder by government supporters and troops in April and May 1994, Amnesty International, AI Index: AFR 47/11/94)

As many as a million people were killed between April and July 1994. Those who planned the genocide thought they could kill with complete impunity. Had a permanent international criminal court existed when the perpetrators planned their crimes, they might have been deterred. Had they carried on regardless, they would have had few places to hide. They would have been swiftly transferred to the permanent international criminal court, brought to justice by the state which arrested them or by another jurisdiction that could guarantee them a fair trial.

Justice would have been swift. There would have been no lengthy wait to establish the International Criminal Tribunal for Rwanda.

NEVER AGAIN

To prevent atrocities like these happening again, we need a permanent international criminal court to guarantee justice and deter potential criminals.

IRAQ: Targeting the innocent, ignoring the guilty

In 1988 in the village of Halabja, some 5,000 Kurdish children and adults were killed by Iraqi government forces in a deliberate attack using chemical weapons. The slaughter, widely reported around the world, was planned. It marked the beginning of the "Anfal" campaign in which tens of thousands of Kurdish civilians lost their lives. The Iraqi Government destroyed hundreds of Kurdish villages, killing or forcibly evacuating the inhabitants or making them "disappear".

In the marsh area of southern Iraq after the Gulf war, thousands of Arabs were massacred during Iraqi military operations against the civilian population. The Iraqi military again planned and executed an unjustifiable attack against civilians.

Someone planned these killings. Someone gave the orders. Someone was in command of the missions. Someone piloted each of the aircraft with the chemical weapons. These people were responsible for their actions, yet none has ever been brought to justice.

Who can protect people in such nightmare situations? In the future, those who commit such crimes must be brought to justice in an international criminal court.

CAMBODIA: No immunity from the law

During the Khmer Rouge period between April 1975 to January 1979, nearly a quarter of Cambodia's population died as a result of extrajudicial executions, starvation and disease. In addition, tens of thousands of people were cruelly abused, enslaved, systematically tortured and killed. In this dark time, there was a generation of professional torturers. To date, not one of them has been brought to account for the suffering they caused. The widespread and systematic crimes which the Khmer Rouge carried out were clearly crimes against humanity. People who commit such grave human rights violations must be brought to justice. They cannot be allowed to benefit from their crimes or to

perpetrate abuses again. The cycle of impunity and violations must be broken. The failure to bring the perpetrators to justice in national courts demonstrates the need for an international criminal court. Never again must such crimes go unpunished. We need a permanent international criminal court.

EL SALVADOR: Continued impunity

On 21 January 1991 a group of armed men wearing black uniforms, their faces covered, ransacked five houses in the locality of El Zapote, department of San Salvador, and cold-bloodedly murdered 15 people, including a 14-year-old girl and a 68-year-old man. Three of the victims were shot dead. Others were stabbed repeatedly. Nine of the bodies had between seven and 19 stab wounds. Eighteen children, some of whom witnessed the killings, were orphaned. (El Salvador: Amnesty International's Continuing Concerns, Amnesty International, AI Index: AMR 29/02/91)

Thousands of women, men and children, including human rights activists, trade unionists, journalists and members of popular grassroots and religious groups, were victims of widespread and systematic abuses in the civil war that plagued El Salvador for more than 30 years. The abuses included extrajudicial executions, deliberate and arbitrary killings, "disappearances" and torture.

What really happened to many of these people remains unknown. The victims, their relatives and society at large deserve to know the truth. Most of those responsible, whether government officials or members of armed opposition groups, have never been held accountable for their actions and have benefited from an amnesty law hastily approved seven days after a truth commission issued its report. The international criminal court would establish finally that anyone who commits such atrocities in the future will be held accountable.

Without justice and truth, there can be no reconciliation.

BOSNIA-HERZEGOVINA: A terrible wrong never put right

One night in September 1992, a group of Bosnian Serbs took a group of women and their children from the Partizan Sports Hall in the town of Foča to a nearby apartment building. One victim reported, "I was raped by two of them... They said that they would throw my child out the window. I cried and screamed, and they did nothing." The victim's four-year-old daughter was also taken with her; she was able to watch through an open door as her mother was stripped, searched for valuables, and as a pistol was put to her head. The victim reported that she was then raped by four men.

(Bosnia-Herzegovina: How can they sleep at night? Arrest Now!, Amnesty International, AI Index: EUR 63/22/97) Such abuses against women have been widespread in the conflict in Bosnia-Herzegovina.

More than two million people were forced into flight during the 1992 to 1995 conflict in Bosnia-Herzegovina, many of them victims of deliberate policies to rid disputed territories of people of particular nationalities. More than a million of these displaced people and refugees remain in areas where those in charge have a different nationality. Most of them have suffered programs of mass expulsion, sometimes described as "ethnic cleansing", which combined torture, including rape, deliberate and arbitrary killings, and arbitrary detention as ways of removing them from the territories where they lived.

Can the victims sleep at night when they know that those responsible for their suffering remain at large? What goes on in the minds of the international troops serving in Bosnia-Herzegovina as they patrol areas where they know that people suspected of committing genocide, crimes against humanity and violations of humanitarian law are at liberty?

To combat rape as a weapon of war and crimes against humanity we demand a permanent international criminal court.

WHY A PERMANENT INTERNATIONAL CRIMINAL COURT IS NECESSARY

- * Bringing perpetrators to justice sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable.
- * National governments are often unwilling or unable to investigate gross human rights violations and bring those responsible to justice.
- * Respect for the rule of law, national and international, cannot be maintained unless those who violate the most basic norms of civilized behaviour are brought to justice.
- * An international criminal court will provide a mechanism to enforce international criminal law.
- * People who commit grave human rights violations must be brought to justice if they are not to benefit from their crimes and if the cycle of impunity and further violations is to be broken.
- * The victims, their relatives and society at large need and deserve to know the truth. Only the attribution of personal responsibility for human rights crimes can prevent whole groups being blamed and sectional hatreds intensifying.
- * Without justice and truth there can be no lasting and effective reconciliation.

WHAT YOU CAN DO

Between now and the diplomatic conference in Rome in June, write to your President or Prime Minister and your Minister of Foreign Affairs asking them publicly to endorse the following points. You could write a letter to the editor of your local or national newspapers or organize a public talk about the international criminal court. Mail this document to non-governmental organizations and work with them to establish a just, fair and effective international criminal court.

IN ORDER FOR THE COURT TO BE EFFECTIVE:

- * The court should have jurisdiction over three core crimes: genocide, other crimes against humanity, and serious violations of humanitarian law in international and internal armed conflict.
- * The court must have inherent (automatic) jurisdiction over the above three core crimes. No added state consent is needed.
- * The court should be an effective complement to national courts and be able to act when these courts are unable or unwilling to bring to justice those responsible for these grave crimes.
- * The court itself, not states, should have the power to determine whether or not states are unable or unwilling to prosecute.
- * States must fully comply with court orders.
- * There should be no reservations to the statute of the court. With reservations, states parties could redefine crimes or avoid obligations to cooperate with the court.

IN ORDER FOR THE COURT TO BE FAIR:

- * The court must ensure justice for women.
- * To ensure that justice is done, the court must develop effective victim and witness protection programs, involving the assistance of all states parties, without prejudicing the rights of suspects and the accused.
- * The court should ensure that the rights of victims are respected at every stage of the proceedings and that they obtain full redress, including restitution, compensation and rehabilitation.
- * The statute must guarantee suspects and accused the right to a fair trial in accordance with the highest international standards at all stages of the proceedings.

IN ORDER FOR THE COURT TO BE INDEPENDENT:

- * The court must be free from political interference. No political body, including the UN Security Council and states, should have the power to stop or delay an investigation or prosecution under any circumstance.
- * An independent prosecutor should have the power to initiate investigations on his or her own initiative, based on information from any source, including victims or their families, subject only to appropriate judicial scrutiny, and present search and arrest warrants and indictments to the court for approval.
- * The court should be financed by the regular UN budget, not by states parties.

Quotes

Nothing prepared me for the actual experience. It lives on inside me. I still bleed a lot. It was done not by just one man, but by a group of them... And it was a side-show; lots of people came to watch. A Kurdish woman raped by Iraqi security officers.

The most important deterrent to future war crimes is not the toughness of the sentence but the certainty of punishment.

Emma Bonino, European Commissioner for Humanitarian Affairs.

I believe that a permanent criminal court will be the long-awaited realization of the goals expressed already in the Genocide Convention of 1949... However, such a court should be strong and well equipped... Should it be a weak and powerless institution, not only will it lack legitimacy, but it will betray the very human rights ideals that will have inspired its creation. In such a case, regardless of the number of ratifications, the Court may be considered a retrograde development as it will not only fail to dispense fair justice, but it may exacerbate the sense of legitimate grievance of the disenfranchised.

Louise Arbour, Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, Statement to the United Nations Preparatory Committee for an International Criminal Court, 8 December 1997.

But, of course, the main problem is that every day hundreds of millions of people experience some serious violation of their human rights... And that is why I am pleased that in this year we could well see the establishment of an international criminal court to deal with the crime of genocide, crimes against humanity and war crimes. Such a court has been called the missing link in the international legal system. I urge you to pay close attention in June when delegates gather in Rome for what I hope would be the culmination of the final negotiations, leading eventually to the establishment of an international criminal court.

Kofi Annan, speaking at the University of the West Indies, Kingston, Jamaica, April 1998

captions

Victims of a massacre in Rwanda

Two grandmothers seek justice for past victims of “disappearance” in Argentina.

All documents issued by Amnesty International on the international criminal court can be found on:

<http://www.amnesty.it>

For more information and documents, you can also contact the website for the NGO Coalition for an International Criminal Court at: [http:// www.igc.apc.org/icc](http://www.igc.apc.org/icc)

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