

# UNIVERSAL JURISDICTION: 14 Principles on the Effective Exercise of Universal Jurisdiction

## INTRODUCTION

In 1945, the courts of the victorious Allies began exercising universal jurisdiction under Allied Control Council Law No. 10 on behalf of the international community over crimes against humanity and war crimes committed during the Second World War outside their own territories and against victims who were not citizens or residents. However, for half a century afterwards, only a limited number of states provided for universal jurisdiction under their national law for such crimes. No more than a handful of these states had ever exercised such jurisdiction during those 50 years, including Australia, Canada, Israel and the United Kingdom, and then only for crimes committed during the Second World War. Sadly, states failed to exercise universal jurisdiction over grave crimes under international law committed since that war ended, even though almost every single state is a party to at least four treaties giving states parties universal jurisdiction over grave crimes under international law.

### *The power and duty under international law to exercise universal jurisdiction.*

Traditionally, courts of one state would only exercise jurisdiction over persons who had committed a crime in their own territory (territorial jurisdiction). Gradually, international law has recognized that courts could exercise other forms of extraterritorial jurisdiction, such as jurisdiction over crimes committed outside the territory by the state's own nationals (active personality jurisdiction), over crimes committed against the state's essential security interests (protective principle jurisdiction) and, although this form of jurisdiction is contested by some states, over crimes committed against a state's own nationals (passive personality jurisdiction). In addition, beginning with piracy committed on the high seas, international law began to recognize that courts of a state could exercise jurisdiction on behalf of the entire international community over certain grave crimes under international law which were matters of international concern. Since such crimes threatened the entire international framework of law, any state where persons suspected of such crimes were found could bring them to justice. International law and standards now permit, and, in some cases, require states to exercise jurisdiction over persons suspected of certain grave crimes under international law, no matter where these crimes occurred, even if they took place in the territory of another state, involved suspects or victims who are not nationals of their state or posed no direct threat to the state's own particular security interests (universal jurisdiction).

***Grave breaches of the Geneva Conventions.*** The four Geneva Conventions for the Protection of War Victims of 1949, which have been ratified by almost every single state in the world, require each state party to search for persons suspected of committing or ordering

to be committed grave breaches of these Conventions, to bring them to justice in their own courts, to extradite them to states which have made out a *prima facie* case against them or to surrender them to an international criminal court. Grave breaches of those Conventions include any of the following acts committed during an international armed conflict against persons protected by the Conventions (such as shipwrecked sailors, wounded sailors or soldiers, prisoners of war and civilians): wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, compelling a prisoner of war or an inhabitant of an occupied territory to serve in the forces of the hostile power, wilfully depriving a prisoner of war or an inhabitant of an occupied territory of the rights of fair and regular trial, taking of hostages and unlawfully deporting or transferring or unlawfully confining an inhabitant of an occupied territory.

***Genocide, crimes against humanity, extrajudicial executions, enforced disappearances and torture.*** It is also now widely recognized that under international customary law and general principles of law states may exercise universal jurisdiction over persons suspected of genocide, crimes against humanity, war crimes in international armed conflict other than grave breaches of the Geneva Conventions and war crimes in non-international armed conflict, extrajudicial executions, enforced disappearances and torture. Crimes against humanity are now defined in the Rome Statute of the International Criminal Court to include the following conduct when committed on a widespread or systematic basis: 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 and other sexual violence, persecution, enforced disappearance, apartheid and other inhumane acts.

It is also increasingly recognized that states not only have the power to exercise universal jurisdiction over these crimes, but also that they have the duty to do so or to extradite suspects to states willing to exercise jurisdiction. For example, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) adopted in 1984 requires states parties when persons suspected of torture are found in their territories to bring them to justice in their own courts or to extradite them to a state able and willing to do so.

***Exercise by national courts of universal jurisdiction over post-war crimes.*** For many years, most states failed to give their courts such jurisdiction under national law. A number of states, most notably in Latin America, enacted legislation providing for universal jurisdiction over certain crimes under international law committed since the Second World War, including Austria, Belgium, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica,

Denmark, Ecuador, El Salvador, France, Germany, Guatemala, Honduras, Mexico, Nicaragua, Norway, Panama, Peru, Spain, Switzerland, Uruguay and Venezuela. Few of these ever exercised it.

However, in the past few years, beginning with the establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda (Yugoslavia and Rwanda Tribunals) in 1993 and 1994, states have finally begun to fulfil their responsibilities under international law to enact legislation permitting their courts to exercise universal jurisdiction over grave crimes under international law and to exercise such jurisdiction. Courts in Austria, Denmark, Germany, the Netherlands, Sweden and Switzerland have exercised universal jurisdiction over grave crimes under international law committed in the former Yugoslavia. Courts in Belgium, France and Switzerland have opened criminal investigations or begun prosecutions related to genocide, crimes against humanity or war crimes committed in 1994 in Rwanda in response to Security Council Resolution 978 urging “States to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there is sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda”.

Italy and Switzerland have opened criminal investigations of torture, extrajudicial executions and enforced disappearances in Argentina in the 1970s and 1980s. Spain, as well as Belgium, France and Switzerland, have sought the extradition from the United Kingdom of the former head of state of Chile, Augusto Pinochet, who has been indicted for such crimes. On 24 March 1999, the United Kingdom’s House of Lords held that he was not immune from criminal prosecution on charges that he was responsible for torture or conspiracy to torture and the Home Secretary has permitted the courts to consider the request by Spain for his extradition on these charges.

***The need for states to fill the gap in the Rome Statute by exercising universal jurisdiction.*** An overwhelming majority of states at the Diplomatic Conference in Rome in June and July 1998 favoured giving the International Criminal Court the same universal jurisdiction over genocide, crimes against humanity and war crimes which they themselves have. However, as a result of a last-minute compromise in an attempt to persuade certain states not to oppose the Court, the Rome Statute omits such jurisdiction when the Prosecutor acts based on information from sources other than the Security Council. Article 12 limits the Court’s jurisdiction to crimes committed within the territory of a state party or on its ships and aircraft and to crimes committed by the nationals of a state party, unless a non-state party makes a special declaration under that article recognizing the Court’s jurisdiction over crimes within its territory, on its ships or aircraft or by its nationals. However, the Security Council, acting pursuant to Chapter VII of the United Nations (UN) Charter to maintain or restore international peace and security or in a case of aggression, may refer a situation to the Court involving crimes committed in the territory of a non-state party.

The international community must ensure that this gap in international protection is filled. National legislatures in states which have signed and ratified the Rome Statute will need to enact implementing legislation permitting the surrender of accused persons to the Court and requiring their authorities to cooperate with the Court. When enacting such legislation, they should ensure that national courts can be an effective complement to the International Criminal Court, not only by defining the crimes within the Court's jurisdiction as crimes under national law consistently with definitions in the Rome Statute, but also by providing their courts with universal jurisdiction over grave crimes under international law, including genocide, crimes against humanity, war crimes, extrajudicial executions, enforced disappearances and torture. Such steps - by reinforcing an integrated system of investigation and prosecution of crimes under international law - will help reduce and, eventually, eliminate safe havens for those responsible for the worst crimes in the world.

#### **14 PRINCIPLES ON THE EFFECTIVE EXERCISE OF UNIVERSAL JURISDICTION**

**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.**

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 Hague Regulations Respecting the Laws and Customs of War on

Land (1907), the Nuremberg and Tokyo Charters (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 Nuremberg Charter 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) on 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 when they were committed. Neither the UN Principles on the Effective Prevention and Punishment 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 limitations.

The international community now considers that when enforced disappearances are committed on a widespread or systematic basis, they are not subject to statutes of limitations. 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 Disappearances 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 limitations 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 limitations "be suspended until these remedies are re-established". Moreover, the Declaration also clearly establishes that "[a]cts constituting enforced disappearances shall be considered a *continuing offence* [emphasis added] 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 Nuremberg and Tokyo Charters 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 Disappearances 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 Disappearances and Article 19 of the UN Principles on the Effective Prevention and Punishment 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, U.N. Doc. CCPR/C/OP/2, U.N. Sales No. E.89.XIV.1). 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 judgement 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 48<sup>th</sup> session - 6 May to 26 July 1996, U.N. 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 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, 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.