

AMNESTY INTERNATIONAL PUBLIC STATEMENT

AI Index: IOR 53/006/2008

9 December 2008

Amnesty International calls for an urgent review of the completion strategies of the International Criminal Tribunals for the former Yugoslavia and Rwanda

As the United Nations Security Council prepares to meet on 12 December 2008 to consider important issues relating to the completion strategies of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), Amnesty International calls for an urgent review of the current strategy, which no longer meets the current situation.

In 2003, the Security Council adopted Resolution 1503 calling on the ICTY and ICTR to “take all possible measures to... complete all trial activities at first instance by the end of 2008, and to complete all work in 2010.”

However, when the timelines were recommended by the Security Council in 2003, Resolution 1503 called on states to take a range of other measures to facilitate the completion of the Tribunal mandates. These have not been fully implemented. It is, therefore, now impossible for the Tribunals to meet the timelines.

First, despite repeated calls by the Security Council, states have failed to ensure that those charged by the Tribunals are arrested and surrendered for trial. Ratko Mladić and Goran Hadžić remain at large for crimes committed in the former Yugoslavia. Thirteen persons charged by the ICTR are still at large.

Second, although some measures have been taken by the international community to improve the capacities of national jurisdictions to try cases transferred by the Tribunals, serious concerns remain that courts in most states of the former Yugoslavia and Rwanda are unable to try these complex and in many instances politically sensitive cases effectively, in accordance with international standards.

Pursuant to requests from the Rwandan Prosecutor General, the ICTR Prosecutor has made four applications to transfer ICTR cases to Rwanda. All applications were rejected by the ICTR on the basis that the accused would not face fair trials in Rwanda. All four decisions identified serious flaws in the national witness protection system. The problems identified cannot be resolved quickly.

Regrettably, additional efforts to have some of the ICTR cases prosecuted by other national courts exercising universal jurisdiction, including in Norway and the Netherlands, failed due to inadequate domestic legislation.

Despite a recent increase in national prosecutions by the national authorities of states emerging from the former Yugoslavia, Amnesty International remains concerned that much more needs to be

done to ensure that investigations and prosecutions of crimes under international law are conducted effectively before competent, impartial and independent national courts, guaranteeing the rights of the accused to a fair trial, the safety of lawyers and judges and the rights of victims and witnesses.

Concerns even exist as to whether the War Crimes Chamber of the State Court in Bosnia Herzegovina - a mechanism recognized in Resolution 1503 and to which ICTY cases have already been transferred – will function effectively, if plans proceed to withdraw its international staff in December 2009. Amnesty International is calling for a comprehensive program of training and capacity building, as well as effective monitoring and assessment, before any handover takes place.

Weaknesses in the national criminal justice systems extend much further than taking on cases from the Tribunals. Unless they are addressed as part of the completion strategy, they could obstruct justice for the thousands of other crimes that the Tribunals have not prosecuted which should be investigated and prosecuted before national courts. Indeed, the success of the Tribunals should be measured by the legacies they leave for national authorities to follow.

The Security Council should recognize that the completion strategy it recommended in 2003 is no longer achievable. A new revised strategy needs to be developed, recognizing that more time and resources must be allocated to ensure that those still at large are arrested and surrendered without further delay, that the Tribunals complete their cases or that they are transferred to competent, impartial and independent national courts and to strengthen the national justice systems of the affected countries to ensure they continue the work to end impunity.

The revised strategy must also ensure that efforts to complete their cases expeditiously do not impact on the rights of defendants to a fair trial. In addition, the right of victims to justice and truth must not be undermined by substantially reducing indictments to the extent that they would not reflect the range of criminal charges against the accused, in particular by removing charges of sexual violence.

Specific measures should also be taken to address the ICTR's failure to prosecute the serious violations of international humanitarian law committed by the Rwandan Patriotic Army (RPA) in 1994. Amnesty International was dismayed by the recent decision of the ICTR Prosecutor to hand over one case file of RPA crimes to Rwandan authorities to be prosecuted by national courts rather than commencing proceedings before the ICTR, ignoring the serious flaws in the Rwandan justice system identified by the Chambers in their decisions not to transfer ICTR cases to Rwanda. Victims of horrific crimes committed by the RPA continue to be denied justice and the ICTR will remain open to accusations of partiality until these crimes are prosecuted.

At its next meeting, the Security Council will consider and act upon a report of its Informal Working Group on Tribunals on establishing a residual mechanism or mechanisms which would handle the Tribunals' residual issues and essential functions when they close. Amnesty International is concerned that the discussions of the Working Group have been conducted in secret and that reports it has prepared or received from the Tribunals and other experts have not been made public.

A residual mechanism will be essential to perform necessary functions that will need to continue after the Tribunals close, including ensuring on-going witness protection, continuing outreach and monitoring the enforcement of sentences of persons convicted by the Tribunals. Although Amnesty International supports preparatory work to define the residual mechanism, the efforts should be aimed at establishing the mechanism at the appropriate time when the Tribunals are nearing the

completion of their work. The mechanism should not be used as a tool to close the Tribunals prematurely.

When considering this issue, the Security Council will also need to consider how to deal with the archives of the Tribunals. It will be vital that the archives can be accessed by the public and national prosecuting authorities, with only appropriate restrictions to ensure the protection of victims and witnesses.

Amnesty International therefore calls on the Security Council not to take any decisions on the residual mechanism at its forthcoming meeting. Instead the Council should conduct, in a transparent process and possibly on the basis of a report of the Secretary-General, a detailed review of the current completion strategy. Independent non-governmental organizations should be able to contribute to identifying the most effective way forward, enabling the Tribunals to fulfil their mandates to ensure justice for the crimes committed in both situations and to leave a legacy of accountability and justice for national authorities to build upon.

Public Document

For more information please call Amnesty International's press office in London, UK, on +44 20 7413 5566 or email: press@amnesty.org

International Secretariat, Amnesty International, 1 Easton St., London WC1X 0DW, UK
www.amnesty.org