

Amnesty International's appeal to all governments to end impunity for the worst crimes known to humanity

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Introduction

The 20th century was perhaps the bloodiest in history. Millions of people were victims of the worst crimes known to humanity - namely **genocide, crimes against humanity, war crimes, torture, extrajudicial executions and “disappearances.”** These crimes were committed throughout the world during international and civil wars and in conditions of “peace.”

Despite the extent and horrific nature of the crimes witnessed in the 20th century, it is shameful that only a handful of those responsible have ever been brought to justice. The majority of prosecutions were for crimes committed in World War II, and more recently, the former Yugoslavia and Rwanda. In these situations, the international community established international tribunals to prosecute the most serious cases. In the case of the former Yugoslavia and Rwanda, the national courts are also conducting some prosecutions. In a small number of cases, the Tribunals have inspired national courts in other countries to prosecute individuals who enter their territory accused of the crimes.

Disturbingly, the vast majority of perpetrators have been allowed to act in the knowledge that it is extremely unlikely that they would be brought to justice. This trend of impunity exists for many reasons, including, the inability of national courts following a conflict to conduct prosecutions and, often, a lack of political will by the national authorities and the international community to hold the perpetrators accountable.

If the 21st century is to avoid the brutality that was a hallmark of the last, a legal system that ends the impunity must be created and implemented worldwide at the international and national level in order to allow victims to obtain justice and reparation, to deter people contemplating such crimes and to support reconciliation between the groups or states involved in a conflict.

Justice and reparation for victims

The crimes of genocide, crimes against humanity, war crimes, torture, extrajudicial executions and “disappearances” are the worst crimes known to humanity. They shockingly demonstrate no respect for the integrity of the victims and their families, who will suffer far beyond the actual event of the crime.

The crimes are so serious that the international community has adopted the position that they are crimes not just directed against the victim, but are crimes “that deeply shock the conscience of humanity” and “that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”¹

¹Preamble to the Rome Statute of the International Criminal Court.

While there is, of course, nothing that can be done to undo the crime once it has taken place, there are measures of reparation which can be taken to ease the suffering of the victims and their families and help them rebuild their lives.

The actual trial of an alleged perpetrator is an important form of reparation. Many victims cannot overstate the importance of holding the person responsible for the crime to account, for a court to find that what happened to them was wrong and to allow them to tell their story.

Courts can also rule that practical forms of reparation should be made, including, that restitution or compensation should be paid to the victim for their suffering, to rebuild or buy new property which was taken from them or destroyed.

Reparation can also take the form of rehabilitation, as well as guarantees of non-repetition and satisfaction, for example, building memorials to commemorate victims.

Victims, as well as being victims of the crime, are the primary victims of patterns of impunity, which in nearly all cases ensures that no reparation is provided to them. The result is that victims are made to feel worthless by the lack of interest in their suffering and in many cases find themselves in a position where it is impossible without assistance to rebuild their lives.

The need for a deterrent

The existence of impunity means that there is no effective judicial deterrent in place in international and national courts to stop people planning these crimes. Although prosecutions which have taken place to date have brought some perpetrators to justice and allowed victims to obtain justice and reparation, the small number of such cases and the inconsistent and limited geographical application has had little effect in deterring the crimes. Furthermore:

- The International Criminal Tribunal for Rwanda was created in 1994 after the crimes had been committed. Although the national courts in Rwanda are now prosecuting people accused of the crimes, at the time the crimes were committed government officials as well as national television and radio were actively encouraging people to commit genocide. The perpetrators would not have thought that the national courts would prosecute them for their crimes.
- Although, the International Criminal Tribunal for the former Yugoslavia, was established in 1993, after many crimes had been committed, it took over a year for the Tribunal to be operational, and even longer for the policing authorities to begin arresting those indicted. Therefore, in July 1995, when over 7,000 people were murdered in Srebrenica, Bosnia and Herzegovina, the possibility of being prosecuted for their acts by the Tribunal was not a realistic consideration for the perpetrators. In fact, general opinion at the time was that the Tribunal would be dissolved as part of an eventual peace

agreement. However, when the Dayton peace agreement was signed in 1995, there was no such protection from justice. Following Dayton and intense pressure from non-governmental organizations, states contributing forces to IFOR and SFOR in Bosnia and Herzegovina began to arrest individuals indicted by the Tribunal. In addition, both Croatia and the Federal Republic of Yugoslavia have since surrendered persons indicted by the Tribunals.

- Investigations and prosecutions for such crimes by national courts outside of the country where the crime was committed, based on universal jurisdiction, have only occurred in a small number of cases. At present these cases (with the exception of a few, such as the Pinochet case) are not widely known and, therefore, are still only a limited deterrent. Amnesty International is lobbying for all countries to exercise this jurisdiction.

These cases illustrate that sporadic application of justice will not effectively deter future atrocities. These crimes can only be prevented when people contemplating them know that it is highly likely that they will be brought to justice if they proceed. It is, therefore, essential to establish an international legal system, involving not only international, but also national courts to investigate and prosecute these crimes worldwide and a commitment by all governments to hold people accused of the crimes accountable.

Reconciliation

“If justice is not done, there may be no end to hatred, and atrocities could go on and on, with the executioners believing they are immune to prosecution and the victims thirst for revenge fuelled by a sense of injustice and the idea that an ethnic group was responsible for the atrocities committed against them. In this regard it is of paramount importance that justice be done, because it will help replace the idea of collective responsibility with the idea of criminal responsibility.”

Speech by Judge Laity Kama, former President of the International Criminal Tribunal, before the General Assembly of the United Nations, 10 December 1996

Bringing perpetrators to justice is an essential tool in reconciliation between conflicting states or groups. First, it will deter further crimes from being committed. Second, when these crimes have been committed, by either or both groups or states, there will obviously be bitterness and calls for vengeance against the perpetrators. In most situations this turns into blaming the entire group to which the perpetrators belong. Such collective blame has been shown to fuel further violence and in such situations meaningful reconciliation will be impossible and peace can be in constant jeopardy.

Bringing the perpetrators to justice will not only help to deter future crimes and provide reparation to the victims, but will also make a very important statement that individuals, not entire groups of people, are responsible for the crimes.

Sierra Leone

Since 1991, a civil war has raged in Sierra Leone, between the government and the armed opposition Revolutionary United Front (RUF). During this time thousands of people were killed, mutilated, raped, abducted and forced to flee from their homes and there was extensive use of child soldiers.

On 7 July 1999 in Lomé, Togo, the government and the RUF signed a peace agreement which was to bring the conflict to an end. A blanket amnesty was granted to all parties for human rights abuses, including crimes against humanity and war crimes, and other acts committed during the conflict.

The amnesty was accepted by some parties as the necessary price for peace. However, following the agreement human rights abuses and crimes continued to take place. A major reason for the failure of the peace agreement was that it appeared to give a signal that such abuses would be condoned and that the perpetrators would not be held accountable.

On 14 August 2000, the United Nations (UN) Security Council adopted a resolution to establish a Special Court for Sierra Leone as an important step towards ending impunity. However, in April 2001, Amnesty International expressed concern following the UN Security Council's decision that the Court should be funded entirely by voluntary contributions, casting uncertainty about the ability to establish or effectively run the Court. It also expressed deep concern that effective steps to rebuild the national justice system were not being taken so that it could conduct fair trials of the vast majority of suspects who would not be tried by the Special Court.

Recent developments

In recent years the international community has made significant progress towards ending impunity:

The establishment of the International Criminal Tribunals for the former Yugoslavia and Rwanda

In response to the shocking crimes which have taken place in both regions, the United Nations Security Council established the International Criminal Tribunals to bring to justice people accused of genocide, crimes against humanity and war crimes.

As of November 2001, the **International Criminal Tribunal for the former Yugoslavia (ICTY)**, located in The Hague, had publicly indicted 75 people, of whom 45 were before the Tribunal and 30 remained at large. Four people had either pleaded guilty or had been found guilty

by the ICTY and their appeals have been completed. Five people had been acquitted or found not guilty on appeal.

The most publicised case to come before the Tribunal is that of former President Slobodan Milosevic, who was surrendered by the Federal Republic of Yugoslavia government to the Tribunal on 28 June 2001, having been indicted for crimes against humanity and war crimes committed in Kosovo by Serbian and Federal Republic of Yugoslavia forces acting under their command, with their encouragement and with their support. In October 2001, charges of war crimes and crimes against humanity committed in Croatia in 1991 and 1992 were filed against him. In November 2001, charges of genocide, crimes against humanity and war crimes in Bosnia Herzegovina were filed against him.

The list of indictments includes persons from the forces of all states and entities involved in the armed conflict in the Former Yugoslavia since 1991 and from the highest to the lowest ranks as well as civilians.

The **ICTR** has jurisdiction to prosecute people accused of genocide, crimes against humanity and war crimes committed in Rwanda or committed by Rwanda citizens in the territory of neighbouring states between 1 January and 31 December 1994. The trial court for the Tribunal is located in Arusha, Tanzania, the appeals court is located in The Hague and the Deputy Prosecutor is located in Kigali, Rwanda.

The ICTR has arrested over 50 persons indicted for genocide, crimes against humanity and war crimes committed in Rwanda in 1994. As of November 2001, seven persons had been convicted and were serving a prison sentence after their appeals had been completed. One person had been acquitted.

In 1999, Jean Kampana, former Prime Minister in the interim government at the time of the genocide and other crimes, pleaded guilty to six charges including genocide and crimes against humanity and was sentenced to life imprisonment.

In the same year, Jean-Paul Akayesu, a former local official, was convicted by the Tribunal for genocide and crimes against humanity and sentenced to life imprisonment. Jean-Paul Akayesu was the *bourgmestre* of the Taba commune, in this role he had exclusive control over the communal police and gendarmes in the commune. He was found to have encouraged murder, beatings and sexual violence in the commune by failing to take any steps to prevent the crimes. The case was a landmark decision, as Jean-Paul Akayesu was the first person to be found guilty of rape as a crime against humanity and as genocide.

As both the ICTY and ICTR were established by UN Security Council resolution pursuant to its Chapter VII powers to maintain or restore international peace and security, all UN members

states are obliged to cooperate with the Tribunals. A number of countries have enacted special legislation to ensure that they can cooperate fully with the Tribunals. Amnesty International has called on all governments to enact this legislation and has issued ***International Criminal Tribunals : A Handbook for Governments*** (AI Index: IOR 40/07/96) to assist governments in the drafting process.

The adoption of the Rome Statute of the International Criminal Court

On 17 July 1998, at a diplomatic conference in Rome, the international community adopted the Rome Statute of the International Criminal Court. Of the 148 states present, 120 voted in favour of the Statute, 21 abstained and only 7 voted against its adoption. Most of those states that abstained have since signed the Rome Statute as a first step towards its ratification. The treaty has been hailed by governments, legal experts and civil society as the most significant development in international law since the adoption of the United Nations Charter.

The Rome Statute provides for the establishment of a permanent International Criminal Court to try individuals accused of crimes including genocide, crimes against humanity and war crimes. The Court will be established when 60 states have ratified the treaty. As of November 2001, 47 states have ratified the Rome Statute and it is expected that the Court will be established in the first half of 2002.

The Court will be of particular importance because it is permanent and will serve as a lasting deterrent to people considering these crimes. In most cases in the last fifty years international mechanisms to prosecute perpetrators have only been set up after the crimes have occurred. It will have a much wider jurisdiction than any of the international criminal tribunals which have been established to date. These tribunals have been limited to crimes committed in a particular geographic area or by nationals of particular countries while crimes committed in other areas or by nationals of other countries have not been addressed. The Rome Statute contains the most advanced provisions for the protection of victims from retraumatization, authorization for the Court to order a convicted person to provide reparation, in the form of compensation, restitution, rehabilitation, satisfaction, guarantees of non-repetition, and any other type of reparation the Court deems appropriate² and the establishment of a Trust Fund for the benefit of victims and their families.

The Court, however, has a limited jurisdiction. Unless a case is referred to the Prosecutor by the UN Security Council, the Court will only have jurisdiction to investigate and prosecute a case if the crime was committed on the territory of a state that has ratified the Statute or by the

² For more information about the International Criminal Court please see Amnesty International's 10 Fact Sheets on the International Criminal Court (AI Index: IOR 40/02/00 to 40/10/00 and IOR 40/17/00), available in Arabic, English, French, Portuguese and Spanish.

national of a state that has ratified it (or accepted the Court's jurisdiction over the crime). It is, therefore, essential to ensure that the Court has the widest possible jurisdiction, that all countries ratify the Statute.

When a state ratifies the Rome Statute, the state should conduct a review of its national laws and make any necessary amendments to ensure that it can cooperate fully with the Court.

Amnesty International has been actively involved in all stages of the establishment of the International Criminal Court and has conducted a worldwide campaign involving its one million members to lobby all states to ratify the Statute and enact effective implementing legislation.

The increasing use of universal jurisdiction by national courts

While national courts have traditionally only prosecuted people accused of crimes committed in their own territory, international law permits - and, in some cases requires - states to enact national laws that will allow their courts to investigate and, if there is sufficient admissible evidence, to prosecute any person who enters their territory suspected of certain crimes, regardless where the crime was committed and the nationality of the accused and the victim.

Universal jurisdiction can apply all crimes, including genocide, crimes against humanity, war crimes, torture, extrajudicial execution and "disappearance", which are the most serious crimes under international law. In a recent worldwide study of national legislation Amnesty International found that over 125 countries had laws providing for universal jurisdiction over at least one of the crimes. However, no one country had universal jurisdiction over all the crimes and all of the existing legislation was flawed in some respects (the full study is included in *Universal jurisdiction: The duty of states to enact and implement legislation* (AI Index: IOR 53/002-018/2001)).

Since the end of World War II, more than a dozen states have conducted investigations, commenced prosecutions and completed trials based on universal jurisdiction for the crimes or arrested people with a view to extraditing the persons to a state that will prosecute. These states include: **Australia, Austria, Belgium, Canada, Denmark, France, Germany, Israel, Mexico, Netherlands, Senegal, Spain, Switzerland, the United Kingdom, the United States.**

The Pinochet Case

The Pinochet case, is the most well known case where states have exercised universal jurisdiction.

On 16 October 1998, Augusto Pinochet, the former President of Chile, was arrested in London in response to an arrest warrant issued by a Spanish court charging Augusto Pinochet with

human rights violations including murder, torture and “disappearance” committed during his administration in Chile between 1973 to 1990. Most of the crimes that Augusto Pinochet was charged with were committed in Chile against Chilean nationals. Spain applied for Augusto Pinochet’s extradition to be prosecuted in Spain. Belgium, France and Switzerland also issued extradition requests.

Augusto Pinochet’s lawyers challenged the arrest and extradition on the basis that as a former head of state he was immune from prosecution.

In March 1999 the House of Lords, the UK’s highest court, ruled that Augusto Pinochet’s immunity as a former head of state extended only to acts done in his official capacity as a head of state. The Law Lords ruled that acts of torture as crimes under international law could not be acts within the official capacity of a head of state and that extradition proceedings to Spain should continue.

In March 2000, Augusto Pinochet was returned to Chile on grounds that he was not medically fit to stand trial. The decision was an act of ministerial discretion by the UK Home Secretary who refused to submit the results of Augusto Pinochet’s medical tests to the courts to determine whether he was fit to stand trial. The House of Lords ruling however stands as an important precedent on immunities and universal jurisdiction.

In December 2000 a judicial warrant was issued for Augusto Pinochet to be placed under house arrest in Chile for the crimes committed under his rule during the military operation known as the "Caravan of Death". His lawyers successfully appealed this order. Pinochet was however placed under house arrest, following a second warrant, until March 2001 when he was released on bail. The same month the charges were reduced from that of perpetrator of the offences of kidnapping and/or aggravated homicide to one of concealment.

In July 2001 the Santiago Appeals Court "suspended temporarily" all legal proceedings affecting Augusto Pinochet on health grounds. Lawyers for the prosecution have submitted a judicial petition to the Supreme Court to review the temporary suspension of the case. The case was still pending before the Chilean courts in December 2001.

Enactment of universal jurisdiction laws for the crimes listed above and bringing prosecutions in national courts are essential components of the worldwide effort to end impunity. In doing so, states will ensure that their territory cannot be used as a safe haven for people accused of these crimes. The International Criminal Tribunals and the International Criminal Court, when it is established, are not designed to prosecute all cases of these crimes and will only be able to try a handful of cases each year. Indeed, the International Criminal Court specifically provides that

national courts have the primary responsibility for conducting prosecutions and that it can only act when national courts are unable or unwilling to carry out investigations and prosecutions.

What governments should do?

Significant progress has been made in the last ten years towards ending impunity. However, much work remains to be done to ensure that this trend will not favour the worst criminals in the new millennium. Achieving this goal requires a major commitment by all states at an international and national level.

At the international level, all governments should ensure that the International Criminal Court will be established promptly and that it will have the widest possible geographic jurisdiction by ratifying its Statute. They should also enact effective implementing legislation to ensure that they can cooperate fully with the Court (see Amnesty International's *International Criminal Court: Checklist for effective implementation* (AI Index: IOR 40/11/00)). States should further ensure that they can cooperate fully with the International Criminal Tribunals for the former Yugoslavia and Rwanda by reviewing and amending and/or enacting new national laws (see Amnesty International's *International Criminal Tribunals: Handbook for government cooperation* (AI Index: IOR 40/07/96)).

At the national level, all governments should support these international courts (which are not designed or capable of prosecuting all cases of these crimes) by enacting effective universal jurisdiction laws, in accordance with Amnesty International's *14 Principles for the effective exercise of universal jurisdiction* (AI Index: IOR 53/01/99) which allow their national courts to prosecute anyone suspected of these crimes, regardless of where the crime was committed, the nationality of the accused or the victim or the absence of any link to the state where the court is located. States should investigate and, if there is sufficient admissible evidence, prosecute persons suspected of these crimes, including crimes committed inside and outside the state's territory, or to extradite the suspect to a country that is able and willing to do so, provided that the suspect will receive a fair trial and will not be subjected to the death penalty if convicted in that country.

Amnesty International's appeal

Accordingly, Amnesty International is calling on all governments to take the three following steps towards ending impunity and in doing so ensure that their countries are not safe havens for the perpetrators of these crimes:

1. Ratify the Rome Statute of the International Criminal Court and enact effective implementing legislation to cooperate with the Court.

For further information on the International Criminal Court see:

- *Appeal by Amnesty International to all states to ratify the Rome Statute of the International Criminal Court* (AI Index: IOR 40/07/99);
- *Fact Sheets on the International Criminal Court 1-10* (AI Index: IOR 40/02/00 to IOR 40/10/00 and IOR 40/17/00);
- *International Criminal Court: Checklist for effective implementation* (IOR 40/11/00).

2. Enact and implement universal jurisdiction legislation for the crimes of genocide, crimes against humanity, war crimes, torture, extra-judicial executions and “disappearances”, in accordance with Amnesty International’s *14 Principles on the effective exercise of universal jurisdiction* (AI Index: IOR 53/01/99), so that their national courts can investigate and prosecute anyone suspected of these crimes, regardless of where the crime was committed or the nationality of the accused or the victim.

For further information on universal jurisdiction see:

- *Universal Jurisdiction: Question and answers* (AI Index: IOR 53/020/2001)
- *14 Principles on the effective exercise of universal jurisdiction* (AI Index: IOR 53/01/99)
- *Universal jurisdiction: The duty of states to enact and implement legislation* (AI Index: IOR 53/002-018/2001)

3. Enact legislation to ensure effective cooperation with the International Criminal Tribunals for the former Yugoslavia and Rwanda and any other international criminal court created in the future.

For further information on the two current International Criminal Tribunals see:

- *International Criminal Tribunals: Handbook for government cooperation* (AI Index: IOR 40/07/96)

All documents referred to in this paper and other information on the issue can be found on the International Justice section of Amnesty International’s website (www.amnesty.org), except the three supplements to the 1996 *Handbook for government cooperation*, which can be obtained by sending a request to: ijp@amnesty.org.