

Campaigning for Justice in the Aftermath of Crisis



An Amnesty International USA
International Justice Handbook

"Injustice anywhere is a threat to justice everywhere."

– Dr. Martin Luther King, Jr

Table of Contents

| | |
|---|----|
| Introduction | 3 |
| Part I: What is International Justice | 4 |
| <i>The Legacy of Nuremberg</i> | 4 |
| <i>Universal Jurisdiction</i> | 4 |
| <i>The International Criminal Court</i> | 5 |
| <i>International and Internationalized Tribunals</i> | 7 |
| <i>National Justice</i> | 8 |
| <i>Truth Commissions</i> | 9 |
| <i>Victims' Rights and Reparations</i> | 9 |
| <i>Obstacles to International Justice</i> | 10 |
| Part II: Terms in International Justice | 12 |
| <i>Crimes Against Humanity</i> | 12 |
| <i>Enforced Disappearances</i> | 13 |
| <i>Extrajudicial Executions</i> | 13 |
| <i>Genocide</i> | 13 |
| <i>Human Rights Law</i> | 13 |
| <i>Impunity</i> | 13 |
| <i>International Criminal Law</i> | 13 |
| <i>International Humanitarian Law</i> | 14 |
| <i>Torture</i> | 14 |
| <i>War Crimes</i> | 14 |
| Part III: International Justice in Sri Lanka | 17 |
| <i>Background</i> | 17 |
| <i>Sri Lanka's Obligations Under International Law</i> | 17 |
| <i>Human Rights Crimes Allegedly Committed</i> | 17 |
| <i>The Current Situation</i> | 18 |
| <i>What is Amnesty Asking For?</i> | 19 |
| Part IV: International Justice in Libya | 20 |
| <i>Background</i> | 20 |
| <i>Human Rights Crimes Allegedly Committed</i> | 20 |
| <i>Current Justice Efforts</i> | 21 |
| <i>What is Amnesty Asking For?</i> | 22 |
| Part V: International Justice in the Democratic Republic of Congo | 23 |
| <i>Background</i> | 23 |
| <i>Human Rights Crimes Allegedly Committed</i> | 23 |
| <i>Current Justice Efforts</i> | 23 |
| <i>What is Amnesty Asking For?</i> | 25 |
| Part VI: Opportunities for Action | 24 |
| Resources & Acknowledgements | 26 |

Dear Activists,

We live in an increasingly globalized and interdependent world. The physical boundaries that separated countries have given way to a global economy, instantaneous communication, the ability to span the globe in less than a day and the proliferation of crimes that have international implications. This phenomenon both necessitates and enables the creation of an international system of justice that complements and reinforces national justice systems.

The trend towards a globalization of justice is defined by an increasingly wide net of international obligations covering everything from free trade to labor standards, environmental regulations and the protection of fundamental human rights. It is evidenced by the establishment of an International Criminal Court (ICC), the creation of ad hoc tribunals for Rwanda and the former Yugoslavia, the creation of internationalized courts and the increasing use of domestic courts to bring criminal and civil cases against individuals accused of gross violations of international human rights.

The world has sustained atrocity after atrocity without having recourse to justice, but this is changing. Global rules and systems that enforce human rights at the international level are increasingly being deployed as tools to prevent conflict and promote peace and justice. An international system of justice is essential to deter those contemplating human rights crimes, to enable victims to obtain justice and redress, to rebuild nations ravaged by war and to support post-conflict reconciliation.

Campaigning in the aftermath of any crisis that AIUSA typically responds to is centered around ensuring accountability for the crimes committed and bringing the perpetrators to justice. This handbook has been designed to introduce you to the fundamentals of international justice for large scale human rights violations, typically committed during armed conflict. By focusing on three cases where we are still actively campaigning for justice and accountability (Sri Lanka, Libya and the Democratic Republic of Congo), this handbook will equip you with the background and the tools to effectively campaign on behalf of these issues.

We hope this will be useful!

In Solidarity,

The Crisis Prevention and Response Team at AIUSA

Part I: What is International Justice?

International justice is the cooperation between countries to hold accountable individuals accused of grave human rights abuses such as genocide, crimes against humanity and war crimes. International justice acts as a safety net to ensure that perpetrators cannot evade justice by crossing borders. Bringing perpetrators to justice before a court of law – whether in domestic courts or internationally established courts – sends a clear message that human rights abuses will not be tolerated, regardless of where the crimes are committed.

The Legacy of Nuremberg

In 1945, the Nuremberg Tribunal was established to prosecute the leading military and political leaders of Nazi Germany. The Tribunal is a testament to the triumph of the rule of law in the struggle against tyranny and oppression. As noted by Justice Robert Jackson in his opening statement to the Tribunal, “[T]hat four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.”

The Nuremberg Tribunal was a watershed moment for international justice, setting a number of key precedents that underpin today’s international justice system. Key concepts that emerged from Nuremberg include: that crimes are committed by individuals, not abstract entities, and therefore individuals must be held accountable to deter future crimes; that no one is above the law, and therefore no head of state or military leader can hide behind their title to commit abuses; that some crimes are so grave as to affect and endanger all of humankind and, therefore, it is in the interests of all countries to ensure that those responsible are punished; and that, particularly in the aftermath of conflict, a trial based upon internationally recognized principles of fairness will be recognized as legitimate by all sides and create a historical record that will not be vulnerable to future revisionism, thereby laying the groundwork for lasting peace.

International Treaties

Since Nuremberg, international treaties such as the Genocide Convention, the Convention against Torture and the Rome Statute for the International Criminal Court (ICC) have all addressed the need for international cooperation to ensure that perpetrators are brought to justice. When the United Nations (UN) adopted the Genocide Convention in 1948, it recognized the need to establish an international criminal court to prosecute the crime of genocide. Article 5 of the Genocide Convention provides that persons charged with genocide shall be tried by an international penal tribunal. The Convention against Torture, adopted in 1984, requires that a state party either prosecute alleged torturers who are found in its territory or extradite them to face trial elsewhere. The Rome Statute, adopted in 1998, represents the realization of one of the oldest items on the UN agenda, namely the establishment of a permanent international court to bring to justice those who commit grave violations of international law.

Universal Jurisdiction

Universal jurisdiction is the principle that every country has an interest in bringing to justice the perpetrators of grave crimes, no matter where the crime was committed and regardless of the nationality of the perpetrators or their victims.

Since the end of World War II, there have been investigations or prosecutions based on universal jurisdiction in the courts of at least 17 countries, including Argentina, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Israel, the Netherlands, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States. Universal jurisdiction was most famously utilized in the 1998 arrest of former Chilean dictator Augusto Pinochet on torture charges in London at the request of a Spanish court.

The principle of universal jurisdiction is rooted in the belief that certain crimes, such as genocide, war crimes, crimes against humanity, torture, “disappearance” and extrajudicial executions, are so serious that they amount to an offence against the whole of humanity and, therefore, all states have a responsibility to bring those responsible to justice.

To fulfill this responsibility, more than 125 countries have enacted universal jurisdiction laws to ensure that their national courts are able to investigate and prosecute persons suspected of committing these crimes, and to ensure that their country is not used as a “safe haven” to evade justice.

The International Criminal Court

With the creation of the International Criminal Court (ICC) in 2002, the world began to fulfill the post-World War II promise of “never again.” The ICC is the world’s first permanent, international judicial body capable of bringing perpetrators to justice and providing redress to victims when states are unable or unwilling to do so. This represents a major stride for international justice.

“The establishment of the Court is still a gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law.”
– Kofi Annan, former United Nations Secretary-General, at the signing of the Rome Statute of the International Criminal Court in July 1998

The Rome Statute of the ICC incorporates the best-evolved, most comprehensive understanding of what constitutes a fair trial. It ensures that the accused receives a public and fair hearing conducted impartially. With the exception of a jury trial, the Rome Statute contains every due process protection in the US Constitution. The death penalty is excluded.

The Court has the authority to investigate and prosecute genocide, crimes against humanity and war crimes when national authorities are unable or unwilling to do so. The Court therefore acts as a catalyst for states to fulfill their primary obligations to investigate and prosecute these crimes. The Court only has jurisdiction over crimes committed after July 1, 2002, when the Rome Statute entered into force. The ICC does not have a police force of its own to arrest suspects. It must rely on the cooperation of national police services to make arrests and hand over suspects to the Court.

The Court may investigate and prosecute an individual when: (a) the accused is a citizen of an ICC member state; (b) the alleged crime took place on the territory of an ICC member state; (c) the UN Security Council asks the ICC to open an investigation; or (d) a country voluntarily accepts ICC jurisdiction. The ICC can bring to trial an individual regardless of his or her civilian or military status or official position. Note that the UN Security Council can vote to defer any investigation or prosecution.

Amnesty International began campaigning for the establishment of the International Criminal Court in 1993. The organization was very active in the drafting of the Rome Statute of the Court, which was adopted in July 1998, and other supplementary documents, including the Rules of Procedure and Evidence and the Elements of Crimes, prepared by the Preparatory Commission for the International Criminal Court between 1998 and 2002.

Since the adoption of the Rome Statute, it has been ratified by 119 countries as of October 2011. Only one country, the United States of America, has actively attempted to limit the Court's jurisdiction and to prevent other countries from cooperating with it. However, its opposition has diminished significantly in recent years as the work of the Court has shown the US government's concerns to be unfounded.

About the Court

The ICC is located in The Hague, the Netherlands. The Court is composed of three branches: the judiciary, which is made up of 18 judges, the Office of the Prosecutor and the Office of the Registrar, which runs the administration of the Court. The Assembly of States Parties is composed of one representative from each country that has ratified the Rome Statute. The Assembly of States Parties oversees the management of the Court and votes on changes to the Court's structure and jurisdiction, which includes the election of judges and prosecutors and adoption of the budget. The Court is funded by countries that have joined the ICC.

How do cases come before the Court?

Cases come before the Court in one of three ways: (1) The Court's Prosecutor can initiate an investigation into a situation where one or more of the crimes has been committed, based on information from any source, including the victim or the victim's family, but only if the Court has jurisdiction over the crime and individual. (2) States that have ratified the Rome Statute may ask the Prosecutor to investigate a situation where one or more of the crimes have been committed. (3) The UN Security Council can ask the Prosecutor to investigate a situation where one or more of the crimes have been committed, even if the crimes occurred in the territory of a state that has not ratified the Rome Statute or was committed by the national of such a state. In each of these situations, however, it is up to the Prosecutor, not the states or the Security Council, to decide whether to open an investigation and, based on that investigation, whether to prosecute, subject to judicial approval.

What is the ICC's relationship to national courts?

The ICC is a court of last resort. It acts essentially as a safety net when national courts are unable to prosecute, either because the criminal justice system is unequipped or collapsed, or because the perpetrators continue to wield influence over the government. Under the principle of "complementarity," the ICC prosecutes crimes only when national courts are unable or unwilling to do so, because, in an ideal world, these crimes generally are most effectively prosecuted in the territories where they were committed. The ICC will not act if a case is being investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. In addition, the ICC can serve as a catalyst and model for reform of domestic laws and procedures; in order for countries to join the Court, they need to bring their laws and procedures into conformity with ICC standards.

What is the difference between the ICC and the International Court of Justice and other international criminal tribunals?

The International Court of Justice (ICJ) is a civil court that hears disputes between countries. The ICC is a criminal court that prosecutes individuals. Other international criminal tribunals, namely the ad hoc tribunals for Rwanda and the former Yugoslavia, are similar to the ICC but are temporary and have a limited geographical scope. The ICC is a permanent court and is global in its reach.

Current Cases at the ICC

By the Fall of 2011, the ICC Prosecutor had opened investigations into four situations referred by the states where the crimes occurred — Cote d'Ivoire, Uganda, the Democratic Republic of the Congo (DRC) and the Central African Republic (CAR) — and two situations referred by the Security Council,

Darfur, Sudan, and Libya. The ICC Prosecutor has also opened an investigation in Kenya using his *proprio motu* powers.

So far, the ICC has summoned a leader of an armed group in Darfur and individuals in the Kenya case, and issued arrest warrants for a militia leader, a senior government official and the President in Sudan, for the former leader of Libya, his son, and a former colonel in the Libyan armed forces, and for leaders of armed groups in Uganda, DRC and CAR.

In recent years, the ICC Prosecutor has expanded the geographical scope of his work by beginning preliminary examinations of four situations outside Africa: Afghanistan, Colombia, Georgia, and the 2008–09 conflict in Gaza and southern Israel.

See Part IV and V for more information about international justice for Libya and the DRC.

What is Amnesty Asking For?

- All governments to ratify the Rome Statute to ensure that it has the broadest possible jurisdiction.
- All governments to enact effective implementing legislation ensuring that they can prosecute the crimes before national courts and cooperate fully with the Court.
- The Assembly of States Parties to provide full support and oversight of the Court.
- All governments to cooperate fully with the Court in investigating and prosecuting the crimes.
- The Court to investigate and prosecute crimes in accordance with the highest standards of international justice.

International and Internationalized Criminal Tribunals

By holding individuals accountable, international and internationalized criminal tribunals have dismantled the tradition of impunity for war crimes and other serious violations of international law. These tribunals try individuals on the basis of their personal responsibility, be it direct or indirect, and regardless of rank. Personal responsibility is an important international development because it shields entire communities from being labeled as collectively responsible for others' suffering, thus paving the way for the reconciliation process within war-torn societies. International and internationalized tribunals are important players in the emerging architecture of international justice in which international, national and hybrid prosecutions should complement each other.

International Tribunals

International criminal tribunals are courts established to try individuals accused of crimes recognized under international humanitarian law as committed in a specific place at a particular time. The Nuremberg and Tokyo Military Tribunals – the first international war crimes tribunals – were established by the victorious Allies at the end of World War II to prosecute leading military and political leaders. In response to the crimes that took place in the former Yugoslavia and in Rwanda, the UN Security Council established two ad hoc international criminal tribunals, one for the former Yugoslavia (ICTY) and another for Rwanda (ICTR), to bring the perpetrators to justice.

Successful convictions of political and military leaders are meant to deliver justice and to deter others from committing such crimes in the future. These international tribunals serve not only as an enforcement mechanism for violations of international humanitarian law, but also as an authoritative source of interpretation of this branch of law. The ad hoc tribunals have been limited to crimes committed in a particular territory and, unfortunately, have left many crimes committed in other territories unaddressed. This concern has spurred the establishment of the ICC.

Internationalized Courts

Internationalized courts are a mixture of national and international courts. They are sometimes called “hybrid courts.” They commonly include both national and international staff and judges. Each internationalized court is unique in its composition and applicable law – incorporating both national and international law. These courts are located in the country where the crimes were committed, which means that justice can be seen to be done by the affected populations, rather than being transferred to far-away proceedings.

Some examples of internationalized courts include the Special Court for Sierra Leone, the Extraordinary Chambers for Cambodia, the UN Interim Administration Mission for Kosovo and the Special Panels for East Timor.

What are the main differences between international tribunals and internationalized courts?

International ad hoc tribunals, such as the ICTY and the ICTR, are set up by the UN Security Council; they apply international law and hold trials outside of the country where the crimes were committed. Internationalized courts are usually a product of a treaty between the national government and the UN; they apply both national and international law and are located in the country where the crimes were committed. Both international tribunals and internationalized courts come with distinct advantages. In the cases of Rwanda and the former Yugoslavia, the national judicial systems had been completely destroyed during the conflicts, which made setting up internationalized courts impractical. For internationalized courts to be effective, the national courts need to be at least partially functioning as internationalized courts are built upon them. Internationalized courts are less costly than international tribunals, and are more likely to contribute to the long-term development of the national judiciary.

Can internationalized courts serve as an effective mechanism for justice?

Yes, but it is essential that internationalized courts ensure that: (1) flaws in national law are not copied over into statutes; (2) the strictest definitions of crimes under international law are used; (3) national judges are independent and impartial; (4) foreign judges and prosecutors are experienced in dealing with crimes under international law and have a strong commitment to fair and effective trials; and (5) defense lawyers and lawyers representing victims and witnesses have access to effective support programs.

What actions can the international community take in ensuring the effective operation of internationalized courts?

The international community should ensure that the courts are properly funded. In many cases, states have not been willing to make the contributions necessary to properly fund the courts. In other cases, the burden of the costs has been placed on the national state that has been unable to fund the courts fully. The international community should also ensure that sufficient resources are provided not just to the internationalized courts, but also to rebuilding the national justice system to deal with the crimes. In the long run, national courts will be able to try more people at a lower cost and contribute to the protection of human rights and the rule of law. Moreover, the international community should ensure that persons indicted by internationalized courts are arrested and surrendered. In some cases, internationalized courts have been frustrated by the failure of states to arrest and surrender indicted persons.

National Justice

Domestic courts are essential instruments of international justice. In fact, the ICC is a “court of last resort,” in that it only steps in when states are unable or unwilling to investigate and prosecute grave human rights abuses in domestic courts. Prosecution in the county where the abuses occurred can have a number of benefits. Holding trials in the location in which the crimes were committed can

show survivors and the broader population that justice is being done, as well as ensure victims and witnesses are able to participate in the proceedings. Domestic trials are also usually the most efficient way to collect evidence and testimonies.

Moreover, domestic courts can play an important role in holding perpetrators accountable when they exercise universal jurisdiction over grave human rights crimes committed in other countries. Universal jurisdiction allows and, in some instances, requires, states to investigate and bring to trial individuals suspected of serious crimes under international law irrespective of the nationality of the perpetrator, of the nationality of the victim and the place where the crime was committed.

Truth Commissions

Truth and reconciliation commissions can play an important role in international justice. They document human rights abuses, provide victims with a forum in which to speak out about the crimes committed against them, and help foster a climate of national reconciliation. In more than 30 countries, truth commissions have been established as official, temporary, non-judicial fact-finding bodies to investigate a pattern of abuses of human rights, including the crimes, and to establish the truth. Most conclude their work with a final report containing findings of fact and recommendations.

Nevertheless, truth commissions are not a substitute for justice in the form of full and fair prosecutions. Truth commissions are distinct from courts of law and do not normally determine individual criminal accountability, subpoena witnesses or order criminal sanctions. In a number of instances, sweeping amnesties have been granted to perpetrators following the publication of a truth commission report. International law, however, demands that those responsible for grave human rights abuses be brought before a court of law and held criminally responsible.

Victims' Rights and Reparations

Victims have often been silent partners in the legal process, with little role other than as witnesses, and at the mercy of the courts. In the past, victims were practically shut out of the very process that was supposed to address the wrongs they had suffered, and few steps were taken to reduce their alienation from the process, or to ensure that the experience did not contribute to further trauma or to a risk of reprisals. Giving victims a real voice in the legal process is crucial because it contributes to healing and the potential for closure. Only with a constructive interaction between victims and the legal process can courts fulfill their promise of reconciling society.

All victims of genocide, crimes against humanity, war crimes, torture, extrajudicial executions and enforced disappearances have a right to full and effective reparations. Reparations are measures to address the suffering of victims resulting from these horrific crimes and to help them rebuild their lives. Disturbingly, in most situations where the crimes have been committed, reparations have not been provided to victims and their suffering has been ignored.

Reparations can include:

- *Restitution*: measures aimed at restoring the victim to the original situation before the crime occurred, including restoration of liberty, return to one's place of residence, restoration of employment and return of property.
- *Compensation*: monetary awards for economically assessable damage, such as: physical or mental harm; lost opportunities, including employment, education and social benefits; material damages and loss of earnings; moral damage; costs required for legal or expert assistance, medicine and medical services and psychological and social services.
- *Rehabilitation*: medical and psychological care, as well as legal and social services.
- *Satisfaction*: includes: establishing the truth about the crimes; the search for the whereabouts

of the disappeared and for the bodies of those killed; public apology, and commemorations and tributes to the victims.

- *Guarantees of non-repetition*: measures aimed at ensuring that victims are not subject to other crimes, including strengthening the independence of the judiciary; human rights training for law enforcement officials as well as military and security forces; and reforming laws that contributed to or allowed the crimes to be committed.

Obstacles to International Justice

While legal accountability for crimes under international law is more of a possibility today than ever before, two formidable obstacles stand in the way. The first is the fact that powerful states continue to stand above the law, outside of effective international scrutiny. The other is that powerful states manipulate the law, shielding their allies from scrutiny and pushing for accountability mainly when politically expedient. In so doing, they provide a pretext for other states or block of states to politicize justice in the same way.

The United States and the International Criminal Court

Although 119 states have ratified the Rome Statute (as of October 2011), only 12 of the G20 countries have done so. Among others, China, India, Indonesia, Russia, Turkey and the US have stood aside from, if not deliberately undermined, international justice efforts.

Despite the United States' long history of involvement in international justice, including its participation in the diplomatic conference that ultimately adopted the ICC treaty, the Bush Administration opposed the ICC for fear that the Court will be used politically against US nationals. The Rome Statute, however, incorporates safeguards against politically motivated prosecutions. Moreover, the ICC would only investigate cases involving US nationals if the US failed to investigate potential crimes and, if appropriate, prosecute the individuals responsible. In 2005, the US government opted to not block a UN Security Council vote to refer crimes committed in Darfur to the ICC Prosecutor. This move signaled willingness on the part of the United States to cooperate with the ICC in the investigation.

More recently, the Obama Administration has begun to reengage with the Court, such as by attending the recent Review Conference, held in May 2010 in Kampala, Uganda, and by agreeing to support to a greater extent current ICC investigations, especially as pertains to the Darfur and DRC cases. However, only a US ratification of the Rome Statute would ensure full and continued US support for the ICC and would help spur other states to support and join the ICC.

The Politicization of International Justice

The second obstacle – the politicization of international justice – makes the pursuit of accountability subservient to a political agenda of supporting allies and undermining rivals. For example, the US and European Union (EU) states have used their position within the UN Security Council to continue to shield Israel from strong measures of accountability for its actions in Gaza. Additionally, at the UN Human Rights Council last year, not a single Asian or African state voted against a resolution that applauded the Sri Lankan government's conduct of the war against the Liberation Tigers of Tamil Eelam (LTTE).

The unwillingness of the powerful to apply the same standards to themselves and their political allies plays into the hands of others who can then justify their own double standards, sometimes placing a misguided notion of "regional solidarity" above solidarity with the victims. Nowhere can this be seen more clearly than in the initial response of African states to the ICC's arrest warrant for Sudanese President Omar al-Bashir for genocide, crimes against humanity and war crimes in Darfur. Despite

the seriousness of the crimes alleged, the Assembly of the African Union (AU) requested that the UN Security Council suspend the proceedings against the Sudanese President, decided that AU member states would not co-operate with the ICC in his arrest and surrender, and requested that the African Commission convene a preparatory meeting to discuss amendments to the Rome Statute to be submitted to the 2010 Review Conference.

After the ICC issued the arrest warrant for al-Bashir, he more or less continued to travel freely to a number of countries, including Egypt, Libya, Qatar, Saudi Arabia, Ethiopia, Zimbabwe, Chad and Kenya. The tide has, however, begun to shift, thanks in large part to an international outcry from human rights activists. South Africa, Brazil, Senegal and Botswana have indicated that they would arrest him if he were to enter their territories. Nevertheless, al-Bashir is still at large, and still alleging that the effort to prosecute him is politically motivated and biased against Africa.



Part II: Terms in International Justice

The following terms often come up in conversations about international justice. Familiarize yourself with them to become a better advocate for justice in the aftermath of conflict!

Crimes Against Humanity

The concept of “crimes against humanity” dates to the mid–nineteenth century, but the first list of such crimes was not integrated into an international document until the Charter of the Nuremberg Tribunal in 1945. Today, the Rome Statute of the International Criminal Court distinguishes ordinary crimes from crimes against humanity as acts, such as murder, which have been “committed as part of a widespread or systematic attack,” “directed against a civilian population,” and committed according to “a state or organizational policy.”

The Rome Statute of the International Criminal Court defines the following 11 types of acts as being capable of amounting to crimes against humanity:

- Murder – intentional killing;
- Extermination – intentional killing on a large scale directed at members of groups; it includes depriving people of food or medicine, with the intention of bringing about the destruction of part of the population;
- Enslavement – exercise of the power of ownership over a person; it includes trafficking in persons, in particular, women and children;
- Deportation or forcible transfer of population – forcing people to leave an area in which they are lawfully present, without grounds permitted under international law; deportation involves crossing national frontiers while forcible transfers take place within national borders;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture – intentionally causing severe physical or mental pain or suffering to a person in custody or under the control of the accused;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity – rape and other forms of sexual violence may also constitute other crimes within the ICC’s jurisdiction such as torture as a crime against humanity or a war crime;
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognized as impermissible under international law, in connection with any crime under the Statute – intentional and severe deprivation of fundamental rights contrary to international law because of the identity of the group or collectivity and linked to some other act which constitutes a crime against humanity, war crime or genocide;
- Enforced disappearances – see next page.
- The crime of apartheid – inhumane acts committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group committed with the intention of maintaining that regime; and
- Other inhumane acts of similar character intentionally causing great suffering, or serious injury to body or to mental or physical health – inhumane acts of a similar gravity to other crimes against humanity.

Enforced Disappearances

An enforced disappearance refers to the arrest, detention or abduction of persons, by or with the authorization, consent or acquiescence of a state or political organization, followed by either (1) a refusal to acknowledge the deprivation of freedom or (2) a refusal to give information on the fate of “disappeared” persons, with the intention of removing them from the protection of the law for a prolonged period of time. “Disappeared” people are often at risk of torture or extrajudicial execution.

Extrajudicial Executions

An extrajudicial execution is an unlawful and deliberate killing carried out by order of a government or with its complicity. It can also be referred to as a political or “death squad” killing.

Genocide

Genocide is any one of a number of acts aimed at the destruction of all or part of certain groups of people; it is this intent that distinguishes genocide from other crimes against humanity. Article 6 of the Rome Statute gives the ICC jurisdiction over genocide as defined in Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (otherwise known as the Genocide Convention). This definition is considered part of international customary law and, therefore, binding on all states – whether they have ratified the Genocide Convention or not.

Under the Rome Statute of the ICC, the following five prohibited acts – if committed with the intention to destroy all or part of a national, ethnical, racial or religious group, as such – may constitute genocide:

- Killing members of the group;
- Causing serious bodily or mental harm to the members of a group;
- Deliberately inflicting on a group conditions of life calculated to bring about its physical destruction;
- Imposing measures intended to prevent births within a group; and
- Forcibly transferring children of a group to another group.

Human Rights Law

International human rights law, including civil, cultural, economic, political and social rights, applies both in peacetime and during armed conflict and is legally binding on states, their armed forces and other agents. It establishes the right of victims of serious human rights violations to remedy, including justice, truth and reparations.

Impunity

Impunity is the exemption from punishment, penalty or harm. The word comes from the Latin *impunitas*, “the absence of punishment.” Impunity is fostered by governments’ refusal to investigate crimes, by granting government officials immunity from prosecution, and/or by enacting amnesty laws to shield a person or a group of people from accountability. The toll of impunity is often seen in the continued suffering of victims and the steady erosion of the rule of law.

International Criminal Law

International criminal law establishes individual criminal responsibility for certain violations and abuses of international human rights and international humanitarian law, such as war crimes, crimes against humanity and genocide, as well as torture, extrajudicial executions and enforced disappearance.

International Humanitarian Law

International humanitarian law (IHL), also known as the laws of armed conflict, includes rules protecting civilians and other individuals not participating in combat, as well as rules regulating the means and methods of warfare. It also includes rules imposing obligations on the power occupying a territory. International humanitarian law binds all parties to an armed conflict, including non-state armed groups. The four Geneva Conventions of 1949 and their two Additional Protocols of 1977 are the principal instruments of international humanitarian law.

Torture

Torture cannot be defined by a list of prohibited practices. Human rights treaties define it in a number of different ways, reflecting the different contexts in which they were drafted and the purposes of each particular treaty.

The Convention against Torture, which was adopted in 1984 by the UN General Assembly, provides not the sole, but certainly an authoritative, definition of torture in international law. Torture is defined in the Convention as the intentional infliction of severe physical or mental pain or suffering for purposes such as obtaining information or a confession, or punishing, intimidating or coercing someone. The term is applied to those forms of ill-treatment that are particularly severe and are deliberate.

The Convention prohibits torture as an independent crime, as a war crime, and as a crime against humanity, absolutely and in all circumstances.

Every act of torture is a crime under international law:

- If torture is committed in an armed conflict, it constitutes the war crime of torture;
- If torture is committed as part of a systematic or a widespread pattern of similar acts, it constitutes the crime against humanity of torture;
- The Geneva Conventions prohibit the war crime of torture in both international wars and internal conflicts such as civil wars or rebellions; and
- The Rome Statute of the International Criminal Court prohibits torture when it constitutes genocide, a crime against humanity or a war crime.

War Crimes

Article 8 of the Rome Statute of the International Criminal Court (ICC) gives the ICC jurisdiction over a wide range of war crimes, whether committed during *international* armed conflict or during *internal* armed conflicts, such as civil wars, which are the most common conflicts today. Unlike crimes against humanity, a war crime can be a single, isolated, dispersed or random act. There is no requirement for the act to be widespread and systematic.

Under the Rome Statute of the International Criminal Court, war crimes committed during international armed conflict fall into two major categories.

First, the ICC can try persons accused of grave breaches of the four Geneva Conventions of 1949. These include the following acts, when committed against persons protected by the Conventions, including wounded soldiers, wounded or shipwrecked sailors, prisoners of war and civilians in occupied territories: willful killing; torture or inhumane treatment, including biological experiments; willfully 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 other protected person to serve in the forces of a hostile state; willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement; and taking of hostages.

Second, the Court has jurisdiction over a wide range of other violations of international humanitarian law, including violations recognized in the Hague Regulations and Protocol I to the Geneva Conventions and in international customary law:

- Prohibited attacks on civilians, including: intentional attacks against the civilian population as such, civilian objects, humanitarian assistance or peace-keeping missions, as well as attacks when it is known that it will cause incidental loss of life or injury to civilians or damage to civilian objects which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; attacks against buildings, material, medical units and transport and personnel using the Red Cross or Red Crescent emblems; and against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments and hospitals, provided they are not military objectives;
- Harm to defenseless persons, such as: killing or wounding soldiers who have surrendered; physical mutilation or medical or scientific experiments which are neither medically justified nor in the interest of the persons, and which cause death to or seriously endanger their health; outrages upon personal dignity, in particular humiliating and degrading treatment; rape and other forms of sexual violence; and use of human shields;
- Certain prohibited methods of warfare, such as misuse of a flag of truce, United Nations or enemy insignia or the emblems of the Red Cross and Red Crescent; declaring that no quarter will be given; pillaging or destroying or seizing enemy property, unless justified by military necessity; use of prohibited weapons, such as poison or poisoned weapons, certain gases, expanding bullets and other weapons added to the Statute by amendment; intentionally using starvation of civilians as a method of warfare; and conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities; and
- Certain prohibited acts in occupied territory or against enemy nationals, including the transfer, directly or indirectly, by the occupier of parts of its own civilian population into the territory, or the deportation or transfer of all or parts of the population of the occupied territory; and abolishing or suspending legal rights of enemy nationals or compelling them to take part in military operations of war against their own country.

The Rome Statute also includes three types of war crimes in internal armed conflict:

- Violations of the common Article 3 of the Geneva Convention against civilians, the wounded and detainees, including: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; committing outrages upon personal dignity, in particular humiliating and degrading treatment; taking of hostages; and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.
- Violations of humanitarian law generally recognized in Protocol II of the Geneva Conventions, including: intentional attacks against the civilian population as such, against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Red Cross and Red Crescent; against humanitarian assistance or UN peacekeeping missions; against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, provided they are not military objectives; pillaging; rape and other crimes of sexual violence; conscripting or enlisting children under the age of 15 into armed forces or groups or using them to participate actively in hostilities; displacement of the civilian population not justified by their security or imperative military reasons; and
- Acts which have traditionally been recognized as war crimes only in international armed conflict, including: Killing or wounding treacherously a combatant adversary; declaring that no quarter will

be given; physical mutilation or medical or scientific experiments; and destruction or seizure of the property of an adversary, unless justified by military necessity.



“The wrongs which we seek to condemn and punish were so calculated, so malignant and so devastating that civilization cannot tolerate their being ignored, nor survive their being repeated.”

– Justice Robert H. Jackson, Chief of Counsel for the US, in his Opening Statement before the International Military Tribunal at Nuremberg

Part III: International Justice in Sri Lanka

Background

During 1983 - 2009, Sri Lanka was wracked by a civil war between the security forces (who are mostly from the majority Sinhalese community) and the armed Tamil opposition group, the Liberation Tigers of Tamil Eelam (LTTE), who were seeking an independent state for the Tamil minority in the north and east of the island. While human rights abuses were committed by both sides during the long decades of conflict, the final years of the war saw a heightened intensity of fighting, accompanied by soaring human rights abuses: hundreds of enforced disappearances, targeted and indiscriminate attacks against civilians, arbitrary arrests, torture and the use of child soldiers. Some of these abuses may constitute war crimes. An independent international investigation into these reported abuses is needed in order to achieve truth and justice for the victims and their families.

In recent years, cases of torture and enforced disappearances have continued to be reported, with no one being held responsible. Outside the war zone, journalists and other media workers have been attacked. At least 14 media workers have been the victims of unlawful killings since the beginning of 2006; one has allegedly disappeared in the custody of the security forces, while others have been tortured and arbitrarily detained. Emergency regulations issued by the Sri Lankan President have been used to silence critical media and generally violate freedom of expression in Sri Lanka, including through detention without charge or trial for periods lasting up to 18 months.

Sri Lanka's Obligations Under International Law

International humanitarian law applies to internal armed conflicts like the one in Sri Lanka and applies to both the Sri Lankan government and the LTTE. In particular, Common Article 3 of the Geneva Conventions (to which Sri Lanka is a party) prohibits the killing of civilians through indiscriminate shelling, deliberate attacks against civilians or civilian objects (such as hospitals and food distribution lines), and the denial of medical care to the sick and wounded. The Sri Lankan government forces are reported to have committed these acts during the final months of the war. Some of the actions of the government forces also violated international human rights law, including alleged enforced disappearances, arbitrary arrests and torture of detainees.

International humanitarian law also applies to the LTTE and forbids the taking of hostages (including forcibly using civilians as "human shields"), deliberate killings of civilians fleeing the war zone, locating military objects near densely populated areas, the recruitment of child soldiers and the use of forced labor. The LTTE is reported as having committed these abuses during the final months of the war.

Some violations of international humanitarian law amount to war crimes; others may constitute crimes against humanity. In the case of Sri Lanka, the following reported acts of the government forces may be war crimes: intentional and indiscriminate attacks on civilians, attacks against medical facilities, starvation of the civilian population in the war zone, and enforced disappearances. The LTTE may have committed war crimes by deliberately attacking civilians and forcibly recruiting child soldiers.

Human Rights Crimes Allegedly Committed

Throughout the more than 30-year conflict, the Sri Lankan armed forces and the LTTE committed violations of international human rights law and international humanitarian law, including against civil-

ians who were subject to forced displacement. Amnesty International has interviewed Sri Lankan war survivors who say that the Sri Lankan army and the LTTE both committed war crimes, including targeted and indiscriminate attacks against civilians.

The extent of violations in the later stages of the conflict however remain unknown following a government crackdown on independent reporting on the conflict beginning in 2008. By denying access to the conflict zone to UN agencies, humanitarian, human rights and other non-governmental organizations, as well as international journalists, the government excluded international scrutiny and effectively denied urgent critical humanitarian assistance to civilians.

A Sri Lankan government statement that approximately 3,000 to 5,000 civilians were killed in the last phase of the war is considered by many to be vastly underestimated. Estimates by the UN based on a daily count up to April 2009 put the civilian death toll at about 7,000; and it was estimated by some aid workers that as many as 1,000 civilians a day may have died after that. Unofficial estimates by UN personnel present in Sri Lanka during the final phase of fighting say that more than 20,000 people (and possibly up to 40,000) people may have been killed between January and May 2009. Nearly 300,000 people were displaced. Disturbingly, the UN Secretariat has failed to issue information it gathered during the conflict on the scale of the violations.

The Current Situation

The failure to act has left victims of human rights violations without access to justice, truth or reparations. Hundreds of thousands of Sri Lankans displaced at the end of the decades-long conflict struggle to rebuild their shattered communities in heavily militarized surroundings, with many still looking for justice for their killed relatives or waiting for word of the fate of their family members arrested at the end of the war.

On June 22, 2010, the UN Secretary-General appointed a Panel of Experts to advise him on accountability issues relating to alleged war crimes committed in Sri Lanka. The Panel's report to the Secretary-General was published in April 2011. The Panel determined that there were credible allegations of violations of human rights law and international humanitarian law, including war crimes and crimes against humanity, committed by both sides during the war in Sri Lanka. The Panel recommended that the Sri Lankan authorities conduct a genuine investigation into these allegations and that a concurrent international investigation also be established into these reported crimes. The Secretary-General responded by saying that he lacked authority to set up such an international investigation unless he had either the consent of the Sri Lankan government or the approval of a UN body such as the General Assembly, the Security Council or the Human Rights Council.

On May 15, 2010, the Sri Lankan government established a Lessons Learnt and Reconciliation Commission to examine the breakdown of the 2002 ceasefire with the LTTE and subsequent events. The Commission is scheduled to report to President Rajapaksa in November 2011. The Sri Lankan government has pointed to the Commission as the mechanism for dealing with accountability issues. However, as noted by both Amnesty International and the UN Panel of Experts, the Commission lacks both the mandate and the independence from the government required for such bodies. In its proceedings, the Commission has failed to follow up on alleged war crimes or human rights violations reported to it by witnesses. The Commission does not meet international standards for such accountability mechanisms. It should also be noted that Sri Lanka has a long history of using ad hoc commissions of inquiry to deflect international pressure on human rights violations without actually holding any violators responsible.

What is Amnesty asking for?

Amnesty International is asking that the UN establish an independent international investigation into crimes under international law committed by both sides in the conflict as a first step towards international justice. The independent international investigation is a vital first step toward eventual criminal investigations and prosecutions. For example, similar investigations led the Security Council to establish the International Criminal Tribunal for the former Yugoslavia and Rwanda and to refer the situation in Darfur to the International Criminal Court's Prosecutor. In both of these situations, there was strong political opposition to these international justice measures. However, the international attention resulting from the authoritative UN reports resulted in opponents not using their veto powers to block the action. The UN Panel of Experts' report should not be buried or ignored; UN member states should uphold their obligations under international law and establish an independent international investigation without further delay.

Additional Resources

Check out <http://www.amnestyusa.org/srilanka> for recent reports, press releases, blog entries and other information on Sri Lanka, including a recent report analyzing the Lessons Learnt and Reconciliation Commission (LLRC).

Also check out AIUSA's Screening Guide to accompany the Channel 4 documentary, "Sri Lanka's Killing Fields" at <http://www.amnestyusa.org/pdfs/SriLankaScreeningGuide.pdf>.

Part IV: International Justice in Libya

Background

Colonel Mu'ammar al-Gaddafi's 42-year authoritarian rule over Libya was marked by endemic corruption and the total repression of any official dissent. His opponents faced harassment, arbitrary detention, torture and extrajudicial execution at home and abroad. Many have "disappeared." Libya lacked an independent civil society, a free press and political parties. Public institutions have been largely inefficient or, like the criminal justice system, turned into tools of repression. They are deeply mistrusted by Libyans. Corruption remains endemic, and the country's oil wealth has benefited only a few.

In the months since the uprising against al-Gaddafi's rule, the hardships all Libyans face have only increased. They have faced further human rights abuses, in some cases pointing to war crimes and crimes against humanity.

Human Rights Crimes Allegedly Committed

Serious human rights violations were a hallmark of Colonel al-Gaddafi's rule, including enforced disappearances, torture, and mass killings of detainees, most notably at the notorious Abu Salim Prison in Tripoli, where in 1996 up to 1,200 detainees were extra-judicially executed in 1996 by security forces. Since the conflict that erupted in February, Libyans have faced further human rights abuses both at the hands of forces loyal to Colonel al-Gaddafi and by opposition forces. In some cases these abuses constitute war crimes and crimes against humanity.

Lethal Force Against Peaceful Demonstrations

Propelled by the momentum of similar uprisings in Egypt, Tunisia and across the Middle East, Libyan citizens distraught over decades of oppressive rule under Colonel al-Gaddafi called for their own "Day of Rage" on 17 February. From the outset, al-Gaddafi's security and armed forces responded to the demonstrations with lethal force, firing live rounds from automatic assault rifles at unarmed demonstrators. According to an Amnesty International fact-finding visit to Libya, some 170 people were killed and more than 1,500 injured in the eastern cities of Benghazi and al-Bayda between 16 and 21 February alone. Intentionally directing attacks against civilians not taking direct part in hostilities, or against civilian objects (in the case of non-international conflicts, medical, religious or cultural objects in particular), is a war crime.

Indiscriminate Attacks

As protests mounted and turned violent, Colonel al-Gaddafi initiated a brutal campaign against opposition forces, utilizing weapons and tactics that were inherently indiscriminate in their targets. From the second half of March on, al-Gaddafi forces launched sustained attacks against residential neighborhoods in Misratah and Ajdabiya using Grad rockets and cluster munitions. Grad rockets are unguided and thus are inherently indiscriminate projectiles that can sow destruction at a distance of up to 40km. Their use against residential areas is in flagrant violation of the prohibition of indiscriminate attacks, a cornerstone of IHL.

Cluster munitions, which are banned by more than 100 countries, present a similar danger. Dropped from the air or fired from the ground, they are designed to break open in mid-air, releasing the submunitions over a wide area in a way that cannot discriminate between civilians and soldiers.

Al-Gaddafi forces also used anti-personnel, anti-vehicle, and other mines in and around civilian residential areas. Although Libya is not a party to the Anti-Personnel Mine Ban Treaty, the use of such inherently indiscriminate weapons violates the customary IHL prohibition of indiscriminate attack.

Enforced Disappearances, Detentions and Torture

In the immediate run-up to the conflict and the months since, thousands of people from across Libya have been victims of enforced disappearance. The lists of reported detainees include both members of the opposition forces and unarmed civilians held in prisons and detention facilities in Tripoli and throughout the western part of the country. As al-Gaddafi's hold on power weakened, many detainees escaped or were released. They confirmed reports of systematic torture and extra-judicial killings, particularly in the final days as jails were being abandoned.

Abuses by Opposition Forces

Amnesty International has also been concerned about reported human rights abuses by rebel forces fighting Colonel al-Gaddafi. In all cases documented by Amnesty International, the abduction of individuals suspected of being al-Gaddafi fighters, loyalists, as well as alleged "African mercenaries" has occurred without an arrest warrant, even when taken from their home. In many cases, they continue to be held indefinitely without charges.

It appears that in general the risk of torture and other ill-treatment decreases after the initial days in detention. However, several detainees told Amnesty International that were still being beaten sporadically and were frequently threatened and insulted. Impunity for such behavior remains entrenched, and new arrivals are particularly vulnerable to a "welcome" that frequently involves beatings and other abuses. Treatment of detainees seems to largely depend on the guards on duty—detainees say that some guards treat them with dignity, while others abuse them.

The detention and abuse of non-Libyan Blacks is particularly worrisome. Allegations that Colonel al-Gaddafi's government was using foreign mercenaries from Sub-Saharan Africa to crush the uprising inflamed the country's already troubled anti-immigrant sentiments. These allegations against foreigners now appear to be largely unfounded. Many captured al-Gaddafi fighters were in fact Libyan nationals mistaken for foreign mercenaries due to their dark skin. Other reports detail the detention and abuse of migrant workers from Sub-Saharan Africa, falsely accused of fighting in support of the al-Gaddafi government.

The arbitrary detention and beating of detainees represents a serious violation of human rights and severely undermines the international credibility of the National Transitional Council. Amnesty International has called on the Council to immediately halt all arbitrary detentions, ensure that all future arrests are only carried out by security forces authorized to do so by law, and place all detention facilities under the oversight of the Department of Public Prosecutions.

On 23 October the National Transitional Council announced the end of the uprising, following the capture of Sirte, the final stronghold of pro-Gaddafi fighters. In the aftermath, reports of similar crimes committed by opposition forces are emerging, including the possible mass killing of detainees, which would constitute a war crime.

Current Justice Efforts

On 27 June the Pre-Trial Chamber of the ICC issued arrest warrants for Colonel al-Gaddafi, his son Saif al-Islam al-Gaddafi and his head of military intelligence Abdallah al-Senussi for "crimes against humanity (murder and persecution) allegedly committed across Libya from 15 February 2011 until at least 28 February 2011, through the State apparatus and Security Forces".

After a prolonged siege of al-Gaddafi's final stronghold in Sirte, a video was released that appeared to show the former leader bleeding but alive. A separate video released the same day seemed to show al-Gaddafi's son, Mu'tassim al-Gaddafi alive and in the custody of rebel forces. Both were reported dead later that day from gunshot wounds. The killing of unarmed detainees is a war crime under international law, and Amnesty International is calling for an independent, impartial investigation into the murders. If the NTC is unable to guarantee such an investigation, the investigation should be conducted by international bodies such as the International Criminal Court or some other UN rights mechanism.

Saif al-Islam and Abdullah al-Senussi remain at large, though the ICC reports that they are in indirect talks with Saif over his surrender. Amnesty International is calling on the NTC and neighboring governments to ensure his and al-Senussi's safe detention and prompt transfer to The Hague to stand trial.

What is Amnesty Asking For?

Amnesty calls on the Transitional Libyan authorities to:

- Conduct an investigation into all alleged cases of war crimes and crimes against humanity, including the death of Colonel al-Gaddafi.
- Reform the security sector and criminal justice system by ensuring that the policies, procedures, and practices of law enforcement and security agencies comply with international law and standards, and by ensuring that all detention facilities are brought under the control of the Ministry of Justice.
- Eradicate torture and other ill-treatment by conducting prompt, independent, impartial and effective investigations into all allegations of torture or other cruel, inhuman or degrading treatment or punishment, and repeal all legislation which allows for the application of corporal punishment.
- Respect and protect freedoms of expression, association and assembly by repealing all laws that criminalize activities amounting to the peaceful exercise of personal expression or that prohibit the establishment of independent organizations and political parties, and enshrine these rights in Libya's new Constitution.
- Uphold the rights of refugees, asylum-seekers and migrants by protecting these groups from exploitation, violence and intimidation and by adopting asylum legislation consistent with international law and standards. Most pressingly, take necessary steps to put an end to violent attacks and discrimination against Sub-Saharan Africans.
- Cooperate with UN mechanisms and established international treaties such as the International Criminal Court, the Convention Against Torture, and other mechanisms intended to protect individuals' human rights, and co-operate with the Commission of Inquiry to investigate all alleged violations of international human rights law.

For more specific recommendations, please refer to Amnesty International report, "Libya: Human Rights Agenda for Change" (September 2011), AI Index: MDE 19/028/2011.

Part V: International Justice in the Democratic Republic of Congo

Background

The people of the Democratic Republic of the Congo (DRC) have been beset by violence and human rights abuses for two decades. Crimes under international law – including mass rapes and killings – have been committed in almost every corner of the country and are still being committed with alarming frequency. Despite some efforts at reform, the DRC authorities have failed to ensure justice, truth and reparations to the victims of crimes under international law. Impunity remains pervasive: while millions of men, women and children have suffered as a result of the violence, only a handful of perpetrators have ever been brought to justice.

Human Rights Crimes Allegedly Committed

Crimes under international law — including crimes against humanity and war crimes — have been committed throughout the DRC over the last two decades and still continue to be committed.

A significant proportion of these violations have been committed in the context of armed conflict. The country was engulfed in two wars between 1996-1997 and 1998-2003, in which the forces of at least six governments and many more armed groups fought for political, economic and military control of the country, notably in the east.

Amnesty International has on numerous occasions documented the type and scale of the violations committed. These include torture, enforced disappearances, and sexual violence committed on a systematic and widespread basis by all combatant forces, the widespread use and recruitment of children into the armed conflicts, countless acts of summary executions and other unlawful killings, enforced disappearances, unlawful arrest and detention, torture and other cruel, inhuman and degrading treatment as well as violations in the context of exploitation of mineral resources.

The recent UN Mapping Report, which documented the most serious violations of human rights and international humanitarian law committed between March 1993 and June 2003, noted that the vast majority of crimes covered in the report could be defined as crimes against humanity and war crimes. Furthermore, it indicated that the question of whether the numerous serious acts of violence committed against members of the Hutu ethnic group by the Rwandan army and the Alliance of Democratic Forces for the Liberation of Congo (Alliance des Forces Démocratiques pour la Libération du Congo, AFDL) rebel group constituted crimes of genocide remains unresolved and could only be decided by a competent court following a full judicial investigation.

Current Justice Efforts

Military Courts

At present in the DRC, military courts have exclusive jurisdiction over crimes of genocide, crimes against humanity and war crimes, so no one can be prosecuted for such crimes under current law in civilian courts. The UN Mapping Report, which was mandated to assess the capacity of the Congolese justice system to deal with these crimes, pointed to a series of limitations of the military justice system that made it incapable of addressing the scores of crimes under international law committed in the DRC. According to the UN Mapping Report, at the time of writing, out of the dozen or more identified cases of such crimes dealt with by Congolese jurisdictions, only two related to crimes committed between March 1993 and June 2003, the period covered by the Mapping Exercise.

Furthermore, according to the UN Mapping Report, even in the few cases tried by the military courts, almost all those convicted and sentenced for war crimes or other crimes under international law have escaped from prison. In none of the cases were awards of compensation payments to victims implemented.

Amnesty laws and decrees were adopted in the DRC between 2003, following the Global and All-Inclusive Agreement, and 2009 as part of the Acts of Engagement of armed groups in North and South Kivu. These amnesties expressly exclude war crimes, crimes against humanity and genocide. However, in practice, such amnesties have posed obstacles to the prosecution of these crimes.

The UN Mapping Report acknowledged that the reform of military law in 2002, followed by the DRC's signing up to the Rome Statute of the ICC in the same year and the adoption of the transitional Constitution in 2003, resulted in some positive outcomes, such as the dozen or more cases in which the Congolese jurisdictions dealt with crimes under international law. However, those positive outcomes are largely insufficient to address the thousands of crimes under international law committed in the DRC.

Prosecutions in Other States

All states may investigate and prosecute crimes, including crimes under international law, on the basis of active personality (the suspect was a national of the state where the court is located) or universal jurisdiction. Many crimes committed in the DRC were perpetrated by nationals of neighboring states, but not a single one of these states is known to have prosecuted any of their nationals for crimes committed in the DRC. In four cases, third-party states have exercised universal jurisdiction over crimes under international law committed in the DRC between 1993 and 2003, but only one of them has led to a conviction so far.

In 2000, a Belgian judge issued an arrest warrant for Abdulaye Yerodia Ndombas, the DRC Foreign Minister, on suspicion of war crimes and crimes against humanity. On 7 April 2004, Sébastien Nzapali, a member of President Mobutu's Presidential Guard, was convicted of torturing a detainee in 1996 by the Rotterdam District Court in the Netherlands and sentenced to two and a half years' imprisonment. In 2008, a Spanish court issued arrest warrants for 40 Rwandans accused of crimes under international law allegedly committed in Rwanda and in the DRC.

In November 2009, Ignace Murwanashyaka, president of the FDLR, and his deputy, Straton Musoni, were arrested in Germany following an arrest warrant issued by the German federal court of justice. They are accused of having controlled the FDLR remotely from Germany. The two have been indicted for crimes against humanity and war crimes allegedly committed in the DRC by the FDLR between January 2008 and November 2009. Their trial started on 4 May 2011 in Stuttgart. The arrest and trial of these two individuals is a very important step in contributing to the fight against impunity in the DRC through the exercise of universal jurisdiction.

The International Criminal Court

On 19 April 2004, the DRC referred the situation in the country since 2002 to the Prosecutor of the ICC, who opened an investigation on 23 June 2004. Since then five individuals suspected of war crimes and crimes against humanity have been named in arrest warrants issued by the Court. Three are now on trial, one is in pre-trial detention and the other is at large:

- On 17 March 2006, Thomas Lubanga Dyilo, former leader of the Union of Congolese Patriots (UPC), a Congolese militia group that was active in Ituri, was surrendered to the ICC. He was tried on war

crimes charges of enlisting and conscripting children under the age of 15 to participate actively in hostilities between 2002 and 2003. Closing statements were presented on August 25 and 26, 2011.

- On 17 October 2007, Germain Katanga, former leader of the Patriotic Force of Resistance in Ituri (FRPI) militia group, surrendered to the ICC and on 6 February 2008, Mathieu Ngudjolo Chui, former leader of the National Integration Front (FNI) militia group, was arrested. Their two cases were joined as their charges relate to an attack carried out in the village of Bogoro, Ituri, jointly by the FPR and the FNI. As of October 2011, their joint trial was continuing on war crimes charges of using children under the age of 15 to take active part in hostilities, directing an attack against a civilian population, willful killings, destruction of property, pillaging, sexual slavery and rape, as well as crimes against humanity of murder, rape and sexual slavery allegedly committed in 2003.
- Callixte Mbarushimana, executive secretary of the FDLR, who was arrested in France on 11 October 2010, is in pre-trial detention awaiting the results of a confirmation hearing set for 16 September 2011. He faces charges of crimes against humanity (murder, torture, rape, inhumane acts and persecution) and war crimes (attacks against the civilian population, destruction of property, murder, torture, rape and inhuman treatment) allegedly committed in the Kivus in 2009.
- The DRC authorities continue to refuse to arrest Bosco Ntaganda, former chief of military operations of the UPC and later military chief of staff of the CNDP, sought in an ICC arrest warrant dated 22 August 2006 for war crimes of enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities between 2002 and 2003 in Ituri. Following the integration of the CNDP into the national Congolese army, Bosco Ntaganda is currently a General in the FARDC. This refusal is in clear breach of the DRC's obligations under Articles 59, 86 and 89 of the Rome Statute of the ICC.

What is Amnesty Asking for?

Amnesty International strongly believes that the development of a long-term comprehensive justice strategy to establish a strong, effective and credible national criminal justice system is crucial to ending impunity for crimes under international law and securing reparation for victims and their families in the DRC.

This comprehensive, long-term justice strategy should prioritize flaws within the current system that are neglected in existing policy, programs and discourse – flaws which impede the system's ability to deal with crimes under international law. Specific priorities should include:

- Efforts to bring national legislation into conformity with international standards, notably by excluding the death penalty and ensuring that civilians, and all those suspected of crimes under international law, are tried in civilian, not military courts.
- Establishing measures to ensure that victims and their families are able and willing to take part in the judicial process and seek justice, truth and reparations;
- Ensuring that the judiciary is able to act independently, that fair trial standards are met, and that judgments are enforced, which requires, among other things, reform of the prison system;
- Ensuring that the establishment of a Specialized Court is part of a long-term comprehensive justice strategy, through the inclusion of an explicit mandate to contribute to the reform of the local justice system.

For more specific recommendations, please refer to Amnesty International report "The Time for Justice is Now: New Strategy Needed in the Democratic Republic of the Congo" (June 2011), AI Index: AFR 62/006/2011.

Part VI: Time for Action!

Sustaining pressure in the aftermath of any crisis is essential to ensure that those affected have access to accountability and justice measures and that these violations of human rights are not repeated in the future. The following are examples of activities you can undertake to support international justice efforts following a crisis.

Contact us at crisis@aiusa.org for more guidance on doing any of these activities or if you would like to receive hard copies of this handbook!

Organize a Petition or Postcard Drive

A petition or postcard drive is a great way to mobilize members of your community to take action, while also creating space for public education and cultivating awareness. One great way to collect signatures is by setting up an Amnesty International table in your community.

Don't forget: your regional office may already have a petition or postcard action you can use!

Create an Informational Display

Setting up an informational display in a public space is a good way to educate your community about international justice and human rights issues, as well as to advertise for an upcoming event or your local group's regular meetings. Consider reserving a display board or case at your library, at a community center, café or meeting place, town hall, student center, etc. Be creative!

Write a Letter to the Editor

Submitting a letter to the editor of your local or school newspaper is an important way to make your voice heard. In fact, the letter to the editor section is one of the most widely read sections of the newspaper!

Responding to a particular article that has already been published and focusing on current events are great ways to increase your chances to be published.

Activist tip: Send your letter via e-mail to save time. Your newspaper's website should list the appropriate email address to send it to. While letters sent by "snail mail" are still sometimes used, often by the time they are received they are "old news." Things change quickly, and issues can be out-of-date after a few days

Be an Online Activist

There are many ways to do this. One really easy way to do this is to take online action through AIUSA's Online Action Center. And if you are a blogger, you can disseminate information about international justice, support victims and stand for accountability. Don't forget to tag your posts as related to international justice!

Organize a Letter-Writing Party

Hosting a casual gathering with an international justice theme is a great way to get together with friends and members of your community while also taking action for human rights and international justice. We suggest that you show a short film, such as AIUSA's 2007 documentary "Justice Without Borders," before the letter writing begins. This is a good excuse to introduce friends and neighbors

to Amnesty International and international justice issues – or to simply get together with your human rights activist friends for an informal and fun evening.

Organize a Public Write–a–thon

Turn a group letter–writing action into a full public event! A public write–a–thon event can combine a vigil–style presence with letter–writing action, with two aims: (1) to be a public presence on an issue and (2) to generate letters to make change. You may organize a speaker to say a few words about the action before the group starts the letter writing, or set up a table with signs that encourage people passing by to join in action for international justice and accountability.

Visit Your Member of Congress

Meeting with your representative is a very effective way to influence international justice and human rights policy. Even if you can't visit Washington, you can still meet your members of Congress. Your member has a district office near you that he or she visits several times each month. It is important that you take time to prepare your thoughts, to familiarize yourself with your target and to follow up as many times as it takes.

.....

Did you know? Legislative Coordinators are AIUSA volunteers who work to build relationships with elected officials in your state and region. If you are considering organizing a meeting with your elected officials, always be sure that you first touch base with your Legislative Coordinator. Please contact crisis@aiusa.org for more information.

.....

Resources and Acknowledgements

Additional Resources

Websites

AIUSA's International Justice Program: <http://www.amnestyusa.org/our-work/issues/international-justice>
Amnesty International reports on International Justice: <http://www.amnesty.org/en/international-justice>

Ally groups

American Non-Governmental Organizations' Coalition for the International Criminal Court (AMICC):
<http://amicc.org>

Find a local AMICC chapter to organize a joint event or action: http://amicc.org/contacts_alliances.html

Coalition for the International Criminal Court: <http://iccnow.org>

Center for Justice and Accountability: <http://cja.org>

The International Center for Transitional Justice: <http://ictj.org>

Official websites

International Criminal Court (official website): <http://www.icc-cpi.int>

The Trust Fund for Victims: <http://www.icc-cpi.int/vtf.html>

International Criminal Tribunal for the former Yugoslavia (ICTY): <http://www.un.org/icty>

International Criminal Tribunal for Rwanda (ICTR): <http://www.un.org/ictw>

Special Court for Sierra Leone: <http://www.sc-sl.org>

Acknowledgements

Amnesty International USA's Crisis Prevention and Response Program would like to thank all volunteers, staff and supporters who contributed to this handbook. Special thanks to Vienna Colucci, Edith Garwood, Christoph Koettl, Jim McDonald, Juliette Rousselot and Ruth Vinson.

Most important, we'd like to thank the activists who are using this handbook to ask for justice and accountability in the aftermath of conflict and who are engaging in their communities to build local support for international justice. Volunteer leadership and dedication are at the core of all Amnesty International successes.

We would love to hear about your experience using the handbook. Please send your comments and questions to crisis@aiusa.org.

Copyright Information

Front page: Amnesty candlelight vigil on the steps of St Martin in the Fields Church to mark the 10th anniversary of the Srebrenica massacre. © Amnesty International.

Page 11: AIUSA rally for the Sri Lanka Day of Action, May 2010. © Amnesty International.

Page 16: AI France day of action for the victims of "Operation Castlead" in Gaza. © Pierry-Yves Brunaud/Picturetank for Amnesty International.

Page 29: AI Peru Gaza Action in Lima outside the Israeli Embassy, January 2009. © Enrique Castro-Mendivil.



“Hope is the engine that drives human endeavor. Without the expectation that a more humane and peaceful world is attainable, humankind will lack the enormous energy and creativity needed to save man from himself. The dreams of today can become the reality of tomorrow.”

– Benjamin Ferencz, former Nuremberg war crimes prosecutor



MOBILIZING FOR HUMAN RIGHTS EMERGENCIES

Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.