

AMNESTY INTERNATIONAL

The International Criminal Court

Fact sheet 2

The case for ratification

“I urge you and your fellow parliamentarians around the world to speed up the process of ratification of the Rome Statute. We must not lose the momentum in bringing this extraordinary achievement to fruition at the earliest possible date.”

Kofi Annan, United Nations Secretary-General, Address to the Swedish Parliament, 28 May 1999

For more than half a century since the Nuremberg and Tokyo trials, states have largely failed to bring to justice those responsible for the millions of victims of genocide, crimes against humanity and war crimes. The Rome Statute of the International Criminal Court (Statute) will help to solve this problem by providing for the establishment of a permanent International Criminal Court (ICC) to bring perpetrators to justice and to provide redress to victims when states are unable or unwilling to do so. To a great extent, its success will depend upon widespread ratification of the Statute.

Why cannot trials be left to courts in the countries where the crimes occurred?

As a general rule, trials should take place where the crimes occurred, provided that they are not shams or unfair or could lead to the death penalty. Trials are often likely to be more efficient and have greatest impact when they take place where much of the evidence is located, the accused and most victims and witnesses live and most participants are familiar with the legal system and language.

However, in many cases, trials which meet these standards have been impossible in the countries where the crimes occurred. Legislation making such conduct crimes may not exist or the legal system may have collapsed. The country may not have the resources for such trials or to provide security

for suspects, victims, witnesses or others involved in the proceedings. Prosecutors may not have the political will to open investigations. They may be prevented from investigating or prosecuting such crimes by executive authorities - some of whom may be implicated in such crimes - or by amnesties, pardons or similar measures of impunity.

What about universal jurisdiction, as in the Pinochet case?

The courts of all states have the authority and, it is increasingly recognized, the duty under international law, to bring to justice those who are responsible for genocide, crimes against humanity and war crimes no matter where they occurred. The exercise by national courts of such universal jurisdiction will be extremely useful when suspects visit their countries or seek refuge there or when the state where the crimes occurred extradites suspects. Universal jurisdiction will also help fill a gap in the Statute by permitting those responsible for crimes committed in the territories of states which have not ratified the Statute to be brought to justice. However, the number of such cases is likely to remain limited for the foreseeable future.

Why not simply establish ad hoc international criminal tribunals when needed?

In the more than half a century since Nuremberg and Tokyo, the Security Council has established only two *ad hoc* international criminal tribunals. Although the International Criminal Tribunal for the former Yugoslavia, established in 1993, and the International Criminal Tribunal for Rwanda, established in 1994, have become increasingly effective, with the majority of those who have been publicly indicted and whose cases are still being pursued arrested, they are limited to crimes committed in two specific regions and during two particular times. Since 1993, the

Security Council has failed to establish similar *ad hoc* tribunals for other grave situations, such as Cambodia, Chechnya, East Timor, Guatemala, Iraq, Liberia, Sierra Leone and Somalia. This reluctance is partly based on the cost of establishing new institutions and partly because of a lack of political will.

What then is the advantage of a permanent ICC?

A permanent ICC will be able to act when the courts of the countries where the crimes occurred or whose nationals are suspected of such crimes are unable or unwilling to bring those responsible to justice. Since the ICC Prosecutor may, subject to judicial approval, open an investigation based on information provided by any source, including victims, their families, non-governmental organizations, intergovernmental organizations, such as the United Nations (UN), and states, the Prosecutor will not be dependent on referrals by the Security Council. The ICC will also speak with greater force on behalf of the entire international community than a national court. Nearly two-thirds of all UN member states voted to adopt the Statute in Rome in 1998 and many others are likely to ratify it in the future.

Why is the ICC worth the cost?

Although the annual budget of the ICC may eventually be as much as \$100 million, this cost would be small in comparison to the amount states now spend on investigations and prosecution of ordinary crimes around the world. Moreover, to the extent that the ICC deters such crimes as genocide, crimes against humanity and war crimes, it will help to save and, thus, repay itself many times over.

What are the safeguards against politically motivated investigations and prosecutions?

The Statute has many safeguards to ensure that investigations and prosecutions are pursued solely in the interest of justice, not politics. Although the Security Council and states can refer situations to the ICC Prosecutor, it will be up to the Prosecutor to decide whether to seek authorization to open an investigation. Moreover, the Prosecutor will not be dependent on Security Council or state referrals, but will be able to open investigations based on information from any source. The Prosecutor must be of high moral

character and highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. The Prosecutor is required to act independently. The Prosecutor must request authorization from the Pre-Trial Chamber both to open an investigation and to begin a prosecution and those requests can be challenged by states.

A Publication of the International Justice Project

KEYWORDS: ICC1 / INTERNATIONAL TRIBUNALS / INVESTIGATION OF ABUSES / IMPUNITY