

AMNESTY INTERNATIONAL

The International Criminal Court

Fact sheet 4

Prosecuting crimes against humanity

“[The parties agree to draw up additional instruments] in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the dictates of humanity”.

Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight (St. Petersburg Declaration), 1868

The concept of “crimes against humanity” dates to the middle of the nineteenth century. Although the first list of such crimes was made at the end of the First World War, they were not codified in an international instrument until the Charter of the Nuremberg Tribunal in 1945. Crimes against humanity as identified in the Nuremberg Charter were recognized as part of international law by the United Nations General Assembly the following year and were included in subsequent international instruments, including the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda. They have now been defined for the first time in an international treaty when the Rome Statute of the International Criminal Court (Statute) was adopted on 17 July 1998.

What distinguishes ordinary crimes from crimes against humanity?

The Statute distinguishes ordinary crimes from crimes against humanity over which the International Criminal Court (ICC) has jurisdiction in three ways.

First, the acts which constitute crimes, such as murder, must have been “**committed**

as part of a **widespread or systematic attack**”. However, the word “attack” here does not mean a military attack and can include laws and administrative measures such as deportation and forced displacement.

Second, they must be **directed against a civilian population**.” Single, isolated, dispersed or random acts that do not rise to the level of crimes against humanity, cannot be prosecuted as such. The presence of a few soldiers among the civilian population is not sufficient to deprive it of its civilian character.

Third, they must have been committed pursuant to “**a State or organizational policy**”. Thus, they can be committed by state agents or by persons acting at their instigation or with their consent or acquiescence, such as death squads. Crimes against humanity can also be committed pursuant to policies of organizations, such as rebel groups, which have no connection with the government.

What acts constitute crimes against humanity?

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

- **Murder** - intentional killing;
- **Extermination** - intentional killing of 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 and 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** - 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;

- **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.

Is any link to armed conflict required?

The states which drafted the Rome Statute reaffirmed that crimes against humanity can be committed in either times of peace or armed conflict by omitting any link to armed conflict. Although the Nuremberg and Tokyo Tribunals limited their jurisdiction over crimes against humanity to those committed during the Second World War, subsequent international instruments, jurisprudence and scholarly analysis have made clear that there is no requirement that crimes take place during armed conflict for them to be crimes against humanity.

Is there any requirement that the acts be committed with a discriminatory intent?

In contrast to the unique jurisdictional requirement in the Statute of the International Criminal Tribunal for Rwanda, there is no such requirement in international law or the Statute, except with the crime against humanity of persecution.

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