

### September '95 Focus

#### International Criminal Court:

The world needs a permanent international criminal court to bring human rights violators to justice. It is time to send a clear message to those who think that they are above the law that violations of human rights will not be tolerated.

Amnesty International is campaigning for a permanent international criminal court to be established by October 1996. This would be a fitting climax to the United Nations' (UN) 50th anniversary year, which begins on 24 October 1995. In the half century since the end of the Second World War, most of those responsible for countless gross human rights violations, crimes committed in war and peace, many amounting to crimes against humanity or war crimes, have escaped justice. National authorities have often been unwilling or unable to try them and there has been no international court to turn to. Many human rights violations and abuses so shock the conscience of humankind that they are crimes under international law even if national laws do not criminalize them. Now is the time for states working through the UN to enforce these universal principles.

In the aftermath of the Second World War the Nuremberg and Tokyo war crimes tribunals raised hopes that a new system of international justice would be created. The newly founded UN began work on an international criminal court. The Cold War intervened and the court was never set up. Governments now have a rare chance to act. The 50th anniversary session of the UN General Assembly opens in New York on 19 September 1995. AI is urging the General Assembly to decide that this court will be established by next year.

An international criminal court would play a vital role in protecting human rights around the world. There is a clear link between continuing human rights violations and impunity – exemption from punishment. Impunity often allows sporadic violations of human rights to develop into patterns of abuse. Impunity brings contempt for the law and encourages even more brazen violations by people who feel that they are above the law. Sweeping aside the question of responsibility only leads to renewed cycles of violence and impunity, sometimes years later.

All over the world AI sees the effects of serious human rights violations going unpunished. In Haiti, thousands of women and men including human rights monitors, trade unionists, journalists and members of popular grassroots and religious groups were victims of widespread and systematic abuses in the years after the 1991 military coup. In Argentina, a presidential pardon and a law allowing “due obedience” to be used as a defence, mean that although senior members of the government were tried and sentenced for human rights crimes, all but a few of those responsible for more than 10,000 “disappearances” may never be held accountable for their crimes. In the Philippines, there have been no effective steps to prosecute those responsible for thousands of “disappearances” and extrajudicial executions in that country over more than two decades. Widespread “disappearances” and extrajudicial executions have taken place in the civil war which began in Tadjikistan in 1992, but no effective measures have been taken to bring those responsible to justice. In Iraq, Kurds in the north of the country and Shi'a Muslims in the south were massacred with impunity by government troops in the aftermath of the Gulf War. Extrajudicial executions have continued since then in government controlled areas.

Many of the atrocities in the headlines are committed during armed conflicts. Some are committed during international conflicts like the invasion of Kuwait by Iraq; many more during internal conflicts like those in Angola, Chechnya, Colombia, India (Jammu and Kashmir), Liberia, Peru, Sudan and Turkey. In other countries gross and systematic violations outside the context of armed conflict have gone largely unpunished, like torture in Iran and Myanmar, extrajudicial executions in Burundi and Uganda and “disappearances” in Guatemala, Morocco and Yemen.

It does not matter how long ago crimes under international law occurred, where they were committed or to which countries those responsible have fled. States which find suspected perpetrators of such

crimes on their territory are able — according to the principle of universal jurisdiction — to prosecute them or to transfer them to a country which will do so. Regrettably states have rarely put these principles into practice.

A permanent international criminal court would step in when states could not or refused to act. It would be able to hold individuals personally responsible if they had planned, ordered or committed certain crimes under international law. The court would prosecute them whether the crimes were committed in war or peace regardless of whether they were leaders or subordinates, civilians or soldiers.

Over the past five years, fuelled by public outrage at atrocities in the former Yugoslavia and in Rwanda, there has been renewed progress towards establishing an international criminal court. Now is the time for governments to take the final step.

#### The court's powers

The permanent international criminal court will stand for generations to come. It must have strong powers and an unwavering commitment to fairness.

Investigators should be able to travel anywhere in the world to interview victims and witnesses and receive help from governments and national or international bodies. The court should be able to retry anyone convicted or acquitted in a trial in a national court which was clearly a sham or unfair.

Investigators, prosecutors, judges, defence lawyers and staff should be sensitive to different cultural and religious mores. Some should have experience in handling cases of violence against women and children. Often women victims will feel more at ease confiding in women investigators. The court should also have wide powers to protect victims, their families and witnesses from reprisals and unnecessary anguish. In some cases victims should be paid compensation.

All suspects and accused must be protected by the highest international guarantees for fair trial which the international community has accepted over the past half century. As Robert H. Jackson told the Nuremberg war crimes tribunal in November 1945 when opening the case for the prosecution: "...the record on which we judge these defendants is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our lips as well". The death penalty should also be excluded.

The international criminal court should be a model of fairness, effectiveness and justice.

Such a court would be expensive, but not as expensive as the cost of healing societies fractured by unchecked gross violations of human rights.

Why a permanent international criminal court is necessary: Bringing perpetrators to justice sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable.

2 National governments are often unwilling or unable to investigate gross human rights violations and bring those responsible to justice.

3 Respect for the rule of law, national and international, cannot be maintained unless those who violate the most basic norms of civilized behaviour are brought to justice.

4 An international criminal court will provide a mechanism to enforce international criminal law.

5 People who commit gross human rights violations must be brought to justice if they are not to benefit from their crimes, and if the cycle of impunity and further violations is to be broken.

6 The victims, their relatives and society at large need and deserve to know the truth. Only the attribution of personal responsibility for human rights crimes can prevent whole groups being blamed and sectional hatreds intensifying.

7 Without justice as well as truth there can be no lasting and effective reconciliation.

The ad hoc tribunals:

### The former Yugoslavia

In response to public outrage, the UN Security Council decided in February 1993 to set up a war crimes tribunal to hear cases involving serious violations of international humanitarian law committed in the former Yugoslavia since 1991. It has been bedevilled by logistical, financial and practical problems. In February this year the tribunal indicted 21 people and the first trial should begin this year. Unfortunately, states are not giving the tribunal the support it needs. Almost two years after it was established, only 12 out of 185 UN Member States have passed laws enabling their authorities to cooperate with it.

### Rwanda

In November 1994 the UN Security Council decided to set up an ad hoc international tribunal to try people responsible for genocide, crimes against humanity and violations of humanitarian law governing internal conflict committed in Rwanda between 1 January and 31 December 1994. The tribunal's jurisdiction also covers such crimes committed by Rwandese in neighbouring states. The tribunal is based in Arusha, Tanzania.

Only two UN member states have informed the tribunal that they have adopted laws enabling their authorities to cooperate with it.

AI has supported the establishment of these two ad hoc tribunals and made recommendations aimed at ensuring they are just, fair and effective. However, they are neither permanent in nature nor global in scope and can only act as a stop gap. They are not a substitute for a permanent international court able to try people accused of gross violations of humanitarian and human rights laws wherever the crimes are committed.

### Chronology of the court:

1948 The UN General Assembly (GA) asked the International Law Commission (ILC) to study the feasibility of creating a permanent international court.

1950 ILC reported that such a court was desirable.

1950-1990 During the Cold War, most work on the court was paralysed.

1990 GA asked ILC to resume work on a statute for court.

1992 GA instructed ILC to complete a draft statute as a priority.

1993 A revised draft statute was submitted to the GA.

1994 Final draft statute submitted to GA. Decision on creating the court postponed due to disagreements over how and when to set it up. An Ad Hoc Committee of government experts set up to review the draft statute.

1995 The Ad Hoc Committee to hold two meetings in 1995 and report back to 50th session of GA. States at GA to decide whether to convene an international conference of states.

1996 The international conference, if held, would draft a treaty, incorporating the statute, for the establishment of the court. If adopted the treaty would have to be ratified by the agreed number of states before it would come into force and formally establish the court.

### What UN member states should do

This year is crucial if a permanent international criminal court is to be established before the millennium. There is overwhelming agreement on the need for such a court, but governments still delay. A draft statute for the court, prepared by legal experts in the International Law Commission, is now being discussed by a UN committee. During the 50th session of the UN General Assembly this year member states should take the crucial decision to convene an international conference of states next year to turn the draft statute into a treaty. Enough states would then have to ratify the treaty so that the court could be formally established. If this opportunity is rejected hope of creating a court could be put back to the 21st century.

Although the draft statute goes a long way towards creating a court that would meet the highest standards of justice and fairness, it needs to be strengthened. AI is calling on states to make a number

of amendments before it is finalized and has already made detailed recommendations to governments. Two weaknesses in the statute are as follows:

First, the draft statute says that the prosecutor will only be able to bring charges against a person if a state makes a complaint to the court or if the UN Security Council refers certain situations to the court. This is too limited and political and could damage the independence of the court if it is the only way cases can be brought before the court. The prosecutor should be able to receive information from anyone, including victims and their families, about possible crimes. The prosecutor must be free to investigate and decide whether to bring charges.

Second, apart from genocide, states which ratify the treaty will be able to choose which crimes they agree the court should be able to try. Many perpetrators could remain free. The court should automatically be able to deal with a broader set of crimes. These should include crimes against humanity, including systematic extrajudicial executions, “disappearances” and torture, as well as serious crimes committed in both international and internal armed conflicts.

#### WHAT YOU CAN DO

t Write a letter to your Head of State and Minister for Foreign Affairs urging them to support the establishment of a permanent international criminal court by October 1996.

t To establish an international criminal court the UN General Assembly, which opens on 19 September, must decide to hold a meeting of states next year which would adopt a treaty to formally create the court. Urge your government to vote in favour of this.

t Tell your government that the draft statute should be strengthened in the ways recommended by AI to make sure the court is just, fair and effective.

t Write a letter to the editor of your national or local newspapers in support of a permanent international criminal court.

t Ask other individuals and relevant organizations to do the same.

A detailed account of AI's recommendations can be found in its report, *The quest for international justice: Time for a permanent international criminal court* (AI index: IOR 40/04/95).

#### September '95 News

##### United Kingdom

Following the death of Joy Gardner and the acquittal in May 1995 of the police officers charged with her manslaughter, AI is calling for an independent inquiry into the deportation process in the United Kingdom.

Three police officers from the London-based Alien Deportation Group, two local police officers and an immigration officer arrived unexpectedly at Joy Gardner's home early on 28 July 1993 to deport her and her five-year-old son that same day to Jamaica. When she was prevented from telephoning her solicitor a struggle ensued and, according to the police, she became so violent that she needed to be restrained.

Joy Gardner was thrown to the ground, placed in a body-belt, handcuffed, and bound around her legs with two leather straps. A police officer then wound more than 13 feet of adhesive tape seven times around her head — over her mouth and chin — as she lay on the ground. Within minutes an officer noticed that she had gone limp; attempts at resuscitation were made. She was taken to hospital where she lay in a coma for four days before she died. Most forensic experts stated that the cause of death was asphyxiation.

AI is also concerned about other deaths in police custody. Shiji Lapite, a Nigerian father of two, died during arrest by north London police on 16 December 1994. The police stated that he was stopped

for “acting suspiciously” and that a violent struggle followed. Within minutes of being arrested and restrained, his body went limp and he was taken to hospital where he was pronounced dead. The autopsy report showed that he had a fractured voice-box; he is said to have died of asphyxiation. Two officers were suspended from work pending the internal police investigation.

Brian Douglas and Stafford Soloman were arrested by south London police on 3 May 1995, allegedly for possessing a knife, CS gas and cannabis. Stafford Soloman, whose wrist was broken during the arrest, alleged that they were both beaten with a baton. Brian Douglas, a well-known black community member, was taken to hospital after spending 15 hours in a police cell. He died five days later from haemorrhages and a fractured skull. Two officers allegedly responsible were not suspended pending the police investigation into the incident.

AI is stressing the British Government’s responsibility to ensure that deportations are carried out in a way that respects the deportee’s human rights. The organization is calling for private security firms (which currently carry out most forcible deportations) to be regulated by law; for the Immigration Service and the private security firms to be accountable to an independent body. Guidelines on which methods of restraint can be used and in what circumstances must be published and circulated widely by the Home Office. AI urges the government to ensure that all deaths in custody are fully and impartially investigated.

\*See United Kingdom: Death in police custody of Joy Gardner (AI Index: EUR 45/05/95).

France

Two French police officers have been found guilty of using illegal violence and causing injuries to Lucien Djossouvi, a Benin national, resident in Paris, on whose behalf AI has campaigned vigorously. The police officers were given suspended sentences of 18 months’ imprisonment each and ordered to pay damages amounting to 47,884.50 francs. A third officer was acquitted.

Lucien Djossouvi alleged that the incident began when he was knocked off his motorcycle by a car on the evening of 5 September 1989. He complained to the driver who called him a “dirty nigger”. The driver then stated that he was a plainclothes officer and ordered Lucien Djossouvi to produce his identity papers. When the driver refused to show proof of his own identity Lucien Djossouvi drove off on his motorbike.

The officer drove after Lucien Djossouvi and forced him against the side of a van, again knocking him off his motorcycle. The officer was then joined by two others, in separate unmarked cars. Lucien Djossouvi was handcuffed, taken to the entrance of a building and repeatedly punched, beaten with truncheons and kicked in the testicles. He was later released after withdrawing his earlier stated intention to press charges. In hospital he received emergency treatment for serious injuries to his head, face, stomach and testicles.

AI was particularly concerned that the investigation and hearing took five years and four months before its conclusion. The lawyer who observed the hearings for AI said that he did not consider the explanations by the Public Prosecutor justifying the length of the proceedings to be convincing.

Israel and the Occupied Territories (including areas under the Palestinian Authority’s jurisdiction):

In the morning of 22 April 1995 a computer expert, ‘Abd al-Samad Harizat, was arrested at his family home in Hebron. In the late afternoon he was rushed in a coma to Hadassah Hospital near Jerusalem. He died three days later without regaining consciousness. A professor of forensic pathology in the United Kingdom, Derrick Pounder, who participated in the autopsy on behalf of the family, determined the cause of death as a haemorrhage within the skull which was most likely produced by violent shaking. He said: “There is no doubt whatsoever about the cause of death ... he has died from torture.”

The official Israeli investigation into the death of ‘Abd al-Samad Harizat confirmed that he had been shaken.

However, the police investigation concluded that “one cannot attribute criminal responsibility to [the] interrogator for the death of Harizat” because he could not have expected that shaking a detainee would have “a fatal outcome”. The investigation recommended that he be tried by a disciplinary tribunal.

Israel has officially adopted guidelines for its interrogators which allow “moderate physical pressure”. These guidelines are secret, but hundreds of affidavits by detainees, publicized by local and international human rights organizations, including AI, describe hooding, beating, prolonged sleep deprivation, prolonged shackling in painful positions, and shaking.

The Israeli Government continues to condone or even encourage torture as a method of interrogation. An AI report, issued in May 1995\* stated that any use of “physical pressure” during interrogation must be absolutely prohibited. Those responsible for torture and ill-treatment – including those responsible for the death of ‘Abd al-Samad Harizat – must be brought to justice.

\*See Israel and the Occupied Territories including the areas under the jurisdiction of the Palestinian Authority: Human rights – A year of shattered hopes (AI Index: MDE 15/07/95).

## India

New evidence has come to light which suggests that the bodies of hundreds of individuals, believed to have been killed in the custody of the Punjab police, have been secretly cremated. AI has written to the Indian Government asking for an inquiry into revelations made in the Indian press and in a petition filed in the state high court. Records from cremation grounds in Amritsar district, where hundreds of families are seeking information about relatives who have “disappeared” in police custody, show that several hundred “unclaimed” bodies had been taken for cremation by Punjab police between 1991 and 1993.

Although in recent years the number of people who have “disappeared” in Punjab has fallen, AI remains concerned, particularly about the fate of hundreds who reportedly “disappeared” in the period 1989 to 1994. These cases have still not been investigated. AI believes that the Punjab police have been allowed to operate with impunity. This has been effectively admitted by police officials, who have reportedly stated that “executive actions” taken in the fight against political violence in Punjab had sanction at the highest level. Members of the Punjab police have consistently attempted to obstruct legal proceedings in cases of “disappearance”.

In recent months, the courts have strongly condemned the Punjab police for abductions and killings in the state, ordering further investigations and recommending prosecutions. In a case before the Supreme Court concerning the “disappearance” in October 1991 of seven members of one family, the Chief Justice commented: “It is a serious matter, people are being killed, the whereabouts of their dead bodies are not known... No doubt we will ensure that the law is maintained... But what about the people who are being eliminated in this way. Who will be accountable for that?” The court recommended the prosecution of a Deputy Superintendent of Police and other officers and awarded Rs1.2 lakh (4,000 US\$) in compensation to the relatives of each of the missing persons.

AI is calling on the Indian Government to immediately order independent and impartial investigations into the fate of those who have “disappeared” and to bring those responsible to justice. The organization also urges the government to respond to reports of “disappearances” in Punjab, detailed in a December 1993

AI report, India: An Unnatural Fate – “disappearances” and impunity in the Indian states of Jammu and Kashmir and Punjab (AI Index: ASA 20/42/93).

## SYRIA

Abbas 'Abbas was sentenced to 15 years' imprisonment after an unfair trial in January 1994, on charges of membership of the Party for Communist Action (PCA). He had already spent 13 years in prison without charge or trial since his arrest in 1982. In theory he should have two more years to serve, but there are cases in Syria where people are detained beyond the expiry of their sentences. AI

considers him to be a prisoner of conscience and is calling for his immediate and unconditional release.

Formerly an employee of Syrian Airlines, 'Abbas 'Abbas is a member of the prohibited PCA. He had been previously detained between May 1978 and February 1980 and was rearrested in Hama in 1982 while distributing party leaflets. No evidence was produced in court suggesting that he had used or advocated violence.

'Abbas 'Abbas was initially held in a prison in Damascus and detained incommunicado for at least 18 months. Following his arrest he was allegedly subjected to torture and as a result was admitted to al-Mezze Military Hospital for urgent treatment. His family was denied access to the hospital at the time.

AI sent urgent appeals on his behalf in June 1982, and again in 1985 following reports that he was seriously ill with peritonitis and was being denied medical treatment while in Tadmur Prison in eastern Syria. 'Abbas 'Abbas is currently being held in Sadraya Prison, 30km outside Damascus. He is married with five children.

+ Please write, asking for the immediate and unconditional release of 'Abbas 'Abbas, to: His Excellency President Hafez al-Assad/ President of the Republic/ Presidential Palace/ Abu Rummaneh/ Al-Rashid Street/ Damascus/ Syrian Arab Republic.

MOROCCO: Eight Sahrawi youths aged between 18 and 20 were sentenced by a military court, in June 1995, to 15 to 20 years' imprisonment, for their alleged participation in a peaceful demonstration calling for independence for the Western Sahara.

Ahmed EL KOURI, Nebt Ramdane BOUCHRAYA, Arbi Brahim BABA, Cheykhataou BOUH, M'Rabih Rabou NEYSAN, Abdel'hay LEKHAL, Mahfoud Brahim DAHOU and Salama Ahmed LEMBARKI were accused of participating in a demonstration in support of the Polisario Front, carrying Polisario flags and leaflets, and chanting slogans calling for the setting up of the Sahrawi Arab Democratic Republic.

They were sentenced on charges of threatening the external security and the territorial integrity of Morocco. AI considers them to be prisoners of conscience and is calling for their immediate and unconditional release. The organization is concerned that the trial was conducted in camera, that allegations that their confessions were obtained under torture were not investigated, and that they were not given the right to be represented by lawyers of their choice. Moroccan human rights organizations who observed the trial and other international bodies also condemned it as unfair.

The trial of the eight youths began during the visit of a MINURSO (the United Nations Mission for the Referendum in Western Sahara) delegation to examine the preparations for the referendum, originally scheduled for January 1992 but now due in 1996, to determine whether the Western Sahara will become independent or will be annexed to Morocco.

The sentences imposed on them were reduced to one year's imprisonment by royal pardon on 9 July 1995.

+Please write, calling for their immediate and unconditional release and for a full, independent and impartial investigation into allegations of ill-treatment and torture, to:

The Minister for Human Rights/ M.Mohamed Ziyane/ 47 Avenue Ibn Sina/ Agdal/ Rabat/ Maroc.  
Myanmar:

Daw Aung San Suu Kyi, 1991 Nobel Peace Prize laureate, was released from house arrest by Myanmar's military authorities on 10 July 1995. A prisoner of conscience, she was the focus of six years of intensive campaigning efforts by AI and many other organizations. She had been held at her home in Yangon, the capital, since 1989.

Aung San Suu Kyi is one of the founders of the National League for Democracy (NLD), formed during the 1988 nationwide protests against 26 years of one-party military rule. The NLD won an

overwhelming victory in the 1990 general elections. However, instead of recognizing the results, the authorities arrested scores of NLD supporters and leaders.

The use of civilians by the military for forced portering and labour continues. Former political prisoners and other activists are kept under surveillance. A climate of fear and intimidation prevails in the country.

While welcoming the release of Aung San Suu Kyi, AI remains concerned that 40 prisoners of conscience are still imprisoned in Myanmar. In addition, the military continue to commit other human rights violations, including the imprisonment of hundreds of political prisoners after unfair trials.

AI is calling on the Myanmar Government to end the imprisonment of individuals for the exercise of their rights to freedom of expression and assembly.

#### Liberia

Despite widespread human rights abuses by all sides in the civil war, the United Nations (UN), which has a duty to report to its Secretary-General “on any major violations of international humanitarian law” such as the killing of non-combatants and the use of torture, is threatening to withdraw its peace-keeping forces at the end of September if the numerous efforts to reactivate the Cotonou Agreement make no progress.

AI is concerned that if the UN should withdraw human rights abuses will escalate and Liberians will be deprived of the small ray of hope, which the UN presence provides, of an end to the killings.

The conflict began in late 1989 when the National Patriotic Front of Liberia (NPFL) tried to overthrow the government of President Samuel Doe. The country is now fragmented. A Transitional Government sits in Monrovia, while the NPFL controls large areas of central Liberia. There are further divisions among the warring factions, which are split along ethnic lines. Human rights abuses have been carried out against unarmed civilians by all sides with impunity, often solely because of their ethnic origins.

The war has been waged largely by unpaid and untrained young men against unarmed civilians. Extortion has become a livelihood for these fighters who now have an interest in the conflict continuing. An estimated 150,000 Liberians have been killed and 700,000 are refugees in neighbouring West African states. There have been persistent reports of deliberate and arbitrary killings, torture, rape and other human rights abuses.

The UN Observer Mission in Liberia (UNOMIL) was set up in September 1993 to oversee the implementation of the Cotonou Agreement. This Agreement was supposed to bring about disarmament and a return to democratic rule by September 1994. It has failed to do this. The failure to tackle human rights issues has undermined the whole peace process.

An important way in which these abuses can be curbed is for the human rights monitoring to be stepped up and for the UN to maintain an international presence in Liberia for as long as is necessary after any future elections. Peace cannot be achieved without building respect for human rights.

#### Chile

In an important blow against impunity, the Chilean Supreme Court ruled on 30 May 1995 to confirm the seven and six-year respective prison sentences of General Manuel Contreras Sepúlveda, former director of the Dirección de Inteligencia Nacional (DINA), Directorate of National Intelligence, and Brigadier Pedro Espinoza Bravo, DINA’s chief of operations. They were originally sentenced in 1993 for the assassination of former Chilean Foreign Minister Orlando Letelier and United States (US) citizen Ronnie Moffit in Washington DC, USA, in 1976. Brigadier Espinoza was subsequently stripped of military rank and began serving his sentence in the Punto Puelco prison, especially built for military personnel.

Chile's 1978 Amnesty Law provided blanket impunity for human rights violations in the first five years of military rule from 1973 to 1978. Many of the violations were committed by members of the DINA and affected thousands of Chileans. The Letelier-Moffit case had been specifically excluded from that law.

The Letelier-Moffit ruling has been the cause of considerable tension between the armed forces and civilian government since the end of military rule in 1990. Politicians across the political spectrum decried statements by General Pinochet, Commander-in-Chief of the Armed Forces, in June that the Letelier-Moffit ruling was "unjust" and there was further protest at the military's part in transferring General Contreras to the Talcahuano naval hospital in June to evade imprisonment.

In a separate case on 23 June 1995, an Italian court sentenced General Manuel Contreras and Rual Iturriaga Neuman to 20 and 18 years' imprisonment respectively for ordering the assassination of former Chilean Defence Minister and Christian Democrat politician, Bernardo Leighton in Rome, Italy, in 1975 – an attempt in which he and his wife Ana Fresno were seriously wounded.