

International Justice Day: All states must reinforce commitment to international justice

International Justice Day, 17 July 2004, marks the international community's historic adoption of the Rome Statute of the International Criminal Court (ICC) six years ago.

Major progress has been made in setting up the ICC since the entry into force of the Rome Statute on 1 July 2002.

Ninety-four states -- almost half the international community -- have ratified the Rome Statute, committing to investigate and prosecute persons accused these crimes in their national courts. The ICC will only step in when national courts are unable or unwilling to do so.

In particular, on 23 June 2004, following a referral by the government of the Democratic Republic of Congo (DRC), the ICC Prosecutor announced the opening of the court's first investigation into "serious crimes" committed in the DRC. This investigation will include crimes against humanity and war crimes such as murder, rape and torture that were committed after the ICC's jurisdiction began on 1 July 2002.

More than three million people are estimated to have died as a result of the conflict in the eastern DRC since 1998. The Prosecutor's announcement marks a very important step towards bringing justice to the victims of these horrific crimes. Having received a second referral by the government of Uganda in January 2004, the Prosecutor is currently also examining the situation in northern Uganda in order to determine whether to open a second full investigation there.

The current administration of the United States of America has consistently opposed the ICC since May 2003 when it launched a worldwide attack seeking to undermine the ICC and secure impunity for US nationals. However, in June 2004, the international community took an important and welcome stand against these attacks.

The United Nations (UN) Security Council refused to renew an unlawful resolution proposed by the USA, which sought to prevent the ICC from exercising jurisdiction over nationals of states that have not ratified the Rome Statute when such people are accused of committing crimes in connection with UN established or authorized operations.

However, the US campaign against the ICC is continuing in other areas. More than 90 states, including states that have ratified the Rome Statute, have signed illegal impunity agreements with the USA. By signing these agreements, these states agree not to surrender US nationals accused of genocide, crimes against humanity and war crimes to the ICC. However, the majority of these agreements need to be ratified before they become binding -- national parliaments in these countries can, and should, refuse to do so.

The most pressing concerns for the ICC are the significant slow-down in ratifications of the Rome Statute and the limited number of states that have amended their national laws so that national courts can fulfil their primary responsibility to investigate and prosecute the crimes themselves and to provide for full cooperation with the ICC when requested. Only two states have ratified so far in 2004, while more than half the 94 states that have ratified have not even prepared draft legislation to implement the Rome Statute. If states do not fulfil these obligations promptly, they could undermine the effectiveness of the new system of international justice.

The ICC is not the only institution that forms part of the emerging system of international justice. This new system of justice operates at several levels. It must be emphasized that the primary responsibility for the investigation and prosecution of crimes under international law remains that of national prosecutors and courts. Since international and internationalised courts will only be able to try a small number of those responsible for the worst crimes known to humanity, national courts will continue to be the primary way for the international community to try these crimes.

The international community must ensure that they have the tools to do so, including effective legislation, extradition and mutual legal assistance treaties, fair procedures and sufficient

resources -- in particular, experienced personnel. When national institutions are unwilling or unable to fulfil their responsibilities, then an increasing number of international and internationalized courts (in addition to the ICC) are playing, or have the potential to play, important roles in providing justice to victims of these crimes.

These courts include the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the Special Court for Sierra Leone, the special panels of Kosovo courts with international judges and prosecutors, the Extraordinary Chambers for Cambodia and the Iraqi Special Tribunal.

However, these developments are not without challenges of their own. There are plans to close both the ICTY and ICTR, which continue to work to bring to justice those accused of genocide, crimes against humanity and war crimes committed in those countries. As yet, the international community has almost completely failed to develop and implement sufficiently effective alternatives to bring to justice all of those responsible for committing crimes; it has yet to recognize its responsibility to do so.

The first trials of the Special Court for Sierra Leone began in June 2004, to try those bearing the greatest responsibility for crimes against humanity and war crimes committed during in the decade long conflict in Sierra Leone. However, the court is unable to award reparations to victims or their families and it faces a continuing financial crisis; as a result of states' failure to make voluntary contributions. Unless this crisis is addressed immediately, it may seriously obstruct the Special Court's work in the next year.

Even more troubling is that the Special Court will try only a handful of the thousands of persons suspected of the most horrific crimes imaginable, including rapes, amputations and the use of child soldiers, and the fact that Sierra Leone courts will be unable to act because of a national amnesty for these crimes -- an amnesty that is contrary to international law.

The Extraordinary Chambers for Cambodia, which the UN and the Government of Cambodia agreed to create in May 2003 to prosecute those most responsible for crimes during the Khmer Rouge era between 1975 and 1979, will only focus on crimes committed by a handful of members of the Khmer Rouge. Crimes committed by other members of the Khmer Rouge and others both before and after Khmer Rouge rule will not be investigated and prosecuted, either in the Extraordinary Chambers or in national courts.

There are also concerns that the definitions of the crimes in the Statute of the Extraordinary Chambers are inadequate and that the procedures risk paralysing the whole process of achieving justice and accountability in Cambodia. Any further steps towards the establishment of the Extraordinary Chambers should be put on hold until these concerns can be addressed.

The Iraqi Special Tribunal, established in December 2003 by the Coalition Provisional Authority and the Iraqi Governing Council raises very serious fair trial and other concerns. Hundreds of persons suspected of crimes within the jurisdiction of the Tribunal have been in prolonged detention without charge, without access to lawyers, families, independent medical attention and judges. Some of them have been tortured. The Iraqi Special Tribunal will use the Iraqi criminal code, some aspects of which are inconsistent with international human rights standards. The criminal code will also allow the Tribunal to use the death penalty.

The progress in international justice this year marks the beginning of a new era where national courts, the ICC and other international and internationalized courts can deliver justice to victims of genocide, crimes against humanity and war crimes. It sends a strong message to those who might plan to commit such crimes that they will be held accountable for their actions.

All states must take this opportunity to reinforce their commitment to international justice by ratifying the Rome Statute in order to accept the jurisdiction of the ICC and by amending existing or enacting new national legislation to cover genocide, crimes against humanity and war crimes.

The international community must also ensure that entire system of international justice is effective. This includes the ICC, other international and internationalized courts (which have the potential to complement the ICC), and of course national courts. All of these institutions must deliver justice to *all* victims, meet the highest standards of international justice and have

the financial and political support to function effectively. Failure to ensure this will compromise justice and undermine the rule of law.