



World Vision

**Submission to the Joint Standing Committee on
Treaties**

**Inquiry into the 1998 Statute of an International
Criminal Court**

World Vision Australia

February 2001

Summary of Recommendations

- 1. World Vision urges the Government of Australia to ratify the Rome Statute at the earliest possible date.**
- 2. The Government should ensure that national law is fully compatible and consistent with the Statute and allows for complete and prompt cooperation with the International Criminal Court.**
- 3. The Government should make an appropriate financial and logistical contribution to the cost of establishing and maintaining the Court.**
- 4. World Vision urges the Government to ratify the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and commit itself to adopting 18 as the minimum age for both voluntary recruitment to and participation with the Australian Defence Force.**
- 5. World Vision encourages the Government to use its influence to promote both the ratification of the Optional Protocol on the involvement of children in armed conflict, and the adoption of the 'straight 18' position for both recruitment and participation in hostilities amongst the Like-Minded Countries group.**
- 6. World Vision urges that seven years after the Statute has come into force, the Government propose that the Statute be amended to include the provisions of the Optional Protocol on the involvement of children in armed conflict, and to establish the age of 18 as the standard for all provisions relating to children.**
- 7. World Vision recommends that Australia pledges to not be party to any bilateral agreement with another state which would prohibit the surrender of nationals of that state to the Court, as permitted in Article 98 (2). Australia should also use its influence as Chair of the Like-Minded Group to persuade other states to pledge not to be party to such a pact.**
- 8. World Vision urges the Government to not accept the provision of Article 124 to 'opt out' of the Court's jurisdiction for seven years with respect to war crimes, and should exert appropriate diplomatic pressure on other nations to also reject this provision.**
- 9. The Government should urge the United Nations not to accept armed forces for peacekeeping operations from states that do not accept the Court's jurisdiction over war crimes, and should recommend that the UN ensure all states make a declaration accepting the jurisdiction of the Court over nationals who take part in UN peacekeeping operations.**

Introduction

World Vision Australia would like to thank the Joint Standing Committee on Treaties for the opportunity to make a submission to this inquiry.

World Vision Australia is a Christian, humanitarian non-governmental organisation, operating as part of the World Vision Partnership, which works in nearly 100 countries around the world. World Vision's vision is to work for a world that no longer tolerates poverty, focussing particularly on the rights of children.

World Vision strongly supports the Australian Government's intention to ratify the Rome Statute, as it believes that the International Criminal Court is not only a viable, but a crucial step towards ensuring effective international justice for those who have suffered crimes of mass violence and in ensuring that the perpetrators of such acts no longer go unpunished.

The leading role the Government has played in promoting the Court is to be congratulated. World Vision also acknowledges the significant contribution the Government has made to the development of the Statute, including its responsibilities as chair of the Like-Minded Group of Countries.

World Vision urges the Government to build on these achievements by not only proceeding quickly with the ratification process, but also by setting an example to other nations who are yet to ratify. After having played such a critical role in the development of the Statute, it would be consistent for Australia to be seen as one of the first 60 nations to ratify the Statute and so help bring the Court into being. Australia can then continue to use its influence in the future shaping and development of the Court as a member of the Assembly of States Parties.

The need for a permanent International Criminal Court

The twentieth century was perhaps the most violent of the last millennium. In the last decade alone, the world has seen violent conflict and genocide in the numerous countries, including the former Yugoslavia, Rwanda, Burundi, Sierra Leone, Somalia, Iraq and East Timor. The genocide in Rwanda in 1994 saw an estimated quarter of a million people massacred in a matter of weeks, with hundreds of thousands more left to cope with the aftermath of such widespread slaughter.

Yet international criminal tribunals have been set up in only two instances since the trials conducted at Nuremberg and Tokyo more than fifty years ago. Although the tribunals for the former Yugoslavia and Rwanda have played an important role in bringing war criminals to justice, millions more have died in other countries, and those states, and the international community, have failed to fulfil their responsibilities to deal with the perpetrators. The United Nations Security Council has not moved to establish such ad hoc tribunals for other occurrences of genocide, crimes against humanity or war crimes, most likely due to a lack of political will concerning those cases or due to the cost of implementing the tribunals¹.

¹ Amnesty International, 2000. The International Criminal Court: The Case for Ratification, p.3.

Moreover, ad hoc tribunals are perceived as lacking impartiality, and the fact that they are only selectively created for some instances restricts any deterrent effect they may have. Amnesty International's experience has indicated that the impunity of perpetrators to their crimes is the single most important factor leading to continued human rights abuses².

The existence of a permanent International Criminal Court, on the other hand, would mean the logistics of establishing the operating mechanisms for each new tribunal would only need to happen once. The Court would be an independent institution, with independent prosecutors, and a permanent presence on the international scene to deter those who might perpetrate genocide, crimes against humanity or war crimes with the knowledge that they can be held accountable at any time for their acts and can no longer expect immunity to justice.

A permanent Court also enables national courts to have universal jurisdiction over the crimes defined in the Rome Statute. By adopting the necessary legislation to ratify the Statute, states are incorporating internationally agreed human rights standards into their own domestic law. However, if states prove unwilling or unable to prosecute individuals for their crimes, the International Criminal Court can still act to ensure that justice is carried out.

The Court will, however, only have jurisdiction over crimes committed after the Rome Statute comes into force. Therefore, there may still be a role for ad hoc tribunals to be set up to deal with crimes perpetrated before the Court was established.

Ratification is in the National Interest of Australia

The establishment of a permanent International Criminal Court will signify a huge step towards achieving universal human rights and the rule of law. It will help to deter gross violations of human rights from even occurring in the first place by providing a mechanism by which perpetrators can be prosecuted and justice can prevail, so breaking the cycle of impunity. Deterrence of such crimes thus reduces their potential threat to not only individual nations, but to the peace and security of the international community as a whole. It is to Australia's benefit when such a climate of global, moral norms is promoted, where atrocities are no longer ignored and violent crimes generate the world's strongest condemnation. Every indictment, arrest, conviction and sentence enacted by the Court will serve as a reminder to all that crimes against humanity will not be tolerated³.

The humanitarian response of the Australian public to the plight of ethnic Albanians in Kosovo at the hand of Slobodan Milosevic, or the depth of support that was felt for Australia's intervention in East Timor, shows that the existence of an International Criminal Court would not only be in Australia's national interest, but would be representative of the extent of the Australian public's concern about such violations of human rights around the world. Moreover, the fact that 139 countries are now signatories to the Statute, 28 of whom have also ratified it, shows that support for the Court is now virtually universal.

² Amnesty International, Annual Report 1999 (www.amnesty.org/ailib/aireport/ar99/intorgs.htm)

³ Cassel, Douglas, 1999. "Why We Need the International Criminal Court", *The Christian Century*, 12 May 1999, p534.

The principle of complementarity, established in Article 17 of the Statute, addresses any objections that may have been made to the Court due to its supposed threat to national sovereignty. The Court does not in fact have jurisdiction over states, but over the individuals who are responsible for the crimes. The Court is intended to complement rather than supplant functioning domestic criminal law systems, only having jurisdiction over a national court if the state concerned proves unwilling or genuinely unable to carry out the investigation or prosecution. The Statute recognises the sovereignty and duty of the nation state to follow up crimes within their own courts, with the International Criminal Court acting, in effect, as a court of last resort.

For these reasons, World Vision urges the Government to implement the necessary domestic legislation as swiftly as possible in order to ratify the Statute at the earliest date. Australia should ensure its own national law is fully compatible and consistent with the Rome Statute and allows for complete and prompt cooperation with the Court. Once this legislation is in place, it is highly unlikely that the International Criminal Court would ever need to exercise its jurisdiction over a case concerning an Australian national.

Swift ratification will also help to shorten the time which elapses before the Court is established, showing that Australia has taken its role as the chair of the Like-Minded Group seriously and is committed to seeing the Statute enter into force as quickly as possible. The quicker the Statute comes into force, the sooner the Court will begin to have jurisdiction over crimes committed, which is an important factor considering that the Court only has power over offenses that take place after it has been established.

Furthermore, if the Court does in any way deter genocide, crimes against humanity and war crimes, the international community can greatly save on the financial cost of reconstruction, reconciliation or peacekeeping measures in the aftermath of conflict, and avoids the uncountable human cost of the suffering involved.

Australia should therefore not shy from contributing to the cost of establishing and maintaining the Court. The Court's level of effectiveness and independence will depend largely on the financial and logistical support it receives from the states party to the Statute. Although the annual budget of the Court is estimated to eventually be as great as US\$100 million, this is a small price to pay to help achieve greater peace and security across the world⁴.

Justice for Children

Over the last decade, more than 2 million children have died as a result of armed conflict, over 6 million children have been left maimed or permanently disabled, more than 1 million have been orphaned and over 10 million now have to live with serious psychological trauma. A further 20 million have also been displaced within their countries or made refugees as a result of conflict⁵.

⁴ Amnesty International, 2000. "The International Criminal Court: The Case for Ratification", p.3.

⁵ Office of the Special Representative of the Secretary-General for Children in Armed Conflict, <http://www.un.org/special-rep/children-armed-conflict/faq.htm> .

Children are often the first to suffer as a result of armed conflict, as the normal provisions for their safety and well-being break down. Children may be driven out of their homes, to live insecure existences where their very physical safety is threatened, suffering great trauma, and the loss of food supplies, as well as education and health services.

Moreover, children are not only the victims of violence, but are increasingly being recruited to perpetrate such acts themselves by the armies involved. According to UNICEF, more than 300,000 children under 18 across the world are being used as combatants, or are being forcibly recruited to act as cooks, porters, or messengers, or abused for sexual purposes, by armed groups⁶. Children are often sought after as they are more vulnerable and malleable, enabling them to be psychologically and physically controlled by use of fear and intimidation by adult commanders. The development of smaller and more lightweight weapons that are easy to handle has meant weapons are now much more ideal for children to also use.

World Vision welcomes the provisions of the Rome Statute which are concerned with the rights of children, specifically genocide by forcibly transferring children of a national, ethnical, racial or religious group to another group (Article 6 (e)); the crime against humanity of trafficking in children (Article 7 (2) (c)); and the war crimes of conscripting or enlisting children under 15 into armed forces or groups or using them to participate actively in hostilities, whether national or international in character (Article 8 (b) (xxvi) and (e) (vii)).

World Vision also welcomes the inclusion in the Statute of provisions for rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence as both crimes against humanity and war crimes (Article 7 (1) (g) and Article 8 (2) (b) (xxii) and (2) (e) (vi)).

Other provisions to be commended which promote child rights are Article 8 (e) (iv), which declares intentional direct attacks on buildings dedicated to education or hospitals as a war crime, and the provisions made to protect child victims and witnesses from further trauma, particularly where the crime involves violence against children (Article 68 (1 & 2)). Also of great value is the provision for state parties to include judges with legal expertise on violence against children (Article 36 (8) (b)), and for the Prosecutor to employ advisers who also have expertise on violence against children (Article 42 (9)).

Although World Vision is pleased with the inclusion of conscripting or enlisting children into armed forces as a war crime, World Vision is disappointed that the minimum age was set at 15, and not 18. The provisions allowing for children over 15 to be used in armed conflicts is in contradiction to Article 26, which states that the Court will have no jurisdiction over any person who was under age 18 at the time of the crime.

The inclusion of children under 15 in armed forces as a war crime is consistent with existing international law in the form of the Convention on the Rights of the Child

⁶ Miller, Judith, and Lewis, Paul, 8 August 1999. "Fighting to Save Children from Battle", The New York Times

(CRC) (Article 38). However, the Optional Protocol to the CRC on the involvement of children in armed conflict, which was adopted by the United Nations General Assembly in May 2000, instructs states to ensure that members of their armed forces who are under 18 do not take a direct part in hostilities. Moreover, the Optional Protocol asks states to commit to a higher minimum recruitment age and to make a binding declaration on what that commitment is. The Optional Protocol also declares that non-state armed groups should not recruit or use in hostilities anyone under 18.

World Vision strongly supports the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the adoption of age 18 as the consistent age used in all international law provisions relating to children. Without age 18 being set as a universal standard for the involvement of children in armed conflict, the rights of children to special protection from violent conflict will continue to be abused.

Therefore, World Vision urges Australia to ratify the Optional Protocol, and commit itself to adopting 18 as the minimum age for both voluntary recruitment to and participation with the Australian Defence Force. World Vision also encourages the Government of Australia to use its influence to promote both the ratification of the Optional Protocol and the adoption of the 'straight 18' position for both recruitment and participation in hostilities amongst the Like-Minded Countries group.

Seven years after the entry into force of the Rome Statute, any state party to the Statute can propose amendments for consideration, requiring a two-thirds majority to be adopted (Article 121). At this time, the Statute should be amended to include the provisions of the Optional Protocol on the involvement of children in armed conflict, and to adopt the age of 18 as the standard for all provisions relating to children. Australia should take the lead in proposing these amendments, therefore helping to ensure that the best interests of the child are promoted and that the Court can act fully to ensure international accountability for violations of children's rights as an integral part of the protection of international human rights.

The Court is in fact an essential tool in helping to enforce the Convention on the Rights of the Child and other treaties, and in addressing the impact of armed conflict on children. Without ratification by nation states of these important legal instruments which promote the protection of children's rights, the long-term consequences for lasting global peace, security and development are not promising.

Addressing the Limitations of the Rome Statute

Although the Rome Statute is a landmark treaty for international human rights law, it is also a product of political compromise through the negotiation of the agreement. The Statute therefore has a number of weaknesses which participating states can help to address through their own response, both by declaring their intentions at the time of ratification, and by proposing amendments to the Statute at the appropriate time.

World Vision recommends that Australia pledges not to be party to any bilateral agreement with another state which would prohibit the surrender of nationals of that state to the Court, as permitted in Article 98 (2). Agreements of this nature would seriously undermine the ability of the Court to fully uphold international justice.

Australia should also use its influence as Chair of the Like-Minded Group to persuade other states to pledge not to be party to such a pact.

Article 124 declares that any state which is party to the Statute may 'opt out' of the Court's jurisdiction, with respect to war crimes only, for a period of seven years, once the Statute has come into force for that state. Although this is a transitional provision of the Statute, which will be therefore be reviewed after the Court is established, it nonetheless seriously diminishes the Court's overall jurisdiction over human rights violators during that period. It would continue to give impunity to perpetrators of war crimes from international justice. The provision therefore undermines both the effectiveness of the Court and the example it can set in deterring would-be criminals from committing crimes in the first place.

For these reasons, Australia should not accept the provisions of Article 124 to 'opt out', and should exert appropriate diplomatic pressure on other nations to also reject this provision. Moreover, Australia should act to ensure that the provision is removed as soon as the review date for the Statute is set, which will be seven years after its entry into force.

Furthermore, Australia should urge the United Nations not to accept armed forces for peacekeeping operations from states that do not accept the Court's jurisdiction over war crimes, while the provisions of Article 124 are in effect. In addition, states which are not party to the Statute should be requested to make a declaration (as described in Article 12 (3)), accepting the jurisdiction of the Court over their nationals who may commit any crimes outlined by the Statute during United Nations peacekeeping operations. The declaration should clarify that states must be willing to cooperate with the Court without delay or exception.

Conclusion

The success of the International Criminal Court will depend largely on how widely it is ratified. A further 32 nations are required to ratify the Court before it can even be established. Its future effectiveness also depends on the political will of nations to enforce compliance with the Court's orders and decisions, and their willingness to bring about the necessary amendments to the Statute to enable the Court to have an increased capacity to fight impunity of serious violators of human rights.

The world has, for the most part, failed to fulfil its responsibilities to bring the perpetrators of genocide, crimes against humanity and war crimes to justice. The Court gives the international community perhaps its greatest opportunity to make amends for past failures and help start a new era of international accountability and the rule of law to promote peace and security for all.

It is imperative that Australia seizes this opportunity and loses no time in ratifying the Statute, and providing appropriate financial or logistical support for the Court's effective establishment and operation. Ratification will also enable Australia to influence the future development of the Court as a member of the Assembly of States Parties. Through these actions, and through encouraging other nations to act similarly, Australia is playing its part in helping the global community to take one step closer to achieving universal human rights.