



## Ethiopian Human Rights Commission (EHRC)

### EXPLAINER

## On Genocide and Crimes Against Humanity

### What is “an atrocity crime”?

There are important commonalities between “genocide” and “crimes against humanity”. Together with “war crimes”, genocide and crimes against humanity constitute the three established categories of atrocity crimes. Atrocity crimes are international crimes because they are exceptionally grave (heinous) crimes that “shock the conscience of humankind”. Being international crimes, atrocity crimes need not be specifically criminalized under domestic law for the perpetrators to be punished for their criminal acts. Those responsible for atrocity crimes may be tried and punished under the domestic legal system or internationally, by any other state or an international criminal tribunal as the case may be. Genocide and crimes against humanity are to be punished whether committed in times of peace or war while war crimes are, by definition, crimes committed in times of war.

Both genocide and crimes against humanity share the same historical roots originally being employed in connection to the most harrowing events of the “Holocaust”. Normative developments in the aftermath of World War II have seen the emergence of the concepts of genocide and crimes against humanity as distinct categories of international crimes.

### What is “genocide” and what is “crime against humanity”?

Under international law, the term genocide is a legal term which applies to deliberate acts (e.g. by killing, or by causing serious bodily or mental harm, or by imposing measures to prevent birth) committed against a protected group with specific intent to destroy the group in whole or in part. A protected group can be a national, ethnic, racial or religious group.

On the other hand, the legal definition of crimes against humanity refers to certain lists of crimes (e.g. killing, extermination, torture, rape, persecution, etc.) committed as a part of a widespread or systematic attack directed against any civilian population. The crime of genocide is restricted to acts perpetrated against certain collective groups with specific intent to destroy the group in whole or in part while the term crimes

against humanity can be applicable in relation to an attack against any civilian population, regardless of its collective identity.

### **What is the difference between genocide and crimes against humanity?**

Both genocide and crimes against humanity may have similar or the same underlying acts (e.g. killing, bodily harm) but there are important distinctions between the two categories of crimes in terms of the nature of the prohibited acts and the state of mind (mental element) of perpetrators of the acts. To constitute crimes against humanity, the criminal acts must be “committed as part of a widespread or systematic attack”.

In contrast, acts perpetrated in furtherance of genocide do not necessarily need to be widespread, but it should have specific intent or knowledge to destroy a legally protected group. The most crucial difference between the two crimes lies in the mental elements of the crimes. To establish crimes against humanity, one of the critical elements of the crime is to show that the perpetrators knew the conduct was part of or intended the underlying acts to be part of a widespread or systematic attack. On the other hand, proof of the crime of genocide requires not only establishing the existence of a general intent to carry out the acts in question, but also a specific “intent to destroy” a protected group in whole or in part.

### **Why look for “intent to destroy”?**

It is this special requirement of “intent to destroy” a protected group as such that gives the crime of genocide its characteristic designation as “genocide” or the “crime of crimes”.

In this connection, international criminal tribunals and scholars caution against a broad application of the crime of genocide that would diminish its relevance and status as the most egregious crime, with some scholars expressly urging limiting the application of genocide only to large scale state-sponsored campaigns aiming at the destruction of protected groups<sup>1</sup>. However, it is noteworthy that crimes against humanity are not subject to specific intent to destroy a protected group even in the case of the crime of persecution of an identifiable collective group.

Violence against collective groups short of genocide would fall within the ambit of crimes against humanity, specifically the specific category of persecution of an identifiable group, provided that the criminal acts are “part of a widespread or systematic attack” and the perpetrators acted with knowledge of the attack. The crime of persecution additionally requires a discriminatory intent against a protected group.

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<sup>1</sup> See W. Schabas, *Genocide in International Law*, (2nd ed., 2009), p. 10; See also “Rwanda: The Preventable Genocide”, Organization of African Unity (OAU) International Panel of Eminent Persons to Investigate the 1994 Genocide in Rwanda and the Surrounding Events (African Union 2000), para 1.15.

However, proving that the perpetrators acted with discriminatory intent is not as cumbersome as establishing specific intent to destroy a protected group.

### Note of caution

The elevation of the crime of genocide as the most egregious crime in legal discourse and in public imagination does not entail that other crimes which fall under the category of crimes against humanity are to be regarded as minor crimes. In this connection, the International Criminal Tribunal for Rwanda holds that “genocide and crimes against humanity are inherently very serious offences because they are heinous in nature and shock the collective conscience of mankind.”<sup>2</sup> Similarly, the International Criminal Tribunal for Yugoslavia has stated that it considers both genocide and persecutions as a crime against humanity to be crimes that “warrant special attention due to their targeting of groups...on discriminatory grounds”.<sup>3</sup> Therefore, crimes against humanity particularly those involving discriminatory treatment and persecutions of protected groups should receive no less condemnations than the crime of genocide.

Secondly, the consequences of genocide and crimes against humanity to victims may not be all that different regardless of moral and legal claims as to the relative seriousness of the crimes. The seriousness attached to genocide owing to the particularly blameworthy mental state of the perpetrators does not necessarily mean that genocidal violence will always cause more victimization than crimes against humanity. Genocidal crimes are not subject to the requirement of scale unlike crimes against humanity which are required to be “widespread or systematic” in nature. Although it is possible that genocide is committed on a large scale whenever the special intent requirement is met, the emphasis on intent as opposed to scale means that a crime of genocide may have far fewer victims than a crime against humanity. In those instances, it is possible for a crime against humanity to attract more severe penalties depending on the facts of the case.

### Point of Reminder

Ethiopian Human Rights Commission’s (EHRC) investigation report on the “Violence & Human Rights Violations following Musician Hachalu Hundessa’s Assassination” released on January 1st, 2021 found that “the attacks during the unrest and overall commission of the crime by individuals and groups who directly took part in it, constitutes the elements of a crime against humanity.

More specifically,

- A large number of people, organized in groups for the most part, moved from place to place to kill, bodily and mentally injure and displace people; destroy property,

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<sup>2</sup> Prosecutor v. Rugambarara, Case No. ICTR-00-59-T, Sentencing Judgement (TC), 16 November 2007, para. 19

<sup>3</sup> Blagojević and Jokić, Case No. IT-02-60-T, Judgement, 17 January 2005, para. 834

- The conduct was committed as part of a widespread and systematic attack against civilian population that extended to at least 40 different localities and over three days from the early hours of June 30th to July 2nd, 2020,
- Some targets in the attacks were selected on the basis of ethnic and religious identity. Other civilians were attacked with intent regardless of their religious or ethnic affiliation,
- The perpetrators knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population and
- The social media and television content/messages broadcast/circulating at the time as well as the slogans chanted by perpetrators of the crime show that the individuals and groups taking part in the conduct acted in a strategic and coordinated manner with full knowledge of the act thereof.

Based on the above findings, the overall conduct carried out by the attackers who were organized in groups, and the result thereof, is not a simple criminal act but a crime against humanity which is an atrocity crime and grave violation of human rights.”

EHRC seeks to point out that the report further highlights the heightened risk of atrocity crimes, including genocide, and makes a recommendation expressly advising federal and regional authorities to put in place a Comprehensive National Strategy for the Prevention of Atrocity Crimes.