



GENDER JUSTICE TEAM

The Coalition's Team on Gender Justice recognises the importance for States to continue their efforts towards complementarity, including the implementation of the gender provisions of the Rome Statute to combat impunity for sexual and gender-based crimes. In this regard, the team takes note of the OTP's Policy Paper on Sexual and Gender-based Crimes.

The Team submits the following recommendations to the Assembly of States Parties at its 13th session.

Complementarity

In a great number of situations where the Court exercises or could exercise its jurisdiction, the lack of relevant or comprehensive legislation can lead to unwillingness or inability to genuinely prosecute sexual and gender-based crimes. The implementation of the Rome Statute should provide states with the opportunity to increase protection of the rights of victims of sexual and gender-based violence, as well as to enhance their access to justice and all forms of reparation (including restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition).

Recommendations to the Assembly of States Parties

- The ASP should encourage States to promote the adoption of legislation establishing effective mechanisms and legal provisions for the investigation, prosecution and adjudication of sexual and gender-based crimes at the national level, as a means of strengthening domestic criminal justice systems to ensure gender-inclusive justice. To this end, such legislation should incorporate the various forms of sexual violence provided for in the Rome Statute and elucidated in the ICC Elements of Crimes.
- The ASP should further encourage States to take note of the OTP's Policy Paper on Sexual and Gender-based Crimes and consider how this tool can be used at the domestic level.
- The ASP should promote the adoption of legislation on the rights of victims and witnesses, especially to protection, support, participation, information and reparation that includes a gender-sensitive approach. To this end, States should be encouraged to incorporate evidentiary procedures to protect the interests of victims and witnesses of sexual and gender-based crimes in line with international standards, as reflected in the Rome Statute and ICC Rules of Procedure and Evidence.
- The ASP should encourage States Parties to address the barriers that victims of SGBV face in accessing justice at the domestic level and engage in initiatives aimed at reinforcing States' capacity to investigate, prosecute and adjudicate these crimes.
- The ASP should encourage States Parties to ensure that relevant institutions have the necessary legislative framework and financial support to enforce judgments for gender-based crimes rendered at the domestic level, including related reparations orders.

Cooperation

This year's plenary discussion on cooperation will include a thematic focus on crimes of sexual and gender-based violence.

Recommendations to the Assembly of States Parties

- States Parties should make individual or joint contributions to this important discussion during the open debate that will follow the panel. States should use this opportunity to affirm their support for the ICC's efforts to tackle sexual and gender-based crimes and to explore ways to strengthen

their cooperation with the Court in this regard, including by sharing examples of concrete steps taken or good practice.

- States should use the plenary discussion to engage in dialogue on ways to strengthen the Court's response to crimes of sexual and gender-based violence through improved cooperation, including but not limited to entering into bilateral agreements with the ICC to relocate victims and witnesses at risk and making contributions to the Special Fund for witness relocation.
- States could also use the plenary session to update the Assembly on any steps taken to strengthen cooperation with the ICC and support efforts at the international or national level to investigate and prosecute sexual and gender-based crimes under international law.

Elections

The Team notes with regret that while there is a gender minimum voting requirement of one male candidate for this election, States Parties only nominated five female candidates out of seventeen candidates in total. While designed to help ensure a fair representation of female and male judges of the Court, the minimum voting requirement with regards to gender should not become a limiting factor on women's participation at the highest levels of the ICC.

Victim Participation

Equitable gender representation among victims participating in proceedings is essential to ensuring gender justice. The Team is concerned that collective approaches to participation may prevent the particular views of victims of sexual and gender-based violence, disproportionately women and girls, from being heard. Collective applications may not be appropriate for these victims who are often already marginalized and stigmatized. The Court therefore needs to ensure that those victims will not be further excluded. The application scheme must guarantee access to participation to all victims of all crimes and must contribute to achieving equitable gender representation among victims participating in the proceedings.

Recommendations to the Assembly of States Parties

- The ASP should encourage equitable gender representation among victims' participation, for example through supporting gender-specific outreach to women and girls.
- The ASP should grant the Court the financial means requested to process the growing number of victims applications in a fair and effective manner.

Recommendation to the Court

- The Court should develop a gender-inclusive approach to the victim application process, regardless of the crime/s that the victim is linked to.
- In addition, the Court should take into account the needs of victims/survivors of sexual and gender-based crimes as required by article 68 of the Rome Statute and the challenges victims/survivors of sexual and gender-based crimes face in seeking to access the application process.
- The Registry should prioritise completion and implementation of the Victim Participation and Representation Section (VPRS) database system for processing victim applications to enable the collection of disaggregated data on applicants seeking to be formally recognized as victims by the Court. Identifying trends in the number of victims applying to participate in Court proceedings is critical in order to understand any barriers faced by certain groups of victims and to ensure resources and activities are targeted efficiently and as needed towards underrepresented groups.

Victim and Witness Protection

The Team notes that without a robust system in place to ensure the protection of victims and witnesses, few would agree to engage with the Court, whether as witnesses, participants or in any other category. While the continued existence of conflicts in many situation countries complicates the process of putting in place protection measures, this, however, does not lessen the legal or moral obligation to ensure adequate and effective protection.

Recommendations to the Assembly of States Parties

- The ASP should significantly increase the resources available to both the Victims and Witnesses Unit (VWU) and the VPRS of the Registry to allow them to efficiently carry out their tasks and duties towards victims, including towards victims of gender-based crimes.
- The ASP should welcome the Guidelines on Intermediaries and ensure that their implementation is funded to the appropriate level to allow, as required, capacity building activities aimed at reinforcing intermediaries' ability to work/assist victims of SGBV and to ensure the protection of the victims they work with.

Recommendations to the Court

- Ensure that protection and support measures are responsive to the particular circumstances of women, girls, victims/survivors of sexual violence and other members of marginalised groups in conflict situations and are implemented in consultation with those to be protected or supported. Ensure also that women and girls who are recognized as 'victims' by the Court benefit from protection procedures where required.
- Ensure that the recommendations outlined in the Independent Review Team report on the alleged sexual assault of ICC witnesses by Court staff responsible for supporting witnesses in the DRC safe house are fully implemented and provide regular updates to States Parties regarding specific implementation achievements. Further, the appointment of suitably qualified female field officers within the Court's Victims and Witnesses Unit (VWU) should be prioritised to enable the implementation of the new procedure, as announced in the Review Team's report and by the ICC Registrar, requiring at least two staff members to be present during visits with victims, witnesses and protected persons, including at least one female staff member to be present for visits which involve female protected persons.

OTP's Policy Paper on Sexual and Gender-based Crimes

Ensuring that sexual and gender-based crimes under the jurisdiction of the Court are fully investigated is essential to the delivery of justice to female and male victims of these crimes, who are often marginalized and stigmatized. This requires an adequate focus on this category of crimes in the policies of case selection and prioritization, as well as in relation to a number of other issues, including the manner in which such crimes are prosecuted. In this regard, the Team takes note of the adoption of the OTP's Policy Paper on Sexual and Gender-based Crimes.

Recommendations to the Assembly of States Parties

- States should support the OTP's implementation of the Policy Paper on Sexual and Gender-based Crimes and to this end ensure that the Court is adequately financed to implement the Policy Paper.

Recommendations to the Court

- The OTP should ensure full and effective implementation of its Policy Paper at all stages of proceedings, from preliminary examination through to post-appeal without delay.