

AMNESTY INTERNATIONAL

The International Criminal Court

Fact sheet 7

Ensuring justice for women

“The Rome Statute’s gender provisions are an encouraging example of how the development of the international women’s rights movement is positively impacting international human rights and humanitarian law despite the strong influence of conservative political forces ... While much remains to be done, the progress made since 1994 is extraordinary.”

United Nations Special Rapporteur on violence against women, Radhika Coomaraswamy, Report, E/CN.4/2003/75/Add.1.

Over half a century after the adoption of the Universal Declaration of Human Rights, discrimination and violence against women continues to be an everyday reality worldwide. The vulnerability of women to human rights violations is compounded in situations of armed conflict. The Rome Statute of the International Criminal Court (Statute) is progressive in its incorporation of a gender perspective to ensure that women who are victims of the gravest crimes under international law have access to justice and that women play a role in the International Criminal Court (ICC). It also serves as a model of international best practice for national legal systems to follow.

What are the crimes against women which the ICC can try?

The Statute gives the ICC jurisdiction over genocide, crimes against humanity and war crimes. Although both men and women can be the victims of most of these crimes, some of them, such as enforced pregnancy, can be committed only against women. Others, such as rape and sexual assault are committed disproportionately against women.

As a result of campaigning by organizations working on behalf of the rights of women from around the world, the Rome Statute is the first international treaty to expressly recognize a broad spectrum of sexual and gender-based violence as some of the gravest crimes under international law.

What crimes against humanity are of particular concern to women?

The Rome Statute recognizes rape, sexual slavery, trafficking, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity as crimes against humanity.

This is the first time that sexual slavery and trafficking have been expressly recognized as crimes against humanity in an international treaty.

In addition, the Statute states that persecution against any identifiable group or collectivity on the grounds of gender, if committed in connection with any other crime within the jurisdiction of the ICC, is a crime against humanity.

What war crimes in the Statute are of particular concern to women?

The Statute provides that individual acts of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence constituting a grave breach or serious violation of common Article 3 of the Geneva Conventions can be prosecuted as war crimes, if they occur during either international or internal armed conflict (see Fact Sheet 5). The definitions of these war crimes are the same as those of the corresponding crimes against humanity.

How are crimes of sexual violence defined?

Rape and other forms of sexual violence have been defined in the ICC Elements of Crimes to focus on the coercive acts of the perpetrator, including threats and psychological oppression, rather than focusing on physical force alone. Instead of defining rape solely in terms of forced vaginal penetration with a penis, the definition of rape is gender-neutral (acknowledging that men and boys can also be raped) and refers generally to the invasion of the victim's body, including rape with objects and forced oral sex.

What role will women play in the ICC?

The Prosecutor and the Registrar are required in the employment of staff to "ensure the highest standards of efficiency, competency and integrity" and to have regard to the need for a fair representation of men and women and for expertise in specific issues, including violence against women. This requirement is particularly important in the case of the Prosecutor, who has the responsibility for the appointment of investigators. Investigators will need to have experience and effective training in collecting evidence of violence against women in a sensitive and effective manner.

Will there be women serving as judges?

States parties are required to take into account the need for a fair representation of female and male judges and the need to include judges with legal expertise on specific issues, including violence against women. Of the first eighteen judges elected to the ICC in 2002, seven were women. This is by far the highest proportion of women judges in any international court or tribunal.

Will there be a special office or official in the ICC to address the needs of women?

The Registrar has established a Victims and Witnesses Unit in the Registry to advise the Prosecutor and the ICC. In particular, such advice includes appropriate protective measures, security arrangements, counselling and assistance for victims who appear before the ICC, witnesses and others who are at risk because of witness testimony. The staff of the Unit must have expertise in trauma, including trauma related to crimes of sexual violence.

The Statute requires the Prosecutor to appoint an adviser on sexual and gender violence.

Does the ICC have an obligation to protect women victims and witnesses?

One of the problems in prosecuting persons accused of these grave crimes against women is that some women who have suffered such violence are reluctant to come forward to testify.

As a result, the ICC must take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, in particular where the crimes involve sexual or gender violence. Such measures may not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

How will women victims and witnesses be protected?

As an exception to the principle of public hearings, the Pre-Trial, Trial or Appeals Chambers may, to protect victims and witnesses or an accused, conduct any part of the proceedings *in camera* (closed to the press and public) or allow the presentation of evidence by electronic or other special means. Such measures shall be implemented, in particular, in the case of a victim of sexual violence, having regard to all the circumstances, particularly the views of the victim or witness.

How will the Court's procedural and evidentiary rules assist women victims and witnesses?

The Rome Statute tackles some of the most common procedural and evidentiary rules that have traditionally undermined women's claims of abuse and made trials traumatic experiences for the victims involved. For example, silence or a lack of resistance by the victim during a crime of sexual violence cannot be used to imply that she consented to the act. Evidence of the victim's prior or subsequent sexual conduct is inadmissible in most cases. There is also no requirement that the victim's testimony be corroborated by another source.

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