

Gender Mainstreaming in the Statute of the International Criminal Court

Substantive Jurisdiction (Crimes of Sexual & Gender Violence)

- *Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization and other Sexual Violence.* The ICC Statute explicitly recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other grave forms of sexual violence as war crimes in international and non-international armed conflict as well as crimes against humanity. (Articles 8(2)(b)(xxii), 8(2)(e)(vi) and 7(1)(g))
- *Persecution and Trafficking.* In addition to the crimes of sexual and gender violence discussed above, persecution is included in the ICC Statute as a crime against humanity and specifically includes for the first time the recognition of gender as a basis for persecution. The ICC Statute also includes trafficking as a crime against humanity as among the crimes of enslavement. (Articles 7(1)(h), 7(1)(c) and 7(2)(c))
- *Genocide.* The ICC Statute adopts the definition of genocide accepted in the Genocide Convention. However, in the negotiations held since the Rome treaty conference to further elaborate upon the elements of offenses with the Court's jurisdiction, there is currently an explicit statement in the commentary that rape and other sexual violence can constitute acts of genocide. (Article 6)
- *Non-discrimination.* The Statute specifically states that the application and interpretation of law must be without adverse distinction on the basis of enumerated grounds, including gender. (Article 21)

Procedures

- *Witness Participation and Protection.* The Court has an over-arching responsibility to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, taking into account all relevant factors, including age, gender, health and the nature of the crime. The Court may take appropriate protective measures in the course of trial, including *in camera* proceedings and allowing the presentation of evidence by electronic means. In addition, the Prosecutor is required to take these concerns into account in both the investigative and the trial stage. (Article 68)
- *Victim Witness Unit.* The statute provides for the creation of a Victims and Witnesses Unit (VWU) within the Court's registry (not in the office of the Prosecutor in recognition that protection of witnesses should be independent of prosecutorial imperatives). The VWU will provide protective measures, security arrangements, counseling and other appropriate assistance for witnesses, victims and others at risk on account of their testimony. (Article 43)

- Participation. The statute explicitly recognizes the right survivors to participate in the justice process, directly or through legal representatives, by presenting their views and concerns at all stages which affect their personal interests. (Article 68(3))
- Reparations. The statute includes a provision enabling the Court to establish principles and, in certain cases, to award reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. (Article 75)

Structure

- Women on the Court. The statute requires that the need for a "fair representation of female and male judges" be taken into account in the selection process. The same provision applies to the selection of staff in the Office of the Prosecutor and in all other organs of the Court. (Article 36(8)(a)(iii))
- Legal Expertise on Violence Against Women. The statute requires that, in the selection of judges, prosecutors and other staff, the need for legal expertise on violence against women or children must be taken into account. The Women's Caucus insisted on this additional provision in recognition of the significance of crimes against women, the need for expertise at every level to ensure these crimes are effectively prosecuted and the fact that expertise in prosecution of gender crimes is not necessarily tied to biological sex and that both women and men can bring such expertise. (Articles 44(2) and 36(8))
- Legal Advisors on Sexual and Gender Violence. The Prosecutor is required to appoint advisers with legal expertise on specific issues, including sexual and gender violence. This is an important mechanism for ensuring both that gender crimes are properly investigated and prosecuted and victims properly respected and protected. (Article 42(9))