



THE INTERNATIONAL CRIMINAL COURT AND GENDER CRIMES

A Historic Landmark

The International Criminal Court (ICC) is the world's first permanent court able to hold individuals criminally responsible for genocide, crimes against humanity and war crimes. The Rome Statute, the international treaty which established the ICC, recognizes serious crimes of violence against women such as rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, gender-based persecutions, trafficking and other forms of sexual and gender based violence as war crimes, crimes against humanity, and in some instances as genocide. Now each case brought before the Court can include gender-based crimes.

About the Court

The ICC has much wider jurisdiction than any of the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR). These tribunals have been limited to crimes committed only in the particular territory for which they are named.

The ICC's jurisdiction extends to all 105 member states and their nationals. Additionally, the ICC can exercise its jurisdiction through a Security Council referral or if a state that is not a party agrees and the crime has been committed in the territory or by a national of that state.

There are three ways to bring a case before the Court: Referral by a state party to the ICC, referral by the UN Security Council in accordance with its Chapter VII authority or through the Prosecutor who can initiate an investigation based on information regarding crimes within the jurisdiction of the court, subject to the approval of the Pre-Trial Chamber. The source of information for the prosecution is not restricted. It can be provided by individuals, NGOs, states or other sources.

Gender Aspects in the Court's Structure

International courts and tribunals have seen little women's participation throughout the last century. In 85 years the International Court of Justice has had just one female judge. The Tribunal for the Law of the Sea has had none in 26 years.

The Rome Statute requires a fair representation of female and male judges. This provision has to be taken into account during the election process. Seven of the 18 judges are female, making the ICC's bench almost completely gender-balanced.

In accordance with the Rome Statute the ICC aims to achieve fair representation of women and men for all positions. Specifically Rule 19(e) of the Court's Rules of Procedure and Evidence requires staff with "Gender and cultural diversity" in the Victims and Witness Unit.





The ICC compared to the Ad Hoc Tribunals

Gender-based crimes have only been seriously prosecuted in the last decade through the international criminal tribunals. The international tribunals have played an immense role in the international recognition of gender-based crimes.

The ICTY and ICTR have recognized sexual violence, including rape, as acts of torture and crimes against humanity. In the *Akayesu* case (ICTR-96-4-I), the ICTR specifically recognized that sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact and that “rape constituted not only a crime against humanity but also genocide”. The ICTR stated that “rape and sexual violence certainly constitute infliction of serious bodily and mental harm on the victims” and that “these rapes resulted in physical and psychological destruction of Tutsi women, their families and their communities. Sexual violence was an integral part of the process of destruction”.

The Rome Statute establishes jurisdiction to try crimes of sexual violence, such as rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization. Under the Statute, these are: crimes against humanity when committed as part of a widespread or systematic attack directed at a civilian population; genocide if the crimes are committed with the intention of preventing reproduction of certain peoples; and war crimes if the crimes occur in the context of an armed conflict. Under the Rome Statute any act that is meant to cause “serious bodily or mental harm to members of the group” (Article 6 (b)) is genocide if it was committed with the intent to destroy a group. This provides the possibility for the Court to try rape as an act of genocide.

Gender Sensitive Rules and Procedures

The ICC has adopted rules and procedures to provide that women survivors are not discriminated against or traumatized in court. The judiciary and staff of the Court must be composed of both men and women, and include experts on dealing with crimes of sexual violence and the conduct of gender sensitive proceedings. The Rules of Procedure and Evidence include gender specific provisions which are applicable to the Victims and Witnesses Unit. Victims’ participation in investigation and trial phases is an innovation in international criminal justice making these rules an important precedent for international courts and future institutions:

Rule 16

Responsibilities of the Registrar relating to victims and witnesses

1. In relation to victims, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules:

(d) Taking gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.

Rule 17

Functions of the Unit

2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:

(b) With respect to witnesses:

(iii) Taking gender-sensitive measures to facilitate the testimony of victims of sexual violence at all stages of the proceedings.





(iv) Making available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

Rule 18

Responsibilities of the Unit

For the efficient and effective performance of its work, the Victims and Witnesses Unit shall:

(d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;

Participation of Victims of Sexual Violence

The provisions for victims' participation in the proceedings of the ICC are extensive and exceed most national requirements. The Court's Rules of Procedure and Evidence provide that "gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings" must be taken. For example, Rule 112(iv) of the Court's Rules of Procedure and Evidence allows the recording of questioning by the Prosecutor if this "could assist in reducing any subsequent traumatization of a victim of sexual or gender violence, a child or a person with disabilities in providing their evidence". This, however, does not exclude the defense or amount to anonymous testimony. The Court also provides protection and support for victims and witnesses and provides reparations to help victims rebuild their lives.

Current Cases

In each of the four situations currently before the ICC, gender based crimes, most often rape and other forms of sexual violence have allegedly been committed widely.

Democratic Republic of Congo

Two people from the Ituri region of the DRC have been arrested and transferred to the ICC. The first, Thomas Lubanga, is charged solely with the war crime of using children as soldiers in support of combat. There have been complaints that the ICC did not adequately investigate gender based crimes committed by the Union des Patriotes Congolais militia, of which Mr. Lubanga was the founder and leader, despite extensive documentation of the widespread commission of rape and other forms of sexual violence committed by this militia group.

Mr. Katanga is charged with murders, inhumane acts and sexual enslavement of women and girls from the town of Bogoro, constituting crimes against humanity and war crimes, and for cruel treatment, a war crime. The prosecution also alleges that he committed the war crime of using children to participate actively in hostilities, the war crime of launching an attack against the civilian population of Bogoro and the war crime of pillaging Bogoro. The decision to prosecute nine crimes, including sexual slavery, is a significant step in the fight against impunity for the worst crimes allegedly committed and continuing in Ituri.

Uganda

The arrest warrants against two of the Lord's Resistance Army (LRA) leaders, Joseph Kony and Vincent Otti, charge murder, rape, inducing rape, enslavement, sexual enslavement, inhumane acts of inflicting serious bodily injury and suffering, cruel treatment of civilians, intentionally directing an attack against a civilian population, forced enlisting of children and pillaging. So far both suspects, in addition to two others, remain at





large. So far six victims have been granted the right to participate in the case proceedings and two victims the right to participate in the situation proceedings.

Central African Republic

The Prosecutor has started investigating gender based crimes during 2002 and 2003 as a priority at the outset of the formal investigation which allegedly began in 2007. The Court stated that “this is the first time the Prosecutor is opening an investigation in which allegations of sexual crimes far outnumber alleged killings. According to the Prosecutor, ‘The allegations of sexual crimes are detailed and substantiated. The information we have now suggests that the rape of civilians was committed in numbers that cannot be ignored under international law’”.

Darfur, Sudan

On February 27, 2007 the ICC Prosecutor submitted evidence to the Pre-Trial Chamber supporting charges against two suspects, Minister of State for Humanitarian Affairs Ahmed Muhammad Haroun and Ali Abd-Al-Rahman, one of the Janjaweed militia leaders, of crimes committed in the Darfur conflict. On May 2, 2007 Pre-Trial Chamber I issued warrants of arrest for the suspects based on 51 counts of war crimes and crimes against humanity including rape, murder, attacks against the civilian population, inhumane acts, torture, pillaging, and outrage upon personal dignity. Eleven victims have been recognized in the Darfur situation.

Outlook

The creation of the ICC and its states parties’ adherence to its principles could improve both the definition and implementation of women’s rights. The ICC provides a deterrent for political and military offenders around the world who persecute women. The Court has powers to prosecute not just obvious gender crimes such as rape but also abuses such as honor killings, trafficking and enslavement.

In many countries women are pressing their governments to reform the treatment of rape in their laws and by the courts. Too often rape is not considered a serious crime. Many states fail to uphold women’s right to sexual autonomy and bodily integrity. However, because rape and other sexual crimes are considered not merely as crimes against the honor and dignity of women, but just as serious under the ICC Statute as crimes such as killing and other crimes against persons, this pressures governments to treat rape and related crimes more seriously in their national legal systems.

Together with the Court’s Rules of Procedure, the Statute can set standards for national courts and legal systems. These standards and the precedents erected under them will help women make their cases for gender justice nationally. They could serve as the substantive bases or examples for new laws and procedural rules or reforms.

The ICC is important for the rights of women because of the promise of the provisions in the Rome Statute which are now being realized in the Court’s early performance. The Court is seeing women not only in terms of their rights, but in ways that relate to the security of their lives and the obligations of governments to protect them.



AMICC



For more information, please visit:

- http://www.whrnet.org/docs/issue-international_court.html
- <http://www.iccwomen.org/publications/articles/index.php>
- http://www.iccwomen.org/news/docs/Press_ReleaseMay07.pdf
- <http://www.fidh.org/spip.php?article4846>

*Researched and drafted by Gwendolyn Bunse
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