

# AMNESTY INTERNATIONAL

## The International Criminal Court Fact sheet 7 Ensuring justice for women

*“All too often, conflict happens in societies that can least afford it, takes its toll on those who least deserve it, and hits hardest those least equipped to defend themselves. Civilians have become the main targets of warfare. From rape and displacement to the denial of the right to food and medicines, women bear more than their fair share of the burden.”*

**Secretary-General Kofi Annan, United Nations Day for Women's Rights and International Peace, 6 March 2000, Press Release, SG/SM/7325, WOM/1190**

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) has incorporated 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).

### ***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.

### ***Can attacks on women amount to genocide?***

Violence against women can be used as a means to commit genocide. Although women are not one of the four groups expressly protected by the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), certain types of attacks against women in one of the four protected groups (national, ethnical, racial and religious) with the intention to destroy the group, in whole or in part, as such, can constitute genocide.

In the 1998 landmark *Akayesu* judgment, a Trial Chamber of the International Criminal Tribunal for Rwanda held that when rape was used as a method to destroy a protected group by causing serious bodily or mental harm to the members of the group, it constituted an act of genocide. In addition, it explained that rape also can be used as a way to prevent births within a group. For example, in societies where ethnicity is determined by the identity of the father, raping a victim to make her pregnant can prevent the victim from giving birth to a baby within her own group.

### ***What crimes against humanity are of particular concern to women?***

Article 7 (1) (g) recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence of comparable gravity as crimes against humanity. It also expressly recognizes that the crime of enslavement includes trafficking of women. In addition, Article 7 (1) (h) states that persecution against any identifiable group or collectivity, on gender grounds, among others, if committed in connection with any other crime within the jurisdiction of the ICC, is a crime against humanity.

These crimes must have been committed as part of a widespread or systematic attack directed against a civilian population, pursuant to or in furtherance of a state or organizational policy to commit such attack. An “attack” has a special

meaning in the Statute which includes other measures besides a military attack and can include legislation (see Fact Sheet 4).

***Are there war crimes in the Statute of particular concern to women?***

Article 8 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 violation of common Article 3 of the Geneva Conventions of 1949 can be prosecuted as war crimes, if they occur during international or internal armed conflict (see Fact Sheet 5). The definitions of these war crimes are essentially the same as those of the analogous crimes against humanity of sexual violence.

***What role will women play in the ICC?***

The Prosecutor and the Registrar are required by Article 44 (2) in the employment of staff to “ensure the highest standards of efficiency, competency and integrity” and to have regard to the criteria for the selection of judges, which include 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, who will need to have experience in collecting evidence of violence against women in a sensitive and effective manner.

***Will there be women serving as Judges?***

States parties are required by Article 36 (8) (a) in the selection of judges to take into account the need within the membership of the court for a fair representation of female and male judges and by Article 36 (8) (b) of the need to include judges with legal expertise on specific issues, including violence against women.

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

Article 43 (6) requires the Registrar to establish 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 to provide to victims - many of whom will be women - 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.

***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, Article 68 (1) requires that the ICC 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. In doing so, it must have regard to all relevant factors, including age, gender, health and the nature of the crime, including whether it was one of 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, Article 68 (2) provides that 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.

In addition, Article 21(3) incorporates the fundamental principle that the interpretation and application of the Statute, Elements of Crimes, Rules of Procedure and Evidence and relevant law “must be consistent with internationally recognised human rights, and be without any adverse distinction on such grounds as gender”.

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