

THE INTERNATIONAL CRIMINAL COURT: ENSURING JUSTICE FOR WOMEN

"[N]othing prepared me for the actual experience. It lives on inside me. I still bleed a lot. It was done not by just one man, but by a group of them... And it was a side-show; lots of people came to watch."
A Kurdish woman raped by Iraqi security officers.

Fifty years after the adoption of the Universal Declaration of Human Rights (UDHR), discrimination and violence against women continue to be the everyday reality for women worldwide. Human rights violations against women have been ignored or have remained largely hidden despite repeated commitments by governments to the full and equal enjoyment by women of all human rights.

Systematic discrimination and violence against women are reflected in, and reinforced by, the structure and functioning of governmental and intergovernmental institutions. This is partly due to the prevalent gender-insensitive interpretation of international human rights and humanitarian law. Judicial bodies have very often failed to investigate and prosecute suspected perpetrators of violations of women's human rights. National authorities have often neglected, excused, or denied such abuses.

The vulnerability of women to human rights violations is compounded in situations of armed conflict. Only five per cent of the casualties in the First World War were civilians. By the mid-1990s, about 80 per cent of the casualties in conflicts were civilians -- most of them women and children. As the 20th century draws to a close, women who have taken no part in conflicts are being murdered, raped and mutilated.

1998 presents a number of important opportunities for women's human rights advocates to demand that governments at the national and international level work to ensure that the protection and promotion of women's human rights become a reality.¹ Among these

¹ 1998 marks the 50th anniversary of the UDHR. In March 1998, the United Nations (UN) Commission on the Status of Women reviewed key sections from the Beijing Declaration and Platform for Action, the final document of the 1995 Fourth UN

opportunities, the UN General Assembly has convened a diplomatic conference to create a permanent international criminal court. Such a court would investigate and prosecute genocide, other serious violations of humanitarian law and crimes against humanity where national courts are unable or unwilling to bring those responsible to justice. Since 1993 Amnesty International has been working for the establishment of a just, fair and effective permanent international criminal court as part of its work to end impunity for grave human rights abuses.²

Historically access to legal remedies and redress have often been denied to women victims and their families. Amnesty International believes that the international criminal court should effectively address grave human rights violations against women, including gender-based crimes, to ensure justice for women.

It is imperative that a gender perspective be fully incorporated into the statute of the international criminal court, its rules and the way it functions. This is essential for women and crucial to enjoyment of human rights worldwide.

World Conference on Women. The implementation of the Vienna Declaration and Programme of Action, the final document of the 1993 UN World Conference on Human Rights, is on the agenda of the July 1998 Economic and Social Council meeting.

²See list of papers at the end of this paper.

This paper is part of Amnesty International's work to ensure justice and human rights for **1.CRIMES AGAINST WOMEN.**

Women, like men, are the victims of genocide, other crimes against humanity and serious violations of humanitarian law. However, women are in double jeopardy. Discriminated against as women, they are also as likely as men, if not more so, to become victims of human rights violations. Therefore, a systematic and adequate effort is needed to ensure the investigation and prosecution of, and redress for, crimes committed against women, including gender-specific abuses such as rape and other forms of serious sexual abuse. **In order to ensure justice for women victims and their families, Amnesty International believes it is essential that the permanent international criminal court has jurisdiction over genocide, other crimes against humanity and serious violations of humanitarian law.**

GENOCIDE. As defined in the Convention on the Prevention and Punishment of the Crime of Genocide, genocide involves committing certain acts against members of national, ethnical, racial or religious groups including killings, causing serious harm and preventing births, with intent to destroy the group, as such. Although not explicitly included in this traditional definition, Amnesty International believes that genocide encompasses rape with genocidal intent. Furthermore, **the definition of genocide to be included in the statute of the international criminal court should be interpreted as including other gender-specific crimes when it can be established that such crimes have been committed with genocidal intent.**

OTHER CRIMES AGAINST HUMANITY. Crimes against women have traditionally fallen within the definition of crimes against humanity when women have been the victims of crimes perpetrated by state agents or armed opposition groups on a systematic basis or a large scale, whether these crimes are committed in peace time or during armed conflict. Such crimes against humanity include murder, extermination,

women and only addresses the role of the international criminal court in that effort. "disappearances", torture, deportation across national frontiers and forcible transfers of population within a country, enslavement, persecution on political, racial, religious and other grounds and other inhumane acts. In addition, women have often been the sole target of other crimes against humanity such as systematic and large scale rape and other forms of serious sexual abuse. **It is clear in international law that rape committed by government officials or by armed opposition groups is torture. When committed on a systematic basis or on a large scale, it is a crime against humanity which should be within the court's jurisdiction. In addition, enforced prostitution and some other forms of sexual abuse when committed by government officials or armed opposition groups on a systematic basis or on a large scale, whether in peace time or during armed conflict, should be expressly included in the court's jurisdiction.**

SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW. In contrast to genocide and other crimes against humanity, which can occur during times of peace or armed conflicts, international humanitarian law applies only to armed conflicts, whether international or internal. Rape perpetrated by soldiers during an international armed conflict is a grave breach of the Geneva Conventions of 1949 (commonly referred to as war crimes) and other forms of serious sexual abuse in such conflicts are also recognized as grave breaches. Similarly, it is now widely recognized that rape and other forms of serious sexual abuse committed by soldiers or armed opposition groups during internal armed conflict are war crimes punishable by international courts.

Humanitarian law seeks to reduce the horrors of international and internal armed conflicts. However, too often human rights violations against women -- particularly gender-specific violations -- have not been investigated let alone prosecuted. Until governments live up to their obligation to eliminate discrimination and violence against women and provide for the

thorough, prompt, and impartial investigation and prosecution of gender-specific crimes, such

The jurisdiction of the international criminal court should include serious violations of humanitarian law in both international and non-international armed conflict.

2.SPECIAL CONSIDERATIONS IN CASES INVOLVING VIOLENCE AGAINST WOMEN.

Effective investigation of crimes against women. Special measures are needed to deal with the particular demands of investigating, prosecuting and judging crimes involving violence against women, including rape and other forms of serious sexual abuse. Women who have suffered such violence may be reluctant to come forward to testify.

Fact-finders **must** have expertise in collecting evidence of violence against women in a sensitive manner. The court should hire investigators and prosecutorial staff with this type of experience and sensitivity if cases involving rape and other forms of serious sexual abuse of women are to be successfully prosecuted without causing unnecessary trauma for the victims and their families. This is particularly important as experience shows that victims and witnesses in such cases are often more likely to confide in and trust other women. Female investigators and prosecutorial staff with the necessary expertise should be available for these cases.

If the draft statute now being considered is amended to give trial judges a more investigative role similar to the practice in some civil law jurisdictions, it will be essential for female judges to be involved in these cases. **All judges, as well as staff of the office of the prosecutor and the registry, should receive adequate training in how to address cases involving violence against women.**

The statute and rules of the court should take into account the special circumstances of cases involving violence against women, to ensure effective prosecution against such violations,

crimes will continue to be a deliberate weapon of war.

without prejudice to the rights of suspects and accused to a fair trial.

It is often difficult to investigate and prosecute crimes against women in the light of the social

The same month Liberian Peace Council (LPC) fighters in Greenville, Sinoe County, were reported to have killed Marie Tokpa, a girl from the Kpelle ethnic group, because she resisted being raped..... Refugees arriving in Côte d'Ivoire from Maryland County reported wilful killings by the LPC as they attacked a National Patriotic Front of Liberia (NPFL) area - one witness described the arrest of a pregnant woman by LPC fighters who slashed her open, removed the baby and left both mother and baby to die. *"Liberia: An opportunity to introduce human rights protection,"* Amnesty International (AI Index: AFR 34/01/95).

stigma attached to many such crimes and as a result of the prevalent discrimination both in the legal procedure and in the system. Effective investigation and prosecution of -- in particular, but not only -- gender-specific crimes is paramount to ensure full access to justice for women. As a result, the court must recognize the special difficulties faced by women in making use of the justice system effectively both at the national and international level during all stages of proceedings.

Protection of victims, their families and witnesses. The court must be able to take certain measures to protect women victims, their families and witnesses from reprisals and unnecessary anguish to which they might be exposed in a public trial, without prejudicing the rights of suspects and accused to a fair trial.

The court, in close cooperation with states parties, must take effective security measures to protect victims, their families and

witnesses from reprisals. These measures should encompass protection before, during and after the trial until that security threat ends. In developing an effective protection program, the court and states parties should draw upon the successful witness protection programs in many states.

Furthermore, victims and witnesses could suffer considerable mental anguish by having repeatedly to relive horrific events before investigators, prosecutors and judges. These needs are now addressed in the draft statute by giving the court the power to “take necessary measures available to it, to protect the accused, victims and witnesses”, supplemented by the power of the prosecutor “to take necessary measures to ensure the confidentiality of information or the protection of any person”. **Creative use of the court’s legal authority to protect witnesses will be particularly important if it is to successfully prosecute cases concerning women and girl-child victims. The court should also have a victims and witnesses unit to provide effective protection for victims and witnesses.**

Reparations. All victims of grave human rights violations within the court’s jurisdiction and their families are entitled to reparations, including restitution, compensation and rehabilitation. **The statute should provide that the court can award such reparations to victims and their families.**

Women suspected and accused. Amnesty International has documented widespread torture, including rape, of women detained on criminal charges. Women suspects provisionally arrested by order of the permanent international criminal court or arrested after indictment will usually be held initially by national authorities. **The statute should include all necessary measures for the protection of women who are suspected or accused of crimes falling within the jurisdiction of the international criminal court. This will include measures such as keeping female detainees separately from men.**

A 27-year-old Muslim woman interviewed by Amnesty International stated that she had been raped by an officer in the Bosnian-Serb army in a house in the town of Kotor Varoš. In June Serbian forces sought to take full-control of the town where local armed Muslims had been resisting from parts of the town and surrounding area. The victim’s husband had been detained by Serbian forces but had managed to escape. After her husband’s escape the victim was detained and questioned about her husband for three days in the corridor of a local school where men were being detained, beaten and interrogated.

In late July the victim was taken by uniformed Serbs to a private house in the town. She thought she was to be interrogated and begged not leave her children. She believed the house to be under the control of a local Serbian officer. Inside the officer hit, bit and raped her, keeping an automatic weapon close at hand throughout. She was released after two or three hours. During and after the incident the perpetrator warned her not to let anybody know where she had been or what had happened. He repeated his threats when she was taken again to the house two and a half weeks later. A second Muslim woman, whose husband had been detained, stated that the same officer attempted to rape her in similar circumstances, but was interrupted by a caller at the house. *“Bosnia-Herzegovina: Rape and sexual abuse by armed forces”*. Amnesty International (AI Index: EUR 63/01/93).

3.ENSURING JUSTICE FOR WOMEN IN THE FUNCTIONING OF THE COURT.

Establishing an effective and independent office of the prosecutor. The prosecutor, deputy prosecutor and staff of the office of the prosecutor, who will be acting on behalf of the international community, should be of high moral character, impartial, possessing integrity and independence and highly competent, with experience in criminal cases. Given the importance of crimes against women which fall within the jurisdiction of the court, **the office of the prosecutor will need to recruit women as well as men with a view to balanced representation of men and women. The prosecution will also need a significant number of staff with experience in investigating and prosecuting such crimes. In addition, all staff should receive training in gender sensitive approaches to their work.**

Amnesty International believes that a concerted effort should be made to recruit women at all levels of the office of the prosecutor. This is consistent with the calls by the international community in the 1995 Beijing Platform for Action adopted by the Fourth UN World Conference on Women.

Qualifications and selection of the judges.

Judges selected for the court should be persons of high moral character, impartiality, integrity and independence, with experience in criminal law or international law, including international human rights and humanitarian law. Efforts should be made to ensure that candidates are sought from all regions and legal systems of the world. The court should facilitate the nomination and appointment of women with a view to achieving gender balance.

Selection procedures. It is essential to devise a method for selecting the judges which will ensure the selection of the best possible candidates satisfying the proposed qualifications based on merit. **At a minimum, the statute should provide that in making such nominations and in selecting the judges, states should do so only after consultation in an open process with their highest courts, law faculties, bar associations and other non-governmental organizations concerned with criminal justice and human rights, including women's rights.**

Establishing an effective and independent registry. The same considerations applicable to the selection of judges and the prosecutor apply to the registrar and staff of the registrar as highlighted earlier in this paper.

WHAT YOU CAN DO:

1) Contact your ministries of foreign affairs, justice and women's affairs (if there is one in your country) and find out where your government stands on the international criminal court and its willingness to ensure strong provisions on justice for women in the statute. If your government has not supported the recommendations made in this paper so far, urge its support for the following recommendations:

- a) The court should have jurisdiction over genocide as defined in the Genocide Convention;
- b) The court should have jurisdiction over crimes against humanity, whether in peace or armed conflict, committed by government officials or armed opposition groups, or with their acquiescence, on a systematic basis or large scale;

- c) The court should have jurisdiction over serious violations of humanitarian law, in both international and non-international armed conflict, committed by government troops or armed opposition groups, or with their acquiescence, as war crimes;
- d) The international criminal court should treat crimes of violence against women as it does other crimes;
- e) The court should protect women victims, their families and witnesses from reprisals and unnecessary anguish through effective witness protection programs, without prejudice to the right of suspects and accused to a fair trial;
- f) The court should take into account the special considerations in investigating and protecting crimes involving violence against women;
- g) The court should have the power to award reparations, including restitution, compensation and rehabilitation, to women victims and their families;
- h) The court should recruit women as well as men with a view to a balanced representation of women and men in all parts of the court and all staff should be trained in the special considerations involved in crimes against women;
- 2) Communicate the results of your meetings with your government to the local and national press, women's groups and other NGOs;
- 3) Mail this document to other NGOs, and urge them to form national coalitions for an international criminal court and in particular women NGOs, to help put women's human rights at the centre of the international criminal court. Contact the NGO Coalition for an International Criminal Court at :c/o WFM, 777 UN Plaza, 12th Floor, New York, NY 10017. USA. E-mail cicc@igc.org.
- 4) Try to work with the media, raising some of the issues or cases illustrated in this paper.

All documents issued by Amnesty International on the international criminal court can be found at the following address <http://www.amnesty.it>. You can also contact the web site at the NGO Coalition for an International Criminal Court for more information and documents about the international criminal court at <http://www.igc.apc.org/icc>.

- 1) *"The quest for international justice: Defining the crimes and defences for the international criminal court."* (AI Index: IOR 40/02/97);
- 2) *"The international criminal court: Making the right choices - Part I: Defining the crimes and permissible defences and initiating a prosecution."* (AI Index: IOR 40/01/97);
- 3) *"The international criminal court: Making the right choices - Part II: Organizing the court and guaranteeing a fair trial."* (AI Index: IOR 40/11/97);
- 4) *"The international criminal court: Making the right choices - Part III: Ensuring effective state cooperation"*. (AI Index: IOR 40/13/97);
- 5) *"The international criminal court: Making the right choices - Part IV: Establishing and financing the court and final clauses."* (AI Index: IOR 40/04/98).

