

AMNESTY INTERNATIONAL

The International Criminal Court

Fact sheet 8

Ensuring justice for children

“... UNICEF is ... insistent on the need to fight atrocities against children ... , including rape as a weapon of war, by deploying a permanent, fully empowered International Criminal Court . The purveyors of genocide and ethnic cleansing and other unspeakable crimes must be made understand that as surely as the sun rises, they will be called to account – and that impunity will not stand.”

Carol Bellamy, Executive Director of the United Nations Children's Fund, address to the opening session of the Hague Appeal for Peace. The Hague, Netherlands, 12 May 1999

The Preamble to the Rome Statute of the International Criminal Court (Statute) recognises that during the twentieth century “millions of children . . . have been victims of unimaginable atrocities that deeply shock the conscience of humanity.” The Statute has included provisions to account for crimes committed

against children and protection of child victims and witnesses during prosecutions before the International Criminal Court (ICC).

Which crimes specifically affect children?

The Statute gives the International Criminal Court (ICC) jurisdiction over genocide, other crimes against humanity and war crimes. Although children can be the victims of most of these crimes, the Statute gives the ICC jurisdiction over three crimes that are of particular concern to children: genocide by transferring children, the crime against humanity of trafficking in children and the recruitment or use of child soldiers in armed conflict.

What is genocide by transfer of children?

The definition of genocide in Article 6 expressly includes “forcibly transferring children of the group to another group” if committed with the intention to destroy all or part

of a national, ethnical, racial or religious group, as such.

What about trafficking in children?

The definition of the crime against humanity of enslavement in Article 7 (2) (c) recognizes that children are a group particularly at risk of being subject to this crime, which is defined to include the exercise of the power of ownership over a person in the course of trafficking in children.

Are all child soldiers now prohibited?

One of the most significant achievements of the Statute was the inclusion for the first time in international law of the conscripting, enlisting and use of child soldiers as a war crime. It is a crime under Article 8 (2) (b) (xxvi) to conscript or enlist children under the age of 15 years into armed forces or groups or to use them to participate actively in hostilities during international armed conflict. In addition, Article

crime, in particular, violence against children.

(1) Will the Court have persons with expertise on violence against children?

Article 36 (8) (b) requires states

8 (2) (e) (vii) contains a similar prohibition during non-international armed conflict.

Although the age limit set by the adopting states in the Statute was 15 – lower than the age of 18 called for by Amnesty International and other sections of civil society – its inclusion has been a major contributing factor towards further progress on the issue that has been made since the Statute's adoption.

What provisions are in place to protect child victims and witnesses from further traumatization?

Article 68 (1) requires the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of all victims and witnesses.

In so doing, the Court shall have regard to all relevant factors, including age and the nature of the

parties to take into account the need for judges to have legal expertise on violence against children. The Prosecutor is required under Article 42 (9) to appoint advisers with legal expertise on violence against children. In addition, both the Prosecutor and

Registrar must under Article 44 (1) have regard to the requirement of expertise on violence against children in the appointment of their staff.

The draft Rules of Procedure and Evidence of the ICC – to be adopted by the Assembly of States Parties when it first meets – provides that in order to facilitate the participation and protection of children as witnesses, the Victims Protection Unit may assign, as appropriate, and with the agreement of the child's parents or legal guardian, a child support person to assist the child through all stages of the proceedings.

(2) How will children be treated by the Court?

Article 68 (1) states that the Prosecutor must take appropriate measures during the effective investigation and prosecution of crimes to respect the interests and personal circumstances of victims and witnesses, including age, and

take into account the nature of the crime, in particular where it involves violence against children.

(3) How can children be protected when they give evidence?

Article 68(2) permits the ICC to conduct any part of the proceedings “in camera or allow the presentation of evidence by electronic or other special means,” to protect child victims and witnesses, unless otherwise ordered by the ICC, having regard to all the circumstances, particularly the views of the victim or witness.

The draft Rules of Procedure and Evidence further provide that the ICC will be able to take other special measures that it deems necessary to protect a child victim or witness, such as, but not limited to, measures to facilitate their testimony.

Can a child be prosecuted by the ICC?

No. Article 26 expressly states that the ICC shall have no jurisdiction over any person who was under the age of 18 at the time the crime was committed. However, this provision does not prevent any state from prosecuting persons for genocide, other crimes against humanity or war crimes who were under the age of 18 at the time of the crime.

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