

International Justice for Women: The ICC Marks a New Era Human Rights Watch Backgrounder, July 1, 2002

I. Introduction

Women's rights activists throughout the world — of every political stripe, faith, sexual orientation, nationality, and ethnicity — mobilized at each step of the International Criminal Court (ICC) process. They have worked to create an independent court to afford women greater protection from violations of human rights and humanitarian law.

Women's rights activists participated in every major United Nations preparatory meeting on the ICC. They worked to ensure that the range of abuses that happen to women was accurately reflected in the list of crimes over which the ICC would have jurisdiction. They worked to ensure that the rules and procedures governing how the court functions would be responsive to gender-specific crimes.

Activists held in-country workshops to educate other women and policy makers about the benefits of ICC adoption and ratification. They lobbied their home country officials to sign and then ratify the Rome Statute, which outlined the establishment and structure of the ICC.

That the ICC has come into force today and is potentially a powerful instrument for protecting women's rights is a testament to this indefatigable activism and determination.

Thanks to women around the world, violence and persecution of women will be treated as the serious criminal and humanitarian law violations that they are. The ICC offers a dramatic and long-awaited improvement in how international crimes against women are treated and greatly increases the possibility for redress. Moreover, it provides witness protection and other measures desperately needed to afford women the greatest level of protection.

II. How the ICC Protects Women's Rights

- **Codification of Crimes.** The Rome Statute of the ICC (the Statute) criminalizes sexual and gender violence as war crimes and crimes against humanity. Accordingly, war crimes and crimes against humanity include rape, sexual slavery (including trafficking of women), enforced prostitution, forced pregnancy, enforced sterilization, other forms of grave sexual violence, and persecution on account of gender.
- **Procedural Protections for Victims and Witnesses.** Women victims and witnesses before the ICC can expect procedures designed to address their needs. The ICC Statute and Rules of Procedure and Evidence (Rules) offer important protections for victims and witnesses, particularly those who suffered sexual or gender violence. The court is required to protect the safety, physical and psychological well-being, dignity, and privacy of victims and witnesses, with special regard to factors such as their gender and whether the crime involved sexual or gender violence. The Statute and Rules also establish a Victims and Witnesses Unit to provide protection, security, counseling, and other assistance. The court can institute measures to protect victims and witnesses during trials and pre-trial proceedings. The court is also required to be vigilant in controlling the questioning of witnesses to avoid harassment or intimidation, especially in sexual violence cases.
- **Rules of Evidence to Protect Victims of Sexual Violence.** The Rules are designed to shield victims of sexual violence from damaging or intrusive attacks on their sexuality or credibility. The court cannot admit evidence of a victim or witness's prior or subsequent sexual conduct or require corroboration of

testimony concerning sexual violence. The Rules outline principles to guide the court in handling sexual violence cases, making clear that a victim's consent cannot be inferred where the perpetrator took advantage of a coercive environment (such as a detention center), and requiring special procedures for presenting evidence of consent to acts of sexual violence.

- **Staff Expertise on Gender and Sexual Violence.** The Statute requires that the ICC prosecutor appoint advisers with legal expertise on sexual and gender violence and that the Victims and Witnesses Unit, to be housed within the ICC registry, include staff with experience in trauma related to sex crimes. The Statute also requires states, in electing judges, to take into account the need for "fair representation" of female and male judges, and requires that the prosecutor and registrar do the same when hiring staff.
- **Victim Participation in the Proceedings.** The ICC Statute and Rules facilitate victims' direct participation in the court's proceedings. Victims can express their views, in accordance with the Statute and the Rules, giving them a chance to tell their stories even if they are not called as witnesses. This will allow individual women's voices, sometimes overlooked in international prosecutions, to emerge.

III. Why the United States Should Support the ICC

For millennia, perpetrators of what today would be called war crimes and crimes against humanity directed at women have enjoyed impunity. Now, there is finally a court that can make a real difference for women around the world. International humanitarian and criminal law no longer ignore the experiences of women who are raped, subjected to sexual mutilation and sexual slavery, trafficked, forced to bear the children of their rapists, and persecuted by other horrendous acts of sexual violence. The ICC is a significant milestone in the struggle to end impunity for crimes of sexual and gender violence. To oppose and undermine the ICC is to squander an important opportunity to safeguard women's human rights around the world.