

**The 1st International Conference on Action with Women and Peace - Global Partnership to
Combat Sexual Violence in Conflict**

“Judicial Efforts for Delivering Survivor-Centered Justice”

Let me first of all thank the organizers and sponsors of this conference for inviting a staff of the Office of the Prosecutor (OTP) of the International Criminal Court (ICC), to participate and give a presentation at this conference. The importance of delivering Survivor-Centered Justice, is a topic which currently attracts a lot of discussion particularly in judicial institutions, academia, and within civil society and victims groups.

Justice means different things to different people and can include the conviction and incarceration of perpetrator(s) of crimes, accessibility to and provision of support and assistance to victims throughout the justice process, as well as, reparation (restitution, rehabilitation, and compensation).

Irrespective of what meaning is attached to the term “Survivor-Centered Justice”, there is concerted effort in the international community to end impunity enjoyed by perpetrators who commit sexual and gender-based crimes, and give justice to people who were victimised. The Statutes of the International Criminal Tribunals for Yugoslavia and Rwanda, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia criminalise some forms of sexual violence. As you may know, the Rome Statute which established the International Criminal Court, contains an expansive list of sexual and gender-based crimes such as rape, sexual slavery, enforced prostitution and forced pregnancy.

Some States have domesticated the Rome Statute and their national judicial systems currently exercise jurisdiction over a wide range of international sexual violence crimes. Kenya for example enacted the International Crimes Act in 2008 which gives the Courts jurisdiction over international crimes namely war crimes, crimes against humanity and genocide, committed on the territory of Kenya. It is therefore crucial for stake holders and duty bearers in national and internal judicial systems to strive to get a better understanding of what survivor-centered justice means to individuals who are victims of such crimes.

To ensure success in our investigations and prosecutions, the OTP of the ICC elevated the enhancement of the investigation and prosecution of sexual and gender-based crimes to a strategic goal in the 2012/2015 and 2016/2018 Strategic Plans. The Office aims in the 2019 – 2021 Strategic Plan to refine its approach to victims, in particular as regards victims of SGBC and crimes against or affecting children.

In 2014, the Office launched a Sexual and Gender-based Crimes Policy which provides clarity and direction on issues pertaining to SGBC during preliminary examinations, investigations and prosecutions. This policy can be found on the OTP website. The Office of the Prosecutor recognises that men and boys are victims of sexual violence, therefore, the SGBC policy applies to both male and female victims as envisaged in Article 7 (3) of the Statute.

The SGBC Policy mentioned above inter alia affirms the commitment of the Office to pay particular attention to these crimes, provide clarity and direction to staff in the interpretation and application of the Statute and the Rules at all stages of the Office’s work, in order to effectively address such crimes. The policy is also meant to ensure that staff interact with the victims and witnesses

sensitively, and with due respect for their best interests and rights under international law. Also through the implementation of the Policy, contribute to the ongoing development of international jurisprudence regarding sexual and gender-based crimes.

In the policy, the Office took the position that sexual and gender-based crimes are particularly grave and that there is a strong presumption that investigations and prosecutions are in the interest of justice. The concept of gender analysis was introduced in our work, and through this, the Office will examine how the commission of these crimes were related to the inequalities between men and women, girls and boys, and whether the power relationships and other dynamics which shape the gender roles in a specific context, had any impact on the commission of crimes.

In line with the SGBC Policy, the OTP undertakes investigations into sexual and gender-based crimes concurrently with its investigations into other crimes. This ensures the efficient utilisation of resources, and provides an opportunity for the thorough investigation of these crimes. Investigation plans must include a specific SGBC component which means that in the preparation of every investigation plan, the investigation of SGBC must be carefully considered. In short, Investigation of these crimes should be an integral part in the investigation of any situation, and a focus should be put on it right from the beginning of preliminary investigations. If a decision is made not to investigate these crimes, sound justification for that decision is required.

The Office is currently implementing the Policy and I will like to highlight some measures which are being taken:

- A) To fully understand the cultural context within which the crimes were committed and the impact on the individual, family and community: the Office organises a pre-deployment cultural awareness sessions prior to the start of any investigation and engages with consultants who have the specific country knowledge.
- B) The Office recognises the importance of appropriate training and the existence of expertise to investigate, prosecute as well as to deal with the victims and witnesses. Training of investigators and trial lawyers is now part of the annual training plan of the Office – the last training for the Investigation and Prosecution Divisions took place in December 2018.
- C) In addition to the statements of victims and witnesses, the Office explores other types of evidence such as medical, documentary, video footages, expert and overview witnesses.
- D) Where ever the evidence permits, the Office makes full use of the statutory provisions and brings cumulative charges against accused persons.
- E) Periodic evidence reviews is conducted to identify gaps in the evidence collected, in order to assess the strength of the evidence so that when necessary, a plan for further collection is developed.
- F) Periodic lessons learned exercises are conducted to identify areas for improvement and good practices which should be replicated.
- G) Efforts are ongoing to expand our network and strengthen cooperation with civil society actors and NGOs dealing with victims of sexual and gender based violence well. The Office will

optimising cooperation with government institutions like medical facilities where information and evidence can be obtained.

H) Psychosocial support is provided to victims and witnesses during the investigation phase and relevant information about witnesses is shared with the Victims and Witnesses Section, so that they can make necessary preparation for witnesses who will testify during a trial. Victims can face threats and intimidation from perpetrators and their cohorts as well as having to contend with risks associated with the stigma and shame related to SGBC – the risks unfortunately may come from their family, resulting in them being abandoned by their spouse, family and community. The OTP collaborates with the Victims and Witnesses to ensure that special measures are put in place to protect the emotional and mental well-being of witnesses, as well as their physical protection.

At the ICC, special measures include:

- closed session/in-camera testimony;
- redacting the name of a person and any identifying information from the public records of the Chamber;
- image/voice alteration;
- use of screens;
- presence of an accompanying support person

We must pool our efforts and work jointly to send an unequivocal, firm, and consistent message that humanity stands united in its belief that sexual and gender-based crimes are serious egregious crimes, which will not be tolerated by the international community and that perpetrators will be held accountable. Only with collective and unified action can we truly make a difference in preventing or punishing the commission of crimes, as well as give justice to survivors. Therefore the issue of cooperation is crucial to the work of the OTP.

Under the RS, States have a duty to cooperate with the Court in the context of its investigations and prosecutions. Indeed, cooperation with State institutions including national judicial and law enforcement systems is vital to the success of the ICC and the RS system of international criminal justice as a whole. Also of importance is cooperation with local and international non-governmental organizations. Lack of cooperation is one of the challenges mentioned in the SGBC Policy. To overcome this challenge, the OTP heavily engages with states, IGO, NGOs and local and international initiatives which respond to sexual and gender-based crimes.

The Office also encourages and supports national efforts fighting to end impunity enjoyed by perpetrators and bring justice to victims, including by sharing best practices and lessons learned, and information, where appropriate. The Office will seek to support and strengthen cooperation with civil society actors particularly those with experience in documenting SGBC and working with victims. It will optimize available means and opportunities for preserving evidence at the early stage, as appropriate – e.g. through increased interaction with first responders.

While the ICC is a key pillar of the emerging international criminal justice system, ending impunity for sexual and gender-based crimes requires collective action and resolve. In particular, States Parties must make every effort to effectively investigate and prosecute crimes within the Court's jurisdiction. Non State Parties also have a responsibility to take effective action to prevent the

commission of crimes as well as conduct investigations and prosecution where they are committed. It is the hope of the Office of the Prosecutor that the policy paper will serve as a guide for States and other relevant actors in their respective work to combat sexual and gender-based crimes. The policy may further assist national jurisdictions as a useful reference document in domestic their efforts to adopt or amend domestic legislation and refine their practices.

Distinguished participants, as stated at the beginning of my presentation, justice mean different things to different people. Notwithstanding the fact that victims of crime cannot be fully restored to the position they were in prior to the victimization and, cognizant of the consequences of atrocities suffered by victims, the Rome Statute does not only set-up a retributive justice system. Article 75 establishes “principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision, the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of victims and will state the principles on which it is acting”.

It is crucial for victims to feel that the violation against them has been recognized and that needs resulting from such violations have been considered and addressed to the extent possible in a just manner. Reparation orders are designed to repair or make amends for the damage to the victims caused by the crime(s) and signify: (1) an acknowledgment of the harm done and (2) help to alleviate their suffering. Without adequate reparations, a conviction means very little or nothing at all to victims of the horrific crimes investigated and prosecuted by the Court. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund which is established under the Statute by the Assembly of States Parties. The Trust Fund also has an assistance mandate, the exercise of which does not depend on conviction.

The law is a powerful tool not only to highlight the brutality and barbaric nature of SGBC, but it also gives a voice to the far too often voiceless victims, and to holds perpetrators accountable. Survivors deserve justice for the victimisation they suffer. I am confident that in time, through its deterrent and disciplining effect, the law will help to change behaviour and establish new norms of acceptable conduct.

Thank you for listening!