



Cour
Pénale
Internationale

International
Criminal
Court



LE BUREAU DU
PROCUREUR
THE OFFICE OF
THE PROSECUTOR

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POLICY ON GENDER-BASED CRIMES

Crimes involving sexual, reproductive
and other gender-based violence

December 2023

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PREFACE

In assuming my role at the International Criminal Court in 2021, I pledged to strengthen my Office's commitment to seek accountability for gender-based crimes wherever they may arise in our cases. From securing new convictions, revising our internal tools and oversight mechanisms, and strengthening our ability to conduct a gender analysis at all stages of our work, we have made substantial progress in our fight against impunity. I have noted, however, that we must strive to do better for survivors of these crimes. They trust us with some of their deepest, most painful memories. We have a moral obligation to take their claims for justice forward, building their accounts into the strongest possible cases.

Thus far, the Office has been guided by a Policy on Sexual and Gender-based Crimes that was issued in 2014. In 2022, to reflect our deepening knowledge about these forms of violence and their impacts, our active learning from national systems and civil society partners, and our new commitment to taking an intersectional, survivor-centred approach to this work, we undertook a root and branch review and reconstruction of our own guidance.

I am indebted to Deputy Prosecutor Nazhat Shameem Khan and my Special Adviser on Sexual Violence in Conflict, Professor Kim Thuy Seelinger, for leading this Policy development process. With them, I thank the dozens of experts from across the international justice ecosystem who shared their time and wisdom with us. We have endeavoured to harness their wisdom in this document, along with lessons learned from our own experiences here at the International Criminal Court.

The resulting Policy is a clear articulation of the concepts, principles, and practical considerations that ground my Office's work on gender-based crimes, including crimes of sexual, reproductive, and other forms of gender-based violence. I am pleased not only to provide this critical guidance to my Office, but also to offer it to others who join us in seeking justice for survivors across the world.

KARIM A. A. KHAN KC

Prosecutor, International Criminal Court

December 2023

When Prosecutor Karim Khan asked whether I might help update the Office’s 2014 Policy on Sexual and Gender-based Crimes, I agreed—primarily because I imagined this would require only a few modest edits to reflect new jurisprudence and recent guidance on survivor-centred interviewing. I was mistaken.

The rich and thoughtful 2014 Policy provided tremendous basis and inspiration for this review. Then, in gathering both internal and external critique and advice, it became clear that this invitation to revise presented an opportunity to dig deep—to clarify core concepts and centre the *values* that drive the Office’s work on these crimes, then illuminate the application of these values in our day-to-day practice.

The revision also triggered the need to think holistically across the Office’s broader work, harmonising this Policy with the 2022 Policy on the Crime of Gender Persecution, the contemporaneous revision of the 2016 Children’s Policy and forthcoming guidance on other key themes including Slavery Crimes.

In addition, the review process was also an opportunity to support the Office’s ever-deepening complementarity efforts by contributing to the cross-pollination of law and practice with our colleagues in national courts.

This Policy was written with implementation in mind; it is also a living document that will itself be reviewed and revised in time. The ink is dry but work remains. For now, I join the Prosecutor in celebrating the Policy’s issuance and thanking all those who made it possible.

KIM THUY SEELINGER

ICC Prosecutor’s Special Adviser
on Sexual Violence in Conflict, 2021-2023

December 2023

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I. EXECUTIVE SUMMARY

Often considered a violence “as old as war itself”, gender-based crimes (“GBC”)—or crimes involving acts of sexual, reproductive and other gender-based violence—have occurred for centuries in the context of armed conflict, attacks on civilian populations, and genocide. From World War II and its “comfort women”, persecution of LGBTQI+ persons, and “medical” experimentation on reproductive organs to more recent accounts of widespread rape, sexualised torture, and forced imposition of contraception of prisoners and enslaved persons, GBC have affected people of all ages, genders, and circumstances.

Justice has been elusive. While ground-breaking convictions have emerged from international, hybrid, and national courts and tribunals around the world, the vast majority of incidents of GBC evade accountability. This is due to myriad factors including discrimination, stigma, underreporting, and survivors’ reservations about law enforcement and judicial systems. Accountability can also be inhibited by inconsistent commitment or ability of justice actors to treat GBC with the same rigour and seriousness as other crimes.

The International Criminal Court (“ICC”) has a key role in fighting impunity for these crimes. Article 54 of the Rome Statute mandates the Office of the Prosecutor (“the Office”) to give particular consideration to sexual violence, gender violence and violence against children in its investigations and prosecutions. These crimes are thus a strategic priority for the Office.

To fulfil this mandate, the Office has developed this Policy on Gender-based Crimes (“Policy”), which focuses on acts of sexual violence, reproductive violence and other forms of gender-based violence that constitute crimes under the Rome Statute. It supersedes the original 2014 Policy and provides revised guidance to the Office with respect to GBC through all stages of its work. The Policy has the following objectives:

- i. to affirm the Prosecutor’s commitment to the rigorous investigation and prosecution of GBC, to help remedy the historical neglect of these crimes;
- ii. to clarify key concepts and articulate fundamental principles underlying the Office’s work on GBC, mainstreaming a gender perspective and gender competence throughout the Office;

- iii. to integrate a survivor-centred and trauma-informed approach in the Office's work with victims and witnesses exposed to GBC and other atrocity crimes;
- iv. to provide clarity and broad direction as to the interpretation and application of the Statute, the Elements of Crimes and the Rules, at all stages of the Office's work, so as to ensure the effective investigation and prosecution of GBC throughout;
- v. to contribute to the development of international jurisprudence and best practice regarding accountability for GBC at the ICC and beyond.

The Policy was developed through a richly consultative process, with multiple rounds of written input and direct discussion—with internal Office staff as well as external experts from across the globe. It is organised to maximise its implementation by the Office, while also optimising relevance and accessibility to colleagues working in other parts of the international criminal justice ecosystem. It consists of a general introduction, presentation of key terms and concepts, an articulation of fundamental principles grounding the Office's work on GBC and a discussion of the Office's practical application of these principles at every stage.

While the term "sexual and gender-based crimes" ("SGBC") reflected conceptualisation of these crimes in 2014 when the first Policy was launched, the Office now refers to "GBC". The term "GBC" encompasses crimes involving sexual, reproductive, and other gender-based violence, better reflecting current understanding about these forms of harm and how they relate to each other. This conceptual approach also reflects recent guidance from the Court's case law, developments in international and national law and input from an extensive consultation process.

In principle, the Office takes the approach that essentially all crimes under the Rome Statute can involve forms of sexual, reproductive or other gender-based violence, regardless of whether they have traditionally been seen as such. The Office must consider this possibility in all cases. In doing so, the Office takes care in its investigations, analysis, charging, and overall strategy to account for different crimes' distinct underlying harms and protected values, including with respect to gender. Only after rigorous gender-competent investigation and careful intersectional analysis can the gendered nature, meaning, and impact of conduct in a case be determined. How acts of sexual, reproductive and other gender-based violence are ultimately characterised and charged in a case is a separate step; this will be determined in light of all relevant factors.



Gender-based crimes are hugely underreported. Survivors are often reluctant to speak out about their experiences for many reasons, including stigma, fear of retaliation and rejection, or unfamiliarity with the criminal process. And yet many hunger for justice. We must do everything we can to create a safe space for survivors to come forward to teach us what they know, what they have experienced. Then we must take this forward to court, building the strongest cases possible. This is our charge. It is our moral obligation.

PROSECUTOR KARIM A.A. KHAN KC

This Policy presents ten principles underlying the Office’s work on GBC. These principles relate to: taking a survivor-centred approach; taking a trauma-informed approach; adopting an intersectional perspective; mainstreaming gender competence; performing due diligence regarding GBC at all stages of Office work; acknowledging and overcoming myths, stereotypes and misconceptions regarding these crimes; properly contextualising GBC; seeking full and faithful characterisation of relevant acts under the Rome Statute; taking an inclusive approach to relationships within and beyond the International Criminal Court; and committing to implementing, monitoring, and evaluating this Policy. Guided by these principles, the Office deepens not only its understanding of GBC and how to address them under the Rome Statute but also its overall sophistication and comfort with the complexity of these crimes and their connections to others. A strengthened approach to GBC benefits the Office’s work overall.

The Policy also lays out, in broad terms, how these principles apply through all operational stages of the Office’s work, from preliminary examination, through sentencing and reparations. The Office intends to learn from lessons of the past. It is keenly aware that the foundations of successful GBC prosecutions cannot be built midway through a criminal trial. Rather, they must be laid carefully and deliberately— brick by brick—right from the start. In addressing the different phases, this Policy follows a holistic, methodological approach to GBC. While the realities of criminal prosecutions are not always easy to predict, the Office is committed to fulfil its mandate with respect to GBC at every stage.

It is the Prosecutor's hope that this Policy will not only strengthen the Office's overall approach to survivor-centred, trauma-informed investigation and prosecution of GBC but, in so doing, surface the ways these acts are connected to broader dynamics of violence in armed conflict, attacks on civilian populations, genocide and aggression. This is the more complete truth victims and survivors carry with them; it is incumbent on the Office to see it. Similarly, the Prosecutor hopes this revised Policy will serve as a useful resource throughout the accountability ecosystem. With more thoughtful, rigorous, systematic address of GBC, the Office and other national actors, investigative mechanisms, survivor groups and civil society organisations can together strengthen survivors' access to justice wherever they stand.

II. INTRODUCTION

a. The issue

1. Often considered a violence “as old as war itself”, gender-based crimes (“GBC”) have occurred for centuries in the context of armed conflict, attacks on civilian populations, and genocide.¹ While historians have noted trials for wartime rape dating back centuries, modern memory usually casts back to World War II and its “comfort women”, persecution of LGBTQI+ persons, and “medical” experimentation on reproductive organs. Towards the other end of the century, the world would hear of mass forced marriage, sexualised torture in detention, and denial of girls’ education.

2. As with other atrocity crimes, GBC can have serious negative effects at multiple levels. At the individual level, GBC can result in adverse physical and psychological effects, ranging from sexually transmitted infections and unwanted or unsafe pregnancies to depression, post-traumatic stress disorder (“PTSD”), and suicidality. GBC can also cause devastating social consequences. Survivors² may suffer stigmatisation, victim-blaming, or ostracism by family and/or community, putting them at greater risk of poverty, isolation and further exposure to violence.³ Communities themselves are impacted by GBC, which are often committed in the context of broader violence and can lead to collective terror, insecurity, and displacement. In part due to these severe and multifaceted consequences, GBC are a significant part of the repertoire of violence committed in the context of armed conflict, attacks on civilian populations, and in campaigns of genocide. Victims and survivors of GBC are entitled to justice.

3. Justice has come in fits and starts. Like several national courts before them, the Nuremberg and Tokyo Tribunals considered evidence of GBC in the broader context of atrocities, with the latter entering convictions for rape euphemised as “inhumane treatment”, “mistreatment” and a “failure to respect family [honour]

¹ For this purpose, the Office understands “violence” broadly to include intentional conduct causing harm, both physical and non-physical.

² The Court uses the word “victim” when referencing the language of its legal framework. However, consistent with the survivor-centred approach, the Office takes the position that it is for an individual to decide if they prefer to be identified as a “victim”, “survivor”, or both. This Policy uses both terms with some flexibility, generally using “victim” (at times with “witness”) when referring to the Rome Statute or ICC jurisprudence or procedures, and “survivor” when focusing more on the experience or needs of the individual.

³ GBViE; see [Helena Judgment](#).

and rights”.⁴ While aspects of the normative framework were underway, efforts to label GBC clearly as GBC took longer, with several crimes first being classified as violations of family honour, rather than as violations of individual rights.⁵ In the decades since World War II, international, hybrid, and national tribunals have encountered an array of GBC committed against both adults and children, including rape, forced marriage, forced nudity, forced pregnancy, forced use of contraception and forced abortion, gender persecution and sexual slavery.⁶ Several important convictions have emerged from courts around the world.⁷ And yet, despite this encouraging progress, the vast majority of incidents of GBC committed in violation of international humanitarian law and international criminal law elude accountability.

4. The International Criminal Court (“ICC”) has a key role to play in fighting impunity for these crimes. Article 54 of the Rome Statute mandates that the Office of the Prosecutor (“Office”) give particular consideration to sexual violence, gender violence and violence against children in its investigations and prosecutions. These crimes are thus a strategic priority for the Office.

b. Policy objectives and audience

5. Per its mandate under the Rome Statute, the Office has developed this Policy to guide its approach to GBC through all stages of work, from preliminary examination and investigations through to sentencing and reparations in the event of final conviction. The Policy was drafted with the following objectives:

- i. to affirm the Prosecutor’s commitment to the consistent and rigorous investigation and prosecution of GBC, to help remedy the historical neglect of these crimes;

⁴ In the immediate wake of World War II, the United Nations War Crimes Commission guided a number of national jurisdictions in their prosecution of Axis crimes from 1943 to 1948, including trials for rape and forced prostitution. The Nuremberg and Tokyo tribunals took up post-war prosecutions between 1945 and 1946. See e.g., [Plesch et al.](#) and [Seelinger; Askin 2003](#), p. 302.

⁵ See e.g., article 46, [Hague Convention of 1907](#) (“family honour and rights”); article 3, [First Geneva Convention](#) (“outrages against personal dignity”).

⁶ For example, [Gacumbitsi TJ](#); [Nyiramasuhuko et al. TJ](#); [Delalić et al. TJ](#); [Krstić TJ](#); [Kvočka et al. TJ](#); [Ntaganda TJ](#); [Brima et al. AJ](#); [Case 002/02 TJ](#); [Akayesu TJ](#); [Ongwen TJ](#); [Helena Judgment](#); [Al Hassan CD](#); [Abd-Al-Rahman CD](#); [Habré Judgment](#); [Maya Achi Judgment](#).

⁷ For example, [Furundžija TJ](#); [Tadić TJ](#); [Kunarac et al TJ](#); [Akayesu TJ](#); [Case 002/02 AJ](#); [Taylor TJ](#); [Ntaganda TJ](#); [Ongwen TJ](#); [Habré Judgment](#); [Sepur Zarco Judgment](#); [Eyad A. Judgment](#); [Kavumu Judgment](#).

- ii. to clarify key concepts and articulate fundamental principles underlying the Office's work on GBC, mainstreaming gender perspective and gender competence throughout the Office;
- iii. to integrate a survivor-centred and trauma-informed approach in the Office's work with victims and witnesses exposed to GBC and other atrocity crimes;
- iv. to provide clarity and direction as to the interpretation and application of the Statute, the Elements of Crimes and the Rules, at all stages of the Office's work, so as to ensure the effective investigation and prosecution of GBC throughout;
- v. to contribute to the development of international jurisprudence and best practice regarding accountability for GBC at the ICC and beyond.

6. The Policy presents the Office's understanding of its mandate *vis-à-vis* GBC and guidance on how its staff⁸ will interpret this mandate. It is structured to optimize its implementation. After presenting the Office's interpretation of the Rome Statute with respect to GBC, it articulates fundamental principles underlying the Office's approach to GBC investigation and prosecution and provides guidance as to how these principles inform Office practice.

7. The Office has produced other guidance at both the policy and operational level relevant to the investigation and prosecution of GBC, including the Policy on the Crime of Gender Persecution (2022), the Guidelines for Civil Society Organisations (2022), the Policy on Children (2023), the forthcoming Policy on Complementarity and Cooperation, and associated internal operational guidance.⁹ Additional thematic guidance is anticipated in the coming years. This Policy integrates and references the Office's other policy documents, to support the proper contextualisation of crimes and to ensure a coherent and holistic approach to its work generally. Likewise, this Policy is being integrated in the implementation of the Office's existing and future policies and operational guidance. Staff are expected to follow this internal operational guidance in their work. This 2023 Policy on Gender-based Crimes is the result of a comprehensive revision of the 2014 Policy. It clarifies key concepts, establishes fundamental principles and reflects updated knowledge and practice in this field. This 2023

⁸ For the purposes of this Policy, references to "staff" include staff members, consultants and individual contractors.

⁹ [Gender Persecution Policy](#); [CAC Policy](#); [CSO Guidelines](#).

Policy thus supersedes the original 2014 version. Any references to the prior document should be read in alignment with this revision.

8. Finally, the Policy reflects the Office's awareness that the ICC is part of a global ecosystem of accountability.¹⁰ It has thus been revised to maximise its utility to national actors, civil society, and other investigative mechanisms pursuing accountability for GBC alongside the ICC. It summarises key procedural or analytical approaches where possible, so that others may adapt these general approaches to local or institutional contexts. The Policy also refers to relevant jurisprudence and practice emerging in national and regional systems around the world, which can in turn inform the Office's awareness of context-specific considerations related to GBC and contribute to cross-pollination of promising prosecutorial practice.

c. History and methods

9. In 2014, the Office issued its first Policy Paper on Sexual and Gender-based Crimes ("SGBC"). A critical and ground-breaking document upon its issuance, the SGBC Policy eventually required review and renewal for three primary reasons. First, in the subsequent years, new jurisprudence, practice and institutional awareness of survivor-centred, trauma-informed approaches to GBC emerged within and beyond the Office. Second, it was important to address the Office's challenges in the investigation and prosecution of GBC, including as noted in the 2020 *Independent Expert Review of the International Criminal Court and the Rome Statute System*.¹¹ Third, the Policy required harmonisation with new and emerging guidance on the Office's policy framework, such as the 2022 Policy on the Crime of Gender Persecution, the parallel revision of the Policy on Children in 2023 and plans to release a Policy on Slavery Crimes and a Policy on Complementarity and Cooperation in 2024.

10. In January 2023, the Prosecutor announced his intention to review and update the 2014 Policy on Sexual and Gender-based Crimes.

11. The Office undertook a series of review activities starting in early 2023 and ending with a launch of the Policy in December 2023. The process was led by the then-Special Adviser on Sexual Violence in Conflict, Prof. Kim Thuy Seelinger, with direction from Deputy Prosecutor Nazhat Shameem Khan and support from

¹⁰ See e.g., [Habré Judgment](#); [Kavumu Judgment](#); [Victims' Accreditation Judgment](#); [Macrocase 02](#); [Macrocase 05](#); [Macrocase 11](#).

¹¹ [2020 Independent Expert Review](#).

key staff, the Office's Gender and Children Unit ("GCU") and an Advisory Group consisting of Office and external colleagues.¹²

12. From January through March 2023, the process began with desk review of the 2014 Policy on Sexual and Gender-based Crimes, the 2020 Independent Expert Review, and commentary on the Office's performance *vis à vis* GBC investigations and prosecutions, by key external experts in peer reviewed journals and online outlets.¹³ From April through June 2023, the review team gathered additional feedback regarding Policy content and implementation from within the Office.

13. In mid-2023, 25 external experts from 15 countries submitted comment in response to the Prosecutor's May 2023 Call for Submissions. In July 2023, the Office further held consultations with 81 experts from 25 countries. To ensure deeper engagement with experts working in national legal systems throughout Latin America, Central and West Africa, and the Middle East in particular, the Office held three additional consultations in Spanish, French, and Arabic, respectively. Thirty three experts from 13 countries attended these consultations. In total, the GBC Policy review process benefited from inputs from 128 external experts from 40 countries. The Office also consulted with colleagues at the International, Impartial and Independent Mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011 ("IIM") and the Independent Investigative Mechanism for Myanmar ("IIMM") to gather their valuable insights.

14. A core writing team within the Office analysed internal and external inputs to identify recurrent themes, key lessons learned and revision priorities. The team also consulted with relevant Special Advisers, Advisory Group members, and OTP colleagues to ensure harmonisation with other relevant Office Policies and guidance documents. The core team produced drafts for review from September through October 2023. The Prosecutor and Deputy Prosecutors reviewed and approved the final draft in October 2023. The Policy was launched in English and French at the Assembly of States Parties in New York City, December 2023. Translation into other languages was anticipated in due course.

¹² Additional Special Advisers contributed key support as relevant, including the Special Adviser for Crimes Against and Affecting Children, Véronique Aubert, the Special Adviser on Gender Persecution, Prof. Lisa Davis and the Special Adviser on Slavery Crimes, Prof. Patricia Viseur Sellers. Logistical support was provided by the Center for Human Rights, Gender and Migration at the Institute for Public Health at Washington University in St. Louis ("CHRGM").

¹³ [2014 SGBC Policy; 2020 Independent Expert Review.](#)

III. KEY TERMS AND CONCEPTS

15. Generally speaking, this Policy defines terms in line with the Rome Statute and the Office’s Policy on the Crime of Gender Persecution (2022).¹⁴ Key terms include:

a. Gender

16. Under article 7(3) of the Rome Statute, “gender refers to the two sexes, male and female, within the context of society.” This includes sex characteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviours, activities and attributes.

17. As a social construct, gender varies from society to society and even within a single society. It can change over time, or due to events that can disrupt gender roles such as displacement, natural disaster and armed conflict. This understanding of gender accords with article 21 of the Statute, which requires alignment with the norms of international law.

18. Article 7(3) of the Rome Statute also requires an understanding of the concept “within the context of society”, referring to social constructs and criteria used to define gender. These include constructs about sexual orientation, gender identity and gender expression.

19. “Gender” and “sex” are closely related concepts that are tethered together. Where “gender” refers to social constructs and criteria about roles, expressions and behaviours used to define maleness and femaleness in a given context, “sex” refers to an individual’s biological or physiological characteristics.

¹⁴ These definitions are also informed by the [2014 SGBC Policy](#). Inspired by the [Gender Persecution Policy](#), this Policy notes that “men and women” includes some LGBTQI+ individuals, while other, non-binary LGBTQI+ persons may not identify as either. Individuals of all sexual orientations, gender expressions and gender identities are included in this Policy and the work of the Office.

b. Gender perspective

20. “Gender perspective” refers to the understanding of differences in status, power, roles, and needs between men and women, including/and LGBTQI+ persons, and how gender inequality and discrimination on the basis of sex, gender identity or sexual orientation may impact people’s opportunities, interactions, and experiences in a given context. This understanding includes an awareness of how gender-related norms can vary within and across contexts.

21. The Office of the Prosecutor aims to integrate a gender perspective consistently into all aspects of its work, noting that all crimes under the Rome Statute are potentially gendered in motivation, form, meaning, or impact. Adopting a gender perspective also enhances the Office’s ability to interact sensitively and effectively with individuals from affected communities.

22. A gender perspective is developed, in part, through conducting an intersectional, gender-competent analysis from the preliminary examination stage and then throughout the Office’s work on a given Situation.

c. Gender-competent analysis

23. “Gender-competent analysis” is part of the systematic, intersectional analytical process that asks what has happened, against whom, by whom, and why, in light of relevant intersecting factors such as gender, age, nationality and ethnicity. It also accounts for different individuals’ relationships to structural oppression and exacerbated violence in a given context.

24. This analysis increases awareness of differences in power, roles, and needs between people of different genders, and the way gender may contribute to people’s vulnerability and their experience of harm. It also helps illuminate how gender norms may contribute to societal institutions that enable, contribute to, or fail to prevent or punish GBC.

25. In the context of the Office’s work, this involves a consideration of whether, and in what ways, acts to be charged as Rome Statute crimes are related to gender norms and inequalities in a given context. It also requires an intersectional approach to determine the investigative and charging strategy and to understand the elements of the crimes and the relevant modes of liability.

Further, a gender-competent analysis requires understanding the proper context of GBC amid other charged crimes and other relevant criminal conduct. A gender-competent analysis of GBC will enable the Office to better understand *all* the crimes under consideration, as well as the full impact of the harms to individuals and communities in a particular society. This should also inform the Office’s work on sentencing and reparations.

26. The analysis is guided by the Office’s internal tools. Where appropriate, it may also be informed by contextual and thematic expertise from different disciplines and backgrounds. The gender-competent analysis should be an iterative process that can extend throughout the different phases of a situation or case.

d. Gender-based violence

27. Gender-based violence is an umbrella term for any harmful act that is perpetrated based on socially ascribed differences based on gender, usually because of a person’s actual or perceived gender, sex, or sexual orientation.

28. Gender-based violence includes acts that inflict physical, sexual or mental harm or suffering, threats of such actions, coercion, and other deprivations of liberty. This conduct can occur in public or in private. It violates a person’s human rights. Rooted in structural gender inequalities and power imbalances, gender-based violence is both a symptom of gender inequity and a tool to reinforce it.¹⁵

29. Gender-based violence includes sexual violence and reproductive violence.

30. Multiple crimes under articles 6, 7, or 8 of the Rome Statute involve acts of gender-based violence. These crimes may be explicitly gendered in form, or they may be facially neutral crimes that are nonetheless motivated or targeted by gender or that are enacted in gender-disparate ways.¹⁶ Gender-based crimes or GBC may entail physical or non-physical harm. They can also involve acts of sexual or reproductive violence. These crimes can affect any individual. They

¹⁵ Adapted from [IASC GBV 2015 Guidelines](#).

¹⁶ Deprivations of fundamental human rights that are “non-gendered” on the surface (e.g., denial of education) and yet driven by gender discrimination may constitute the crime against humanity of gender persecution. The [Gender Persecution Policy](#) provides guidance on how to conceptualise, investigate and prosecute this crime.

are sometimes specifically motivated by a person’s actual or perceived sexual orientation, gender identity and expression, or sex characteristics.

e. Sexual violence

31. Sexual violence is a form of gender-based violence that involves the commission or attempted commission of sexual acts.¹⁷

32. An act can be “sexual” even without physical contact, such as psychological violence that arises from threats of rape or genital mutilation. An act may be sexual regardless of whether sexual gratification was part of the intent or result.¹⁸ Finally, sexual violence can be committed by and against any person regardless of sex or gender; it may also involve persons of the same sex.¹⁹

33. It should be noted that there is no single understanding of the term “sexual”, nor should one be imposed. Rather, the sexual nature and gravity of an act is determined by myriad factors such as age, gender, sex characteristics, culture, religion, historical precedents, ethnicity and indigenous status.²⁰ Survivors may have diverse perspectives as to what constitutes an “act of sexual nature”.²¹ Ultimately, as with other crimes, understanding acts of a sexual nature

¹⁷ The relationship to gender may be obvious or more attenuated, depending on the individual facts and circumstances and the context in which it arises.

¹⁸ [Hague Principles on Sexual Violence](#), p. 14.

¹⁹ [Hague Principles on Sexual Violence](#), p. 75.

²⁰ [Hague Principles on Sexual Violence](#), pp. 14-15; [The Gambia TRRC Report](#), para. 15. The following indicia suggests that an act is sexual in nature, but such indicia are not necessary to such a finding, nor is this list exhaustive:

1. the act involved exposing a “sexual body part” or physical contact with such a body part, including over clothing;
2. the act was intended to be sexual by the perpetrator or was perceived as such by the affected person or their community as being sexual in nature;
3. the perpetrator or a third party derived sexual gratification from the act, or intended to do so;
4. the act, while not necessarily sexual in itself, was intended to impact: (a) the affected person’s sexual autonomy or sexual integrity, including their capacity to engage in sexual activity, feel sexual desire, or have intimate relationships; (b) the affected person’s sexual orientation or gender identity; or (c) the affected person’s reproductive capacity or reproductive autonomy;
5. sexual innuendos or language with implicit or explicit sexual connotations for the affected person, the community, or the perpetrator;
6. the use, interference, control, or degradation of fluids or tissue associated with sexual and reproductive capacity, including semen, vaginal fluids, menstrual blood, breast milk, or placenta.

²¹ [Hague Principles on Sexual Violence](#), p. 77.

requires an intersectional approach. Such an analysis can help discern whether an act was committed with sexual intent, had sexual impact or was perceived as sexual by affected persons.

34. Several crimes under the Rome Statute involve sexual violence, either by definition or by possibility. Certain crimes specifically include an “act of sexual nature” as part of their elements: sexual slavery;²² enforced prostitution;²³ and other forms of sexual violence.²⁴ For these crimes, the Office must establish the sexual nature of the act in question in order to carry its burden of proof. In addition, as discussed below,²⁵ many other crimes under the Rome Statute may also be expressed as, or involve, sexual acts.²⁶ The Office is thus conscious that many crimes under the Rome Statute may involve acts of a sexual nature and, as such, require appropriate inquiry.

f. Reproductive violence

35. Reproductive violence violates reproductive autonomy and/or it is directed at people on account of their actual or potential reproductive capacity, or perceptions thereof.²⁷

36. Attacks on reproductive autonomy violate the right of individuals to exercise agency with respect to decisions about their fertility, or whether, when and with whom to reproduce. This form of violence can also affect the individual’s actual ability to have children. As with other forms of gender-based violence, reproductive violence violates fundamental rights to dignity and bodily integrity. Reproductive violence can be committed against persons of any gender, age, or

²² Articles 7(1)(g)-2, 8(2)(b)(xxii)-2, 8(2)(e)(vi)-2, [Statute](#).

²³ Articles 7(1)(g)-3, 8(2)(b)(xxii)-3, 8(2)(e)(vi)-3, [Statute](#).

²⁴ Articles 7(1)(g)-6, 8(2)(b)(xxii)-6, 8(2)(e)(vi)-6, [Statute](#).

²⁵ See below Section IV.

²⁶ For example, sexual acts may occur in the course of causing serious bodily or mental harm to members of a group as genocide (article 6(b)), acts of torture (article 7(1)(f)), or forms of inhuman treatment (article 8(a)(2)(ii)).

²⁷ See generally, [Grey 2017](#), p. 906. This includes situations where a person is targeted for their lack of reproductive capacity (for example, elderly Yazidi women).

condition, including LGBTQI+ persons, children, and persons with disabilities. It can also be committed against a group, as through systematic measures enacted to control or prevent collective reproduction.

37. Multiple crimes within the Court's jurisdiction involve reproductive violence. Three are specifically enumerated in the Rome Statute: forced pregnancy as a crime against humanity and war crime (articles 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi)); enforced sterilization as a crime against humanity and war crime (articles 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi)); and genocide by imposing measures intended to prevent births within a national, ethnic, racial or religious group (article 6(d)). Other acts of reproductive violence are not explicitly named as such in the Statute and yet could be charged, as and where appropriate, under different provisions. These acts might include forced use of contraception, forced abortion, forced breastfeeding, denial of essential reproductive healthcare or physical violence aimed at reproductive organs.

g. LGBTQI+

38. The acronym LGBTQI+ refers to a diversity of sexual orientations, gender identities and expressions, and sex characteristics. Specifically, it stands for: lesbian, gay, bisexual, transgender, queer and intersex persons, with a plus sign to indicate the non-exhaustive nature of this list.²⁸

39. Like many others, the term is imperfect shorthand. It does not fully capture all the ways persons impacted by violence and discrimination based on sexual orientation and gender identity may see or refer to themselves.

²⁸ [Gender Persecution Policy](#), p. 3 (“Intersex” is an umbrella term used to describe a wide range of natural variations in sex characteristics.”) Individuals identifying as intersex may suffer discrimination due to the imposition of binary notions of male and female bodies. *See further* [UN Fact Sheet: Intersex](#).

h. Intersectionality

40. Intersectionality refers to the way distinct forms of discrimination can combine and compound to result in consequences that differ from those resulting from any one of the individual forms of discrimination.²⁹

41. An intersectional analysis, therefore, surfaces the way multiple systems or structures of oppression can accumulate to produce unique outcomes for those individuals or communities bearing multiple, overlapping identities or traits marked for discrimination. In the context of international criminal law, intersectionality describes how multiple aspects of a person's identity (for example, gender, sex characteristics, sexual orientation, religion, age, ethnicity or indigenous status) can render them particularly vulnerable to specific or overlapping systems of discrimination, oppression or violence. Similarly, a perpetrator's motives, conduct, and access to impunity can be understood as reflecting multiple, intersecting sources of power.

i. Conceptualising GBC

42. By "GBC", this Policy refers to crimes under the Rome Statute that involve acts of sexual violence, reproductive violence, and/or other forms of gender-based violence.³⁰ As a revision of the 2014 Policy on Sexual and Gender-based Crimes, the current Policy adjusts its title and use of the acronym for this category of crimes,³¹ while clarifying the Office's understanding of this group of crimes. Individual concepts and relationships are elaborated as follows.

²⁹ The concept of "intersectionality" was articulated in a 1977 statement from the Combahee River Collective and coined by Prof. Kimberle Crenshaw in 1989 when describing discrimination experienced by Black working-class women in the United States on the grounds of race, gender and class distinct from the discrimination experienced by white cis-women or Black cis-men of the same socio-economic status. The concept provides a framework to capture how multiple, compounding systems of exclusion and oppression drive discrimination, harm and violence in a given context. See e.g., [Crenshaw 1989](#), p. 139; [Crenshaw 1991](#), p. 1241. See also [UN Intersectionality Toolkit](#), pp. 8-9; [CEDAW General Recommendation 28](#), para. 18.

³⁰ The crime of gender persecution is a significant GBC, which the Office has addressed in detail through its separate Policy on the Crime of Gender Persecution ([Gender Persecution Policy](#)). These two Policies must be read together, along with the Office's other relevant Policies, and will continue to inform the Office's work.

³¹ See e.g., [UNHCR GBV Toolkit](#); [IIIM Gender Strategy](#), p. 4.

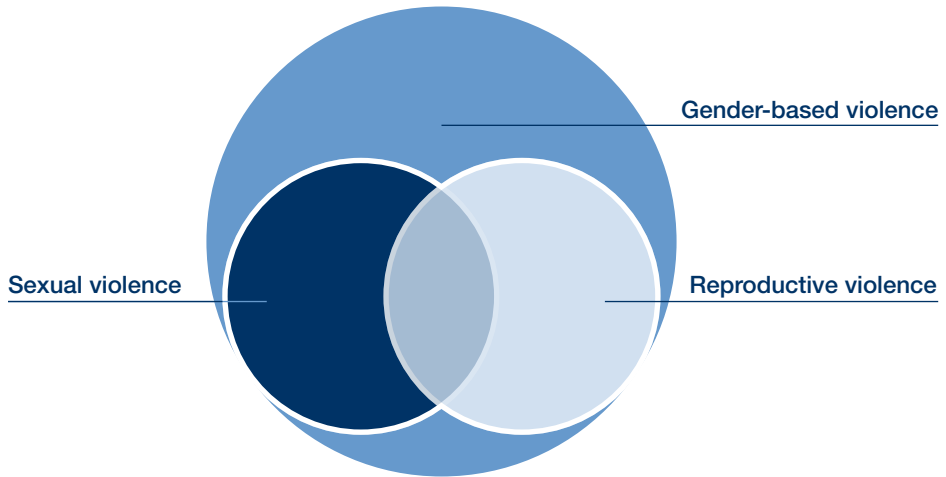


FIGURE 1

43. Crimes involving sexual violence and crimes involving reproductive violence are often closely related in terms of their motivations, forms or impacts. Clearly, rape can result in pregnancy or physical damage resulting in infertility or transmission of infection. Similarly, torture involving an individual's genitals can affect sexual and reproductive function. Forced marriage can involve violations of both sexual and reproductive autonomy. In this way, a single act may implicate different protected interests.³²

44. However, crimes involving sexual violence and crimes involving reproductive violence are not completely coterminous. For example, certain acts, such as forced nudity, may constitute sexual violence without necessarily also entailing reproductive violence. On the other hand, acts such as forced imposition of oral or injectable contraception may be a form of reproductive violence without necessarily constituting sexual violence. Further, as noted above, the sexual nature or meaning of an act may depend on context, community or even individual. It is thus critical to conduct an in-depth, intersectional analysis to understand and characterise these acts appropriately within a given context.

³² See e.g., [Ongwen AJ](#), paras. 1678-1679, 1682-1683; [Ongwen Appeal Hearing Transcript](#), 40:22-41:4.

45. Other GBC may involve gender-based violence that is neither sexual nor reproductive in nature. Further, as the Policy on the Crime of Gender Persecution sets out, gender persecution as a crime against humanity may be expressed through the regulation of clothing, the restriction of interactions between men and women³³ or denying girls education.³⁴

³³ [Gender Persecution Policy](#), para. 45; [Al Hassan CD](#), paras. 177, 689, 690, 697.

³⁴ [Gender Persecution Policy](#), para. 80.

IV. GBC AND THE ROME STATUTE

46. In 1998, the Rome Statute codified certain GBC—several for the first time in international criminal law—to ensure accountability for these serious crimes.³⁵ Yet, the Statute must be understood today in a manner consistent with its object and purpose³⁶ and with the Court’s obligation, under article 21(3) of the Statute, to apply and interpret law consistently with internationally recognised human rights.³⁷ Further, to fulfil its statutory obligations, the Office must actively avoid discrimination and bias in all its forms.³⁸ This requires the Office to clearly recognise multiple forms of GBC as they relate to different crimes under the Statute, while also remaining mindful that any person can be a victim or perpetrator.³⁹

47. Following this approach, the Office takes a broad view of the statutory provisions available to investigate and prosecute GBC. While some crimes have been expressly recognised as sexual and/or gender-based,⁴⁰ the Office’s responsibility to investigate and prosecute crimes involving sexual, reproductive, and other gender-based violence is not limited to them. All crimes under the

³⁵ La Haye, p. 186 (“[A] rather extensive list of gender crimes [...] was included in the definition of war crimes and of crimes against humanity in the Rome Statute, recognising for the first time in an international instrument that acts of sexual and gender violence are among the most serious crimes under international law.”)

³⁶ Preamble, [Statute](#); see e.g., [Katanga & Ngudjolo Admissibility AD](#), para. 79 (“The aim of the Rome Statute is ‘to put an end to impunity’ and to ensure that ‘the most serious crimes of concern to the international community as a whole must not go punished.’”).

³⁷ Article 21 of the Statute sets out the applicable law. Article 21(3), [Statute](#): The application and interpretation of law pursuant to this article must be consistent with internationally recognised human rights, and be without any adverse distinction founded on grounds such as gender as defined in article 7, paragraph 3, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status; [Afghanistan Judge Ibáñez Dis Op](#), para. 36 (“As internationally recognised human rights evolve in real time, article 21(3) imposes an obligation [...] to keep the text of the Statute up to date with our times. Article 21(3) makes the Statute a living instrument.”).

³⁸ See e.g., [Gender Persecution Policy](#), para. 7; [Afghanistan Judge Ibáñez Dis Op](#), para. 36 (“[...] The Court could not endorse a discriminatory definition of gender...”).

³⁹ See e.g., [Ongwen TJ](#), para. 166 (finding that a female LRA attacker raped a civilian woman, with a comb and stick used for cooking, while the victim’s husband was forced to watch); [Nyiramasuhuko et al. TJ](#), para. 6200 (finding Pauline Nyiramasuhuko guilty of rape); [Eyad A. Judgment](#); [Musa Azar Judgment](#).

⁴⁰ Crimes against humanity: article 7(1)(g), [Statute](#): rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; article 7(1)(h), [Statute](#): gender persecution; War crimes: articles 8(2)(b)(xxii), 8(2)(e)(vi), [Statute](#): rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence (also constituting a grave breach of the Geneva Conventions or a serious violation of article 3 common to the four Geneva Conventions respectively).

Statute (genocide, crimes against humanity, war crimes and aggression)⁴¹ may potentially involve gendered forms in their commission and/or result in gender-specific harms— whether acts of sexual and/or reproductive violence are present. Further, each crime nonetheless has distinct legal elements—and significantly, distinct underlying harms and protected values.⁴² These different harms and protected interests are not fungible—they should not be conflated.⁴³

48. Therefore, the following crimes under the Statute are potentially relevant to this Policy. They include a wide range of conduct relating to sexual violence, reproductive violence and other forms of gender-based violence.⁴⁴ Given the multiple forms these crimes take and their pervasive nature in varied contexts, the acts below only illustrate broad approaches. In individual cases, the Office relies on these broad approaches to identify various forms of gender-based violence under the Statute, based on the circumstances of the case.

a. Genocide (article 6, Statute)

49. Acts of sexual, reproductive and other gender-based violence can be relevant to all acts of genocide (*i.e.*, killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction, imposing measures intended to prevent births, forcibly transferring children to another group) against members of a group.⁴⁵ Gender and other intersecting factors are relevant to and can influence the crime of genocide leading it to manifest in complex and varied ways. Thus, the experiences of genocide victims and survivors include, but also go beyond, acts of rapes of women and killings of men.

50. For instance, male and female members of the group can be targeted for genocidal killings, sometimes differently. In many societies, men tend to occupy societal roles seen as threatening (heads of households, community, political and religious leaders), and women are subject to misogynistic and racist propaganda

⁴¹ The crime of aggression should also be subject to a gender-competent analysis. *See e.g.*, [Van Schaack 2010](#). It is noted that approaches taken in this Policy can also be relevant to the crime of aggression. Relevant aspects will be developed in due course.

⁴² [Ongwen AJ](#), paras. 1678-1679, 1682-1683.

⁴³ [Ongwen Appeal Hearing Transcript](#), 40:22-41:4.

⁴⁴ *See above* Section III.

⁴⁵ *See e.g.*, [Akayesu TJ](#), paras. 500-510.

about their allegedly dangerous sexuality.⁴⁶ Women may be devalued for not being able to bear children in a culture where their “worth” derives from their reproductive capacities, or alternately, they may be targeted *because* of their ability to perpetuate a group. The killing of the men can also have gendered consequences, as it is then difficult for women and girls to perpetuate their society and culture. Further, the loss of husbands, brothers and sons may lead to new circumstances for women and girls whose lives continue to be restricted by patriarchal norms.

51. Causing serious bodily and/or mental harm can be an act of genocide. These acts include rape and other forms of sexual violence, often with a sexualised interpretation of the victim’s ethnic, racial, religious or national identity,⁴⁷ and torture and other cruel, inhuman or degrading treatment.⁴⁸ Such acts also include forcing family members to commit these acts against each other, or to witness them. Moreover, acts of enslavement, by which perpetrators exercise their powers of ownership over the victims in gendered and sexualised ways, can contribute to the destruction of the individual and ultimately of the group.⁴⁹

52. Deliberately inflicting group conditions of life calculated to bring about the physical destruction of the targeted group can also constitute acts of genocide. These include conditions imposed with the intent to cause a “slow death”, such as imposing starvation or a subsistence diet, reducing medical services below the minimum, systematic expulsions from homes or their destruction, deportation or forcible transfer, and sexual violence including those rapes committed with the intent to infect the victim with HIV or other condition.⁵⁰

⁴⁶ [Nahimana TJ](#), para. 188 (“The presentation of Tutsi women as *femme fatales* focused particular attention on Tutsi women and the danger that they represented to the Hutu. This danger was explicitly associated with sexuality [and] made the sexual attack of Tutsi women a foreseeable consequence of the role attributed to them.”). This assessment may also be relevant to gender persecution.

⁴⁷ [Akayesu TJ](#), paras. 731-732 (“Sexual violence was a step in the process of destruction of the [T]utsi group—destruction of the spirit, of the will to live, and of life itself.”); [Semanza TJ](#), paras. 320-322.

⁴⁸ Article 6(b)(1)(fn. 3), [Elements of Crimes](#) (This conduct may include, but is not necessarily restricted to, acts of torture, rape, sexual violence or inhuman or degrading treatment).

⁴⁹ See [COI Syria 2016 Report](#), paras. 125-128 (ISIS fighters forced Yazidi women and girls to cook, clean, wash clothes and care for children, and forced Yazidi men and boys over puberty to undertake construction work, digging trenches, etc); see e.g., [Taha Al Judgment](#).

⁵⁰ Schabas, pp. 129-130 (mn. 25); [Akayesu TJ](#), para. 506; [Kayishema & Ruzindana TJ](#), para. 116; [Croatia v. Serbia ICJ Judgment](#), paras. 362-364. See [Gender Persecution Policy](#). These acts can be relevant to gender persecution.

53. Measures imposed to prevent births within the group, as acts of genocide, can be physical or psychological.⁵¹ They include sexual mutilation, forced sterilisation, forced birth control, forced separation based on gender, prohibition of marriages, deliberate threats of sexual violence and intentional infliction of trauma by violent acts intended to ensure the victim does not procreate.⁵² In patrilineal societies, the deliberate impregnation of a woman of the group by a member of another group can effectively exclude the child from membership in its mother's group.⁵³ Similarly, forcibly imposing a "marriage" with the intention to "breed out" a particular group can also amount to a genocidal act.⁵⁴ The forcible transfer of children, either by direct acts of transfer or by threats, can also be an act of genocide.⁵⁵ These children, when forcibly transferred, may experience the genocide differently, depending on their gender, age and other factors.

54. To establish the specific intent for the crime of genocide, underlying discriminatory attitudes, misogyny and prejudice influencing the perpetrators are relevant.⁵⁶ Similarly, given the critical role that women and girls have in reproduction within a society, evidence of intent to target them as members of a group is highly relevant.

b. Crimes against humanity (article 7, Statute)

55. All underlying acts relevant to crimes against humanity (article 7(1)) may include acts of sexual, reproductive or other forms of gender-based violence.⁵⁷ These acts are relevant to the entire gamut of crimes against humanity, including murder, extermination, persecution, imprisonment, enslavement, and enforced disappearance.

⁵¹ [Akayesu TJ](#), paras. 507-508.

⁵² [Akayesu TJ](#), para. 507; Grey 2022, p. 250 citing *Rodríguez Sanchez* Decision.

⁵³ [Akayesu TJ](#), para. 507.

⁵⁴ Grey 2022, p. 251.

⁵⁵ [Akayesu TJ](#), para. 509.

⁵⁶ See e.g., [Akayesu TJ](#), para. 732.

⁵⁷ Article 7(1) acts include murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, other forms of sexual violence, persecution, enforced disappearance, apartheid and other inhumane acts.

56. For instance, victims may be subject to sexual, reproductive and other gender-based violence while imprisoned or deprived of their liberty, and/or killed after being raped.⁵⁸ Regarding the crime of extermination, conditions of life intentionally imposed may include acts of gender-based violence, including those that target persons based on their sexual orientation or gender identity.⁵⁹ In addition, coercive circumstances leading to deportation or forcible transfer can include acts of sexual or reproductive violence and targeting victims based on their actual or perceived societal and community roles.⁶⁰ Similar acts also constitute relevant evidence for the contextual elements of crimes against humanity, *i.e.*, the policy to attack the civilian population, or aspects of the widespread and/or systematic attack.⁶¹

57. For the crime of enslavement, the exercise of powers of ownership can be shown by a range of factors, including control of sexuality and reproductive autonomy, assertions of exclusivity, forced breeding, forced labour, torture, cruel treatment and abuse.⁶² Since enslavement and sexual slavery (articles 7(1)(c) and 7(1)(g)-2, respectively) have the same element (exercise of ownership), this element should be interpreted in the same way for both crimes.⁶³ Within an overarching system of enslavement, the crime of enslavement may encompass the commission of several other article 7(1) acts such as forced marriage as an inhumane act, forced pregnancy and rape. Within this enslavement “umbrella”, children born into enslavement and/or held captive with their parents can be as much victims of the crime as their parents. Moreover, while trafficking or any other similar deprivation of liberty—when combined with the exercise of powers attaching to the right of ownership over a person—can describe relevant conduct

⁵⁸ Articles 7(1)(a) and (e), [Statute](#). See *e.g.*, [Ntaganda TJ](#), paras. 873-874.

⁵⁹ Article 7(1)(b), [Statute](#); when persons are killed for their sexual orientation or gender identity, charges of extermination and/or persecution may be relevant.

⁶⁰ Article 7(1)(d), [Statute](#); See *e.g.*, [Bangladesh article 15 Decision](#), paras. 85-89; 104-108.

⁶¹ See *e.g.*, [Ntaganda TJ](#), paras. 664, 671, 688-689, 694-695; [Gbagbo AJ Judge Ibáñez Dis Op](#), para. 394 (rapes can form the basis for the policy to attack the civilian population, without requiring a specific policy to rape).

⁶² [Ntaganda TJ](#), para. 952; [Katanga TJ](#), para. 976; [Katanga CD](#), para. 431; [Al Hassan CD](#), paras. 546-547; [Ongwen TJ](#), paras. 2711-2712; 2715-2716; [Kunarac et al. TJ](#), paras. 542-543; [Kunarac et al. AJ](#), paras. 119-124; [Sesay et al. TJ](#), paras. 160-161; [Taylor TJ](#), para. 420; [Sellers and Kestenbaum 2022](#), pp. 157-158, 163-168; Grey 2022, pp. 255-256; [Ongwen Prosecution Response to Amici](#), paras. 37-38.

⁶³ Element 1, article 7(1)(c) and Element 1, article 7(1)(g)-2, [Elements of Crimes](#). The same applies to Elements 1 of articles 8(2)(b)(xxii)-2 and 8(2)(e)(vi)-2; [Ongwen Prosecution Response to Amici](#), paras. 37-38.

for the crime of enslavement,⁶⁴ trafficking is not itself an international crime under the Statute.

58. The crime of torture can also be committed by way of acts of sexual, reproductive and other gender-based violence if they cause the victim(s) in the perpetrator's custody and/or control severe pain and suffering.⁶⁵ These acts can be used as a method of torture (or cruel treatment) and gender-competent approaches are necessary to properly understand the pain and suffering caused. If the evidence meets the materially distinct elements of the different crimes (for instance, rape and torture), they can be charged cumulatively and cumulative convictions entered accordingly.⁶⁶ Examples of reproductive violence as torture may include rape, electrocution of the genitals, or acts of violence targeting the womb of a pregnant woman.⁶⁷

59. Under article 7(1)(g), rape requires the perpetrator to invade the body of a person by conduct resulting in penetration (however slight) of any part of the victim's or perpetrator's body with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.⁶⁸ This invasion may be committed by force, threat of force or coercion (including by the fear of violence, duress, detention, psychological oppression or abuse of power), by taking advantage of a coercive environment or when committed against a person incapable of giving genuine consent.⁶⁹ Further, the crime of sexual slavery requires the perpetrator to exercise any or all of the powers attaching to the right of ownership over one or more persons, and to cause such person to engage in one or more acts of a sexual nature.⁷⁰ Moreover, each crime expressly set out in

⁶⁴ Article 7(2)(c), [Statute](#); articles 7(1)(c) (fn. 11), 7(1)(g)-2 (fn. 18), 8(2)(b)(xxii)-2 (fn. 53), 8(2)(e) (vi)-2 (fn. 66), [Elements of Crimes](#). See Sellers and Kestenbaum 2022, p. 182 (“[...] Under the Rome Statute, trafficking in persons is neither a separate crime nor an element of enslavement, but a mere description of enslavement conduct without legal force.”). The conduct of trafficking may also be charged as persecution.

⁶⁵ Article 7(1)(f), [Statute](#); Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions. See [Grey 2022](#), p. 260; [The Gambia TRRC Report](#), paras. 24-26 (a gender-sensitive approach is required to understand the level of pain and suffering in this context); [Niamey Guidelines](#), p. 15; [Furundžija TJ](#), paras. 163-164; [Eyad A. Judgment](#); [Almeida Judgment](#), p. 1664.

⁶⁶ [Chambers Practice Manual](#), para. 68 (allowing cumulative charges); [Ongwen AJ](#), paras. 1635-1636 (allowing cumulative convictions). *Contra Bemba CD*, paras. 71-72, 189, 197-205 (the approach disallowing cumulative charging for rape and torture and “subsuming” the elements of torture in rape is no longer followed).

⁶⁷ See e.g., [Grey 2022](#), p. 260.

⁶⁸ Article 7(1)(g)-1, Element 1, [Elements of Crimes](#). See generally, [Baričanić Judgment](#); [Damjanović Judgment](#); [Habré Judgment](#).

⁶⁹ Article 7(1)(g)-1, Element 2, [Elements of Crimes](#).

⁷⁰ Articles 7(1)(g)-2, Elements 1 and 2, [Elements of Crimes](#).

article 7(1)(g), in addition to its distinct legal elements, protects a separate interest. For instance, the crime of rape is the invasion of a sexual nature, of a person's body and the attack on their sexual autonomy.⁷¹ On the other hand, sexual slavery reduces a person to a servile status and deprives them of their liberty and sexual autonomy.⁷²

60. The crimes of forced pregnancy and enforced sterilization relate to reproductive autonomy as the primary protected interest.⁷³ As the Appeals Chamber has found, forced pregnancy—the unlawful confinement of a woman forcibly made pregnant—is distinct from other crimes like rape and imprisonment.⁷⁴ Accordingly, the rationale behind this crime safeguards reproductive rights, including the right to be or not to be pregnant and to autonomously determine the way in which the pregnancy is carried out.⁷⁵ Unlawfully confining the victim when pregnant affects a range of their sexual and reproductive rights, including access to health care services and to information to facilitate their decision-making on pregnancy, including abortion.⁷⁶ National laws on abortion are not relevant to interpret this international crime.⁷⁷

61. Relevant acts depriving the victim of biological reproductive capacity for the crime of enforced sterilization can include acts requiring physical and/or sexual contact and also those that do not: for instance, forcible castration, other forms of severe genital mutilation, injuries from rape and other forms of sexual violence intentionally inflicted to deprive a person of biological reproductive capacity, use of medication, and exposure to certain chemicals or radioactive substances.

⁷¹ [Ongwen AJ](#), para. 1678; article 7(1)(g)-1, [Statute](#); see [Akayesu TJ](#), para. 598 (“[Rape is] a physical invasion of a sexual nature, committed on a person in circumstances which are coercive..”)

⁷² [Ongwen AJ](#), para. 1678; article 7(1)(g)-2, [Statute](#).

⁷³ Articles 7(1)(g)-4 and 7(1)(g)-5, [Statute](#); [Ongwen AJ](#), paras. 1055 (“[Forced pregnancy] was criminalised separately from other crimes listed in article 7(1) of the Statute, such as rape and imprisonment... [It] intends to protect a woman's reproductive rights, including the right to be pregnant and to autonomously determine the way in which she carries out her pregnancy.”); (“[...] the main focus of this crime is to protect a woman's reproductive autonomy.”); 1063 (“[The] crime of forced pregnancy is grounded in the woman's right to personal and reproductive autonomy and the right to family”); [Women's Caucus Report](#), p. 31 (Recommendation 7), para. WC.4.4 (proposing to include “attacks on reproductive integrity such as forced pregnancy or forced sterilisation”).

⁷⁴ [Ongwen AJ](#), para. 1055. See article 7(1)(g)-4, [Elements of the Crimes](#). The crime of forced pregnancy under the Statute is committed when the perpetrator confines one or more women forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law.

⁷⁵ [Ongwen AJ](#), para. 1055.

⁷⁶ [Ongwen AJ](#), para. 1055; articles 12(1) and 16(1)(e), [CEDAW](#); article 12(1), [ICESCR](#); article 14(1)(b), [ACHPR Protocol](#); [Beijing Declaration](#), para. 96; [General Comment 22](#), paras. 5, 30.

⁷⁷ Article 7(2)(f), [Statute](#); [Ongwen AJ](#), paras. 1065-1066.

62. The residual category of “other forms of sexual violence” (article 7(1)(g)-6) includes a broad range of conduct which are of comparable gravity to the other crimes in article 7(1)(g) of the Statute.⁷⁸ Acts of sexual nature committed by force, or by threat of force or coercion, may include mutilating, beating, biting or otherwise causing injury to a sexual body part, kissing or licking someone’s body, touching someone in a sexual way, making sexual threats, castration/forced circumcision, forced masturbation, forced witnessing of acts of sexual nature, forced nudity in part or whole, inspecting someone’s sexual body parts, and/or their filming of these acts and their dissemination.⁷⁹ As noted above, an “act of sexual nature” must be seen in context. It may be informed by the survivor’s point of view.⁸⁰ For example, in some contexts, forced removal of a veil may be experienced as “forced nudity” and may qualify as a form of sexual violence.⁸¹ Several acts of sexual violence may overlap with acts of reproductive violence (for instance, acts causing harm to sexual organs, forced circumcision, forced abortion, forced marriage). Noting their distinct protected values and harm caused and depending on the specific circumstances, these acts may be reflected under articles 7(1)(g)-6, 7(1)(k) or other relevant statutory provision. Moreover, depending on the context of a society (for instance, when committed against members of an indigenous community), the harms may be felt at an individual and collective level.

63. Acts of sexual, reproductive and other gender-based violence are also relevant to the category of other inhumane acts (article 7(1)(k)). Article 7(1)(k) is an open provision, allowing different types of conduct to amount to other

⁷⁸ Article 7(1)(g)-6, [Statute](#) and [Elements of Crimes](#). For the war crimes of sexual violence, the conduct must be comparable to a grave breach of the Geneva Convention (article 8(2)(b)(xxii)-6), or to a serious violation of article 3 common to the four Geneva Conventions (article 8(2)(e)(vi)-6); [Ntaganda Jurisdiction AD](#), para. 49; [McDougall Report](#), paras. 21-22 (“Sexual violence covers both physical and psychological attacks directed at a person’s sexual characteristics, such as forcing a person to strip naked in public, mutilating a person’s genitals, or slicing off a woman’s breasts. [It] characterises situations in which two victims are forced to perform sexual acts on one another or to harm one another in a sexual manner. [It is] intended to inflict severe humiliation on the victims and when others are forced to watch acts of sexual violence, it is often intended to intimidate the larger community.”)

⁷⁹ [The Hague Principles on Sexual Violence](#), pp. 70-77.

⁸⁰ See above definition of “act of sexual nature”.

⁸¹ For example, [The Hague Principles on Sexual Violence](#), p. 45 (“having someone undress completely or partially, including the removal of headwear in cultures where this has a sexual implication, or requiring them to wear clothing with a sexual association” can be sexual violence); [SR Iran Report](#), paras. 15-16, 40-41.

inhumane acts as long as they satisfy its elements.⁸² Relevant international conventions and treaties may help determine if specific conduct is covered by this provision.⁸³ For instance, the crime of “other inhumane acts” can include the conduct of forced marriage.⁸⁴ Forced marriage describes a situation in which a person is compelled to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment.⁸⁵ It violates a person’s right to freely choose a spouse.⁸⁶ In addition to various potential sexual and reproductive harms,⁸⁷ it also causes a gendered harm by imposing socially constructed gendered expectations and roles attached to being a “wife” or “husband”.⁸⁸ The conduct of forced marriage disproportionately affects women and girls in its gravity and impact, yet it is often overlooked as a form of gender-based violence.⁸⁹ Forced marriage can occur in different contexts, and with victims of different identities.⁹⁰ As a persecutory act, forced marriage may be committed against multiple targeted groups on different discriminatory grounds.⁹¹

⁸² [Ongwen AJ](#), paras. 1020-1021; see paras. 1018: “[...] article 7(1)(k) of the Statute and the Elements of the Crimes require the following criteria to be met: (1) the act must be of a similar nature and gravity to any other acts referred to in article 7(1); (ii) the act must have resulted in great suffering, or serious injury to body or to mental or physical health; and (iii) the act must have been part of a widespread or systematic attack directed against any civilian population.”; 1019 “[the principle of *nullum crimen sine lege*] attach[es] to the entire category of ‘other inhumane acts’, and not to each sub-category thereof”; [Case 002/01 Closing Order AD](#), para. 378; [Case 002/01 TJ](#), paras. 436-438; [Case 002/02 AJ](#), paras. 1189-1195.

⁸³ [Ongwen AJ](#), para. 1021.

⁸⁴ “Forced marriage” is not a standalone crime under the Statute. When charged as relevant conduct as an other inhumane act under article 7(1)(k), the conviction entered is for the crime of other inhumane acts (forced marriage), and not for forced marriage itself.

⁸⁵ [Ongwen AJ](#), para. 1024; [Brima et al. AJ](#), para. 196; [Sesay et al. AJ](#), para. 735; [Al Hassan CD](#), para. 559; [Brima et al. TJ \(Judge Sebutinde Sep. Op.\)](#), para. 12; [Brima et al. TJ \(Judge Doherty Dis. Op.\)](#), para. 36.

⁸⁶ [Ongwen AJ](#), paras. 1023-1024. The conduct of forced marriage involves different types of harm; it violates the victim’s relational autonomy which leads to a host of other related human rights violations.

⁸⁷ For example, control of sexuality and reproductive autonomy, forced consummation of marriage. See e.g., [Case 002/02 AJ](#), para. 1223.

⁸⁸ [Ongwen AJ](#), para. 1024; [Ongwen TJ](#), paras. 2748-2750.

⁸⁹ [Al Hassan CD](#), paras. 177, 697 (acts of gender persecution may constitute, for example, the imposition of disproportionate sanctions against women or the imposition of sanctions involving gender-specific violence), 699-700 (rape was used as a gender-specific sanction committed against women held in detention and forced into so-called marriages); [Gender Persecution Policy](#), n. 51.

⁹⁰ See e.g., [Ongwen AJ](#), paras. 1025-1028; [Case 002/02 AJ](#), paras. 1183-1185 (victims of forced marriage include both males and females), 1223-1230 (forced sexual acts involving both male and female victims have been found to constitute sexual violence) 1444-1591 (finding that male victims who were forced to have sexual intercourse in the context of forced marriage experienced serious mental harm and a serious attack on human dignity).

⁹¹ [Gender Persecution Policy](#), paras. 50-51.

64. Other acts relevant to the category of other inhumane acts can include forced nudity (alone or when accompanied by public exposure), forced witnessing of sexual and reproductive violence,⁹² causing public humiliation and forced abortion.

65. The Statute also recognises the crime of persecution on *inter alia* grounds of gender.⁹³ Persecution often involves multiple grounds simultaneously, and thus an intersectional approach must be taken.⁹⁴ Gender persecution is committed against persons because of sex characteristics and/or because of the social constructs and criteria used to define gender.⁹⁵ Groups and individuals targeted for gender persecution include, for example women, girls, men, boys and LGBTQI+ persons, and subsets of these groups.⁹⁶

c. War crimes (article 8, Statute)

66. Like genocide and crimes against humanity, acts of sexual, reproductive and other gender-based violence are equally relevant to war crimes. The interpretations set out above (sub-sections IV(a) and IV(b)) with respect to genocide and crimes against humanity apply equally to war crimes (as long as consistent with the elements of the war crimes).⁹⁷ For the sake of brevity, they are not repeated here.

67. It is sometimes mistakenly assumed that a gender-competent analysis is not relevant to war crimes. However, many war crimes may have gendered aspects—whether in terms of motive, form, implementation or impact. In addition

⁹² [Abd-Al-Rahman Trial Brief](#), paras. 279-287.

⁹³ Articles 7(1)(h), 7(2)(g), [Statute](#).

⁹⁴ See e.g., [Sarah O Judgment](#).

⁹⁵ [Gender Persecution Policy](#), para. 4. Gender persecution is more fully addressed in the separate policy.

⁹⁶ [Gender Persecution Policy](#), para. 5.

⁹⁷ For instance, for torture as a war crime, the pain or suffering must be inflicted for a prohibited purpose (obtaining information or a confession, punishment, intimidation or coercion or discrimination); [Delalić et al. TJ](#), paras. 493, 495-496 (e.g., violence directed against a woman because she is a woman represents a form of discrimination that seriously inhibits the ability to enjoy human rights and freedoms); The victims of war crimes can include civilians, or persons (including combatants *hors de combats*) affiliated to the adverse party of the conflict. In addition, in some instances, members of the perpetrator's own armed group may also be victims ([Ntaganda Jurisdiction AD](#), para. 63; [Helena Judgment](#)).

to more obvious war crimes such as rape, sexual slavery,⁹⁸ enforced prostitution, forced pregnancy or enforced sterilization,⁹⁹ these can include a host of other war crimes under the Statute. For instance, the crimes of wilful killing, murder, attacking civilians and using, conscripting and enlisting children may target one gender or result in gender-specific harm.¹⁰⁰ Using biological, medical or scientific experiments, poison, prohibited gases, materials, bullets and other weapons are similarly relevant.¹⁰¹ Displacement-related crimes such as deportation, forcible transfer and starvation also have gender-specific effects. Further, property-related war crimes such as pillage, destruction and appropriation of property and attacking protected objects (including buildings dedicated to religion, education, art, historic monuments and hospitals, among others) may all reveal gendered aspects.

68. Further, the Court may exercise jurisdiction over war crimes when they are committed as part of a plan or policy.¹⁰² When this plan or policy has a discriminatory component (including on the basis of gender), the gravity of the crime is heightened and the Court's intervention becomes increasingly important.

⁹⁸ [Ntaganda Jurisdiction AD](#), paras. 64-65 (Sexual violence against any person—irrespective of whether the person can be targeted and killed under international humanitarian law—is always prohibited.). With a nexus to the armed conflict, rape and sexual slavery are by definition crimes of a gravity comparable to that of a grave breach of the Geneva Conventions or serious violations of Common Article 3. See also [Maya Achi Judgment](#), p. 397; [Sepur Zarco Judgment](#), p. 493.

⁹⁹ Also other forms of sexual violence, outrages upon personal dignity, torture, mutilation and inhuman treatment.

¹⁰⁰ [Al-Werfalli Arrest Warrant](#), paras. 17-19 (targeting of men); [Lubanga TJ](#), paras. 911-916 (child soldiers), [Separate Opinion of Judge Odio Benito](#), paras. 15-21 (including sexual violence within the legal concept of "use to participate actively in the hostilities"). See e.g., [Georgia Arrest Warrant](#), paras. 15-19 (Situations of armed conflict create particular risks associated with detention, exacerbating the impact of the conflict and harms on the young, elderly and otherwise vulnerable).

¹⁰¹ See articles 8(2)(b)(xvii), 8(2)(b)(xviii), 8(2)(b)(xix), 8(2)(b)(xx), [Statute](#).

¹⁰² Article 8(1), [Statute](#).

V. PRINCIPLES



It was not so long ago that the international justice system was seen as a patriarchal institution, reflecting entrenched biases against women, children, and LGBTQI+ persons. With this Policy, the Office commits to taking an intersectional, gender-competent analysis across all our situations while ensuring gender diversity in our own ranks and in the experts we consult. In this way, we can better understand the facts before us and make sound decisions about what should be charged and what should not, what should be tried and what should not.

DEPUTY PROSECUTOR NAZHAT SHAMEEM KHAN

69. The Office’s strategic and operational approach to GBC is guided by certain fundamental principles. These relate to ethics, competencies, relationships, and overall prosecutorial and strategic objectives. This section of the Policy presents the Office’s key principles, which inform the practical aspects of the Office’s work at every stage.

a. Survivor-centred approach

70. A survivor-centred approach prioritises a survivor’s rights. It orients all policy, actions, and decision-making towards treating every survivor and victim with dignity and respect. As a general principle, this approach acknowledges that every survivor has equal rights to care and support; is different and unique; will react differently to their experiences of violence; has different strengths, capacities, coping skills, resources and needs; has the right, appropriate to their age and circumstances, to be informed about relevant developments, to decide who should know about what has happened to them and what should happen next; and should be believed and be treated with respect, kindness, compassion and empathy.¹⁰³ Many of the victims and witnesses the Office engages are

¹⁰³ [IASC GBV 2017 Guidelines](#); [Murad Code](#).

survivors of atrocity crimes, including possible GBC. The Office commits to taking a survivor-centred approach to its work with these individuals generally, particularly as the details of an individual's past experiences or survivorhood may not be immediately apparent.¹⁰⁴

b. Trauma-informed approach

71. The Office commits to taking a trauma-informed approach to its work with victims and witnesses, including those who have been directly or indirectly affected by GBC. While "trauma" has been defined and understood in many ways, the Office understands that at the individual level, trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.¹⁰⁵

72. A trauma-informed approach is one that is aware of, and responsive to, trauma and its impacts on individuals, their families, and their communities. It seeks to promote safety, healing, and recovery from traumatic experiences. This may require integration of culturally sensitive knowledge about how different people respond to traumatic experiences into policies, procedures, and practices. Ultimately, a trauma-informed approach actively seeks to avoid doing further harm or causing re-traumatisation.¹⁰⁶

73. With respect to survivors: In the context of this Policy, a trauma-informed approach recognises that survivors may have experienced traumatic events related to GBC and acknowledges that this can impact their physical, emotional and mental health, well-being and behaviours. Developing trauma-informed practices is a critical part of taking a survivor-centred approach generally.¹⁰⁷

74. With respect to others: The Office is cognisant of the risks of vicarious trauma and its duty of care towards its staff. Supporting staff well-being will ensure the quality and longevity of its work. In its implementing of this Policy, the Office will set out further efforts to ensure that its staff is supported.

¹⁰⁴ [Murad Code](#); [GBV Disclosure Toolkit](#); [UNITAD Field Guide](#).

¹⁰⁵ See [SAMHSA Guidance](#).

¹⁰⁶ [Trauma Informed Care Guidance](#); [Murad Code](#).

¹⁰⁷ See [Murad Code](#); [Helena Judgment](#).

c. Intersectional perspective

75. The Office takes an intersectional perspective to its analysis and treatment of GBC.¹⁰⁸ This requires an understanding of differences in status, power, roles, and needs between persons, including persons under 18 years of age, as a result of social and political hierarchies and inequalities between persons and collectivities on intersecting grounds. Such grounds include race, ethnicity, socio-economic status, religion, age, sex characteristics, gender (including sexual orientation, identity and expression), caste, indigenous status, legal or displacement status and disability. Each of these grounds is to be understood within the context of the relevant society and its history. An intersectional perspective considers such factors and their relationship to structural drivers of violence in a given context as well as the impact on people's vulnerabilities, opportunities and interactions. This will enable the Office to gain a better understanding of crimes and their meanings, as well as the experiences of individuals, collectivities and communities in a particular society.

d. Gender competence

76. The Office strives to increase its capacity to recognise and address GBC at all levels of its casework, including mainstreaming a gender perspective and ability of all staff to contribute to gender-competent analysis throughout preliminary examination, investigations and prosecution phases. The Office's commitment to gender competence extends to its own institutional culture and practices related to gender. This requires awareness of internal biases and discriminatory attitudes that may affect the quality of both the Office's substantive work and its practical operations with respect to GBC.

e. Due diligence

77. The Statute requires the Office to exercise due diligence in all aspects relevant to GBC, at all stages of its work.¹⁰⁹ This diligence extends to ensuring independent, impartial and ethical investigations and prosecutions that seek to establish the truth.¹¹⁰ In particular, the Office takes appropriate measures to respect the interests and personal circumstances of survivors, victims and witnesses,

¹⁰⁸ This is in part motivated by article 21 (3) of the Statute. See e.g. [Maya Achi Judgment](#); [Sepur Zarco Judgment](#). See also Gopalan.

¹⁰⁹ See e.g., articles 42, 44(2), 44(4), 45, 54(1)(a), (b) and (c), 55, 67, 68, [Statute](#).

¹¹⁰ See e.g., [Murad Code](#); [CSO Guidelines](#).

including their age, gender and health. It also considers the nature of the crime, especially when it involves sexual, reproductive and other gender-based violence or violence against children. To properly understand the nature of the crime, the Office must accurately understand its context, relying on appropriate geographic, gender and other intersectional expertise. The Office must, at all times, fully respect the rights of the suspect and/or accused.

78. To successfully investigate and prosecute GBC, the Office pays attention to *all* elements necessary for proof, *i.e.*, the underlying crimes, the contextual elements and the modes of liability.

f. Addressing myths, stereotypes and misconceptions

79. Often, GBC investigations and prosecutions are beset by various myths, stereotypes and misconceptions. This can hinder successful outcomes and deny victims and survivors justice.¹¹¹ Even when they do not affect outcomes, archaic notions about gender run counter to the values of the Office and the Court.¹¹² Since the Court is often far removed from the situations it investigates, lack of familiarity with these specific contexts (many in the Global South) can compound these biases and discriminatory assumptions. It is incumbent on the Office—and its staff—to proactively identify and dismantle biases and stereotypes affecting the work and culture, including with respect to GBC. Otherwise, it risks inaccuracy, inefficiency and irrelevance. While it is not easy for the Office to confront these issues, it must do so with a measure of introspection, humility and urgency. Everyone is susceptible to these biases and misplaced assumptions. It is necessary to acknowledge this reality with self-awareness and emotional intelligence, to recognise power and privilege and to overcome barriers to work and success.

80. Regarding myths, GBC work is often weighed down by paternalistic and patriarchal approaches. Victims and witnesses are assumed to be “fragile” when they are not. Women, children and LGBTQI+ persons are assumed to be vulnerable in identical ways rather than treated as individuals with distinct needs and perspectives. Women are assumed to be the victims; men are assumed to be the perpetrators. Men are judged against stereotypes of toxic masculinity, with their vulnerability and victimisation ignored. Survivors are assumed to be passive recipients of justice rendered, rather than as experts on accountability in their own right and the designers of their future. Crimes are assumed to relate to

¹¹¹ See [IIIM Gender Strategy](#), p. 21.

¹¹² See *e.g.*, [OTP Code of Conduct](#); [ICC Gender Strategy](#). See also [Combating Gender Stereotypes Handbook \(Supreme Court of India\)](#), p. 4.

the protection of a woman's or girl's "honour" and "sexual purity" rather than recognising their inherently violent nature and impact.¹¹³ Victims of GBC are primarily retained only as crime-based witnesses without recognising their value as potential insiders or witnesses to other crimes and aspects of the conflict.

81. Several legal myths pervade GBC work, as well. GBC are often incorrectly held to higher legal thresholds *vis-à-vis* other crimes,¹¹⁴ or are seen as somehow separate or "ring-fenced" from the context of other violence.¹¹⁵ This manifests in the imposition of incorrect legal requirements, such as requiring proof of a specific policy to rape or to commit sexual violence, instead of simply demonstrating a policy to attack the civilian population.¹¹⁶ Similarly, there is often an incorrect expectation of large scale acts of GBC in the context of that attack. Somewhat contrarily, GBC is also mistakenly seen as an area of work distinct from "regular criminal law", and as a less serious and less rigorous discipline. Thus, in applying the routine criminal law principles of intent, undue weight is given to personal motives, such that the existence of sexual desire is seen to obviate criminal intent.¹¹⁷ Moreover, rape is often mistakenly seen as synonymous with all GBC, disregarding the other forms. Further, it is often mistakenly assumed that the burden of proof to hold a commander, superior or remote (co)perpetrator responsible is higher than for a physical perpetrator.

82. It is incumbent on the Office to recognise that positionality, context and background affect the way the crimes and their expressive values are intended and experienced. It is important to seek accurate situational and intersectional expertise on a specific context, without assuming or interpreting the social, cultural and geographic context for crimes. For instance, without the appropriate knowledge of the context, it is quite possible to misunderstand the victims, alleged perpetrators and the alleged crimes.¹¹⁸ Further, in their interactions, staff must also be aware of power dynamics between themselves (as lawyers, investigators

¹¹³ See [IIIM Gender Strategy](#), p. 21; Jarvis and Vigneswaran, pp. 35-36; see e.g., [Musa Azar Judgment](#), p. 54.

¹¹⁴ [Gbagbo AJ Judge Ibáñez Dis Op](#), para. 395; [Abd-Al-Rahman NCTA Response](#), paras. 1, 7.

¹¹⁵ [Ntaganda TJ](#), para. 805 ("Regarding acts of sexual violence, [...] the unfolding of the operations shows that the acts were, like the acts of killings and other acts of physical violence, a tool used by UPC/FPLC soldiers and commanders alike to achieve their objective to destroy the Lendu community [...]"); see [Maya Achi Judgment](#), p. 397; [Sepur Zarco Judgment](#), p. 491.

¹¹⁶ [Gbagbo AJ Judge Ibáñez Dis Op](#), paras. 394-395.

¹¹⁷ See [Gbagbo AJ Judge Ibáñez Dis Op](#), para. 396; [Đorđević AJ](#), para. 852.

¹¹⁸ For instance, presuming that all ethnicities or other group affiliations in a society are identical may lead to misidentifying victims, alleged perpetrators and their motivations. Likewise, presuming familiarity with gender norms in a society without the appropriate expertise may conflate punishments for adultery with those for rape. See also Gopalan.

and analysts) and victims, survivors and witnesses. Understanding differences in context and culture enhances the dignity, mutual respect and productivity of these interactions.¹¹⁹

83. The Office recognises the value of cultural expertise when working on GBC in a given context. It will engage expertise from situation countries and those bringing non-Western perspectives among its staff. The Office also recognises the value of having a greater footprint on the ground. Through its continuous presence in situation countries, it gains a greater familiarity with the relevant context.

g. Contextualising GBC

84. While underlying acts of GBC are distinct in nature, they must also be properly contextualised within the broader attack to be properly understood. A contextual analysis brings a deeper, more nuanced understanding of when, why and how sexual, reproductive and other gender-based violence takes place during genocide, war or other periods of crisis.¹²⁰ It helps to explain the gravity and potentially gendered nature of the crimes, as well as the coercive environment within which they take place.¹²¹ Once GBC are seen in their proper context, the Office can fully identify and utilise all aspects of coercion (including the fear of violence, duress, detention, psychological oppression or abuse of power, or otherwise taking advantage of a coercive environment), which are key elements of several crimes.¹²² It will also be able to identify situations where the drivers of violence are ethnic, religious or political, in addition to being gender-based. Likewise, taking a “360-degree view” of the crime reveals the intersections with other kinds of crimes (e.g., slavery, environment, starvation, deportation and imprisonment). Similarly, taking a holistic and contextual view of survivors’ experiences highlights victimisation beyond the most immediate crime (e.g., impact on women and children after the men in a society are killed or ‘disappeared’, or the impact on children when their mothers are enslaved).

85. Further, since GBC are often linked to or occur simultaneously to other crimes, GBC victims may well be key witnesses to those other crimes and the

¹¹⁹ For instance, in some contexts, making eye contact is deemed confrontational, in others, it is necessary.

¹²⁰ See Oosterveld 2018, p. 207.

¹²¹ Oosterveld 2018, p. 201.

¹²² See e.g., articles 7(1)(g)-1, element 2; 7(1)(g)-3, element 1; 7(1)(g)-6, element 1, [Elements of Crimes](#).

broader context within which they occur. Similarly, other witnesses may have relevant information for GBC charges.

h. Full and faithful characterisation

86. Characterising GBC fully and faithfully is necessary to capture and to convey the complexity and nuance of survivors' experiences accurately. To allow this characterisation, when the underlying conduct fulfils the materially distinct elements of different GBC, the Office will charge cumulatively and request cumulative convictions.¹²³ The Office understands that the comprehensive survivor experience may not necessarily be reduced to a single crime. Accordingly, where appropriate, the Office will pursue the full range of crimes under the Statute (*e.g.*, persecution, enslavement, rape, torture, etc). In particular, crimes such as persecution and enslavement have the potential to convey a range of harms and experiences as "umbrella crimes" and to allow a full description of what happened. Where legally possible, and supported by the evidence, the Office will make full and innovative use of the Statute to go beyond the "most obvious" GBC. Likewise, where appropriate, the Office will be mindful of the consequences of its charging strategy on reparations at a later stage (*e.g.*, children of enslaved parents or those born as a result of rape as direct victims of crimes themselves). For charging purposes, children born as a result of rape may be considered victims themselves.

87. Further, to reflect the multi-dimensional survivor experience as authentically as possible in its submissions to Chambers, the Office will reflect not only the legal elements of the crimes, but also their underlying harms and protected values. In characterising these harms, the Office will carefully consider understandings of harm and stigma relevant to the appropriate context, including non-Western approaches as relevant. For instance, the pillage of livestock or the deprivation of medical and social support in some non-Western contexts may have gendered consequences for the society at large.

¹²³ [Chambers Practice Manual](#), para. 68 (allowing cumulative charges); [Ongwen AJ](#), paras. 1631, 1635-1636 (allowing cumulative convictions). Convictions may be entered cumulatively if the conduct in question violates two distinct provisions of the Statute, each having a "materially distinct" element not contained in the other, *i.e.*, an element which requires proof of a fact not required by the other.

i. Inclusion and relationships

88. Effective cooperation is crucial to the Office and the Court in carrying out their mandates under the Rome Statute. The Office actively engages with States, UN-mandated accountability mechanisms and other relevant stakeholders to improve the effectiveness of its actions, including with regard to GBC. In doing so, the Office is aware of and will mitigate the risk of over-documentation in this field. The Office also includes an intersectional perspective in its public information activities and outreach which seek to maximise awareness and the impact of its work.

89. The Court is complementary to national efforts. Given jurisdictional and admissibility considerations, along with its policy to prosecute those most responsible, the Office will ultimately prosecute a limited number of persons. In an effort to close the impunity gap, the Office is committed to supporting States' efforts to fulfil their responsibility to investigate and prosecute serious international crimes effectively, including GBC. The Office will stay actively abreast of relevant jurisprudential developments and investigative and prosecutorial strategies emerging at the national level, particularly with respect to GBC.

90. The Office also recognises the crucial role that civil society and experts from a range of disciplines play in preventing and addressing GBC. In line with its 2022 Guidelines for Civil Society Organisations,¹²⁴ the Office will support and strengthen cooperation with these actors from diverse contexts, particularly those with experience in documenting GBC and working with survivors of these crimes. Where appropriate, the Office seeks to learn from survivors themselves, to better understand not only the impact of their experiences but how to improve the Office's survivor-centred, trauma-informed practice.

¹²⁴ [CSO Guidelines](#).

j. Implementation, monitoring and evaluation

91. To implement this Policy, the Office will enhance its institutional capacity to investigate and prosecute GBC with the assistance of a Senior Coordinator assigned to these issues, the GCU, and the Prosecutor’s relevant Special Advisers. The Office will constantly strengthen its in-house competence to effectively investigate and prosecute GBC through enhanced recruitment, training, and assessment practices. The Office will incorporate and mainstream the taking of a gender perspective in all aspects of its work.

92. Under the direction of a Deputy Prosecutor and senior staff, the Office will monitor its implementation of this Policy, with a view to conducting regular process and impact evaluation. Depending on evaluation results, policy and practice will be revised or adjusted to improve the Office’s performance with respect to GBC.



This Office must deepen its understanding of how gender norms operate in the contexts in which we work. We must make room for local perspectives about gender-based crimes and recognise the taboos that surround these experiences. A survivor-centred approach is critical, as are strong relationships with civil society partners who can assist with survivors’ ongoing support and protection.

DEPUTY PROSECUTOR MAME MANDIAYE NIANG

VI. PRACTICE: OTP PROCESS

a. Institutional structure and approach

93. The Office will build its capacity to effectively investigate and prosecute GBC by strengthening its dedicated sources of internal expertise and mainstreaming baseline gender competence across all staff. It will accomplish this both through structural and procedural measures.

94. Structurally, the Office benefits from dedicated leadership and high-level expertise on GBC. This includes direction from the Prosecutor and Deputy Prosecutors, with cross-pillar support from a Senior Coordinator assigned to these issues, the GCU, and relevant Special Advisers to the Prosecutor. The Senior Coordinator and GCU staff provide technical assistance to Unified Teams across both pillars on specific case matters related to GBC. Additionally, all Unified Teams and other sections/units are expected to have staff with GBC expertise. In this way, staff at every level and every stage of the Office's work have access to immediate peer guidance. In appointing and allocating expertise, the Office pays attention to both gender and geographic balance in staff profiles. This includes, in particular, staff with social and cultural expertise relevant to the situation countries and conflicts, and those bringing non-Western and Global South perspectives.

95. The Office will also strengthen its approach to GBC through systematic approaches to hiring, training, and assessment. In terms of hiring, the Office recruits for specialised GBC expertise in particular instances while also seeking baseline gender competence in all hiring. Within the resources allocated to the Office, it will increase its recruitment of staff with relevant professional qualifications and experience in relation to GBC issues. This includes expertise in investigating and prosecuting these crimes, including interacting directly with GBC witnesses and victims. The Office will also recruit for situation-specific expertise. This includes hiring country experts for specific situations, engaging local psychosocial expertise where there are field offices and harnessing geographic diversity through its pool of seconded personnel. The Office will include relevant selection criteria in vacancy announcements, as appropriate.

96. In terms of training, ongoing education of staff is essential for ensuring the effective investigation and prosecution of GBC. The Office takes an all-of-team approach to training, with various levels and modes of learning available to different members of staff. Training addresses key thematic issues such as survivor-centred and trauma-informed approaches, forensic science and

gender-competent analysis. The Office will ensure that team members and all other relevant staff members, including interpreters, have the necessary competencies to perform their functions effectively in relation to GBC. Basic training on gender competence and GBC is mandatory for all relevant staff.

97. The Office will actively engage in standardised and institutionalised lessons-learned processes to identify and document challenges and implement best practices with regard to GBC. As part of monitoring and evaluation, the Office will carefully document setbacks and actively learn from them. This will promote learning and preserve institutional knowledge gained from experience. This Policy, with the relevant internal operational guidance, will be regularly reviewed to incorporate best practice and relevant developments.

98. To ensure a coherent approach and operation throughout the ICC system, the Office will liaise as needed with other Court units with expertise or function related to GBC, such as the Victims and Witnesses Section (“VWS”), the Office of Public Counsel for Victims, the Victims Participation and Reparations Section and the Outreach Section.

b. Phases



We must continue to mainstream our awareness and application of best practices in the investigation and prosecution of gender-based crimes and ensure the prioritisation of these crimes at all stages and across all of our situations and cases.

PROSECUTOR KARIM A. A. KHAN KC

99. The Office’s work extends across several different phases: preliminary examination, investigations, confirmation of charges, pre-trial, trial, sentencing, appeal, and reparations. While every phase is distinct, the successful implementation of this Policy depends on applying the key principles consistently at every step of the Office’s work. This requires precise planning ahead of time, deliberate execution, the ability to course correct where necessary and adopting a learning mindset and culture. Senior management will exercise oversight over the different phases to ensure that the key principles of this Policy are being implemented.

<p>PRELIMINARY EXAMINATION</p>	<ul style="list-style-type: none"> ■ Conduct gender-competent intersectional analysis of available information to assess if GBC are committed ■ Consider GBC inter alia to determine gravity and complementarity ■ Support genuine national GBC investigations/prosecutions if feasible
<p>INVESTIGATIONS</p>	<ul style="list-style-type: none"> ■ Include GBC in investigation and analysis plans; update gender-competent intersectional analysis ■ Compose gender-competent teams with GBC and other expertise, consult country experts; avoid stereotypes ■ Include GBC in case hypothesis, consult varied sources and types of evidence, recognise “red flags” ■ Undergo proper interview training; consider all witnesses potentially relevant for GBC; seek psychosocial assessment of GBC victim/witness, where relevant
<p>CONFIRMATION AND PRE-TRIAL</p>	<ul style="list-style-type: none"> ■ Select charges, consulting with GBC subject-matter experts ■ Fully use legal framework on crimes, modes of liability and cumulative charging ■ Emphasise GBC in written and oral submissions; consider strategic litigation ■ Consider procedural innovations (e.g., article 56) to preserve evidence; make deliberate and empowering choices with respect to GBC witnesses
<p>TRIAL</p>	<ul style="list-style-type: none"> ■ Undergo proper training in examining GBC witnesses; avoid stereotypes ■ Request witness preparation at least for vulnerable witnesses; support witness familiarisation ■ Request protective measures, tailored to witness’s agency and needs ■ Keep evidence under close review; emphasise GBC in submissions
<p>SENTENCING</p>	<ul style="list-style-type: none"> ■ Consider gravity of GBC, vulnerability of victims and related facts ■ Highlight gender dimensions of crimes and their impact ■ Call experts at sentencing, as permitted
<p>APPEAL</p>	<ul style="list-style-type: none"> ■ Consider GBC priority crimes, when deciding on appeals and strategic litigation ■ Communicate with victims’ legal representatives as appropriate
<p>REPARATIONS</p>	<ul style="list-style-type: none"> ■ Consider making submissions on reparations, when invited by Chamber ■ Support intersectional gender-inclusive approach to reparations

FIGURE 2

Preliminary examination

100. During a preliminary examination, the Prosecutor determines if there is a reasonable basis to proceed to an investigation within a situation.¹²⁵ In making this determination, the Office considers a wide range of information from varied sources to assess the following factors: jurisdiction (temporal, subject-matter, and either territorial or personal jurisdiction), admissibility (complementarity and gravity), and the interests of justice.¹²⁶ Information on the commission of GBC is relevant to all these assessments, whether a referred or non-referred situation. Additionally, in exercising discretion with respect to preliminary examinations of non-referred situations, the Office will pay close attention to crimes of priority to the Office, such as GBC, including gender persecution, and crimes against children. In general, the Office considers crimes relating to sexual, reproductive and other gender-based violence to be among the gravest under the Statute. In assessing their gravity, the Office considers their multi-faceted character, and resulting harm and impact. While investigations are usually in the interests of justice,¹²⁷ this is even more the case when GBC are being investigated.

101. While the Prosecutor has relatively limited investigative powers during a preliminary examination, the Office recognises that any assessment at this stage will support any investigation if opened at a later stage. It will therefore carefully analyse the available information to assess if GBC have been committed, consulting a range of local, regional, national and international actors and expertise, including survivors' groups, as relevant. In this respect, the Office may make requests for information and/or undertake field missions, as relevant. Further, where appropriate, the Office will also rely on its country experts at this early stage, to better understand relevant cultural, social and linguistic factors, the larger context of the crimes and the patterns/trends of under-reporting and bias. In addition, the Office will identify patterns of targeting of particular victims or victim groups, to understand the background context of the relevant situation and alleged crimes, and to recognise specific vulnerabilities affecting specific victims, victim groups, or others relevant to the Office's operational activities. This should be done at this earliest phase (preliminary examination) and the analyses updated as the situation progresses to investigation.

102. Where crimes including GBC within the Court's jurisdiction have been identified, the Office determines admissibility by considering factors of gravity and complementarity. In this context, the Office will give particular consideration

¹²⁵ Articles 15(3) and 53(1), [Statute](#); rule 48, [Rules](#).

¹²⁶ Article 53(1), [Statute](#).

¹²⁷ [Afghanistan AD](#), para. 49.

to GBC when it assesses gravity. The Office considers whether there are relevant and genuine national proceedings, and where such proceedings exist, whether they relate to potential cases being examined by the Office (defined by reference to the relevant criminality and same groups or categories of individuals).¹²⁸ While there is no requirement that the crimes charged in national proceedings should be identically characterised as those before the Court, the domestic proceedings must cover substantially the same underlying conduct as those before the Court.¹²⁹ While complementarity assessments are factually-driven, legal qualifications used in national cases are sometimes relevant to determine whether the domestic proceedings encompass substantially the same conduct as the case before the Court.¹³⁰ This is a case-specific determination. Various national barriers to genuine GBC investigations and prosecutions may be relevant. Such barriers include discriminatory attitudes and gender/other stereotypes in substantive law, and/or procedural rules limiting access to justice, the existence of amnesties or immunity laws and statutes of limitations, the absence of proper protective measures for victims, the lack of political will (including official attitudes of trivialisation, minimisation, or denial of these crimes).¹³¹

103. Based on the Prosecutor’s vision for the Office to serve as a hub for justice—a centre to facilitate international and national accountability efforts—the Office takes a positive and dynamic approach to complementarity and cooperation. The Office will encourage genuine national investigations and prosecutions of GBC by States, by proactively engaging with national authorities and giving prompt and effective assistance where feasible. It will also encourage relevant national authorities and other entities to address barriers to genuine proceedings, and to provide support for the victims of these crimes. To facilitate exchanges of expertise and information to mutual benefit, the Office will engage with national jurisdictions on sharing best practices and relevant jurisprudence, and consult survivor groups. The Office will make this Policy available and accessible to national jurisdictions.

¹²⁸ Article 17(1), *Statute*. See [Burundi article 15 Decision](#), para. 143; [Georgia article 15 Decision](#), para. 37; [Kenya article 15 Decision](#), paras. 50, 59; [Côte d’Ivoire article 15 Decision](#), para. 191. This is also relevant to proceedings under articles 18 and 19 of the Statute. See [Philippines article 18\(2\) AD](#), paras. 106, 110.

¹²⁹ [Venezuela article 18\(2\) Decision](#), para. 67; [Al-Senussi Admissibility AD](#), para. 119.

¹³⁰ [Simone Gbagbo Admissibility AD](#), para. 100; [Simone Gbagbo Admissibility Decision](#), paras. 48-49 and fn. 87; [Venezuela article 18\(2\) Decision](#), para. 124.

¹³¹ For instance, the use of the so-called “two-finger” test (where a medical practitioner or other person inserts two fingers in the vagina of a woman, to attempt to assess her past sexual history or if she had been raped) is prohibited in many jurisdictions and is contrary to international human rights. See e.g., [State of Jharkhand v. Shailendra Kumar Rai](#), paras. 60-68. Further, there is also no legal requirement for a medical examination to establish a person’s gender; it would also violate a person’s right to gender identity.

Investigation

Planning and preparation

104. Given both the known pervasiveness and under-reporting of GBC, the Office will assume that investigations in *all* situations may yield evidence of GBC in some form.¹³² Moreover, all crimes under the Statute potentially have gendered aspects—whether in terms of motive, form, implementation or impact. The planning and preparation of investigations will acknowledge and reflect this approach.¹³³

105. Accordingly, it is mandatory to include GBC in investigation and analysis plans for every situation and proactively investigate these crimes. Internal tools and templates, including those used to plan investigations, should also include issues relevant to GBC. The situation-specific analysis during preliminary examination should also be updated. The intersectional, gender-competent analysis at this stage ensures that the case theory is accurate and complete, and that harms are properly identified for the case and for the stages beyond convictions. The plans should also be used to anticipate support for victims and witnesses. For instance, refugees may not be allowed to access public health facilities in a host country, requiring planning for proper referral pathways. To ensure that the situation and case planning is based on a sound understanding of history, culture and context, the Office will consult experts (including country experts) with multi-disciplinary skills. It will also compile glossaries of culturally appropriate terms, idioms and euphemisms for investigators, prosecutors and judges to enhance communication with witnesses. Adequate interpretation is provided for interviews. All team members will also receive briefings on relevant background and context; they must also proactively familiarise themselves with the nuances of the situation.

106. The teams must also be properly composed, including staff with professional experience in investigating or prosecuting GBC from diverse angles, such as through forensic expertise, online investigations, and experience interviewing children. All team members must have, at least, a basic level of gender and intersectional competence.

Case hypothesis

107. Building on its work during the preliminary examination, the Office develops the case hypothesis once specific cases within the situations are

¹³² This is done in a manner consistent with article 54 of the Statute.

¹³³ See e.g., [Murad Code](#).

selected and prioritised for investigation. Teams must actively include GBC in this hypothesis and fully consider GBC in its selection of priority incidents for investigation, identification of potential suspects and framing of possible charges. To fully consider GBC at this stage, the teams must diversify their sources of information and recognise any factual indicators or red flags that may signal the commission of these crimes. Some red flags include situations of detention or captivity, use of torture or “enhanced interrogation techniques”, conscription, forced displacement or ethnic cleansing, use of hate speech, and claims of racial/religious/ethnic/national superiority of one community over another.¹³⁴ Teams will keep the case hypothesis under review and conduct a gap analysis, if needed, to further investigate GBC.

Sources of evidence

108. Multiple varied sources and types of evidence are relevant. These include witness testimony (*e.g.*, eye-witness, insider, contextual, expert), forensic evidence (*e.g.*, clinical examinations, forensic epidemiology, autopsies), documentary evidence (*e.g.*, video footage, formal and informal notices to perpetrators, expert and forensic reports), and digital and open source evidence (*e.g.*, social media analysis, satellite imagery). The Office will comprehensively evaluate all sources of evidence, bearing in mind that some sources may contain and reproduce implicit biases preventing the discovery of GBC. While there is no legal requirement to corroborate evidence relating to GBC¹³⁵ and testimonies need not be identical to be considered corroborated,¹³⁶ the Office will seek to collect evidence to reinforce the crime base, contextual elements and linkage to the suspect. The Office specifically notes the importance of forensic science, which can provide an independent line of inquiry in addition to corroborative value.¹³⁷

109. In addition, given the importance of—and challenges with—establishing intent and knowledge of the suspect or accused for these crimes, the Office

¹³⁴ This includes situations with pre-existing gender discrimination. It also includes situations where GBC including rape or other forms of sexual violence are committed against persons because of sex characteristics and/or because of social constructs and criteria used to define gender.

¹³⁵ Rule 63(1), [Rules](#).

¹³⁶ [Ntaganda AJ](#), para. 672 (“[D]ifferent testimonies do not need to ‘be identical in all aspects or describe the same fact in the same way. Every witness presents what he has seen from his own point of view at the time of the events, or according to how he understood the events recounted by others’”); [Gbagbo AJ](#), paras. 356-357.

¹³⁷ The Office recognises the value of expert forensic evidence at all stages of its work to, among other things: (i) independently assist in determining whether the requisite elements of the crimes are established; (ii) corroborate witness evidence; (iii) assist judges and others to contextualise, understand and assess witness evidence; and (iv) identify the diverse impact of the crimes in a specific case. *See e.g.*, [Al-Khatib](#); [Kavumu Judgment](#).

will collect and examine evidence from diverse sources.¹³⁸ These include oral statements or written materials such as arts and literature, visual and audio media, educational and religious materials, orders, decrees, brochures, magazines, posters, radio or television broadcasts, internet postings such as social media or blogposts, speeches and everyday language or utterances. Evidence of an individual suspect's background or prior conduct may also indicate intent and knowledge. Likewise, reports of UN experts or bodies, Commissions of Inquiry, civil society organisations, and universities may also be relevant.

110. Moreover, types of evidence relevant to establishing intent and knowledge include the acts or statements of the direct perpetrators, legislation, policies or regulations promulgated by the perpetrator group or other authorities, the use of hate speech, slurs or discriminatory language, or public statements. Intent and knowledge can also be inferred from the pattern of violence or targeting, such as when crimes are committed exclusively or predominantly against certain individuals or groups, or when individuals are separated based on their gender. Intent and knowledge can also be inferred from prior or subsequent conduct.

111. The Office will keep the evidence being collected under review, identify gaps in the collection, and proactively take steps to fill those gaps.

Interviews

112. Many individuals may be relevant for interview. This includes victims and survivors; their families, neighbours and friends; community and religious leaders; doctors and community health professionals; and insiders. Moreover, GBC victims should not only be asked about their own personal experiences. They may have important information about the context, modes of liability, intent, knowledge and group/organisation structures. In deciding to interview GBC victims, teams will avoid making assumptions about the victims' agency or ability. Similarly, teams will avoid making assumptions when choosing an interviewer. The interview team should seek the witness's preferences regarding the kind of interviewer and interpreter, including with respect to gender. The Office should provide the best possible match based on the profiles and competencies of available interviewers and interpreters.

113. The interview team and interpreters conducting GBC-related interviews, in particular with victims and survivors, will have undergone relevant training and will prepare thoroughly for each interview. In all interactions, the interview team will use gender-competent and culturally sensitive language and address

¹³⁸ [Gender Persecution Policy](#), paras. 94-95.

victims and witnesses in the most respectful and preferred way.¹³⁹ Before the interview, members of the interview team will familiarise themselves with context-appropriate terms to describe acts of gender discrimination, violence and harms. When conducting the interview, interviewers should take a survivor-centred, trauma-informed approach to all aspects of the interaction. This includes using empathy to build rapport and create a safe and comfortable environment. It also involves appropriate questioning and memory retrieval techniques to support the interviewee's recall efforts while also mitigating the risk of re-traumatisation. Staff shall be aware of how time and exposure to past traumatic events may affect a witness's memory or manner of recounting the past. Inability to describe time or events fully or in linear ways is not indicative of a witness's credibility.¹⁴⁰ Likewise, belated or hesitant disclosure of experiences of gender-based violence does not automatically implicate their credibility. GBC victims and witnesses should always be given the opportunity to speak about their past experiences of GBC and the consequences resulting from the crimes – this can also have implications later in a reparations context.

114. Finally, multiple interviews of the same witness should generally be discouraged. However, it should also not be assumed that multiple interviews will necessarily re-traumatise a witness, so long as a careful, survivor-centred and trauma-informed approach is taken. The Office commits to building staff competence to undertake these interviews safely and consistently across its cases.

Protection and support

115. As set out above, the Office recognises the ethical and statutory obligations inherent in engaging with victims and witnesses of GBC.¹⁴¹

116. Before interviewing a GBC victim or witness, the Office will assess the need to rely on a psychosocial expert to conduct an assessment to determine whether the person is fit to be interviewed at that time and the person's potential vulnerabilities. The psychosocial expert will make recommendations on the conduct of the interview, risks of re-traumatisation and any particular accommodations needed during the interview process. The assessment also helps to identify any additional follow up needed or referral to local support pathways or the VWS of the Registry.

¹³⁹ For adults, this includes the use of preferred gender pronouns where appropriate. Cultures and communities differ on their use of gender pronouns.

¹⁴⁰ See e.g., [Helena Judgment](#); [Gazdić Judgment](#); [Musa Azar Judgment](#).

¹⁴¹ See *above* section on due diligence; article 68(1), [Statute](#).

117. GBC witnesses may risk danger because of their cooperation with the Court. In addition to being targeted for intimidation or retaliation for their engagement with the OTP, they may also suffer severe social consequences related to the violence they have, or are assumed to have, experienced. In the case of GBC, this can include stigmatisation, divorce, family or community rejection for being identified as a GBC survivor, for bearing children conceived as a result of rape by an enemy, or for exposure of LGBTQI+ identity. The Office should consider the potential impact of those measures on any dependent children for whom the witness is a parent or caregiver. In conducting its security and risk assessments for a given situation under investigation, the Office will take all these factors into account. It will develop tailored protection strategies and will identify specific mitigation measures so that GBC witnesses, victims and their dependents are protected. In addition, the Office will conduct an individual assessment for each witness's security situation to determine potential risks arising from their cooperation with the Office. This assessment of risks and mitigation should take an intersectional and gender-competent approach. Where necessary, the Office may make a protection referral to the VWS of the Registry.

Confirmation and Pre-trial

118. Building on the earlier phases and the substantive investigations, the Office will ensure that charges for GBC are brought as early as possible when there is sufficient evidence. This requires teams to plan sufficiently ahead, to actively consult GBC expertise and to keep the evidence collected under constant review.

Selection of charges

119. In assessing which charges to bring, the teams will actively consult GBC subject-matter experts so that any barriers can be identified in time, and the approaches set out in this Policy can be consistently implemented.

120. The Office will make full use of the regulatory framework to investigate and prosecute GBC. To ensure full and faithful characterisation, the Office will charge cumulatively, request cumulative convictions, and, where possible, pursue thematic prosecutions of GBC.¹⁴² When appropriate, the Office may consider charging in the alternative. In selecting charges, the Office will also pay careful attention to other key legal elements required for successful prosecutions, including modes of liability, mental elements of the crimes, and contextual elements. To

¹⁴² "Thematic prosecutions" refers to prosecution strategies that orient cases around particular themes of criminality, in this case, various aspects of GBC.

achieve full and faithful characterisation of criminal conduct, the Office will also be alert to opportunities to amend the charges before the start of trial¹⁴³ and/or, where appropriate, to request modification of its legal characterisation, as long as the Pre-Trial Chamber has confirmed the relevant facts and circumstances.¹⁴⁴

121. To ensure accountability in diverse scenarios, the Office will consider the full range of modes of liability and mental elements under articles 25, 28 and 30 of the Statute and will decide based on the evidence.¹⁴⁵ Article 25 of the Statute allows individuals, including military commanders and civilian superiors, to be held responsible when they commit (as individuals or jointly with and/or through another person), order, solicit, induce, aid, abet, otherwise assist in, or in any way contribute to, the commission or attempted commission of crimes.¹⁴⁶ Military commanders or civilian superiors can be held responsible under article 28 of the Statute for command or superior responsibility.¹⁴⁷ Military commanders may be held accountable where (a) they knew, or should have known, that their forces were committing or about to commit crimes and when (b) they, as commanders, failed to take all necessary and reasonable measures within their power to prevent or repress such commission, or to submit the matter to the competent authorities for investigation and prosecution. Similarly, civilian superiors may be held accountable where (a) they knew or consciously disregarded information clearly indicating that their subordinates were committing or about to commit crimes and when (b) they, as superiors, failed to take all necessary and reasonable measures within their power to prevent or repress such commission, or to submit the matter to the competent authorities for investigation and prosecution.

122. GBC may be committed, *inter alia*, as a result of explicit or implicit orders or instructions to commit such crimes, or even as a result of legitimate orders to attack. For instance, the perpetrator may be aware that GBC will—in the ordinary course of events—be committed as a consequence of military operations directed against civilian populations. GBC may also be committed because of an omission (*e.g.*, a failure to order subordinates to protect civilians, or failure to punish similar crimes committed in earlier operations). These crimes may also be caused by a combination of other relevant discriminatory factors at all levels of an organisation.

¹⁴³ Articles 61(8) and (9), [Statute](#).

¹⁴⁴ Regulation 55, [Regulations of the Court](#).

¹⁴⁵ See [Sácouto et al. 2019](#).

¹⁴⁶ Articles 25(3)(a), (b), (c) and (d), [Statute](#). Article 25(3)(d) requires a person to contribute, in any other way, to the commission or attempted commission of a crime by a group of persons acting with a common purpose.

¹⁴⁷ See *e.g.*, [Sepur Zarco Judgment](#), pp. 491-493; *Musa Azar Judgment*, p. 205.

123. To prove the mental elements of GBC, the Office must establish that the suspect or accused committed the crime with intent and knowledge as set out in article 30 of the Statute, unless the Statute or Elements specify differently.¹⁴⁸ If the suspect/accused is not the physical perpetrator, they must meet the mental requirements for the relevant form of responsibility. Depending on who the suspect or accused is, there are many ways to prove the elements of intent and knowledge for GBC. Proving the intent and knowledge of a less physically proximate perpetrator does not entail a higher burden of proof, nor necessarily greater difficulties with proof. Contextualising the act properly within the greater pattern of violence often yields the relevant basis for the perpetrator's intent and knowledge.

124. Nonetheless, the Office recognises that the legal requirement of intent or knowledge in the "ordinary course of events" *vis-à-vis* GBC is sometimes misinterpreted and/or subject to an undue higher scrutiny as compared to other violent crimes. To avoid this common pitfall, while recognising that there is often no direct evidence of orders to commit GBC, the Office will carefully consider the broad pool of different types of evidence and factual indicators that support findings of intent and knowledge. For instance, evidence of orders to commit other violent crimes (killing, pillage, torture),¹⁴⁹ the pattern arising out of repetition of the conduct showing a *modus operandi* (sometimes shown in contemporaneous public reporting), the high rank of the accused/suspect within the group/organisation, the conduct of the suspect (*e.g.*, signifying approval) after the crime was committed.¹⁵⁰ Notwithstanding, as a matter of law, a specific order to commit GBC is not required: a general order to commit crimes may suffice on the facts. The Office will also make strategic use of evidence outside the scope of the (intended) charges, as circumstantial evidence to establish the facts and circumstances described in the charges and/or as necessary to contextualise the facts of the charges.¹⁵¹

¹⁴⁸ For example, article 25(3)(c), [Statute](#).

¹⁴⁹ [Ntaganda TJ](#), paras. 415, 1186 (interpreting the general order "*kupiga na kuchaji*" to destroy the Lendu community, to include acts of sexual violence), 805-806.

¹⁵⁰ [Ntaganda AJ](#), paras. 1127-1128 (fn. 2500); [Ntaganda TJ](#), paras. 1177-1189.

¹⁵¹ [Ongwen TJ](#), para. 2009; [Ongwen AJ](#), paras. 1093-1094.

Submissions

125. The Office will proactively identify and emphasise issues relating to GBC in its oral¹⁵² and written¹⁵³ submissions, including as they relate to the various elements of proof. The Office will properly articulate the relevance of gender to the commission of crimes,¹⁵⁴ and explain the link between gender-based violence and systemic/structural issues. In addition, the Office will anticipate issues of substance (*e.g.*, elements of crimes, evidentiary thresholds) and procedure (*e.g.*, protective and special measures, redactions, questioning procedures) relating to GBC that may benefit from strategic litigation in a particular case.

Procedural steps

126. Consistent with this Policy, the Office will use procedural innovations in the Statute to advance GBC investigations and prosecutions. Article 56 (unique investigative opportunity) is one such avenue to elicit and preserve GBC-related evidence ahead of trial. It may be used, for instance, when witnesses who are victims of gender-based violence are particularly vulnerable or may need specific protective measures as a result of their victimisation.¹⁵⁵

127. In the pre-trial phase of a case, the Office will make deliberate, planned and empowering choices (consistent with the key principles) on how to most effectively hear witnesses relevant to GBC in proceedings before the Trial Chamber. Depending on the specific witness, methods include hearing the witness *viva-voce*, or introducing previously recorded audio or video testimony, transcript or other documented evidence of such testimony under various conditions.¹⁵⁶ The Office will advise testimony by audio-video link where appropriate.¹⁵⁷

¹⁵² For example, submissions at confirmation hearing, status conferences, opening and closing statements at trial, any no case to answer submissions, closing submissions, submissions at any sentencing hearing, appeals hearing submissions.

¹⁵³ For example, requests for authorisation of an investigation, applications for an arrest warrant or summons, confirmation briefs, trial briefs, any no case to answer submissions, closing briefs and any submissions on sentence, appeals briefs, reparations submissions.

¹⁵⁴ For example, *Abd-Al-Rahman CD*, paras. 80, 116; *Abd-Al-Rahman Trial Brief*, para. 181.

¹⁵⁵ *Ongwen article 56 Decision*, paras. 1, 4 (“Article 56 [may apply] to any stage of the investigation.”), 7 ([...] not only physical conditions may pose a risk to the subsequent availability of a testimony, but that any such risk may equally result from interference...”), 10 (“[...] they may require specific protective measures as a result of the nature of their victimisation [and allow] completing the witnesses’ involvement with the Court as soon as possible, so as not to force them to keep reliving their victimisation for a long period of time.”); *Ongwen Second article 56 Decision*, para. 12.

¹⁵⁶ For example, *see* rules 68(2)(b), 68(3), *Rules*.

¹⁵⁷ Article 69(2), *Statute* and rule 67, *Rules*.

128. Where necessary for the safety and security of a witness and their family, the Office may, for the purposes of any proceedings before the trial begins, withhold the evidence or information and instead submit only a summary of it.¹⁵⁸ Likewise, the Office will also seek to redact information in written material, as permitted by the Chamber.

129. Further, the Office will consider calling expert testimony, including experts with knowledge of gender norms and culture of the specific situation. In selecting expert witnesses, the Office recognises the wealth of local and regional expertise (including particularly those with non-Western perspectives) as highly relevant. Where appropriate, the Office will consider calling joint experts on trauma and related issues, in consultation with the Defence and victims' representatives. Likewise, where possible, the Office will consider the potential for agreed facts for certain aspects of GBC to limit the depth of in-court questioning and thus minimise the risk of re-traumatisation.¹⁵⁹ Agreements may be sought on aspects of proof relating to the contextual elements of the crimes or the coercive circumstances in which the crimes took place. Further, the Office may also seek agreement on the use of euphemisms in relation to gender-based violence or on stipulations for the elements of some crimes, *e.g.*, penetration for the crime of rape, instead of eliciting these aspects from the witnesses in court.

130. Further, when entering into an agreement on an admission of guilt by a suspect/accused, the Office will carefully consider any relevant aspects of GBC, including its gravity, before entering into an agreement. If necessary, the Office may present evidence and submissions on the matter.¹⁶⁰

Trial

131. During trial proceedings, the Office will continue to make relevant GBC-related submissions, where required, and keep the evidence under close review, as witnesses testify before the Chamber.¹⁶¹ In particular, the Office recognises that GBC requires a more nuanced use of regular principles of evidence than those that pertain to other offences.¹⁶² In this context, the Office will make full use of the

¹⁵⁸ Article 68(5), [Statute](#). Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

¹⁵⁹ Rule 69, [Rules](#).

¹⁶⁰ Article 65, [Statute](#).

¹⁶¹ The Office keeps the evidence under close review, especially if no case to answer proceedings are expected.

¹⁶² [Ongwen AJ](#), para. 1088 (fn. 2404); [Gbagbo AJ Judge Ibáñez Dis Op](#), para. 403.

special evidentiary regime governing crimes of sexual violence.¹⁶³ Accordingly, consent cannot be inferred in any situation where force, threat of force, coercion or taking advantage of coercive circumstances undermines the victim’s ability to give voluntary and genuine consent. Likewise, consent cannot be inferred by reason of silence or lack of resistance to the act of sexual violence, or when the victim, such as a child, is incapable of giving genuine consent. The victim’s or witness’s prior or subsequent sexual conduct does not bear on their character or credibility or suggest that they are somehow “sexually available”—this evidence should not be admitted before a Chamber. To determine the relevance and/or admissibility of related evidence and to ensure that the evidentiary principles set out in rules 70 and 71 are respected, the Office will request *in camera* proceedings before the Chamber to set out its views.

Witness preparation

132. Witness preparation is conducted by the party calling the witness before testimony to assist the witness as well as for the calling party to assess and clarify the witness’s evidence to allow for focused, efficient and effective questioning during the proceedings.¹⁶⁴ While the statutory framework does not expressly provide for witness preparation, some Chambers allow the practice depending on the circumstances.¹⁶⁵ Its conduct is strictly regulated. The Office’s ethical code and the Court’s jurisprudence disallow certain conduct, such as coaching the witness on their testimony or practicing it with them. Depending on the circumstances of the case, the Office will request authorisation from the Chamber to conduct witness preparation for witnesses in a case. Where the Chamber does not permit witness preparation as a general rule, the Office will seek the Chamber’s permission for exceptions or special allowances for vulnerable witnesses to the extent possible.¹⁶⁶

¹⁶³ Rules 70-72, [Rules](#).

¹⁶⁴ [Al Hassan Witness Preparation Decision](#), para. 11.

¹⁶⁵ [Al Hassan Witness Preparation Decision](#), para. 10.

¹⁶⁶ In *Ntaganda*, witness preparation was allowed for all witnesses ([Ntaganda Witness Preparation Decision](#)). In *Gbagbo and Blé-Goudé*, witness preparation was sought but denied. Leave to appeal was also denied. However, at the Prosecution’s further request, the Chamber amended the familiarisation protocol in the case, (i) allowing vulnerable witnesses to review prior to their testimony certain documents and materials that may be shown to them when they testified so as “to avoid any psychological harm” if exposed to that material for the first time in court; and (ii) allowing, in exceptional cases and with the Chamber’s leave, the presence and limited interaction with counsel from the calling party during the statement-reading session “to further reduce the scope of potential re-traumatisation”, see [Gbagbo and Blé-Goudé Oral Ruling](#). In *Ongwen*, witness preparation was once again sought (including for GBC witnesses) but denied ([Ongwen Witness Preparation Decision](#)). Leave to appeal was also denied. However, the Prosecution conducted “memory-refresh” meetings where examining counsel meets with the witness in the field and reads out the statement to the witness. Such meetings assist to develop a rapport with witnesses, and especially with vulnerable witnesses, ahead of their testimony.

Irrespective of whether witness preparation is allowed, all counsel questioning vulnerable witnesses will undergo bespoke training on questioning and will also conduct mock sessions with the team before the testimony.

Witness familiarisation

133. Witness familiarisation is a process conducted by the VWS of the Registry to orient witnesses before their testimony. It consists of showing the witness the courtroom or the remote witness room, explaining the proceedings, assessing the need for in-court protective and special measures, and meeting with the persons who will examine the witness in court.

134. The Office supports the continued use of witness familiarisation to safeguard the witness's well-being, especially when they are vulnerable witnesses. The Office cooperates with the VWS so that the witness familiarisation process is adapted to the special needs of the witness and conducted by persons with the required training and experience.

Protective and special measures

135. Depending on an individual witness's needs and concerns, and in coordination with the VWS, the Office will request the Chamber to authorise protective and/or special measures for their testimony.¹⁶⁷ The Office recognises that individual witnesses may have multiple intersecting requirements for protection, for instance, vulnerable witnesses identifying as LGBTQI+. Likewise, the Office will be careful not to make assumptions about the kind of protection that GBC witnesses may need.

136. Protective measures may include giving testimony partly or entirely in closed session; testifying by audio-video link from a different location; voice and/or image distortion; use of pseudonyms; and redacting the name and identifying information from public records and prohibiting disclosure to a third party. Special measures may include the use of a screen to prevent direct contact with the accused; the presence of an accompanying support person (e.g., psychologist, family member or other trusted person); adapting the manner of questioning to the witness's needs; using testimonial aids and taking regular breaks.

¹⁶⁷ Articles 68(1), 68(2), 68(4), [Statute](#).

Witness examination

137. The Office recognises that any witness at trial can have potentially relevant testimony on GBC. When examining a GBC witness, the team will prepare carefully in advance. This includes preparing interview outlines that address all necessary topics (*i.e.*, specific elements of the crimes, modes of liability and linkage aspects, contextual elements, impact and harms). In particular, it should not be assumed that a GBC victim can only give crime-base evidence. As with investigative interviews, examining counsel will actively refrain from making assumptions about the witness's agency or ability. Likewise, teams will also avoid stereotypes when selecting an examining counsel. Rather, the team will carefully assess the witness's preference and the profiles and competencies of available counsel.

138. Counsel conducting GBC-related witness examinations, in particular with victims and survivors, will have undergone relevant training and will prepare thoroughly for each examination. In all interactions, the team will use gender-competent and culturally sensitive language and address victims and witnesses in the most respectful and preferred way.¹⁶⁸ Before the examination, counsel will familiarise themselves with context-appropriate terms to describe acts of gender discrimination, violence and harms. They should take a survivor-centred, trauma-informed approach to all aspects of the interaction. Staff shall be aware that witnesses may not always describe time or events fully or in linear ways. This is not indicative of credibility.¹⁶⁹ Likewise, belated or hesitant disclosure of acts of gender-based violence by witnesses does not automatically implicate their credibility. To support future sentencing and reparations proceedings, GBC victims and witnesses should also be examined on the various harms and consequences resulting from the crimes. Where appropriate, counsel will make use of stipulations (agreed to by other parties) to limit the depth of in-court questioning and thus minimise the risk of re-traumatisation.¹⁷⁰ This may include euphemisms, contextual elements, coercive circumstances, stipulations on some elements of the crimes, *e.g.*, penetration for the crime of rape.

139. Following the examination, the Office will carefully follow up with the witness to ensure their wellbeing.

¹⁶⁸ For adults, this includes the use of preferred gender pronouns where appropriate. Cultures and communities differ on their use of gender pronouns.

¹⁶⁹ See *e.g.*, [Helena Judgment](#); [Gazdić Judgment](#); [Musa Azar Judgment](#).

¹⁷⁰ Rule 69, [Rules](#).

Sentencing

140. When recommending an appropriate sentence for a convicted person, the Office will consider factors such as the gravity of the GBC, the impact of the crime on the victims (including their particular vulnerability such as their age and defencelessness), any continuing and transgenerational harm, and the individual circumstances of the convicted person.¹⁷¹ In seeking to adduce evidence (if permitted) and in its submissions during the sentencing proceedings,¹⁷² the Office will highlight the gender dimensions of the crimes and their impact.¹⁷³ To this end, the Office will bring expertise on GBC to underscore the particular circumstances and effects of these crimes.¹⁷⁴ Further, recognising that many GBC involve conduct that continues beyond the scope of the charges in a given case, the Office will strategically rely on evidence of acts or conduct after the offence itself (even if outside the scope of the charges) as relevant to the sentence.¹⁷⁵ For instance, subsequent criminal conduct such as continuing enslavement, forced marriage, or forced pregnancy of persons enslaved during the scope of charges may inform the gravity of the crime.¹⁷⁶ Likewise, evidence regarding children being born as a result of rapes may be relevant at sentencing, even if the births occur after the scope of the charges.

¹⁷¹ Article 78(1), [Statute](#); rules 145(1) and (2) also list several factors to be considered in determining the sentence, including aggravating and mitigating circumstances.

¹⁷² To the extent permitted, the Office will also seek to elicit witness's views during testimony at trial on the harm they suffered, noting also the role of the legal representatives of victims in court.

¹⁷³ For instance, in *Ntaganda*, the Prosecution emphasised the mass and multi-layered victimisation and harm from sexual violence and other crimes. In sentencing, the *Ntaganda* Trial Chamber found that the victims of GBC had suffered physical, psychological, psychiatric, and social consequences (ostracisation, stigmatisation and social rejection), both in the immediate aftermath and the longer term ([Ntaganda SD](#), para. 130). The *Ongwen* Trial Chamber considered the particular defenceless status of the victims, including those who were abducted and suffered crimes as children and the discriminatory motive on the grounds of gender. ([Ongwen SD](#), paras. 287-288)

¹⁷⁴ In *Ntaganda*, for instance, a psychotherapist testified on factors that can contribute to the delayed reporting of rape and other forms of sexual violence. The Trial Chamber relied on the testimony. In *Bemba*, several experts testified on the gravity of the sexual violence, including on post-traumatic stress disorder and on the "longitudinal and intergenerational impact of mass sexual violence".

¹⁷⁵ [Ongwen SAJ](#), paras. 160-162 ("conduct after the offence must not be taken into account for its own sake [...] because the convicted person is not punished for it", but such conduct may inform the gravity assessment or give rise to an aggravating circumstance; there must be a "sufficiently proximate link" between the conduct and the crimes for which the person has been convicted).

¹⁷⁶ [Ongwen SD](#), paras. 312-313, 353-354.

Appeal

141. The Office will consider the particular gravity of GBC affecting victims, their families and communities in its decisions regarding appeals and strategic litigation.¹⁷⁷ In the interests of transparency, where appropriate, the Office will also communicate clearly with relevant legal representatives of victims, should it decide not to appeal issues relevant to GBC for legal and strategic reasons. The Office will consider strategic litigation (including relevant interlocutory appeals) on relevant substantive and procedural issues, where appropriate. To the extent necessary and appropriate, the Office will also actively pursue opportunities during the appeal to add value to the submissions made at trial on GBC.¹⁷⁸

Reparations

142. The Prosecutor is not a party to the reparations proceedings. However, the Chamber may invite observations from the Office.

143. The Office supports an intersectional, gender-inclusive approach to reparations, considering the complex impact of these crimes. To allow for transformative reparations that contribute to non-discrimination and equality, the Office supports consultation with victims to determine the most effective and appropriate forms of reparation within a particular community. This requires a gender-competent and intersectional approach to understanding the impact of harms including GBC on individuals and collectivities. Further, the Office recognises that children born out of rape and sexual slavery are direct victims in their own right for the purposes of reparations.¹⁷⁹

144. In framing its submissions, the Office will bear in mind that individual reparations awards, including non-monetary awards such as apologies, may enhance a victim's sense of justice. At the same time, collective reparations may promote community reconciliation and provide the greatest benefit to groups of victims. For example, the Office acknowledges the reparative value of commemoration; (re)construction of cultural or social centres, healthcare facilities; and historical archives or preservation of art from affected groups.

¹⁷⁷ For instance, [Ntaganda Jurisdiction AD](#), [Al Hassan Regulation 55 AD](#).

¹⁷⁸ For instance, Prosecution submissions in the *Ongwen* appeal on interpreting different GBC, their protected values, and arguing for cumulative convictions.

¹⁷⁹ [Ntaganda Reparations AD](#), paras. 652-661.

VII. WAY FORWARD

145. With this Policy, the Office recommit itself to ensuring that GBC is a strategic priority at the heart of its investigations and prosecutions. It intends to build a sustainable basis for this work that will serve victims and survivors in the long-term. Ultimately, the test of this Policy is in its consistent and rigorous implementation. To this end, the Office ensures that the Policy’s key principles are mirrored in the Office’s relevant internal operational guidance. This Policy—and the operational guidance that underpins it—remain living documents. They will continue to be informed by relevant expertise and developments and will evolve as necessary.

146. The Prosecutor is deeply grateful for the robust support the Office received as it renewed this Policy. Together, staff and external colleagues from all regions of the world have generously given their time and expertise to enrich the process. It is the Prosecutor’s hope that this marks a new chapter in this essential partnership to ensure success in GBC investigations and prosecutions. The victims and survivors deserve no less.

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<u>Plesch et al.</u>	Plesch, D. <i>et al.</i> , “The Relevance of the United Nations War Crimes Commission to the Prosecution of Sexual and Gender-Based Crimes Today”, <i>Criminal Law Forum</i> , Vol. 25 (2014)
Oosterveld 2018	Oosterveld, V., “Contextualising Sexual Violence in the Prosecution of International Crimes” in Bergsmo, M. (ed.), <i>Thematic Prosecution of International Sex Crimes</i> (Torkel Opsahl Academic EPublisher: Brussels, 2018)
<u>Sácouto et al. 2019</u>	SáCouto, S. et al., “Collective Criminality and Sexual Violence: Fixing a Failed Approach”, <i>Leiden Journal of International Law</i> , Vol. 33, Issue 1 (2019).
Schabas	Schabas, W., “Article 6” in Ambos, K. (ed.), <i>Rome Statute of the International Criminal Court: article-by-article commentary</i> , 4th ed. (Verlag C.H. Beck oHG: München, 2022)

Short-title	Full citation
Seelinger	Seelinger, K.T., “Close to Home: A Short History, and Rough Typology, of National Courts Prosecuting Wartime Sexual Violence”, <i>Journal of International Criminal Justice</i> , Vol. 18, Issue 2 (2020)
Sellers and Kestenbaum 2022	Sellers, P. and Kestenbaum, J., <i>et al.</i> , “The International Crimes of Slavery and Slave Trade: A Feminist Critique” in Rosenthal, I. <i>et al.</i> (eds.), <i>Gender and International Criminal Law</i> , (Oxford University Press: Oxford, 2022)
Van Schaack 2010	Van Schaack, B., ““The Grass that Gets Trampled When Elephants Fight’: Will the Codification of the Crime of Aggression protect Women?”, <i>University of California Los Angeles Journal of International Foreign Affairs</i> , Vol. 15, Issue 2 (2010).

10. POLICIES, REPORTS AND OTHER GUIDANCE

Short-title	Full citation
2014 SGBC Policy	Policy Paper on Sexual and Gender-Based Crimes (2014)
2020 Independent Expert Review	Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report, 30 September 2020
CAC Policy	Policy on Children (2023)

Short-title	Full citation
<u>Chambers Practice Manual</u>	Chambers Practice Manual, 7th Edition, 2023
<u>COI Syria 2016 Report</u>	Commission of Inquiry on the Syrian Arab Republic, <i>“They came to destroy”: ISIS Crimes Against the Yazidis</i> , A/HRC/32/CRP.2 (Advance version), Human Rights Council (Thirty-second session), 15 June 2016
<u>Combating Gender Stereotypes Handbook (Supreme Court of India)</u>	Handbook on Combating Gender Stereotypes, Supreme Court of India (2023)
<u>CSO Guidelines</u>	Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organizations
<u>GBV Disclosure Toolkit</u>	CHRGM, Gender-Based Violence Disclosure Toolkit: Responding to Gender-based Violence Disclosure in Humanitarian Crisis Settings, (2022)
<u>GBViE</u>	UNICEF, Gender-Based Violence in Emergencies (GBViE) Programme Resource Pack Kit 1: Getting Started Guidance Book (2019)
<u>Gender Persecution Policy</u>	Policy on the Crime of Gender Persecution (2022)
<u>Hague Principles on Sexual Violence</u>	Women’s Initiative for Gender Justice, The Hague Principles on Sexual Violence (2018)

Short-title	Full citation
<u>IASC GBV 2015 Guidelines</u>	Inter-Agency Standing Committee (IASC), Guidelines for Integrating Gender-based Violence Interventions in Humanitarian Action: Reducing risk, promoting resilience and aiding recovery (2015)
<u>IASC GBV 2017 Guidelines</u>	Edited extract from IASC, Interagency Gender-Based Violence Case Management Guidelines: Providing Care and Case Management Services to Gender-Based Violence Survivors in Humanitarian Settings (2017)
<u>ICC Gender Strategy</u>	Strategy on Gender Equality and Workplace Culture for the International Criminal Court (2022)
<u>IIIM Gender Strategy</u>	United Nations International, Impartial and Independent Mechanism for Syria, “IIIM Gender Strategy and Implementation Plan” (2022)
<u>McDougall Report</u>	Economic and Social Council, Contemporary Forms of Slavery, Systematic rape, sexual slavery and slavery-like practices during armed conflict: Final Report submitted by Ms. Gay J. McDougall, E/CN.4/Sub.2/1998/13, 22 June 1998
<u>Murad Code</u>	Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-related Sexual Violence, 13 April 2022
<u>Niamey Guidelines</u>	African Commission on Human and Peoples’ Rights, Guidelines on Combating Sexual Violence and its Consequences in Africa, 60th Ordinary Session, May 2017

Short-title	Full citation
<u>SAMHSA Guidance</u>	SAMHSA’s Trauma and Justice Strategic Initiative, SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach, July 2014
<u>SR Iran Report</u>	Human Rights Council, Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran, A/HRC/52/67, 7 February 2023
<u>The Gambia TRRC Report</u>	Truth, Reconciliation and Reparations Commission-The Gambia, Report, “Sexual and Gender-Based Violence”, Volume 10 (2022)
<u>Trauma Informed Care Guidance</u>	Trauma Informed Care Implementation Resource Centre, “What is trauma-informed care?” available at: www.traumainformedcare.chcs.org/what-is-trauma-informed-care/ (accessed on 4 October 2023)
<u>UN Fact Sheet: Intersex</u>	United Nations Free and Equal, “Fact Sheet: Intersex”
<u>UN Intersectionality Toolkit</u>	United Nations, “Intersectionality Resource Guide And Toolkit: An Intersectional Approach to Leave No One Behind” (2022)
<u>UNHCR GBV Toolkit</u>	UNHCR, About Gender-based violence-UNHCR GBV Toolkit (defining Gender-based violence)
<u>UNITAD Field Guide</u>	United Nations Investigative Team to promote Accountability for Crimes Committed by Da’esh (UNITAD) and the Human Rights in Trauma Mental Health Program at Stanford University, Trauma-Informed Investigations Field Guide, 2021

Short-title	Full citation
<u>Women's Caucus Report</u>	Women's Caucus for Gender Justice in the International Criminal Court, Recommendations and Commentary for December 1997 PrepCom on the Establishment of An International Criminal Court, December 1997

11. OTHER ABBREVIATIONS

Abbreviation	Full citation
<u>Elements of Crimes</u>	ICC Elements of Crimes
OTP	Office of the Prosecutor of the International Criminal Court
<u>OTP Code of Conduct</u>	Code of Conduct for the Office of the Prosecutor
<u>Regulations of the Court</u>	CC Regulations of the Court
<u>Rules</u>	ICC Rules of Procedure and Evidence
<u>Statute</u>	Rome Statute of the International Criminal Court



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