

**SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE
OF THE INTERNATIONAL CRIMINAL COURT**

THE HAGUE WORKING GROUP OF THE BUREAU

Complementarity

Third meeting

4 October 2024

Summary

The meeting was chaired by the representatives of the ad country co-focal points, Ambassador Mirjam Blaak (Uganda) and Ambassador Gregory French (Australia).

Ambassador Blaak recalled that in December 2023, the Office of the Prosecutor launched a revised policy on gender-based crimes (GBC) and a new policy on crimes against children. The new GBC policy replaced the original 2014 version and offered updated guidance on addressing gender-based crimes throughout the office's work, from preliminary examination to sentencing and reparations.

In her presentation on the implementation of these new policies, Prof. Kim Thuy Seelinger (Senior Coordinator, Gender-based Crimes and Crimes against and Affecting Children, Office of the Prosecutor – OTP), emphasized that implementation involved more than just budget management or quality assurance, noting that it also required a comprehensive strategy based on planned behaviour change and operational steps. She outlined the structure of the strategy, which was based on five key pillars. The first pillar, Dissemination and Community Building, focussed on raising awareness and sharing resources, such as newsletters, while fostering communities of practice both within and outside the OTP, emphasizing the importance of engaging specialists and external experts. The second pillar, Development of Tools and Resources, highlighted the creation of practical tools, including child-friendly court scripts and forensic interview guidance. A significant addition was a new “best interests of the child” tool to help investigators assess whether to interview a child, considering their psychological state, security, and potential risks to their communities. The third pillar, Skill Building, prioritized providing comprehensive and specialized training to enhance the team's capacity to support vulnerable witnesses, including children and survivors of gender-based crimes. The fourth pillar, Technical Support and Application, offered ongoing assistance to teams in interview planning, evidence review, and court filings. She emphasized the way OTP has substantially benefited from the specialised secondees provided by States Parties to bolster Team expertise. Lastly, the Institutional Support and Meta-Measures pillar addressed critical areas such as recruitment, staff well-being, monitoring and evaluation, funding, and collaboration across the OTP, ensuring sustainability and facilitating learning from past experiences. Additionally, she noted that the OTP collaborated with international stakeholders to expand the impact of these policies beyond The Hague, such as in Ukraine and Colombia, where they were being adapted and implemented.

In response to a question regarding best practices, Prof. Seelinger noted that certain states possessed valuable expertise in areas such as interviewing and protecting survivors of gender-based crimes, and that while the OTP had conducted its own surveys and assessments to gather relevant guidance, additional resources from national jurisdictions would be highly beneficial. She indicated that the OTP was in the process of building a library of these resources for review and learning. Prof. Seelinger also emphasized the importance of understanding how OTP policies were being implemented by national systems. Gaining insights into how states applied and found value in these policies helped track the impact of the OTP's work and fostered an ecosystem of shared practices. She encouraged mutual awareness and collaboration, which would allow both the OTP and states to benefit from each other's best practices.

In response to a question regarding the stigma surrounding sexual violence, Prof. Seelinger acknowledged that it varies across different contexts, making it difficult for some witnesses to come forward. Security concerns also contributed to this inhibition in some countries. To address these challenges, the OTP was planning training sessions focused on enabling safe and effective disclosure of such crimes. She indicated that alternative methods for gathering evidence, such as medical records, were being explored to reduce the burden on victims. She also emphasized the need to resist solely focusing on male-on-female rape, instead broadening the understanding of gender-based crimes to include other acts of violence. These crimes included sexualized torture, forced nudity, and the coerced witnessing of sexual offenses, particularly affecting children. She noted that the OTP was working to expand its understanding and approach to these crimes beyond the list found in Rome Statute Article 7(1)(g). Additionally, specific guidance was being developed for dealing with male survivors of rape. Prof. Seelinger also noted that to ensure effective interactions, the OTP strived to accommodate the preferences of witnesses in advance when constituting an interview team. However, she said this might not always be possible in light of resource constraints.

Ambassador French noted that the second half of the meeting involved presentations from experts focusing on gender-based crimes and capacity-building initiatives. Part of the work plan of the facilitation aimed at fostering dialogue on gender-based crimes related to the Rome Statute and provide a platform for the Court, State Parties, and external actors to discuss emerging issues to enhance collaboration among stakeholders in preventing and combating gender-based crimes and ensuring accountability for perpetrators through national or ICC mechanisms.

In his presentation, Mr. Jack Torbet (Program Manager at Legal Action Worldwide – LAW), noted that LAW, a nonprofit organization with over 80 lawyers working in conflict-affected regions across four continents, was advancing a Gender Justice Practitioner’s Hub initiative that aimed to support various practitioners, such as prosecutors and civil society members, in achieving gender justice. He noted that despite advancements in gender justice over the years, inconsistencies in application and access to tools persisted, particularly for those outside the Global North. He highlighted key challenges identified through extensive research, including: institutional resistance to gender issues which were often sidelined or marginalized in organizations, making it challenging for practitioners to advocate for gender justice; anti-gender rhetoric which affected advocacy and funding for gender justice initiatives; fragmented knowledge which was often scattered and only available in certain languages, making it hard for practitioners to access; gaps in interdisciplinary approaches leading to missed opportunities; and security concerns around practitioners’ safety when advocating for gender justice. Mr. Torbet indicated that the proposed Gender Justice Practitioner Hub would consist of three pillars, namely: a knowledge repository with a curated collection of gender justice resources available in multiple languages; a network architecture creating a safe space for practitioners to collaborate and share experiences; and a help desk for practitioners seeking advice or connections related to gender justice work. He concluded that a draft report outlining these findings and recommendations would be circulated soon, with plans to launch the hub by the end of the year.

Ms. Lea Rose Stoian (Conflict Related Sexual-Violence (CRSV) expert at the International Development Law Organization – IDLO), discussed her work in Ukraine, focusing on a project funded by the Dutch MFA, that aimed at restoring dignity and advancing accountability for international crimes by strengthening the capacities of Ukrainian authorities, including law enforcement and the Office of the Prosecutor General, in investigating and prosecuting CRSV. The aim was to create a supportive environment for survivors and ensure that practitioners were equipped to engage effectively with them. Regarding the context of CRSV in Ukraine she noted that the situation was complex, with many victims, including men, women, and children. She indicated that the Ukrainian authorities had established specialized units within the war crimes department to address CRSV, but challenges remained, particularly in the regions where cases were less visible and centralized. She noted that through this project the IDLO was providing mentoring and technical support to practitioners, including procedural guidance, and developing accessible documentation to assist practitioners in the field. She indicated that the initiative actively involved civil society organizations and survivor networks to foster communication and trust between survivors and authorities. This was particularly important for male

victims of sexual violence, which are often underreported. The goal was to create sustainable practices within the criminal justice system, enabling authorities to apply survivor-centered and trauma-informed approaches not only in CRSV cases but across all types of crimes. Ms. Stoian emphasized the need for better coordination among international and national actors, avoiding duplication, and involving regional CSOs that have established connections with local communities.

In her presentation, Ms. Vanessa Murphy, (Legal Adviser at the Legal Division of the International Committee of the Red Cross – ICRC) outlined the ICRC's recent work in three key areas related to addressing gender-based harm within international humanitarian law (IHL). These included the criminal repression of gender-based violations of IHL, prevention of gender-based harm in military operations, and the integration of gender perspectives in the interpretation of IHL obligations. On criminal repression, she noted the ICRC's technical support for states in implementing domestic legislation to address serious IHL violations, including sexual violence. She highlighted that effective legislation alone was not enough and emphasized the need to tackle issues like stigma, underreporting, and lack of survivor services. The ICRC developed a "Domestic Checklist for the Implementation of IHL Prohibiting Sexual Violence" to ensure legal frameworks considered gender-specific needs. Regarding measures that can be put in place to prevent gender-based harm caused by military operations, she stressed the importance of integrating gender perspectives into military doctrines and practices. Key factors to change behaviour included leadership commitment, codes of conduct, and better understanding of civilian environments. Logistical considerations like planning to separate women and men in detention, and meet the medical needs of diverse civilians, were also noted. Finally, Ms. Murphy discussed integrating gender perspectives into the interpretation of IHL obligations, noting ICRC's alignment with the Office of the Prosecutor's policy on gender-based crimes. She emphasized that all crimes under the Rome Statute could involve gender-based violence in motivation, form, or impact, and called for gender-sensitive interpretations of IHL principles such as distinction and proportionality. She concluded by stressing the need for upstream prevention and a holistic approach to addressing gender-based violence in conflict settings.

Mr. Aaron Matta (Legal Officer at the Secretariat of the Assembly of States Parties – ASP, focal point for the Complementarity Platform) provided an update on the Complementarity Platform, emphasizing the Secretariat's mandate to collaborate with State Parties, the Court, and other stakeholders to strengthen domestic jurisdictions in prosecuting Rome Statute crimes. He noted that the Complementarity Platform assisted States with requests related to implementing legislation, judicial cooperation, witness and victim protection, and addressing gender-based crimes. Each year, the Secretariat invited States to submit technical assistance requests, which were handled confidentially. Additionally, a list of available actors for technical support was maintained and posted on the ASP website. He highlighted that the newly formed Complementarity Coordination Group had enhanced collaboration, supported by a memorandum of understanding between the Secretariat and Court organs to clarify roles and responsibilities, allocate tasks, and coordinate efforts. He clarified that when the Court was unable to participate, the Secretariat then engaged with external actors to facilitate contacts with countries seeking assistance. He indicated that this year, three requests for assistance had been received. One request resulted in a virtual meeting between the Court's organs and the authorities of the requesting State, while a follow-up virtual meeting was scheduled with the same State. There were also two additional meetings planned with the remaining States, hopefully before the end of the year.

The facilitators concluded the meeting indicating that all IER complementarity-related recommendations had been assessed and implemented, and that they would proceed with preparing their report to the ASP by the deadline for reporting.
