



Comments on the Development of a Revised Policy on Sexual and Gender-Based Crimes

Submission from UN Women to the Office of the Prosecutor at the International Criminal Court

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Artwork by a survivor of conflict-related sexual violence

UN Women thanks the Prosecutor of the International Criminal Court (ICC), Mr. Karim A. A. Khan KC, and the Special Adviser to the Prosecutor on Sexual Violence in Conflict, Ms. Kim Thuy Seelinger, for their leadership to pursue accountability for sexual and gender-based crimes (SGBC). The [Policy Paper on Sexual and Gender-Based Crimes](#) adopted by the Office of the Prosecutor (OTP) in 2014 has been pivotal for the investigation and prosecution of these crimes before the ICC,¹ and its renewal process proves the Office's commitment to the highest quality of work in its pursuit of justice. UN Women also welcomes the OTP's public consultation to inform the updated policy, as it opens space for survivors and civil society to have their voices heard. UN Women is pleased to respond to the request for inputs and hopes that this submission amplifies the messages of our civil society partners around the world, and the clear call by SGBC survivors for justice.

UN Women's inputs focus on five suggestions: (1) strengthen the gender analysis framework; (2) differentiate between gender-based crimes and sexual crimes; (3) include people of diverse sexual orientations, gender identities and expressions and sex characteristics (SOGIESC) and devise specific measures for addressing male experiences; (4) further develop a survivor-centered approach, and (5) formulate an implementation plan

and monitoring framework with targets. Many of these suggestions are inspired by the recently-adopted [Gender Strategy and Implementation Plan](#) of 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 (IIIM), which UN Women commends as an excellent example of an institutional commitment to gender justice in action.

1. Strengthen the gender analysis framework

UN Women encourages the OTP to use the renewal of its policy on SGBC as an opportunity to strengthen its framework for conducting gender analyses throughout the execution of its mandate. As contemplated in the OTP's current [Policy Paper on SGBC](#) and its new [Policy on the Crime of Gender Persecution](#), gender analyses are necessary to address harms that are often overlooked, to understand the context and extent of the impact suffered by victims, and to inform appropriate responses,² including by promoting transformative reparations.³ Moreover, surfacing the gendered aspects of crimes allows for a better understanding of the causes and motives behind them, and a

¹ Under the leadership of the previous prosecutor, Fatou Bensouda, the OTP initiated 13 new preliminary examinations, nine of which included SGBC, and four which were brought on the prosecutor's own motion. See: Yvonne Dutton and Milena Sterio, "[The ICC's 2022 Gender Persecution Policy in Context: An Important Next Step Forward](#)", *Just Security* (2023).

² Office of the Prosecutor of the International Criminal Court, [Policy on the Crime of Gender Persecution](#) (2022), para. 65.

³ Office of the Prosecutor of the International Criminal Court, [Policy Paper on Sexual and Gender-Based Crimes](#) (2014), para. 102.

stronger comprehension of the power dynamic in violent societies,⁴ which leads to more robust investigations and prosecutions.⁵

With this aim, the OTP may consider broadening the scope of the Policy Paper so that it encompasses a general directive to apply a gender analysis throughout all stages of its mandate to investigate and prosecute all crimes under the jurisdiction of the Court – not limited to SGBC. While the current Policy on SGBC contemplates the integration of a gender analysis into all aspects of the OTP operations,⁶ by focusing on SGBC, the Policy Paper does not live up to its full potential as a tool for helping the OTP understand how gendered inequalities play a role in the purpose, policy, planning, execution and impact of *all* crimes under the Rome Statute. This, in turn, can result in a limited comprehension of the causes and effects of crimes on survivors and communities, which can lead to incomplete assessments of situations and cases. By broadening the scope of the Policy Paper to call for a comprehensive gender analysis, the OTP can maximize its effectiveness in the prosecution of both SGBC and non-sexual and non-gender-based crimes, paving the way for more meaningful justice.

If the OTP maintains the focus of the policy on SGBC, only, UN Women suggests centering gender analysis in the strategies to address SGBC in all the stages of preliminary examinations, situations, and cases. This requires formulating a detailed plan of action that ensures that a gender analysis will be conducted when identifying crime patterns, examining evidence and engaging with victims and witnesses, and as part of all decision-making throughout the investigation and prosecution of SGBC.

When devising a gender analysis framework, it is crucial to give full effect to Article 21.3 of the Rome Statute by (1) creating a framework for the application of international human rights to the analysis, and (2) formulating the manner in which analyses will examine how the intersection of gender and other factors lead to unique experiences of discrimination or disadvantage that affect individuals' and communities' exposure to crimes and that can exacerbate the resulting harms. These factors should include race, ethnicity, religion, sexual identity, sexual orientation, sexuality, class, socio-economic background, age, ability, marital status, displacement status, access to resources, and language, at a minimum.

⁴ See: [Guidance note of the Secretary-General: reparations for conflict-related sexual violence](#) (2014); Fionnuala Ní Aoláin, "[Transformative Gender Justice?](#)", in *From Transitional to Transformative Justice*, Ed. P. Gready & S. Robins (Cambridge: Cambridge University Press, 2019) 150-171, 152.

⁵ For more information on the importance of applying a gender analysis in accountability work, please see section "2.2 Purpose and objectives: why does a gender analysis matter for the IIM's work?" in the [Gender Strategy and Implementation Plan](#) of the International, Impartial and Independent Mechanism to Assist in the Investigation and

2. Differentiate between gender-based crimes and sexual crimes

While the current Policy Paper on SGBC defines gender-based crimes and sexual crimes separately, the content of the Policy largely conflates the terms. As a result, the strategies to address sexual crimes dominate the policy to the detriment of a more complete policy to address gender-based crimes of a non-sexual nature.

While all sexual violence can be considered a form of gender-based violence, and thus both concepts are deeply interconnected, sexual violence is only one type of gendered violence. By equating both concepts, the policy risks neglecting the other kinds of gender-based violence, due to the lack of specific strategies to identify, describe, and understand the causes, impacts, harms, and characteristics of *non-sexual* gender-based violence. Therefore, UN Women encourages the OTP to avoid combining these terms in its policy paper and, accordingly, develop comprehensive strategies to address each type of violence.

In addition, UN Women takes this opportunity to highlight [The Hague Principles on Sexual Violence](#),⁷ a set of key documents resulting from the work of over 60 civil society organizations and the input from more than 500 survivors, as a suitable guide to inform the definitions of sexual violence and sexual crimes, among other aspects of SGBC, in the revised Policy on SGBC.

3. Include people of diverse sexual orientations, gender identities and expressions and sex characteristics, and devise specific measures for addressing male experiences

Women and girls are at greater risk of sexual and gender-based violence than men and face additional barriers in accessing assistance. However, these harms are not exclusive to women and girls. People of diverse sexual orientations, gender identities and expressions and sex characteristics (SOGIESC) – and people *perceived* to be of diverse SOGIESC – are particularly impacted by SGBC, too, because of their defiance of socially constructed gender roles. The impact of SGBC on people of diverse SOGIESC is

Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, Technical Version (2022).

⁶ Office of the Prosecutor of the International Criminal Court, [Policy Paper on Sexual and Gender-Based Crimes](#) (2014), para. 5.

⁷ See: Women's Initiatives for Gender Justice, [The Hague Principles on Sexual Violence](#) (2019).

also often exacerbated due to systemic discrimination and extraordinary barriers to accessing assistance or protection.

UN Women encourages the OTP to adopt a more complete understanding of gender, sex, gender-based violence and gender-based crimes by addressing people of diverse SOGIESC, in accordance with articles 7.3 and 21.3 of the Rome Statute. UN Women highlights the definition of key terms contemplated in the OTP's Policy on the Crime of Gender Persecution and suggests its use in the revised Policy on SGBC. This comprehensive understanding would ideally be reflected in the definitions section of the policy and would be mainstreamed in all aspects of the policy, including by devising specific strategies for addressing crimes affecting people of diverse SOGIESC when conducting any gender analyses, investigating and prosecuting SGBC and non-sexual and non-gender-based crimes, and all other aspects of the OTP's mandate.

Moreover, examining the gendered experiences of men and boys as victims, survivors, perpetrators, and witnesses is also a crucial component of any gender analysis. UN Women recommends designing a framework specifically directed at understanding how gender shapes the experiences of crimes of men and boys to gain a more exhaustive understanding of crimes, the contexts in which they occur, their causes, motivations, and consequences. In addition, as contemplated in the OTP's Policy on the Crime of Gender Persecution, people of all genders can be targeted with sexual and gender-based violence,⁸ and violence that targets men because of their gender is also rooted in gender inequality between women and men, and harmful gender stereotypes.⁹ Further, male survivors face a different set of obstacles to come forward as victims of crimes, particularly sexual crimes. Consequently, UN Women suggests that the policy contemplate specific strategies for investigating and prosecuting gender-based crimes and sexual crimes committed against male victims.

4. Develop a survivor-centered approach

UN Women encourages the OTP to strengthen the "victim-responsive approach" described in its current Policy Paper on SGBC by moving towards a survivor-centered approach, as this will facilitate that the execution of its mandate leads to meaningful justice.

Besides the measures already contemplated in the current policy, such as respecting the interests and personal circumstances of victims, victim consultation, and managing expectations, a revised Policy on SGBC would ideally include measures to:

- Reflect the experiences, perspectives and priorities of a broad range of survivors.
- Design methods to engage with different communities and survivor groups.
- Open space for underrepresented voices to be heard.
- Create the proper conditions for survivors to come forward, including by addressing the restrictions that some may face in terms of movement, time, or the resources needed to participate in accountability efforts.
- Provide protection, and medical, psychosocial and other support that ensures survivors' wellbeing and safety.
- Manage stigma and other adverse social consequences of participation.
- Tailor the participation of each survivor according to their needs and preferences. Ask survivors about them, avoid making assumptions, and respect survivors' choices.
- Provide survivors with adequate and timely information to facilitate informed choices.
- Empower survivors and respect their agency, rather than treating them as vulnerable beneficiaries.
- Assess the repercussions that the OTP's work will create for survivors, their families, and their communities.
- Be clear on limitations and ensure realistic expectations.
- Understand the context, culture, gender and community dynamics.
- Create a supportive environment, be trauma-sensitive, ensure privacy, and minimize the number of people present during testimonies.
- Give survivors control over how they tell their story, and do not ask for details that are not needed.
- Avoid re-traumatization.

UN Women suggests that the OTP draw upon the [Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence](#),¹⁰ also known as the "Murad Code," as well as on victim/survivor-centered approach employed by the IIIM,¹¹ and detailed in the [IIIM's Gender Strategy and Implementation Plan](#).¹² The suggestions above were drawn from

⁸ Office of the Prosecutor of the International Criminal Court, [Policy on the Crime of Gender Persecution](#) (2022), para. 6.

⁹ See: Lisa Davis, "Dusting Off the Law Books: Recognizing Gender Persecution in Conflicts and Atrocities", *Northwestern Journal of Human Rights* (Vol. 20: Issue 1, 2021), pp. 19-23.

¹⁰ Institute for International Criminal Investigations, Nadia's Initiative & the Preventing Sexual Violence in Conflict Initiative of the UK government, "[Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence](#)" (2022).

¹¹ See: International, Impartial and Independent Mechanism to Assist the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011, "[Victim/Survivor Centred Approach](#)".

¹² 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, [Gender Strategy and Implementation Plan](#), Technical Version (2022).

these documents as a sample, but they are not an exhaustive compilation of the crucial measures that the Murad Code and the IIMM's strategy contain.

5. Formulate an implementation plan and monitoring framework with targets

Finally, UN Women encourages the OTP to adopt an implementation plan for the revised Policy on SGBC that includes a monitoring framework. This is crucial to assess the suitability of the Policy to the OTP's work, learn about successes and shortcomings, and course-correct when needed.

The implementation plan and monitoring framework should be made available to the public in the interest of promoting transparency, clarity and predictability. This would also encourage and facilitate the support of external experts, international organizations and civil society in the implementation of the Policy and the OTP's mandate.

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UN Women reiterates its gratitude to the Prosecutor and his Special Advisor on Sexual Violence in Conflict for the opportunity to participate in this public consultation. UN Women submits these comments in solidarity with survivors of SGBC and joins them in their call for justice and accountability. The OTP can count on UN Women as a partner in its efforts to renew this policy and as an ally in its implementation.