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**The investigation and prosecution of sexual and gender-based crimes:  
reflections from the Office of the Prosecutor**

*The Hague Academy of International Law Advanced Course on International  
Criminal Law – Special Focus: Gender Justice*

Keynote speech

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Mr Secretary General,  
Your Excellency,  
Prof. Stahn,  
Distinguished Guests,  
Ladies and Gentlemen,  
Dear Friends,

Allow me at the outset to thank the organisers of this inaugural advanced summer school on international criminal law, and in particular, I want to thank Professor Carsten Stahn, for inviting me to address you this morning.

It is a pleasure and an honour to be here among such distinguished colleagues and eminent experts, and to be able to share a few thoughts with all of you on the important theme of the course: *gender justice*.

Accountability and justice for victims of sexual and gender-based crimes is an issue to which my Office and I are most committed.

This impressive summer school is indeed another testament to the growing recognition of the need to fight impunity for atrocity crimes, including sexual and gender-based crimes. I am therefore delighted to see so many of us gathered here today to discuss this crucial topic.

In my remarks today, I will provide an overview of my Office's policies and strategies in relation to the investigation and prosecution of sexual and gender-based crimes, and I would like to share with you some thoughts for the future. I will also reflect upon some of the challenges we have faced, and the lessons we have learned during the preliminary examination, investigation, and prosecution of these crimes.

Sexual and gender-based crimes have long been shrouded in a culture of silence and impunity. For too long, such crimes were seen as inevitable consequences of war and conflict, left unchecked by a legal framework unable to address these brutal harms.

While the international legal framework has come a long way to fill the impunity gap for such heinous crimes, countless challenges remain.

Societal taboos and the sensitive nature of these offences continue to make them some of the most underreported in the world, notwithstanding the severity of the crimes in question.

For me, as Prosecutor of the International Criminal Court, challenging the culture of discrimination that allows sexual and gender-based crimes to persist against girls and women, and boys and men, entails robustly investigating and prosecuting those most responsible for these crimes. I consider this to be my duty, rooted in firm personal convictions.

I firmly believe in the power of the law to stop and prevent violence, and to pacify communities gripped by conflict.

I believe in the law as an instrument to affect constructive change, including in the fight against sexual and gender-based crimes.

Through the might of the law, we can highlight the brutality and barbaric nature of these crimes; we can hold perpetrators accountable, and, crucially, give a voice to the victims.

I am confident that in time, through its deterrent and disciplining effect, the law will help alter archaic norms in this domain, establishing new norms of acceptable conduct.

One of the most important measures of achieving justice and accountability for sexual and gender-based violence is effecting a change in attitude, not only among investigators, prosecutors, legislators and security personnel, but also among communities themselves.

We must all recognise that such violence is *never* allowed, is *never* normal, and will *never* be tolerated. That, the shame all too often placed on the victims must be transferred to its rightful owners: the perpetrators. Those are the ones who should be really ashamed. Only then can we break the silence and impunity that still surrounds these heinous crimes.

Over the past few decades, the international community has taken a number of concrete and progressive steps in response to increasing calls to recognise sexual and gender-based crimes as serious crimes, both nationally and internationally.

The statutes of the UN *ad hoc* tribunals both included rape as a crime against humanity. And jurisprudence from these tribunals – such as the *Akayesu* judgement of the International Criminal Tribunal for Rwanda– significantly moved forward not only the understanding within international law of these crimes, but also it expanded the ability of the law to address this scourge. I note here the significant contribution of my cherished friend, and former Judge at the ICC, Judge Navi Pillay to this seminal ICTR jurisprudence.

The Rome Statute, the founding treaty of the ICC, further consolidated these developments and firmly embraced the need to address the culture of impunity for sexual and gender-based crimes.

The Rome Statute is the first instrument in international law to include an expansive list of sexual and gender-based crimes as crimes against humanity and war crimes relating to both international and non-international armed conflicts. These include: rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, and other forms of sexual violence. It also criminalises persecution on the basis of gender as a crime against humanity.

Taking inspiration from the *Akayesu* judgment, the Rome Statute also codified the notion that sexual violence committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, may constitute acts of genocide.

The *Rules of Procedure and Evidence* and the *Elements of Crimes* of the ICC also consolidate important procedural and evidentiary advancements to protect the interest of victims and enhance the effectiveness of the work of the Court in this area.

Additionally, it bears mentioning that Article 21(3) of the Statute stipulates that the application and interpretation of the Statute must be consistent with internationally recognised human rights. More specifically, it must be without any adverse distinction founded on several grounds, which are set out, including gender and “other status.”

As Prosecutor of the ICC, my objectives are to hold perpetrators of war crimes, crimes against humanity and genocide to account, to bring a measure of justice to victims and affected communities, and to deter others from committing atrocity

crimes. In our selection of cases, my Office strictly applies the Rome Statute legal framework, following the evidence, without fear or favour.

As some of you in the room may be aware, since my election as Prosecutor in December 2011, I have made the investigation and prosecution of sexual and gender-based crimes a key priority for my Office, in accordance with the Rome Statute.

Allow me to explain what this means for the work of my Office, and how we have learned from past experiences in this regard.

The integration of a gender perspective in all areas of our work has been a key strategic goal of my Office since 2012.

In June 2014, my Office adopted its Policy Paper on Sexual and Gender-Based Crimes, the first such policy to be adopted by an international court or tribunal. This comprehensive policy was the result of a two-year process of extensive internal and external consultations. We gathered input from my staff, as well as from our wide-range partners from states and to international organisations, civil society, and academia.

As part of this policy, we have committed to integrating a gender perspective and gender analysis into all areas of our work, starting with preliminary examinations to prosecutions and eventually reparations proceedings.

In practical terms, this means, for instance, that my Office will systematically ensure the inclusion of charges for sexual and gender-based crimes in our cases wherever there is sufficient evidence to support such charges.

Importantly, we will bring charges for sexual and gender-based crimes explicitly as crimes in themselves, in addition to charging them as forms of other violence within the jurisdiction of the ICC, such as rape as torture.

In short, one central pillar of this policy is that it enables us to approach the investigation and prosecution of such crimes in a systematic and methodological manner.

Importantly, this policy which is built on the lessons we learned in the first 10 years of our work, both celebrated successes and challenges we have faced.

Sexual and gender-based crimes have been an important feature in most of the cases currently before the ICC. Our cases have highlighted different aspects of such crimes.

We have included explicit sexual violence charges, such as rape and sexual slavery, in the charges we have brought against, among others, Germain Katanga, Mathieu Ngudjolo and Sylvestre Mudacumura in our cases in the situation of the Democratic Republic of the Congo.

Importantly, in the case against Bosco Ntaganda, my Office is currently working to advance the interpretation of international humanitarian law, by bringing charges in relation to sexual violence committed against one's own troops. The charges have been confirmed to date, and if the matter stands at trial, this would be a novelty and a major advance in the fight against impunity for sexual and gender-based crimes.

Furthermore, the case against Jean-Pierre Bemba Gombo concerning crimes committed in the Central African Republic, which will be coming to a conclusion hopefully this year, is unprecedented in that for the first time in the history of international criminal justice in practice, acts of sexual violence far outnumbered alleged killings. These acts thus became the focus of our investigations and prosecutions. In this case, which included charges of rape as a war crime and a crime against humanity, both men and women testified before the Chamber about the sexual violence they suffered and witnessed. Their evidence constituted a significant record of the trial.

To date, my Office has charged 18 individuals with gender related crimes in 13 cases; specific sexual violence charges were proffered in 68 percent of the Court's cases and in respect of 58 percent of suspects.

Sexual violence charges were, for example, brought against the top leadership of the Lord's Resistance Army in Uganda, against Sudanese high-level officials such as Harun, Kushayb and Hussein, against Laurent Gbagbo, Simone Gbagbo and Charles Blé Goudé in the Côte d'Ivoire, and against Muthaura in the Kenya situation.

Notwithstanding these facts, we recognise that much more needs to be done to translate our efforts into the convictions of those most responsible for such crimes on the strength of the evidence we collect.

For this reason, we continue to invest in increasing the quality of our investigations and prosecutions. For instance, as a matter of policy, we now aim to have cases as trial-ready as possible as early as the confirmation hearing stage. This has the benefit of advancing our cases on more solid footing early in the proceedings, thus enhancing the prospects of successful prosecutions.

We are also committed to being innovative in the investigation and prosecution of such crimes, for instance by relying on different forms of evidence rather than a heavy reliance on witness statements to support such charges, including forensic or documentary evidence.

In our Strategic Plan for the period of 2012 to 2015, we also adopted a new approach to pursue more in-depth, open-ended investigations while maintaining focus, so that more evidence from diversified sources might be collected.

Our new draft Strategic Plan for the period of 2016 to 2018 endorses this same approach, which is also intended to assist in addressing the challenge of establishing the individual criminal responsibility of persons at the highest levels for the commission of sexual and gender-based crimes.

My Office will also undertake investigations into sexual and gender-based crimes *concurrently* with its investigations into other crimes. This will ensure the efficient utilisation of resources, and provide an opportunity for the thorough investigation of these crimes. It ensures sufficient time for the collection and analysis of evidence.

As set out in our Policy Paper, within the scope of our mandate, my Office will apply a gender analysis to all crimes within our jurisdiction, examining how those crimes are related to inequalities between women and men, and girls and boys, and the power relationships and other dynamics which shape gender roles in a specific context. For this purpose, we continue to invest in the training of all staff on sexual and gender-based crimes, and the recruitment of persons with the required expertise and experience in this field.

Following the adoption of the Policy Paper in June of 2014, we have worked and continue to work on its implementation. This includes the development of specific guidelines for all staff on how to engage in gender analysis, as well as the drafting of a policy on how to avoid re-traumatisation of the victims.

As indicated in our new draft Strategic Plan, my Office will continue to invest in training for relevant staff on interviewing vulnerable witnesses, in particular witnesses of sexual and gender-based crimes.

The incorporation of a gender perspective also affects the Office's approach to sentencing and reparations. My Office will propose sentences which give due consideration to the sexual and gender dimensions of the crimes charged, including the impact on victims, families and communities, as an aggravating factor and reflective of the gravity and seriousness of the crimes.

In assessing the gravity of sexual and gender-based crimes, we will consider the multi-faceted character and the resulting suffering, harm and impact of such acts. My Office supports a gender-inclusive approach to reparations, taking into account the gender-specific impact, harm and suffering of the victims affected by the crimes for which an individual has been convicted.

Ladies and Gentlemen,

As important as these developments are for my Office's ability to provide justice and accountability for victims of sexual violence, we are only one part of a global system of justice.

As a court of last resort, the ICC can only intervene when States Parties are unable or unwilling genuinely to investigate and prosecute crimes within the jurisdiction of the Court. This brings me to one of the challenges for the future: the need to develop not only the ICC's capacity, but also that of domestic jurisdictions to deal with sexual and gender-based crimes, as well as the other Rome Statute crimes.

It is our hope that my Office's Policy Paper on Sexual and Gender-Based Crimes will also serve as a guide for States and other relevant actors as they work towards combatting sexual and gender-based crimes more effectively. Our policy may assist national jurisdictions as a useful reference document in their efforts to



adopt, formulate or amend domestic legislation and refine their practices where deemed necessary.

Much more needs to be done, and can be done, to increase, standardise and streamline efforts.

Countries in conflict or post-conflict situations often face great challenges in conducting national proceedings because of the lack of or ineffective judicial infrastructure, insufficient resources or inadequate legislation that limit access to justice for victims of such crimes.

These difficulties have proven to be significant barriers in dealing with sexual and gender based crimes. The lack of political will, official attitudes of trivialisation or denial of these crimes, and other discriminatory attitudes further exacerbate these challenges.

Investigative opportunities are severely reduced where evidence cannot be collected or preserved in a timely or proper manner, whether due to stigmatisation, ongoing conflict or the lack of capacity or trust in the relevant judicial system. Such difficulties contribute to a continuing reign of impunity.

If we are to hope for any prospects of succeeding in our goal to curb impunity for such crimes, cooperation between and amongst the relevant stakeholders, including the Court, is therefore very crucial.

We, at the Court, and in particular in my Office, are attempting to do our part.

Again, I reiterate that while the ICC is a key pillar of the emerging international criminal justice system, it is not a panacea. It was never designed to be so.

Ending impunity for sexual and gender-based crimes requires collective action and resolve.

As custodians of the Rome Statute system, States Parties must adhere to *their* obligations under the Rome Statute to effectively investigate and prosecute crimes within the Court's jurisdiction, and to fully cooperate with the ICC.

It is therefore imperative to continue to work to support and enhance domestic capacities, for instance through training activities and secondments of judicial and law enforcement officials to countries where the judicial system has a proven history of success and effectiveness in dealing with these crimes.

My Office encourages various initiatives and actions, most notably those by States Parties, to address sexual and gender-based crimes. These initiatives include:

- Efforts towards universal ratification and domestic implementation of the Rome Statute and cooperation with the Court;
- The adoption of domestic legislation, which incorporates the conduct proscribed under the Statute and procedures which would protect the interests of victims and facilitate the effective investigation and prosecution of such crimes;
- Support for domestic investigations and prosecutions;
- Enhancement of cooperation for the execution of arrest warrants issued by the Court; and
- Strengthening political support to end impunity and to prevent the recurrence of crimes.

These contributions are important to establish and reinforce the normative framework of the Rome Statute for accountability for sexual and gender-based crimes.

More specifically, in the context of our positive approach to complementarity, my Office seeks to combine our efforts to prosecute those most responsible, with those of national authorities conducting proceedings against other perpetrators.

This has been particularly fruitful in Guinea, for example, where my Office has supported the efforts of the national authorities, who have the primary responsibility to deliver justice to the victims of the 28 September 2009 massacre, including the numerous victims of sexual and gender-based crimes.

As I noted during my last mission to Guinea in July of this year, significant and encouraging progress has been made in the investigation carried out by the panel of investigative judges. Numerous high ranking individuals have been indicted and hundreds of victims and key witnesses have been interviewed, including victims of sexual violence. My Office continues to follow the developments in Guinea and to encourage the Guinean authorities to pursue their efforts and to pay particular attention to the commission of sexual and gender-based crimes.

Additionally, following the eventual opening of an investigation, positive complementarity continues to inform my Office's activities. Under the Rome Statute, the Office may importantly provide assistance at the request of national authorities with regard to investigations or prosecutions they are carrying out at the national level, such as by sharing information collected by us, or expertise and best practices concerning investigations and prosecutions, including on witness protection and evidence handling.

In this regard, and in recognition of the need to share the burden of justice, the Office's new Strategic Plan for 2016-2018 designates the development, with partners, of a coordinated investigative and prosecutorial strategy to close the impunity gap as one of its strategic goals. This will not only strengthen the investigative and prosecutorial possibilities of the Rome Statute system, but will also help optimise the benefits and output of other existing justice initiatives. I believe this is particularly important for sexual and gender-based crimes.

We will particularly encourage relevant national authorities and other entities to address barriers to genuine proceedings and to provide support for the victims of such crimes.

The Office aims to react promptly to upsurges of violence, including sexual and gender-based crimes, by reinforcing early interaction with States and international and non-governmental organisations, in order to verify information on alleged crimes, to encourage genuine national proceedings and to prevent the recurrence of crimes.

Where the Court has jurisdiction, the Office may also issue preventive statements to deter the escalation of violence and the further commission of crimes, and to put perpetrators on notice, and to promote national proceedings.

Finally, cooperation from States with my Office in its investigations and prosecutions, including for sexual and gender-based crimes, remains critical for our ability to live up to our mandate under the Rome Statute.

Ladies and Gentlemen,

I have stated previously, let me reiterate that this is a battle none of us can win alone.

We have come a long way indeed and must be proud of the gains that we have achieved, but we must not underestimate the challenges that are present.

It is my firm and unyielding belief that our collective efforts and dedication is the only way to achieve our common goal to break the cycle of impunity and end the scourge of sexual and gender-based crimes.

My Office's commitment in this regard remains unshaken.

Knowledge is power. Education is one way through which the impact of the Court and efforts at ending impunity for sexual and gender-based crimes can be ultimately enhanced. Teaching future generations about past conflicts and global issues, such as the use of sexual violence in conflict, the functioning of global institutions, and different methods and skills to manage violence at domestic and international levels, is the ultimate means to prevent future crimes. The academic study of conflict and of mechanisms to respond to conflict, including through the vector of international law, can teach us invaluable lessons as we advance in humanity's epic journey to reverse the traditional cycle of violence that has historically defined the human experience.

Over these next two weeks, I know you will hear from experts in this field, including my Special Gender Adviser Brigid Inder and many others.

I wish you all a most fulfilling two weeks of study and reflection on these serious issues, and I am confident your deliberations will close with reinforced inspiration and commitment.

It is also my hope that the ICC can count on the support of each and every one of you in our joint endeavour to fight impunity and bring justice to the victims of sexual and gender-based crimes.

As you embark on these two weeks of learning and reflection, I ask you to think creatively about how we can collectively move this conversation forward and take practical steps towards greater harmonisation of our efforts to fight sexual and gender-based crimes. A holistic response to ending impunity for these heinous crimes is very critical.

As you continue your discussions over the next few days, perhaps you can reflect on how the system as a whole can become more effective in our response to such crimes, and what each of you, in your respective roles – present or future – can do to advance this important cause.

Allow me to close my remarks by making the following observation:

Sexual and gender-based crimes are *an affront* to our most basic notions of decency, and degrade humanity's good name.

There is no rationalising these crimes; and let me be clear: *no moral imperative* – earthly or divine – would licence the commission of such horrors. On the contrary, humanity's moral conscience must be outraged and shocked into action to stop these despicable crimes.

We must absolutely do all that we can to bring an end to the culture of sexual and gender-based crimes which continue to prevail, unchecked, in contemporary conflicts around the world.

Our responsibilities remain great, but our resolve *must* endure.

As I stand before you today, I reiterate my unyielding commitment and that of my Office to hold those most responsible for such crimes accountable within the Rome Statute legal framework.

Let me, however, emphasise that the flame of international criminal justice shines brightest when lit across the globe.

We all have a role to play and must each do our part by carrying the torch.

When those collective efforts materialise and merge, it is when we have finally ensured that during war and conflict, the laws will no longer remain silent.

The countless victims of sexual and gender-based crimes of past and current conflicts deserve no less.

I thank you for your attention. | OTP