

AMICC

The International Criminal Court and Children's Rights

The Rome Statute creates the International Criminal Court (ICC) and gives it jurisdiction to investigate and try individuals accused of serious war crimes, crimes against humanity, and genocide. As children are increasingly the victims of atrocities – whether targeted directly, harmed as a consequence of violent attacks against their parents, or coerced to act as combatants in hostilities – this Court provides an important new mechanism for implementing existing child protection standards. Thus, participation in the ICC is a concrete step in the fulfillment of many obligations incorporated into the Convention on the Rights of the Child (CRC) and its Protocols. In addition to providing a means for states to enforce these obligations collectively, membership in the Court will encourage States Parties to draft new domestic legislation with complementary child protection provisions.

ICC PROVISIONS IMPLEMENTING THE GUIDING PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD

Children's rights incorporated into the Rome Statute include laws punishing crimes committed against children, recognition that separate procedures are necessary to establish the criminal responsibility of children, special measures protecting children as victims and witnesses during judicial proceedings, and requirements that judicial staff have expertise on children's issues:

INTERNATIONAL JUSTICE STANDARDS

The Rome Statute criminalizes the conscription, enlistment or use in active hostilities of child soldiers under the age of fifteen years, both in international and non-international armed conflicts. [Article 8(2)(b)(xxvi), (e)(vii)]

- “States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take direct part in hostilities.” [CRC Article 38(2)]
- “States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. ...” [CRC Article 38(3)]
- “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.” [CRC OP on the Involvement of Children in Armed Conflicts Article 1]
- “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.” [CRC OP on the Involvement of Children in Armed Conflicts Article 2]

The Rome Statute criminalizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and other forms of sexual violence as both war crimes and crimes against humanity. [Articles 7(1)(g), 8(2)(b)(xxii), (e)(vi)]

- “States Parties shall take all appropriate ... measures to protect the child from all forms of physical or mental violence, injury or abuse, ..., maltreatment or exploitation, including sexual abuse....” [CRC Article 19(1)]
- “States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
 - a) The inducement or coercion of a child to engage in any unlawful sexual activity;
 - b) The exploitive use of children in prostitution or other unlawful sexual practices;
 - c) The exploitive use of children in pornographic performances and materials.” [CRC Article 34]
- “Each State Party shall make [child prostitution and the sale of children] punishable by appropriate penalties that take into account their grave nature.” [CRC OP on the Sale of Children, Child Prostitution and Child Pornography Article 3(3)]

The Rome Statute criminalizes widespread or systematic enslavement, including trafficking in children [Article 7(1)(c), (2)(c)]

- “States Parties shall take all appropriate ... multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.” [CRC Article 35]
- “Each State Party shall make [child prostitution and the sale of children] punishable by appropriate penalties that take into account their grave nature.” [CRC OP on the Sale of Children, Child Prostitution and Child Pornography Article 3(3)]

The Rome Statute criminalizes as genocide the forcible transfer of children from a group to another with the intent to destroy, in whole or in part a national, ethnic, or racial group as such. [Article 6(e)]

- “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.” [CRC Article 8(1)]
- “States Parties shall ensure that a child not be separated from his or her parents against their will....” [CRC Article 9]

CHILDREN AS PERPETRATORS

The Rome Statute provides that individuals under the age of 18 at the time of their alleged crime cannot be tried by the ICC. [Article 26]

- “In all actions concerning children...the best interests of the child shall be a primary consideration.” [CRC Article 3(1)]
- The arrest, detention, or imprisonment of a child...shall be used only as a measure of last resort...” [CRC Article 37(b)]
- “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law....” [CRC Article 40(3)]

- “A variety of ... alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” [CRC Article 40(4)]

CHILDREN AS VICTIMS AND WITNESSES

The Rome Statute includes procedures protecting the rights of children in their interactions with the Court, including:

- Requiring the Prosecutor to be sensitive to the interests of children during investigations and prosecutions, including making special arrangements for child witnesses to testify in private. [Articles 54(1)(b), 68(1), (2)];
- Establishing a Victims and Witnesses Unit (VWU) to provide counseling, protection, and other forms of support for child victims. [Article 43(6)];
- Establishing a Victim’s Representation and Reparations Unit to provide victims counsel with facilities and experts, and to establish principles regarding reparations to victims. [Articles 68(3), 75, First-Year Budget]; and
- Ensuring that judges, legal advisors in the Prosecutor’s Office, and VWU staff will have expertise in issues pertaining to violence against children. [Articles 36(8)(b), 42(9), 43(6)]

Moreover, the Rome Statute creates a Victim’s Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court and their families. [Article 79]

- “States Parties shall take all appropriate measures to promote the ... psychological recovery...of a child victim of: any form of neglect, exploitation, or abuse...; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” [CRC Article 39]

The Rome Statute provides that where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at appropriate stages of the proceedings. [Article 68(3)]

- “In all actions concerning children...the best interests of the child shall be a primary consideration.” [CRC Article 3(1)]
- “...[T]he child shall in particular be provided the opportunity to be heard in any judicial...proceedings affecting the child...” [CRC Article 12(2)]