



Lexsitus Lecturer: Shikha S. Bhattacharjee (JD, Legal and Content Director, HELM Studio)

Topic: ICC Statute Article 7(3)

Level: Introductory

Date of recording: 19 January 2018

Place of recording: Berkeley, California

Duration of the recording: 06:11

PURL of film: www.cilrap.org/cilrap-film/7-3-bhattacharjee/

PURL of English transcript: www.legal-tools.org/doc/f03f93

Hello. My name is Shikha Silliman Bhattacharjee. I am the Legal and Content Director at HELM Social Design Studio and a PhD Student in Jurisprudence and Social Policy at the University of California, Berkeley Law School.

This is an introductory lecture on article 7(3) of the Rome Statute. The text of this short article reads as follows:

For the purpose of this Statute, it is understood that the term “gender” refers to the two sexes, male and female, within the context of society. The term “gender” does not indicate any meaning different from the above.

This article is significant in that the Rome Statute is the first international instrument that expressly includes various forms of sexual and gender-based crimes as underlying acts of both crimes against humanity and war crimes committed in international and non-international armed conflicts. The Statute also criminalizes persecution based on gender as a crime against humanity.

In June 2014, the Office of the Prosecutor of the International Criminal Court released a Policy Paper on Sexual and Gender-Based Crimes. This Paper provides insight into the relevance of the article 7(3) definition in context of Court proceedings and OTP practice.

The Policy Paper on Sexual and Gender-Based Crimes begins by defining key terms:

“Gender”, in accordance with article 7(3) of the Rome Statute (“Statute”) of the ICC, refers to males and females, within the context of society. This definition acknowledges the social construction of gender, and the accompanying roles, behaviours, activities, and attributes assigned to women and men, and to girls and boys.

Notably, neither article 7(3) nor the definition provided by the OTP paper expressly include transgender, non-binary, and intersex people. However, in context of article 21(3) of the Statute, which mandates that the application and interpretation of the Statute be consistent with internationally recognized human rights, the OTP commits to taking the evolution of internationally recognized human rights into account. As a result of commitments made by the Office of the High Commissioner for Human Rights, this extends, therefore, to include violence and discrimination on the basis of sexual orientation or gender identity. The Policy Paper cites the

26 September 2013 statement by the High Commissioner for Human Rights, Navi Pillay articulating a commitment to end violence and discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons.

“Gender-based crimes” are those committed against persons, whether male or female, because of their sex and/or socially constructed gender roles. Gender-based crimes are not always manifested as a form of sexual violence. They may include non-sexual attacks on women and girls, and men and boys, because of their gender.

A “Gender perspective” requires an understanding of differences in status, power, roles, and needs between males and females, and the impact of gender on people’s opportunities and interactions. This will enable the Office to gain a better understanding of the crimes, as well as the experiences of individuals and communities in a particular society.

Finally, “Gender analysis” examines the underlying differences and inequalities between women and men, and girls and boys, and the power relationships and other dynamics which determine and shape gender roles in a society, and give rise to assumptions and stereotypes. In the context of the work of the Office, this involves a consideration of whether, and in what ways, crimes, including sexual and gender-based crimes, are related to gender norms and inequalities.

The 2014 Policy Paper articulates a commitment by the OTP to integrate a gender perspective and analysis into all of its work, including through innovation in investigation and prosecution, providing adequate training for staff, adopting a victim-responsive approach, and attending to staff interaction with victims and witnesses, and their families and communities.

In applying a gender analysis, the OTP commits to “examine 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”. In context of investigations, for instance, a gender analysis may lend insight into under reporting or non-reporting due to social, cultural, or religious factors, and stigma associated with gender-based violence for victims.

The OTP Policy Paper also highlights the significance of gender perspectives and analysis in context of the regulatory framework of the Court, including the Statute and Rules of Procedures and Evidence; and at all stages of Court engagement, from preliminary examinations, to investigations, prosecutions, external relations, and public information. Finally, the Paper concludes with a discussion of institutional development initiatives aimed at fostering gender perspectives and analysis, including recruitment and institutional arrangements, staff training, and implementation of policies outlined in the 2014 Policy Paper.

While a detailed account of these areas covered in the 2014 Policy Paper is outside the scope of this introductory lecture, I encourage you to refer to the 2014 Policy Paper on Sexual and Gender-Based Crimes for a detailed discussion of these critical issues.

Thank you.