



**Cour
Pénale
Internationale**

**International
Criminal
Court**

Le Bureau du Procureur

The Office of the Prosecutor

Policy on the Crime of Gender Persecution

7 December 2022



**Cour
Pénale
Internationale**
**International
Criminal
Court**

Le Bureau du Procureur
The Office of the Prosecutor



Policy on the Crime of Gender Persecution

December 2022

Table of Contents

I.	Use of Key Terms	3
II.	Executive Summary	4
III.	Introduction	5
IV.	General Policy	10
V.	The Regulatory Framework	12
	<i>Element 1: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.</i>	14
	<i>Element 2: The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.</i>	15
	<i>Element 3: Such targeting was based on gender as defined in article 7, paragraph 3, of the Statute.</i>	16
	<i>Element 4: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.</i>	18
	<i>Element 5: The conduct was committed as part of a widespread or systematic attack directed against a civilian population; Element 6: The perpetrator knew that the conduct was part of, or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.</i>	19
VI.	Preliminary Examinations	19
VII.	Investigations	21
	<i>a. Preparation</i>	21
	<i>b. Practice</i>	22
	<i>c. Analysis</i>	22
VIII.	Prosecutions	23
	<i>a. Selection of charges</i>	23
	<i>b. Modes of liability</i>	24
	<i>c. Evidence</i>	24
	<i>d. Sentencing</i>	27

e. Appeals 27

IX. Reparations 27

X. Cooperation and External Relations 28

XI. Institutional Development 29

XII. Implementation of this Policy 30

I. Use of Key Terms

The following reflects the understanding of the Office of the Prosecutor (“Office”) of the International Criminal Court (“Court” or “ICC”) of certain key terms used in this policy paper.

Key Terms	Understandings
Context of society	Under article 7(3) of the Statute, “context of society” refers to the group of social constructs and criteria used to define gender. These include, for example, sexual orientation, gender identity and gender expression, e.g. “woman,” “man,” “girl” and “boy.” Just as social constructs and criteria are used to define the understanding of race, ethnicity or culture, ¹ so are social constructs and criteria used to define the understanding of gender. ²
Gender	Under article 7(3) of the Rome Statute (“Statute”), “gender” is understood as the two sexes, male and female, within the context of society. Gender refers to sex characteristics and social constructs and criteria used to define maleness and femaleness, including roles, behaviours, activities and attributes. ³ As a social construct, gender varies within societies and from society to society and can change over time. This understanding of gender is in accordance with article 21 of the Statute.
Gender persecution	“Gender persecution” is the crime against humanity of persecution on the grounds of gender, under article 7(1)(h) of the Statute. Gender persecution is committed against persons because of sex characteristics and/or because of the social constructs and criteria used to define gender.
Intersex	“Intersex” is an umbrella term used to describe a wide range of natural bodily variations in sex characteristics. ⁴
LGBTQI+	Lesbian, gay, bisexual, transgender, queer and intersex identified persons. The plus sign represents people who identify with the broader LGBTQI community, but use other terms for self-identification. ⁵

¹ *Prosecution v. Ntaganda*, Trial Chamber VI Judgment, [ICC-01/04-02/06](#), para. 1010; *Prosecutor v. Rutaganda*, Trial Chamber I Judgement, [ICTR-96-3-T](#), para. 56; *Prosecutor v. Jelisić*, Trial Chamber Judgement, [IT-95-10-T](#), para. 70.

² [Policy Paper on Sexual and Gender-Based Crimes](#), p. 3.

³ [Policy Paper on Sexual and Gender-Based Crimes](#), p. 3; World Health Organization, [“Sex and Gender”](#).

⁴ United Nations Free and Equal, [Fact Sheet: Intersex](#).

⁵ While the acronym LGBTQI+ is inclusive of a broad range of persons, it is not exhaustive, nor is it the universally standard acronym.

II. Executive Summary

Persecution has been a long-standing matter of international concern and is firmly based in customary international law. Persecution as a crime against humanity crystallised as an international crime in the London and Tokyo Charters and in the judgements of the post-Second World War International Military Tribunals, with evidence of gender-based crimes appearing in their written records.

Despite this longstanding record of evidence of gender-based crimes in atrocities, the crime against humanity of persecution on the grounds of gender, referred to in this Policy as “gender persecution,” was not expressly established in treaty law until the adoption of the Rome Statute—the first international criminal law statute to recognise gender persecution as such. Inclusion of gender persecution resulted from a successful effort to secure recognition of various forms of sexual and gender-based harms in the Statute.

Notwithstanding this recognition, justice still eludes many victims. In conflicts and atrocities across the world, armed actors have perpetrated gender-based crimes amounting to persecution as a crime against humanity. Despite over 20 years of official recognition, the Office has only just begun to bring charges of gender persecution in its cases, leaving a gap in the development of international criminal jurisprudence.

This lag in bringing prosecutions for gender persecution as a crime against humanity is echoed by the practice of other international criminal tribunals and national jurisdictions. As a result, gender persecution is rarely investigated adequately or charged, whether in international or domestic courts. This has contributed to the lack of visibility in historical records, despite its consistent occurrence.

By definition, gender-based crimes target groups such as women, men, children, and LGBTQI+ persons, on the basis of gender. At their core, gender-based crimes are used by perpetrators to regulate or punish those who are perceived to transgress gender criteria that define “accepted” forms of gender expression manifest in, for example, roles, behaviors, activities, or attributes. These criteria often regulate every aspect of life, determining the extent of individuals’ freedom of movement, their reproductive options, who they can marry, where they can work, how they can dress and whether they are simply allowed to exist.

As with all forms of persecution, accountability for gender persecution requires recognition and understanding of the discrimination that underlies the crime. It is insufficient to only hold perpetrators accountable for crimes that take place during atrocities. Justice also requires a holistic understanding as to why perpetrators committed such acts, if we are to eliminate discrimination and break cycles of violence.

Given their grave consequences on victims and affected communities, the circumstances in which they are often committed, and the importance of addressing traditionally under-prosecuted offences, investigating and prosecuting sexual and gender-based crimes is a key priority for the Office of the Prosecutor. The Office developed the Policy Paper on the Crime of Gender Persecution to help put its aims more fully into practice.

International criminal law recognises that people of all genders and sexual orientations can be targeted with sexual and gender-based violence. However, gender discrimination has not been historically identified as a driving factor of violence under international criminal law. For

example, sexual violence is often viewed as a gender-neutral crime, which ignores the prevalence of gender discrimination in such crimes.

Recognition of gender persecution not only helps to unearth the discriminatory intent that can drive such crimes or entire conflicts, it can also shed light on victims who are vulnerable because of multiple and intersecting forms of discrimination. For example, LGBTQI+ persons can belong to women, girls, men and boys groups, and can also be targeted for belonging to LGBTQI+ groups.

Such recognition can also reflect the continuum of historical and longstanding structural discrimination and fundamental rights deprivations experienced by vulnerable gender groups such as women, girls and LGBTQI+ persons. It can also help to unearth misogynist, homophobic, and transphobic discrimination, when it intertwines with racial, ethnic and other forms of discrimination that undergird crimes. Accountability for gender persecution crimes can help contribute to sustainable peace and disrupt the normalisation of institutionalised gender discrimination and violence.

Gender persecution charges can help to capture a fuller range of criminality than that covered by other charges and can serve to redress impunity gaps. Charging gender persecution may help to unearth a myriad of gender-based acts that may or may not be found within the scope of most statutory crimes, highlighting harms that are often obscured.

The Court's mandate to 'put an end to impunity' requires the Office to consider the cumulative effect of all acts of persecution. In particular, recognising the cumulative effect of such acts may inform the Office's evaluation of the gravity of a case, while serving the victims and affected communities' interests by accurately describing the significance and extent of their mistreatment. Where possible, naming fundamental rights violations based on discriminatory grounds that may cumulatively amount to a severe deprivation also produces a more accurate and holistic historical record of the abuses that occurred.

At the request of the Prosecutor, the Special Adviser on Gender Persecution drafted this Policy. Taking direction from the Prosecutor's initiative to strengthen engagement with civil society, this Policy was developed through an extensive year-long consultative process engaging Special Advisers and staff of the Office as well as external actors, including representatives of States, UN experts, UN Women, international institutions, civil society organisations, affected communities, activists, academics, scholars and victims/survivors through workshops, panels, briefings and meetings before and during the drafting of this Policy. Over 500 organisations, institutions, States, UN experts, independent experts, activists, scholars and academics, representing over 100 countries and territories made submissions for consideration, signaling the importance of developing this Policy.

Accountability for, and the prevention of, gender persecution requires unified action and commitment by all relevant actors. In issuing this Policy, the Prosecutor further demonstrates his commitment to this endeavor.

III. Introduction

1. Persecution has been a long-standing matter of international concern and is firmly based in customary international law. Persecution as a crime against humanity crystallised as

an international crime in the London and Tokyo Charters and in the judgements of the post-Second World War International Military Tribunals, with evidence of gender-based crimes appearing in the written records.⁶

2. The Rome Statute of the International Criminal Court is the first international criminal law statute to recognise the crime against humanity of persecution on grounds of gender (“gender persecution”).⁷ The recognition of gender persecution formed part of the larger recognition of various forms of sexual and gender-based harms within the Statute.
3. Sexual and gender-based crimes have been recognised as being among the gravest crimes in the Statute,⁸ and investigating and prosecuting such crimes is a key priority for the Office of the Prosecutor. The Office is committed to paying particular attention to the commission of these crimes, including gender persecution, at all stages of its work from preliminary examination, investigation, to trial, sentencing, appeal and reparations.⁹
4. Under article 7(2)(g) of the Statute, “persecution” refers to the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of a group or collectivity. Gender persecution is committed against persons because of sex characteristics and/or because of the social constructs and criteria used to define gender.¹⁰
5. All persons who are victims¹¹ of crimes under the jurisdiction of the Court may be vulnerable to grounds for persecution under article 7(1)(h) of the Statute, including gender. Groups targeted for gender persecution include, for example, women, girls, men, boys and LGBTQI+ persons, and subsets of these groups.¹²
6. International criminal law recognises that people of all genders and sexual orientations can be targeted with sexual and gender-based violence. However, gender discrimination has not been historically identified as a driving factor of violence under international criminal law.¹³ For example, there has been a tendency to view sexual violence as a gender-neutral crime, which ignores the gender aspect.¹⁴

⁶ E.g., Nuremberg Trial Proceedings [Vol. 4, 8 January 1946 at p. 506](#); [Vol. 6, 29 January 1946 at p. 309](#); and, [Vol. 12, 25 April 1946 at p. 199](#). Additionally, both international human rights law and refugee law have recognised gender / gender-related persecution over the last thirty years. Oosterveld, V., “[Gender, Persecution, and the International Criminal Court: Refugee Law’s Relevance to the Crimes Against Humanity of Gender-Based Persecution](#),” *Duke Journal of Comparative & International Law*, Vol. 17 (2006), 49, pp. 50-51.

⁷ Article 7(1)(h) of the [Statute](#).

⁸ E.g., [Policy Paper on Sexual and Gender-Based Crimes](#), para. 45; [UNSC Resolution 2467](#) (2019), para. 15.

⁹ [Policy Paper on Sexual and Gender-Based Crimes](#), para. 4; [Policy Paper on Case Selection and Prioritisation](#), para. 46.

¹⁰ See [Policy Paper on Sexual and Gender-Based Crimes](#).

¹¹ This Policy uses the term “victim” as defined in Rule 85(a) and acknowledges that persons who experience crimes or harms may identify with the term “victim” or with the term “survivor.”

¹² While LGBTQI+ persons can belong to women, girls, men and boys groups, they can also be targeted for belonging to LGBTQI+ groups.

¹³ [IIIM Gender Strategy and Implementation Plan](#), Abridged Version (30 September 2022), pp. 5 and 9 (“IIIM Gender Strategy”). “The fact that sexual violence has long been regarded as inevitable side-effect of armed conflict has led to crimes of sexual violence being ignored and thus allowing the perpetrators to continue to act with impunity.” [IIIM Gender Strategy](#), p. 4.

¹⁴ [IIIM Gender Strategy](#), p. 9.

7. The Office will ensure there is no bias in how it assesses potential cases of gender persecution, recognising that any person may be targeted on grounds of gender, and that there should be no biased assumptions as to what crimes might underlie gender persecution.
8. With regard to gender persecution committed against or affecting children, the Office considers such acts or crimes as particularly grave, given the commitment made to children in the Statute, and the fact that children enjoy special recognition and protection under international law.¹⁵ Persecutory acts targeting children on the basis of age or birth may be charged on intersecting grounds, including gender, in accordance with the Policy on Children.¹⁶ The Office will pay particular attention to child victims of all ages—from birth to adolescence¹⁷—of gender persecution when assessing the gravity and impact of such crimes. Additionally, when engaging with children who are victims of gender persecution, the Office will apply a trauma-informed, child-sensitive and child-competent approach.¹⁸
9. While gender persecution may be committed against all persons in connection with crimes within the jurisdiction of the Court, such crimes can reflect the continuum of historical and longstanding structural discrimination and fundamental rights deprivations experienced by women, girls and LGBTQI+ persons.¹⁹
10. The perpetrators' discriminatory intent may overlap with or exacerbate existing social constructs or criteria used to define gender, or may represent an effort to impose new ones. The perpetrators' discriminatory intent may intersect with other grounds for persecution prohibited under the Statute, and also reflect existing social constructs or criteria used to define targeted groups based on, for example, race, ethnicity or culture, or impose new ones.²⁰
11. Recent examples of acts that may amount to gender persecution include crimes targeting women, girls, men, boys and LGBTQI+ persons, by parties to the conflict in

¹⁵ [Policy on Children](#), para. 57.

¹⁶ [Policy on Children](#), paras. 37 and 51.

¹⁷ Adolescence is the phase of life between childhood and adulthood, from ages 10 to 19. World Health Organization, [Adolescent Health](#).

¹⁸ [Policy on Children](#), paras. 9, 22, 23, 28, 33, 34, 63, 70, 71, 106 109, 116 and 120.

¹⁹ "The term 'gender' ... entails: Understanding the ways in which socially constructed gender roles can cause an imbalance of power against women and girls; Being aware that gender-based discrimination also drives harms against people of diverse SOGI [sexual orientations and gender identities] and can make their experiences invisible or poorly understood; and Ensuring that addressing gender constructions harming men and boys does not undermine efforts to address the systemic inequality and discrimination experienced by women and girls in all societies." [IIIM Gender Strategy](#), p. 6. "Conflict-related violence based on sexual orientation and gender identity can be structural in its nature, and some acts are connected to larger social discriminatory patterns as a result of criminalization and/or exclusionary social norms, all of which are used strategically and tactically by conflict actors." UN General Assembly, *Protection against violence and discrimination based on sexual orientation and gender identity*, [A/75/235](#) (July 27, 2022), para. 37.

²⁰ *Prosecution v. Ntaganda*, Trial Chamber VI Judgement, [ICC-01/04-02/06](#), para. 1010 ("Ntaganda Trial Judgement"); *Prosecutor v. Rutaganda*, Trial Chamber I Judgement, [ICTR-96-3-T](#), para. 56; *Prosecutor v. Jelisić*, Trial Chamber Judgement, [IT-95-10-T](#), para. 70.

Afghanistan;²¹ parties to the conflict in Colombia;²² “Da’esh” in Iraq;²³ parties to the conflict in Libya;²⁴ armed actors in Myanmar;²⁵ parties to the conflict in Nigeria;²⁶ armed actors in Syria;²⁷ and, parties to the conflict in Yemen.²⁸

12. Gender-competent approaches inform all aspects of the Office’s undertakings. The Office is committed to applying and interpreting the Statute consistently with international law, notably including human rights law, in accordance with article 21(1)(b)-(c) and (3) of the Statute. These principles will therefore guide the Office’s execution of its responsibilities concerning gender at all times.
13. Recognising the gravity of gender persecution and the importance of investigating and prosecuting it, the Office of the Prosecutor first charged the crime in the *Prosecutor v. Al Hassan* case.²⁹ For the first time in the Court’s history, on 30 September 2019 an ICC Pre-Trial Chamber confirmed charges of persecution on grounds of gender.
14. In 2022, the Prosecutor elevated the mandate, and capacity of the Gender and Children Unit (“GCU”), to reflect the Office’s prioritisation of these thematic areas. GCU supports all Unified Teams and other specialised Units and Sections in their work on sexual and gender-based crimes and crimes against and affecting children and other vulnerable persons, and at all stages of its work (preliminary examinations, investigations, trial, sentencing, appeal and reparations), including on matters related to gender persecution.
15. The Office only has jurisdiction to address gender persecution when it is committed in connection with any act referred to in article 7(1) or any other crime within the jurisdiction of the Court,³⁰ and when the contextual elements of crimes against humanity are met.

²¹ [“Even If You Got to the Skies, We’ll Find You:” LGBT People in Afghanistan After the Taliban Takeover](#), OutRight Actional International and Human Rights Watch (25 January 2022), pp. 12-14 and 20; See [Human Rights in Afghanistan: 15 August 2021 to 15 June 2022](#), UN Assistance Mission in Afghanistan (July 2022), p. 17.

²² [Caso 05, Auto 066 de 2021, Jurisdicción Especial para la Paz, Sada de Reconocimiento de verdad, de responsabilidad y de determinación de los hechos y conductas](#), 14 April 2021, paras. 2.2 and 2.3.

²³ OHCHR Report on the human rights situation in Iraq in light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, [A/HRC/28/18](#) (27 March 2015), paras. 35-43.

²⁴ Report of the Independent Fact-Finding Mission on Libya, [A/HRC/48/83](#) (29 November 2021), paras. 46 and 52.

²⁵ Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, [ICC-01/19-27](#), para. 86.

²⁶ [Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria](#), 11 December 2020.

²⁷ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, [A/HRC/46/54](#) (21 January 2021), paras. 49-53.

²⁸ Situation of Human Rights in Yemen, including violations and abuses since September 2014, [A/HRC/45/CRP.7](#) (29 September 2020), paras. 196-234.

²⁹ *The Prosecutor v. Al Hassan*, Confirmation of Charges, [ICC-01/12-01/18](#) (“*Al Hassan* Confirmation of Charges”). The *Al Hassan* case is the first where gender persecution charges have been filed. Charges of persecution on the grounds of gender (along with ethnic, political and/or religious grounds) have also since been brought in the CAR and Darfur Situations. See *Prosecutor v. Al Rahman*, Confirmation Decision, [ICC-02/05-01/20](#) (“*Al Rahman* Confirmation Decision”); See also *Prosecutor v. Said*, Confirmation Decision, [ICC-01/14-01/21](#) (“*Said* Confirmation Decision”). Prior to the *Al Hassan* case, the Prosecutor attempted to bring charges of gender persecution in the *Mbarushimana* case, but these were not ultimately included in the document containing the charges. *Prosecutor v. Mbarushimana*, Pre-Trial Chamber I, [ICC-01/04-01/10](#).

³⁰ Article 7(1)(h) of the [Statute](#).

16. The objectives of this Policy are to:
 - Affirm the commitment of the Office to pay particular attention to addressing sexual and gender-based crimes in line with its statutory mandate;
 - Provide clarity and direction to staff in the interpretation and application of the Statute, the Elements of Crimes (“Elements”) and the Rules of Procedure and Evidence (“Rules”), at all stages of the Office’s work, in order to ensure the effective investigation and prosecution of gender persecution from preliminary examination through to sentencing, appeal and reparations;
 - Contribute to advancing a culture of best practice in relation to the investigation, analysis and prosecution of gender persecution both within the Office and more broadly;
 - Contribute, through the implementation of this Policy, to the ongoing development of international jurisprudence regarding gender persecution;
 - Raise awareness regarding the importance of addressing gender persecution, including by supporting genuine national proceedings.
17. Accountability for, and the prevention of, gender persecution requires unified action, commitment and dedicated efforts by all relevant actors. In issuing this Policy, the Prosecutor further demonstrates his commitment to this endeavour.
18. This document sets out the Office’s policy in relation to gender persecution. It is based on the Statute, the Elements, the Rules, the Regulations of the Court, the Regulations of the Office and the Office’s prosecutorial strategies. It aligns with and builds on the Office’s other policy documents and the Gender Analysis Guidelines. Where appropriate, it is based on applicable treaties and the principles and rules of international law in accordance with article 21(1)(b)-(c) and (3) of the Statute. It draws on the experience of the Office, its existing good practices and lessons learned, as well as relevant jurisprudence, including that of the ICC and other courts and tribunals. This Policy focuses on the Office’s strategic approaches and is subject to revision. It does not give rise to legal rights.
19. The Office publishes its policies in the interests of promoting transparency, clarity and predictability in its approach to alleged crimes. Publication, dissemination and implementation of this Policy may enhance cooperation and collaboration in addressing gender persecution among actors including States, United Nations (“UN”) bodies and experts, transitional justice mechanisms, international institutions, civil society organisations, academics, activists and victims/survivors. It is hoped that it will also assist in promoting cooperation, increasing accountability for gender persecution, and enhancing the preventive impact of the Statute through the work of the Court in relation to these crimes.
20. The Office stresses the importance of collaboration with external partners, experts in this field and civil society to address gender persecution. At the request of the Prosecutor, the Special Adviser on Gender Persecution drafted this Policy. The Office considered it vital that this Policy be informed by the voices of civil society, affected communities and other

key actors, especially those who have experience addressing gender-based harms or have been victims of such crimes. Taking direction from the Prosecutor's initiative to strengthen engagement with civil society,³¹ this Policy was developed through an extensive year-long consultative process engaging Special Advisers and staff of the Office as well as external actors, including representatives of States, UN experts, UN Women, international institutions, civil society organisations, affected communities, activists, victims/survivors, academics and scholars through workshops, panels, briefings and meetings before and during the drafting of this Policy. Over 500 organisations, institutions, States, UN experts, independent experts, activists, victims/survivors, academic and scholars representing over 100 countries and territories made submissions for consideration, signaling the importance of developing this Policy.

IV. General Policy

21. The Office pays particular attention to the crime against humanity of persecution on the grounds of gender and endeavours to investigate, analyse and prosecute it within the scope of its mandate.
22. Article 7(2)(g) defines "persecution" as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." In accordance with article 7(1)(h), gender persecution conduct must be committed in connection with any act referred to in article 7(1) or any crime within the jurisdiction of the Court: genocide, other crimes against humanity, war crimes and the crime of aggression.
23. Underlying acts or crimes of gender persecution may include, but are not always manifested as, forms of sexual violence or any physical violence or physical contact. They may include psychological abuse.³² They may take forms other than physical injury to persons, including acts such as cultural destruction or confiscation or attacks on schools or hospitals.³³
24. Gender persecution severely deprives a person or persons of the fundamental right to be free from discrimination in connection with other fundamental rights deprivations, contrary to international law. For example, it may deprive a person of the right: to life; to be free from torture or other inhumane or degrading treatment or punishment; to be free from slavery or the slave trade, servitude and retroactive application of penal law; to freedom of assembly, opinion, expression, movement and religion, including the right to be free from religion; rights to equality, dignity, bodily integrity, family, privacy, security, education, employment, property, political or cultural participation, to access to justice or health care. Human rights violations can constitute a severe deprivation of fundamental rights on their own or when considered cumulatively. The deprivation of fundamental rights may be enforced by means of violence or destruction, or occur via the imposition of regulations that can impact persons in every aspect of life. This may

³¹ [ICC Prosecutor Karim A.A. Khan QC announces new initiative to strengthen engagement with civil society](#), 13 May 2022.

³² *Prosecutor v. Kvočka*, [IT-98-30/1-A](#), Appeals Judgement, para. 325 (finding that acts of harassment, humiliation and psychological abuse against Bosnian Muslims constituted underlying acts of persecution as a crime against humanity).

³³ See [Policy Paper on Sexual and Gender-Based Crimes](#); [Policy on Cultural Heritage](#).

include, for example, their reproductive and family options, who they can marry, whether they can attend school, where they can work, how they can dress and whether they are simply allowed to exist.

25. Gender persecution may be used by perpetrators to enforce social constructs and criteria through imposed discriminatory regulations that violate fundamental rights. For example, the ideology of the Islamic State in Iraq and the Levant has been described as “grounded on a systematic discrimination against persons on the basis of gender and gender expression, which has included torturing and killing those deemed not to be in conformity with their understanding of gender roles.”³⁴
26. Recognising that a broad range of severe fundamental rights deprivations may amount to gender persecution, the Office will analyse patterns in persecutory conduct both as individual acts or crimes and in their cumulative effect when investigating gender persecution.
27. The Office recognises that human rights violations prohibited under international law are not culturally determinative. Breaches of fundamental rights cannot be ignored, dismissed or justified on the basis of culture.³⁵
28. Certain types or aspects of cultural heritage may be targeted specifically because they hold a special value to members of a targeted group on gender grounds.³⁶ For example, destroying a mausoleum that serves as an important gathering site for women, or burning down an archive center important to LGBTQI+ persons,³⁷ may constitute an act of gender and cultural persecution. In accordance with article 54(1)(b) of the Statute and as reflected in the Policies on Sexual and Gender-Based Crimes and Cultural Heritage, the Office will

³⁴ UN Human Rights Council, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on a Gender-Sensitive Approach to Arbitrary Killings, [A/HRC/35/23](#) (6 June 2017), para. 47.

³⁵ [Policy on Cultural Heritage](#), fn. 8 citing, Report of the Special Rapporteur in the field of cultural rights, 3 February 2016, UN Doc. [A/HRC/31/59](#), para. 27: “It is perhaps useful at this juncture to recall what cultural rights are not. They are not tantamount to cultural relativism. They are not an excuse for violations of other human rights. They do not justify discrimination or violence. They are not a licence to impose identities or practices on others or to exclude them from either in violation of international law. They are firmly embedded in the universal human rights framework.” See para. 25: “The Office respects, and is sensitive to, culture in all its richness and diversity, provided that such cultural practices ‘are not inconsistent with this Statute and with international law and internationally recognized norms and standards’.” See also, The UN Human Rights Committee has stated that States parties to the ICCPR should ensure that traditional, historical, religious, or cultural attitudes are not to be used to justify violations of the right to equality before the law and to equal enjoyment of all rights under the [International Covenant for Civil and Political Rights](#) (“ICCPR”), articles 5(2) and 26. [The Declaration on the Elimination of Violence Against Women](#), article 4, para. 1: States “should not invoke any custom, tradition or religious consideration to avoid their obligations with respect to [the] elimination [of violence against women]”.

³⁶ [Policy on Cultural Heritage](#), para. 29 (noting such an analysis is also in accordance with the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)).

³⁷ See, e.g., Claudia Schoppmann, “The Position of Lesbian Women in Nazi Germany,” in “Hidden Holocaust? Gay and Lesbian Persecution in Germany 1933-45” (Gunter Grau ed., 1995), p. 9; Heike Bauer, “Burning Sexual Subjects: Books, Homophobia and the Nazi Destruction of the Institute of Sexual Sciences in Berlin” in, “Book Destruction from Medieval to Contemporary”, (Basingstoke: Palgrave Macmillan, 2014), p. 17-33. See William J. Payne, *Death-squads contemplating queers as citizens: What Colombian paramilitaries are saying*, Gender, Place & Culture, (2016), p. 338 (discussing an armed actor advocating for the firebombing of gay establishments in Colombia).

take a holistic approach to investigating gender persecution in understanding its intersection with culture and other persecutory grounds.³⁸

29. The Office will strengthen the concrete steps it has taken to enhance the skills of staff in the application of a gender and child-competent approach to its work, recognising that victims who experience or are at risk of gender discrimination often endure heightened vulnerability to gender persecution. The Office will also pursue an intersectional approach to discrimination to fully reflect the inter-relationship between gender, age and other aspects of an individual's identity or circumstances (such as race, ethnicity or social origin, Indigenous status, language, religion or belief, political or other opinion, nationality, culture, wealth, birth, health or other status, disability status, statelessness, status as a refugee or migrant, among other grounds),³⁹ which may increase their vulnerability to persecution or other crimes, and to assist in planning of the Office's operational activities.
30. Where possible under its mandate, the Office will encourage complementary efforts by States and other stakeholders to stop, prevent and punish gender persecution including by encouraging domestic implementation, including specific consideration of domestic accountability mechanisms for gender-based crimes in its complementarity assessments, participating in awareness-raising activities, and exchanging best practices to support and learn from domestic investigative and prosecutorial strategies. The Office will also work to assist national authorities and other relevant stakeholders to investigate and prosecute these crimes, as appropriate.

V. The Regulatory Framework

31. The consideration of gender persecution in the context of the work of the Office occurs within a prescribed regulatory framework, *viz.* the Statute (with assistance in interpretation and application provided by the Elements)⁴⁰ and the Rules.
32. Article 21(3) of the Statute is particularly relevant to the Office's work regarding crimes committed on the basis of gender. It mandates that both the application and interpretation of the Statute must be consistent with internationally recognised human rights law and without any adverse distinction founded on the grounds of gender as defined in article 7(3). Thus, where appropriate, the Court may rely on applicable treaties and the principles and rules of international law pursuant to article 21(1)(b)-(c) and (3).
33. Accordingly, the Office will:
 - Fully utilise the provisions in the regulatory framework to effectively address gender persecution at all stages of its work;
 - Apply and interpret the Statute consistent with internationally recognised human rights law and other applicable sources of law set out in article 21 of the Statute,

³⁸ [Policy Paper on Sexual and Gender-Based Crimes](#), para. 20; [Policy on Cultural Heritage](#), paras. 3 and 16.

³⁹ *See, e.g.*, [UN Special Rapporteur to the International Law Commission, Re: Comments Regarding the Persecutory Grounds in the Draft Crimes Against Humanity Convention](#) (30 November 2018).

⁴⁰ Article 9 of the [Statute](#).

including those relating to persecution, discrimination and equality, gender and fundamental rights;

- Include gender persecution in internal analyses of situations and cases for the purpose of preliminary examinations and investigations, and consider the cumulative effect of all acts of persecution and their related human rights violations when analysing the severe deprivation of fundamental rights.
- Apply an intersectional approach to gender persecution with, when relevant, persecution based on political, racial, national, ethnic, cultural, religious or other grounds that are universally recognised as impermissible under international law⁴¹ in consideration of charging strategies, and hold perpetrators accountable for multiple or intersecting forms of persecution recognised under the Statute; and
- Seek to address any adverse distinction on the basis of gender, which may arise as a result of the work of the Court.⁴²

34. Article 7(1)(h) of the Elements provides assistance to the Court in the interpretation and application of article 7(1)(h) of the Statute.⁴³ It describes the six elements of persecution as a crime against humanity:

Element 1: The perpetrator severely deprived, contrary to international law,⁴⁴ one or more persons of fundamental rights;

Element 2: The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such;

*Element 3: Such targeting was based on political, racial, national, ethnic, cultural, religious, **gender** as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognised as impermissible under international law;*

Element 4: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court;⁴⁵

Element 5: The conduct was committed as part of a widespread or systematic attack directed against a civilian population; and

Element 6: The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

35. The Elements are not separate standards that supersede the language of the Statute itself. Consistent with article 9, they shall assist the Court in the interpretation and application

⁴¹ The Office considers that, in light of article 21(3), acts targeting children on the basis of age or birth may be charged as persecution on “other grounds”; The Office recognises that children may also be persecuted on intersecting grounds, such as ethnicity, religion and gender. [Policy on Children](#), para. 51.

⁴² Articles 21(3) and 68(1) of the [Statute](#).

⁴³ Article 9 of the [Statute](#).

⁴⁴ This requirement is without prejudice to para. 6 of the General Introduction to the [Elements of Crimes](#).

⁴⁵ No additional mental element is necessary for this element other than that inherent in element 6.

of the crimes in the Statute. Each of these elements will be considered in turn, as applied to gender persecution.

Element 1: The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.

36. Article 7(2)(g) of the Statute defines “persecution” as the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.
37. In accordance with article 21(1)(b) of the Statute, when assessing fundamental rights deprivations, the Office will have recourse to, for example, the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant of Economic, the Social and Cultural Rights; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the International Convention for the Elimination of Racial Discrimination; Convention on the Rights of Persons with Disabilities; the African Charter on Human and Peoples’ Rights; the American Convention on Human Rights; and the European Convention on Human Rights⁴⁶, as well as other rights under customary international law.⁴⁷
38. The Office recognises that the Court and other tribunals have produced a rich body of case law illustrating a broad range of acts and omissions that, individually or cumulatively, have amounted to severe deprivations of fundamental rights. Conscious that a fixed definition of fundamental rights would not serve the interests of justice, these tribunals instead have recognised a wide variety of fundamental rights.⁴⁸
39. The threshold for element one of gender persecution is always met when the crime[s] under the Statute are committed with discriminatory intent.⁴⁹ This is because all crimes under the Statute are violations of fundamental rights and all persecutory conduct violates the fundamental right to be free from discrimination. Taken together, the violation of the right to be free from discrimination in connection with any relevant crime prohibited by the Statute always constitutes a severe deprivation of fundamental rights. Regardless, for the severity assessment, fundamental rights deprivations based on discriminatory grounds, should always be considered cumulatively.

⁴⁶ Also known as the Convention for the Protection of Human Rights and Fundamental Freedoms.

⁴⁷ This is not an exhaustive list. See para. 24 above. See also, *Burundi* Article 15 Decision, [ICC-01/17-X](#), fn. 331.

⁴⁸ The Pre-Trial Chamber in *Al-Hassan* confirmed violations of a wide range of fundamental rights, following the Prosecution’s argument: “[T]hat the people of Timbuktu suffered violations of their fundamental rights, viz. the rights to freedom of religion, freedom of expression, freedom of thought, freedom of association and assembly, freedom of movement, equality, education, privacy, personal dignity, security and property.” *Prosecutor v. Al Hassan*, Pre-Trial Chamber Decision on the Prosecutor’s Application for the Issuance of a Warrant of Arrest, [ICC-01/12-01/18](#), para. 88; See also, *Burundi* Article 15 Decision, [ICC-01/17-X](#), para. 132; *Prosecutor v. Krnojelac*, [IT-97-25-T](#), Trial Chamber II Judgement, para. 433; *Prosecutor v. Kvočka*, Trial Chamber Judgement, [IT-98-30/1-T](#), para. 186 (citing *U.S. v. Ernst von Weizsaker*, vol. XIV, Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No. 10, p. 471); *Prosecutor v. Blaškić*, Trial Chamber Judgement, [IT-95-14-T](#), para. 233. The Nuremberg Tribunal found that acts such as denying the right to education or employment opportunities, or choice of spouse, are forms of religious persecution; *Prosecutor v. Tadić*, Trial Chamber Judgement, [IT-94-1-T](#), para. 710.

⁴⁹ In rare instances, there may exceptions, for example, with a single act of pillage.

40. The Court’s mandate to ‘put an end to impunity’ requires the Office to consider the cumulative effect of all acts of persecution.⁵⁰ In particular, recognising the cumulative effect of such acts may inform the Office’s evaluation of the gravity of a case for the purpose of article 17(1)(d) of the Statute, as well as serving the interests of victims and affected communities by accurately describing the significance and extent of their mistreatment.

Element 2: The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.

41. Article 7(1)(h) of the Statute criminalises persecution *against any identifiable group or collectivity* on prohibited grounds. Article 7(2)(g) defines persecution as the intentional and severe deprivation of fundamental rights contrary to international law “*by reason of the identity of the group or collectivity.*” Taken together, the Elements further describe the *targeting* of such persons by reason of the identity of a group or collectivity or the targeting of *the group or collectivity as such*. Thus, in accordance with article 7(1)(h)(2), the perpetrator must either (1) target a person or persons by reason of the identity of a group or collectivity or (2) target the group or collectivity as such.⁵¹
42. As for all forms of persecution, persons may be targeted for gender persecution because of sex characteristics and/or because of the social constructs and criteria used to define gender roles, behaviours, activities and attributes.⁵² For example, persons may be targeted for gender persecution when they are perceived to have or carry (gender) criteria prohibited by the perpetrator; or are perceived to not have or carry (gender) criteria required by the perpetrator.⁵³
43. The Elements make it clear that the ‘targeted group’ should be viewed broadly. Not all targeted persons are required to be directly part of the targeted group.⁵⁴ It is sufficient if they are sympathisers or affiliates of targeted members.⁵⁵ For example, if a perpetrator targets a school to prevent girls from attending, men who are teachers and staff at that

⁵⁰ The [Statute](#), Preamble.

⁵¹ The *Al Hassan* Pre-Trial Chamber noted that gender persecution acts may constitute, for example, the imposition of disproportionate sanctions against women, or the imposition of sanctions involving gender-specific violence. [Al Hassan Confirmation of Charges](#), paras. 177 and 697. For example, rape was used as a gender-specific sanction committed against women held in detention centers and forced into marriages. Paras. 699-700.

⁵² [Policy Paper on Sexual and Gender-Based Crimes](#), p. 3; World Health Organization, “[Sex and Gender.](#)”

⁵³ *Prosecutor v. Ongwen*, Trial Chamber IX Judgement, [ICC-02/04-01/15](#), paras. 2735-2736 (“*Ongwen* Trial Judgement”).

⁵⁴ The *Ntaganda* Pre-Trial Chamber, in finding persecution as a crime against humanity, held that crimes perpetrated against the non-Hema civilian population was based on ethnic grounds. *Prosecution v. Ntaganda*, Pre-Trial Chamber II Decision Pursuant to Article 61(7)(a) and (b), [ICC-01/04-02/06-309](#), para. 58. The ICTY also permitted the persecuted group to be defined in the negative for crimes against humanity charges, and permitted persecution against “non-Serbs” to be alleged in many cases. *E.g.*, *Prosecutor v. Stakić*, [IT-97-24-A](#), Chamber Judgement, para. 26. By contrast, *see* sub-para. (2) of the [Elements of Crimes](#) for Article 6 – Genocide: “Such person or persons belonged to a particular national, ethnical, racial or religious group.”

⁵⁵ The *Naletilić and Martinović* Trial Chamber held that “the targeted group does not only comprise persons who *personally* carry the (religious, racial or political) criteria of the group. The targeted group must be interpreted broadly, and may, in particular, include such persons who are *defined by the perpetrator as belonging to the victim group due to their close affiliations or sympathies for the victim group.*” *Prosecutor v. Naletilić and Martinović*, [IT-98-34-T](#), Trial Chamber Judgement, para. 636. “[I]t is the perpetrator who defines the victim group while the targeted victims have no influence on the definition of their status.”

school may form part of the targeted group, where the grounds for targeting are based on gender.

44. It is also sufficient that the perpetrator perceives the person as a member or an affiliate of the targeted group.⁵⁶ For example, if a perpetrator targets a person for being perceived as a gay man or lesbian, it is irrelevant that the person does not personally identify as homosexual.⁵⁷ That the perpetrator wrongly perceived the person as belonging to the targeted group, does not deprive such conduct of its discriminatory character.⁵⁸
45. As with other forms of persecution, all persons can be subjected to gender persecution because all persons have gender identities just as all persons have racial and ethnic identities. Targeted groups may include women, girls, men, boys and LGBTQI+ persons. Gender criteria assigned to groups relevant for discriminatory targeting include roles, behaviours, activities and attributes. Women and men may be targeted, for example, for being out of dress code⁵⁹ or for being perceived as homosexual or as engaging in homosexual behaviour.⁶⁰ Discriminatory criteria may also include physiological characteristics or attributes assigned to males and females. For example, a perpetrator may target women and girls for their perceived ability to become pregnant.⁶¹ Men or boys who cannot grow beards may be targeted.⁶² Intersex, nonbinary or transgender persons may be targeted for not belonging to “male/men” or “female/women” groups, as defined by the perpetrator.⁶³

Element 3: Such targeting was based on gender as defined in article 7, paragraph 3, of the Statute.

⁵⁶ *Prosecutor v Naletilić*, [IT-98-34-T](#), Trial Chamber Judgement, para. 636: “It is the perpetrator who defines the victim group while the targeted victims have no influence on the definition of their status.”; *See also, Prosecutor v. Krnojelac*, [IT-97-25-A](#), Appeals Chamber Judgement, para. 185; *Prosecutor v. Tadić*, [IT-94-1-T](#), Trial Chamber Judgement, paras. 652 and 714; *Prosecutor v. Blaškić*, [IT-95-14-T](#), Trial Chamber Judgement, para. 236; *Prosecutor v. Krstić*, [IT-98-33-T](#), Trial Chamber Judgement, para. 557.

⁵⁷ [Ntaganda Trial Judgement](#), paras. 1010-1011. If a perpetrator targets a person he perceives as a gay man, and the person also personally identifies as gay, this may provide evidence of the perpetrator’s targeting of gay men. However, such an overlap is not required.

⁵⁸ *Prosecutor v. Vlastimir Dorđević*, [IT-05-87/1-A](#), Appeals Chamber Judgement, para. 203 (citing *Prosecutor v. Krnojelac*, [IT-97-25-A](#), Appeals Chamber Judgement, para. 185).

⁵⁹ The *Al Hassan* Pre-Trial Chamber noted that victims were targeted by gender and religious persecutory acts through policies that regulated everyday aspect of victims’ lives. These included the regulation of their clothing, policies that governed interactions between men and women and policies that provided harsh penalties for transgressors. [Al Hassan Confirmation Charges](#), paras. 177, 689, 690 and 697.

⁶⁰ *See, e.g.*, OHCHR Report on the human rights situation in Iraq in light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, [A/HRC/28/18](#) (27 March 2015), para. 49; Report of the Independent Fact-Finding Mission on Libya, [A/HRC/48/83](#) (29 November 2021), para. 52 (noting the use of violence specifically against women and men identified as LGBTQI+ persons); Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, [A/HRC/46/54](#) (21 January 2021), para. 52; Situation of Human Rights in Yemen, including violations and abuses since September 2014, [A/HRC/45/CRP.7](#) (29 September 2020), para. 218.

⁶¹ *See, e.g.*, Report OHCHR on the human rights situation in Iraq in light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, [A/HRC/28/18](#) (27 March 2015), para. 41. Transgender men and boys may also be targeted for their perceived ability to become pregnant.

⁶² [Report on the Protection of Civilians in the Armed Conflict in Iraq: 1 May – 31 October 2015](#) (5 January 2016), p. 19.

⁶³ *See, e.g.*, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings, [A/HRC/35/23](#) (6 June 2017).

46. The mental elements for (gender) persecution are as follows. The perpetrator:
- meant to cause a severe deprivation of fundamental rights or knew that it would occur in the ordinary course of events;
 - had the specific intent to discriminate (targeting based on the statutory ground of gender); and
 - knew that the conduct was part of a widespread or systematic attack or intended that it be part of the attack.
47. Unless the accused is charged under article 25(3)(a) as a direct perpetrator, a co-perpetrator and/or an indirect perpetrator, there is no requirement to prove that the accused had a specific intent to discriminate. However, the mental elements for other relevant modes of liability must be proven. It suffices that the perpetrators had the specific intent to discriminate, in that case.
48. The concepts of ‘motive’ and ‘intent’ should not be conflated. Motive for carrying out a crime is not the same as the intent to perpetrate the crime. The fact that a perpetrator stole money due to greed is irrelevant. The question is simply whether the perpetrator intended to commit the theft.
49. In addition to the intent to commit the underlying act, discriminatory intent is required for gender persecution and thus must be proven. Personal *motives* should also not be conflated with discriminatory *intent*.⁶⁴ For example, personal motives to rape may include “sexual gratification” or the “opportunity” to commit rape.⁶⁵ Such motives do not undermine discriminatory intent. Personal motive should not be conflated with the perpetrator’s determination to act *by reason of gender*. Intent to discriminate is demonstrated when the perpetrator specifically intended to treat a targeted gender group or member of that group unequally.
50. Discriminatory intent may be evidenced in the disproportionate use of a persecutory conduct against one group based on gender. Or, it may be evidenced through the use of the same persecutory conduct committed against multiple groups but targeted separately based on gender. This requires a holistic understanding of the persecutory intent.
51. For example, perpetrators may target both women and men separately through rape, by reason of gender. Perpetrators may target women and girls because they view them as “chattel” or “war booty”⁶⁶ (based on their belief that women are lesser than men and

⁶⁴ The ICTY Appeals Chamber held that “[p]ersonal motive does not preclude a perpetrator from also having requisite specific intent” and emphasised that, “the same applies to sexual crimes, which in this regard must not be treated differently from other violent acts simply because of their sexual component.” *Prosecutor v. Dorđević*, [IT-05-87/1-A](#), Appeals Chamber Judgement, para. 887. The ICTY *Kvočka* Trial Chamber found that sexual violence committed against women in detention was a “natural or foreseeable consequence” of their incarceration, since violence, including rape and other forms of sexual violence and humiliation were accepted forms of violence committed against women targeted as an ethnic enemy. *Prosecutor v. Kvočka*, [IT-98-30/1-T](#), Trial Chamber Judgement, para. 327.

⁶⁵ It should be noted that personal motives such as “opportunity” or “sexual gratification” have not been sufficient on their own to prove discriminatory intent, even though they could evidence discriminatory intent.

⁶⁶ All rape victims are subjected to humiliation. In some cases, women and girls may be targeted for rape because the perpetrator views rape as part of the victims’ role, for example in the context of sexual slavery. In the case of “corrective rape” women and girls may be targeted to “cure” them of homosexuality. In these latter two instances, the perpetrator may not be motivated by the humiliation caused by his conduct.

should be treated like property). At the same time, perpetrators may target men and boys through rape as a strategy to “feminise” them and/or to invoke the “indignity” of being treated as a woman or a “homosexual” (based on their belief that men enjoy a higher standing than women or LGBTQI+ persons).

52. Finally, personal motives that *do not* evidence discriminatory intent *do not* negate a discriminatory intent.⁶⁷ Thus, perpetrators may hold motives that do evidence discriminatory intent at the same time as holding personal motives that do not evidence discriminatory intent, while committing a persecutory act. For example, a perpetrator may rape a woman to humiliate her *and* for “sexual gratification.”⁶⁸
53. Discriminatory intent does not require a showing of actual bias or prejudice. It suffices to show that the perpetrator acted on the basis of gender.⁶⁹ For example, a perpetrator may view persecutory acts such as enslaving or forcibly marrying a woman or girl as his “right” and not committed from a personally-held bias or to punish the victim. (See paragraphs 91 and 96). However, such acts are still based on gender.
54. Nevertheless, personal motives, bias and prejudice can be important to identify because they may serve as aggravating factors, including when acts are committed on the grounds of gender,⁷⁰ in addition to assisting in proving discriminatory intent. Thus, the perpetrators’ intent and motives must be carefully examined and unpacked.
55. Perpetrators may also commit a persecutory act based on multiple or intersecting grounds of persecution. Gender persecution may, and frequently does, intersect with and constitute multiple forms of persecution based on political, racial, national, ethnic, cultural, religious or other grounds that are universally recognised as impermissible under international law.⁷¹

Element 4: The conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.

56. Article 7(1)(h) provides that persecution on grounds of gender has to occur in connection with any act referred to under article 7(1) of the Statute or any crime within the jurisdiction of the Court. Accordingly, such crimes may be genocide, crimes against humanity, war crimes or the crime of aggression.

⁶⁷ Personal motivations to commit sexual violence as torture do not void the intent to discriminate *Prosecutor v. Kvočka*, [IT-98-30/1-A](#), Appeals Chamber Judgement, para. 463; *Prosecutor v. Kunarac*, Appeals Chamber Judgement, [IT-96-23 & 23/1-A](#), paras. 103 and 153.

⁶⁸ See fns. 32, 66 and 67 discussing humiliation as an underlying act of persecution.

⁶⁹ Similarly, under international human rights law on discrimination, there is no obligation to prove actual bias.

⁷⁰ [Rules of Procedure and Evidence](#), Rule 145(2)(b)(v). The aggravating circumstances set out under rule 145(2)(b) of the Rules include the “Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, paragraph 3”, which includes gender.

⁷¹ See fn. 41 above. See also, [Al Hassan Confirmation of Charges](#). The *Al Hassan* Pre-Trial Chamber commented on the intersectionality between forms of gender and racial discrimination, noting that “violence against women could also have been motivated by considerations linked to skin color, since women with dark skin were more affected by this violence than others; the same goes for dark-skinned men who, according to some witnesses, were [more] persecuted than those with light skin.” [Al Hassan Confirmation of Charges](#), para. 702. Gender persecution was also charged along with intersecting ethnic, political and/or religious discriminatory grounds in the *Said* and *Al Rahman* cases. *Al Rahman* Confirmation Decision, [ICC-02/05-01/20-433](#), and *Said* Confirmation Decision, [ICC-01/14-01/21-218](#).

57. Gender persecution charges can capture a fuller range of criminality and serve to redress impunity gaps. Such charges may help to unearth a myriad of gender-based acts that may or may not be found within the scope of most statutory crimes.
58. Gender persecution can be connected with crimes that take forms other than physical injury to persons, such as attacks on property or protected objects,⁷² for example, acts that target places important to the targeted group. Such places may include historical, cultural, religious, economical, educational, social or health centers, offices or other gathering places, places of worship, archives, works of literature or art significant to women, girls or LGBTQI+ communities. The destruction of such places may constitute acts of gender persecution.

Element 5: The conduct was committed as part of a widespread or systematic attack directed against a civilian population; Element 6: The perpetrator knew that the conduct was part of, or intended the conduct to be part of, a widespread or systematic attack directed against a civilian population.

59. It is not required that the persecutory acts be widespread or systematic, provided that the act(s) formed part of a widespread or systematic attack against a civilian population.
60. While evidence of repeated persecutory acts committed during an attack is not required, it may support the widespread or systematic nature of the ‘attack’ against the civilian population.
61. There is no need to prove a policy or plan to commit gender-based crimes for a determination of gender persecution under the Statute. Instead, as for any other crimes against humanity under the Statute, the requirement is to prove a widespread or systematic attack against a civilian population pursuant to or in furtherance of a State or organisational policy.
62. When assessing the widespread nature of an attack, the Office will take due regard of the fact that gender persecution often produces a multiplicity of victims, as it causes harm throughout affected communities and humanity as a whole.

VI. Preliminary Examinations

63. In accordance with the Statute and the Rules, the Office conducts preliminary examinations of situations to determine whether the conditions for opening an investigation are met—including whether there is a reasonable basis to believe that crimes within the jurisdiction of the Court, including gender persecution, have been committed.⁷³
64. In conducting preliminary examinations, the Office will pay particular attention to information made available concerning alleged gender persecution. The Office will

⁷² [Policy on Cultural Heritage](#), para. 29 (noting “that certain types or aspects of cultural heritage may be targeted specifically because they hold a special value to a specific group, such as a particular sex, gender or age group”).

⁷³ Article 53(1) (a)-(c) of the [Statute](#). See also, [Policy Paper on Preliminary Examinations](#), para. 2.

address barriers to identifying this crime, including when women,⁷⁴ men,⁷⁵ girls, boys⁷⁶ and LGBTQI+ persons⁷⁷ are targeted.

65. A gender analysis is needed to highlight and address harms that are often obscured. Examining rape and other forms of sexual or non-sexual violence in isolation may lead to missing relevant facts or patterns demonstrating their commission as a form of persecution.⁷⁸ Therefore, the Office is committed to implementing a gender analysis of crime patterns in order to understand the context and extent of harms suffered by victims and inform appropriate responses and remedies.
66. Recognising the gravity of gender persecution and the importance of investigating and prosecuting it, the Office will ensure that an assessment of the impact of the alleged gender persecution acts or crimes is incorporated into its analysis of the gravity of potential cases.
67. When assessing gravity, the Office will take into account whether there were multiple forms of persecution, the multi-faceted character of the act or acts, and the resulting suffering, harm and other impacts of such acts or crimes. The Office will apply an intersectional approach to its assessment of the discriminatory basis for such acts.
68. The Office will examine the general context within which the alleged crimes occurred, in particular, where gender persecution has occurred.⁷⁹ As part of its analysis, the Office may review information produced by or for human rights treaty bodies; the UN Secretary General's Office; UN experts; UN investigative and accountability mechanisms or other bodies; relevant regional human rights mechanisms and courts; academics; and, civil society organisations.
69. The Office recognises that there are many challenges to identifying and gathering information on gender persecution and may seek to engage with States, UN experts and bodies, local and international institutions, academics, civil society organisations, diverse victim/survivor groups, and other relevant entities and experts at an early stage.⁸⁰ Accordingly, the Office can send requests for information to such sources. The Office may also undertake field missions to the territory concerned in order to consult with the competent national authorities and affected communities.⁸¹

⁷⁴ [IIIM Gender Strategy](#), p. 4-5. "Justice for crimes more frequently targeting men and boys (such as killing and forced recruitment) are often prioritised whilst those disproportionately affecting women and girls (such as forced marriage and forced displacement), and their gravity and impact, are often overlooked," [IIIM Gender Strategy](#), p. 4.

⁷⁵ "Another problem caused by stereotyping is that international humanitarian law has consistently linked the crime of rape with women, reinforcing misconceptions that men and boys are not affected. This makes sexual violence against males more difficult to surface and address, particularly as negative stereotyping deters male victims forward owing to fears of emasculation, homophobia and associated stigma." [IIIM Gender Strategy](#), p. 12.

⁷⁶ [IIIM Gender Strategy](#), p. 12.

⁷⁷ "Stereotyping also often means that sexual violence perpetrated against persons of diverse SOGI and children goes unreported or unaddressed." [IIIM Gender Strategy](#), p. 12.

⁷⁸ [IIIM Gender Strategy](#), p. 5.

⁷⁹ See [Policy Paper on Sexual and Gender-Based Crimes](#); [Policy Paper on Preliminary Examinations](#), para. 86.

⁸⁰ See [Policy Paper on Preliminary Examinations](#), paras. 85-86.

⁸¹ [Policy Paper on Preliminary Examinations](#), para. 85.

70. The Office will seek to encourage, where feasible, genuine national investigations and prosecutions by States of gender persecution. It will also encourage relevant national authorities and other entities to address barriers to genuine proceedings, and to provide support for the victims of such crimes. The absence of genuine national proceedings will be assessed by the Office in light of indicators listed in the Office's Preliminary Examination Policy Paper.⁸² In its complementarity assessment, the Office may consider a separate assessment of the ability or willingness of national authorities to address gender persecution as distinct from other categories of crime.
71. The Office will seek to react promptly to upsurges of violence, which may include or give rise to gender persecution. It will engage with States, UN experts and bodies and civil society organisations at an early stage in order to verify information on alleged gender persecution.⁸³ Where the Office has jurisdiction, it may also issue statements to prevent the escalation of gender persecution, put perpetrators on notice and encourage genuine national proceedings.

VII. Investigations

72. The Office will carefully consider gender persecution at the earliest stages of an investigation, and will proactively include specific lines of inquiry to determine whether such crimes were committed. This will ensure the efficient utilisation of resources, sufficient time for the collection and analysis of evidence, strategic planning and decision-making.
 - a. *Preparation*
73. The Office will identify fundamental rights violations, their connection to acts or crimes and the targeting of members from one or more groups or collectivities. Staff will receive trainings designed to help them identify patterns, red flags and factual indicators related to persecutory conduct, including on grounds of gender.
74. Staff will receive briefings and be required to proactively familiarise themselves with local traditions, religious practices, customs, and cultural issues, including the status of women, girls, men, boys, and LGBTQI+ persons within this context. The Office will also examine any allegations of fundamental rights violations (to understand how, if present, they typically manifest in the region) and any other factors that may assist in the investigation mission and the interview process. Identifying relevant expert or overview witnesses who can provide information on the historical, cultural and social context in which the crimes took place is an integral component of any gender persecution investigation. The Office may appoint country experts to individual Unified Teams with situation-specific knowledge and/or expertise of these matters.
75. Networks are crucial for effective investigations of gender persecution. They also assist in addressing the challenges faced when investigations involve crimes committed on the basis of gender, such as identifying victims and witnesses. In order to build networks, the

⁸² [Policy Paper on Preliminary Examinations](#), paras 50-55.

⁸³ [Policy Paper on Preliminary Examinations](#), para. 18.

Office will consider information obtained during the preliminary examination stage relating to local communities and the existence of relevant civil society organisations.

76. Recognising the challenges and sensitive nature related to engaging with victims of and witnesses to gender persecution, as required, the Office will identify appropriate individuals who may be selected as intermediaries to support investigations. Where local intermediaries are not available or cannot be identified, the Office may look to regional or international civil society organisations with relevant expertise for assistance.⁸⁴
77. When interacting with victims or witnesses, the interview team will address them with their preferred gender pronouns and employ gender and culturally sensitive language. The team will assess relevant profile factors of interpreters and interviewers, avoiding any stereotypes. The interview team and interpreters will undertake specific preparations for the interview process when engaging with victims or witnesses including those who identify as LGBTQI+ persons. This may include familiarisation with euphemisms and other verbal, non-verbal or age-specific communication which may be used by interviewees to refer to acts of gender discrimination within the specific context of the investigation. They will also receive briefings and glossaries in order to familiarise themselves with the appropriate and accurate terms to describe acts of gender discrimination, violence and harms. The interview team will assess the witness's preference regarding the gender and other profile factors of interpreters and interviewers, avoiding any stereotypes.

b. Practice

78. As required by article 68(1) of the Statute, the Office takes various measures to protect the safety, physical and psychological well-being, privacy and dignity of victims and witnesses, particularly with regard to sexual and gender-based crimes. Accordingly, the Office will follow the protection provisions laid out in the Policy Papers on Sexual and Gender Based Crimes and Children as well as provisions relating to participation under the Policy Paper on Victims' Participation⁸⁵ when engaging with victims and witnesses of gender persecution. In particular, the Office will consider any unique threats, vulnerabilities, protection or support issues affecting victims or witnesses of gender persecution, particularly women, children and LGBTQI+ persons.

c. Analysis

79. Analysing the pre-conflict societal human rights context may be helpful as an indicator of fundamental rights deprivations committed during the temporal scope of an investigation. Perpetrators may rely on, or exacerbate, pre-existing discriminatory gender norms in order to facilitate gender persecution and this may serve as evidence of gender persecution. Pre-existing gender discrimination cannot excuse a perpetrator's gender persecutory conduct. Additionally, whether or not such acts are legal under national laws is irrelevant.⁸⁶ Just as with other forms of persecution, there is no requirement that the perpetrator's conduct must overlap with or exceed the pre-existing levels of gender discrimination in order to qualify as gender persecution.

⁸⁴ For example, the [UN WOMEN-JRR Sexual and Gender-Based Violence Roster](#) provides the international community with expertise in conflict and other contexts.

⁸⁵ [Policy Paper on Victims' Participation](#).

⁸⁶ Article 21 of the [Statute](#), with the exception of when article 32(2) of the [Statute](#) applies.

80. The Office will collect information and analyse criminal patterns from a fundamental rights perspective in order to ascertain whether prohibited acts or crimes were carried out as a means to enforce gender discrimination. Such an analysis may help to unearth a clearer pattern of persecution. For example, perpetrators may prohibit girls' education by bombing girls' schools or other educational facilities;⁸⁷ deny women and girls' reproductive and other medical care and/or intend to humiliate men by preventing them from meeting the needs of women and girl family members, through bombing hospitals with maternity wards;⁸⁸ enforce misogynist or homophobic values by burning down LGBTQI+ cultural centers; or target organisations providing support or services to vulnerable groups.
81. The Office will further apply an intersectional analysis to gender persecution conduct, recognising that such acts or crimes may also be motivated by additional and intersecting persecutory grounds under article 7(h).⁸⁹

VIII. Prosecutions

82. Building on the preliminary examination, and the substantive and detailed investigations and collection and assessment of evidence, the Office will ensure that charges for gender persecution are brought wherever there is sufficient evidence. The Office will seek to investigate and prosecute those most responsible for gender persecution that fall under the Court's jurisdiction.

a. Selection of charges

83. The Statute confers upon the Court jurisdiction over gender persecution in connection with any act referred to in article 7(1) of the Statute or any crime within the jurisdiction of the Court. The Office will make full use of the regulatory framework to investigate and prosecute gender persecution. The Office is committed to strengthening accountability for such crimes, thereby contributing to their prevention and to the development of jurisprudence in this regard.
84. In order to capture the totality of gender persecutory harms perpetrated in acts of gender persecution and their multi-faceted character, the Office may seek to bring cumulative charges for other sexual and gender-based crimes or to undertake thematic prosecutions of sexual and gender-based crimes, as supported by the evidence in each case.⁹⁰ The Office may also seek to bring separate charges for gender persecution committed against child victims.⁹¹

⁸⁷ See, e.g., Global Coalition to Protect Education from Attack ("GCPEA"), "[The Impact of Explosive Weapons on Education: A Case Study of Afghanistan](#)" (September 2021). See also, [Policy on Children](#), para. 87.

⁸⁸ See, e.g., [Report of the independent international commission of inquiry on the Syrian Arab Republic](#), A/HRC/25/65 (12 February 2014), Annex 7.II.

⁸⁹ See also, fn. 41 above.

⁹⁰ See [Policy Paper on Sexual and Gender-Based Crimes](#), para. 72. The Office will also consider bringing cumulative charges in order to reflect the gravity, multifaceted nature and far-reaching impact of crimes against or affecting cultural heritage. [Policy on Cultural Heritage](#), para. 109.

⁹¹ [Policy on Children](#), para. 51.

b. Modes of liability

85. In order to ensure accountability in a diversity of scenarios, the Office will consider the full range of modes of liability and mental elements under articles 25, 28 and 30 of the Statute for charging gender persecution, and will decide based on the existing evidence.
86. Under article 25 of the Statute, individuals, including military commanders or non-military superiors, may be responsible for gender persecution that they commit, either as individuals or jointly with and/or through another person, or if they order, solicit, induce, aid, abet, otherwise assist in, or in any way contribute to, the commission or attempted commission of those crimes. In the case of military commanders or non-military superiors, they can also be held responsible under article 28 of the Statute on the basis of command or superior responsibility.
87. Gender persecution may be committed, *inter alia*, as a result of explicit or implicit orders or instructions to commit such crimes. For instance, the perpetrator may be aware that gender persecution will—in the ordinary course of events—be committed as a consequence of military operations directed against civilian populations. Gender persecution may also be committed because of an omission (e.g., a failure to order subordinates to protect civilians, or failure to punish similar crimes committed in prior operations based on discriminatory motives). These crimes may also be caused by a combination of other relevant discriminatory factors at all levels of an organisation.

c. Evidence

88. Gender persecution may be evidenced through persecutory acts committed exclusively or disproportionately against a targeted group or collectivity, or against members of that group. In other cases, gender persecution may be evidenced by the targeting of members of a group or collectivity where no indication of such disproportionality exists. (See paragraphs 50-51).
89. Groups may be targeted through direct orders rooted in the strategy of war,⁹² or coordinated and methodological efforts.⁹³ For example, perpetrators may commit prohibited acts in an effort to further discriminatory regulations or beliefs that exemplify persecutory patterns in criminal conduct. (See examples in paragraphs 80 and 91).
90. The experience of the ICC and other tribunals demonstrates that there is often no direct evidence of orders to commit sexual or gender-based crimes.⁹⁴ In such circumstances, evidence such as patterns of prior or subsequent conduct or specific notice, as well as existing organisational policies, and the overall approach of the group to members of the targeted group or gender issues, may be adduced to prove an awareness on the part of the perpetrator that such crimes would occur in the ordinary course of events, which would satisfy the mental element under article 30(2)(b) of the Statute and may be sufficient, depending on the mode of liability charged. The Office will explore the full potential of this provision when analysing gender persecution and will consider strategic litigation approaches to establish the foreseeability of sexual and gender-based crimes.

⁹² [Ntaganda Trial Judgement](#), paras. 293 and 799.

⁹³ [Ongwen Trial Judgement](#), paras. 212, 222, 2098-2099 and 2312-2313.

⁹⁴ [Policy Paper on Sexual and Gender-Based Crimes](#), para. 81.

91. Gender criteria imposed by perpetrators on members of targeted groups or collectivities that amount to severe fundamental rights deprivations may be regulated through, for example, how they behave, the way they dress, where they work, where they live, what they are allowed to consume, how they define their family, or whether they are simply allowed to exist. (See paragraph 24). They may also incorporate discriminatory gender, ethnic and racial constructs and criteria shaped by colonialism and slavery. Thus, gender persecution may be evidenced, *inter alia*, when:
- i. Acts or crimes are committed as punishments for deviating from gender criteria imposed by the perpetrators. For example, women or girls who violate dress regulations by not wearing gloves at the market, could be met with corporal punishment.⁹⁵ Men and boys who exhibit what perpetrators view as “undesirable behaviors or clothing” counter to their notions of masculinity may be punished with torture or murder.⁹⁶
 - ii. The act or crime itself demonstrates the criteria the perpetrator imposes on persons. For example, a perpetrator may believe that the role of women and girls of a specific ethnicity is to be enslaved.⁹⁷ Men and boys may be forced to fight.⁹⁸ Women and girls may be forced into servitude to perform domestic labor such as cooking, washing clothes or treating the sick based on the assignment of these activities to women’s and girls’ gender roles.⁹⁹
 - iii. Acts or crimes evidence the perpetrators’ effort to show their ability to enforce gender regulations. For example, the perpetrators may engage in what they may refer to as “corrective rape” and “social cleansing”, i.e., the raping or killing of people considered “undesirable” such as women sex workers¹⁰⁰ and LGBTQI+ persons.¹⁰¹
 - iv. Acts or crimes intersect with other grounds for persecution prohibited under the Statute, and reflect existing social constructs and criteria used by perpetrators to target groups based on, *inter alia*, race and ethnicity. For example, there may be multiple grounds for persecution that undergird violence and other harms committed against Afro-descendent and Indigenous women.¹⁰²

⁹⁵ See, e.g., [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, at the Opening of the Confirmation of Charges Hearing in the Case against Al Hassan](#), 8 July 2019.

⁹⁶ See, e.g., UN WOMEN, [Gender and the Role of Women in Colombia’s Peace Process](#) (2016), p. 10; OHCHR & UNAMI, [Report on the Protection of Civilians in the Armed Conflict in Iraq: 1 May – 31 October 2015](#), (19 January 2016), p. 19.

⁹⁷ See, e.g., OHCHR Report on the human rights situation in Iraq in light of abuses committed by the so-called Islamic State in Iraq and the Levant and associated groups, [A/HRC/28/18](#) (27 March 2015), para. 35. This example may evince both gender and ethnic persecution.

⁹⁸ See, e.g., *Al Rahman* Confirmation Decision, [ICC-02/05-01/20-433](#); and *Said* Confirmation Decision, [ICC-01/14-01/21-218](#). [Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Nigeria](#), 11 December 2020.

⁹⁹ See, e.g., [Colombia Diversa. ¿Quién nos va a contar?](#) (September 2020), p. 65, 86-88 (reporting that cisgender and transgender women were forced into domestic labor).

¹⁰⁰ See, e.g., Inter-American Commission on Human Rights (IACHR), *Violence and Discrimination Against Women in the Armed Conflict in Colombia*, [OEA/Ser.L/V/II](#) (18 October 2006), para. 97.

¹⁰¹ See, e.g., UNWOMEN, [Gender and the Role of Women in Colombia’s Peace Process](#) (2016), p. 14.

¹⁰² See, e.g., Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición, [Hay futuro si hay verdad, informe final](#) (July 2022), pp. 73-98; Lisa Davis, [Dusting Off the Law Books: Recognizing Gender Persecution in Conflicts and Atrocities](#), 20 Nw. J. Hum. Rts. 1 (2021), pp. 42-51.

92. Gender persecution may target persons based on their gender and culture. For example, persons may be targeted for enslavement or subjected to the crime of forced pregnancy, because of their shared cultural heritage or because of their personal importance to the cultural heritage of that group, e.g. as religious or spiritual leaders.¹⁰³ Gender-based restrictions on freedom of movement or freedom of worship can also deprive victims of the right to access or practice their cultural heritage. The Office will apply an analysis of cultural heritage that appreciates that certain types or aspects of cultural heritage may be targeted specifically because they hold a special value to groups targeted on the basis on gender.¹⁰⁴ When supported by the facts, the Office will highlight the relationship between the gender persecution crime and cultural heritage in the charging instruments.¹⁰⁵
93. The Office recognises that gender persecution may target children because of their gender.¹⁰⁶ Acts of gender persecution committed against children may include, for example, forced marriage,¹⁰⁷ sexual enslavement and domestic servitude,¹⁰⁸ boys may be forced to fight each other.¹⁰⁹
94. The Office will seek to present evidence to establish the discriminatory intent and knowledge of the accused through diverse sources.¹¹⁰ Policies, plans, rules, regulations and other means for expressing gender criteria may come in various forms of oral statements or written materials such as teachings, arts and literature, visual and audio media, education and religious materials, manifestos, orders, decrees, brochures, magazines, leaflets, posters, radio or television broadcasts, artwork, graffiti, internet postings such as social media or blog posts, orders, speeches, everyday language and utterances. This may also include elements of an individual suspect's background and prior conduct that are indicative of relevant intent and adverse gender biases in the response of suspected groups or authorities to the crimes. The Office may also review documentary evidence contained in the reports of civil society organisations, universities, UN experts or bodies, Commissions of Inquires and media coverage.
95. Types of evidence of discriminatory intent can include the acts or statements of the direct perpetrators, legislation, policies or regulations promulgated by the perpetrator group or other authorities, the use of hate speech, slurs or discriminatory language against members of the target group, or public statements relating to the underlying crimes or persecutory acts. It can also be inferred from the pattern of targeting, such as crimes which are committed exclusively or predominantly against certain individuals or groups and/or not against others, or the separation of individuals based on their identifying gender characteristics. Intent and knowledge can also be inferred from prior or subsequent conduct.

¹⁰³ [Policy on Cultural Heritage](#), para. 60(iii).

¹⁰⁴ [Policy on Cultural Heritage](#), para. 29.

¹⁰⁵ [Policy on Cultural Heritage](#), para. 60(iii).

¹⁰⁶ [Policy on Children](#), paras. 51 and 86.

¹⁰⁷ ECCC Case No. 002/02, [002/19-09-2007-ECCC/SC](#), Summary of the Appeal Judgment in Case 002/02, para. 58. The ECCC confirms that victims of forced sexual intercourse and forced marriage comprise both female and male victims. Paras. 58 and 63. The same persecutory act may be committed against multiple targeted groups for different discriminatory intent. See paras. 50-51 above.

¹⁰⁸ E.g., [Ongwen Trial Judgement](#), paras. 216, 217 and 220; See paras. 50-51 above.

¹⁰⁹ See, e.g., UN WOMEN, [Gender and the Role of Women in Colombia's Peace Process](#) (2016) (reporting an incident where 16 gay youths were forced to fight each other in a boxing ring), p. 9.

¹¹⁰ E.g., *Prosecutor v. Taylor*, [SCSL-03-01-T](#), Trial Judgement, paras. 6815-6876 and 6880.

96. While personal beliefs or motives are not a requisite to establish individual criminal responsibility for gender persecution, they may evince discriminatory intent, particularly if expressed by the direct perpetrators before, during or after the commission of crimes. Sometimes such beliefs are so internalised and normalised, that the perpetrators may not articulate them or see them as a form of bias. In these instances, looking at the gender of victims; gender-specific patterns of targeting or whether the crime was sexual in nature, can help better determine the presence of discrimination, which may serve as evidence of intent.¹¹¹ (See paragraphs 52-54).
97. The Office will consult with experts, and where appropriate, propose their testimony on different aspects of gender persecution, such as socio-political, economic or environmental impacts inflicted on the affected communities. Such experts may also be useful in identifying patterns of gender persecution acts, including persecutory conduct and its connection with other crimes and fundamental rights deprivations, as well as its connections to other grounds for persecution. To this end, the Office may explore potential partnerships with international or local organisations, UN experts or bodies, academics or other experts able to testify or provide written statements on gender persecution concerns.

d. Sentencing

98. When determining an appropriate sentence to recommend, the Office will consider factors such as the gravity of the gender persecution, the impact of the crime on the victims of targeted groups on the basis on gender (such as vulnerabilities of women, LGBTQI+ persons, girls and boys being given special consideration), any transgenerational harm, and the individual circumstances of the convicted person.¹¹² The Office takes the position that gender persecution crimes should be seen as particularly grave for the purpose of sentencing, and considers that evidence of the personal discriminatory motive may constitute an aggravating factor for sentencing.¹¹³

e. Appeals

99. The Office will take into consideration the particular gravity of gender persecution crimes committed against or affecting victims, their families, their communities, the international community and humanity as a whole, in its decisions regarding appeals and strategic litigation.

IX. Reparations

100. The Office supports a gender-inclusive approach to reparations, taking into account the gender-specific impact on, as well as the harm caused to, and suffering of, the victims

¹¹¹ E.g., [Ongwen Trial Judgement](#), paras. 212 and 2082.

¹¹² Article 78(1) of the [Statute](#). Rules of Procedure and Evidence, [Rules of Procedure and Evidence](#), Rule 145(1) and (2) also list several factors to be considered in the determination of the sentence, including aggravating and mitigating circumstances.

¹¹³ [Rules of Procedure and Evidence](#), Rule 145(2)(b)(v). The aggravating circumstances set out under rule 145(2)(b) of the Rules include the “Commission of the crime for any motive involving discrimination on any of the grounds referred to in article 21, para. 3,” which includes gender.

affected by gender persecution for which the individual has been convicted. The Office will also take into account victims' rights to reintegration into their communities.

101. The Office will moreover support consultation with victims, including a gender analysis by an appropriate body in order to determine the most effective and appropriate forms of reparation within a particular community. This approach is intended to promote reparations that are transformative and contribute to advancing nondiscrimination and gender equality.
102. The Office will, in framing any submissions, bear in mind that individual reparations awards, including non-monetary awards such as apologies, may enhance a victim's sense of justice.¹¹⁴ At the same time, collective reparations, such as commemorations or the (re)construction of cultural or social centers, offices or other gathering places, archives, literature or art belonging to, for example, women, girls or LGBTQI+ people's communities, schools or health care facilities, may promote community reconciliation and provide the greatest benefit to groups of victims.¹¹⁵

X. Cooperation and External Relations

103. Effective cooperation is crucial to the Office's ability to conduct effective investigations and prosecutions. Accordingly, the Office will continue its efforts to enhance cooperation and support for its activities, in particular to address and prevent gender persecution, and to promote a gender-sensitive approach with respect to international criminal justice.
104. The Office will actively engage with States, international organisations and other relevant stakeholders in order to ensure the requisite level of assistance to its operations, to enhance diplomatic and political support for its work and to improve the effectiveness of its actions with respect to gender persecution. Noting the extent to which relationships with external partners have already greatly empowered and enriched the Office's work, the Office will strengthen its cooperation with, and continue to benefit from, the expertise of UN experts including Special Representatives, Independent Experts and Special Rapporteurs,¹¹⁶ UN bodies or specialised actors, civil society organisations and academics.
105. The Office recognises the dearth of information and awareness of gender persecution crimes within larger sexual and gender-based crimes documentation and accountability efforts. In accordance with the Office's new initiative to further strengthen the role of civil society,¹¹⁷ the Office will seek to support and strengthen cooperation with

¹¹⁴ See, e.g., *Lubanga Dyilo* Reparations Procedures, [ICC-01/04-01/06-2867](#), paras. 9-13.

¹¹⁵ See, e.g., *Lubanga Dyilo* Reparations Procedures, [ICC-01/04-01/06-2867](#), paras. 14-15.

¹¹⁶ UN experts who have commented on gender persecution or hold mandates relevant to gender persecution accountability, include, for example, the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict; and, for Children and Armed Conflict; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; and the UN Special Rapporteurs on: extrajudicial, summary or arbitrary executions; violence against women and girls, its causes and consequences; the right to health; torture and other cruel, inhuman or degrading treatment or punishment; on the promotion of truth, justice, reparation and guarantees of non-recurrence; in the field of cultural rights; and the UN Working Group on discrimination against women and girls.

¹¹⁷ [ICC Prosecutor Karim A.A. Khan QC announces new initiative to strengthen engagement with civil society](#), 13 May 2022.

organisations, that have experience in documentation and working with victims of these crimes. The Office will continue to work actively towards building a network, and may seek advice from the Special Adviser on Gender Persecution on how to engage with States, civil society organisations, and academic institutions, in order to enlist their assistance and support in efforts to identify gender persecution and victims of such crimes.

106. Beyond its operations, and in conjunction with other stakeholders, the Office seeks to contribute to, and highlight the need for, accountability for gender persecution through missions, public statements, and participation in conferences and trainings; as well as, generally, by contributing to the further development of a global network among investigative and prosecutorial bodies for sharing information and experience. It will actively engage with States, civil society organisations and other key stakeholders, in order to continue to improve the effectiveness of preventing and addressing gender persecution. The Office recognises that creating a record of successful prosecutions for gender persecution and strong jurisprudence on the legal elements of the crime can create a valuable precedent for domestic and regional accountability efforts.

XI. Institutional Development

107. The Office will endeavour to ensure that it has the necessary competencies and support to perform its functions effectively in relation to gender persecution. Providing adequate support to the GCU and enhancing mainstreaming of gender competencies within each Unified Team and other specialised Sections and Units are some of the ways of ensuring that proper focus is put on the investigation and prosecution of gender persecution.
108. The Office will monitor its practices with regard to the investigation and prosecution of gender persecution. The Office will identify, document and develop best practices with regard to gender persecution, including examples from domestic or regional accountability mechanisms where relevant. This will promote learning and the preservation of institutional knowledge gained from experience. In as far as is possible, the demonstration of awareness, knowledge, and best practice regarding identifying and working in persecutory contexts of cases will be fostered through team leadership.
109. The Office recognises the need to strengthen its in-house expertise on gender persecution, both in conflict and non-conflict situations. It will continue to recruit persons with the required expertise and experience in this field as appropriate, while benefiting from external expertise, where needed.
110. In accordance with article 42(9) of the Statute, the Prosecutor has appointed advisers, recognised experts with legal and other expertise in particular fields, including on issues of sexual and gender-based violence, to develop the capacity of the Office further and to advise the Office on policies, procedures and legal submissions.¹¹⁸ In September 2021,

¹¹⁸ On 17 September 2021, the Prosecutor created two new [Special Adviser appointments](#) pertaining to sexual and gender-based crimes, enlarging the mandates regarding gender crimes and signifying the importance of addressing such crimes. [Lisa Davis](#) was appointed the Special Adviser on Gender Persecution. The Prosecutor also created a new Special Adviser on Slavery Crimes and appointed [Patricia Viseur-Sellers](#). [Kim Thuy Seelinger](#) was appointed the Special Adviser on Sexual Violence in Conflict. Additionally, [Veronique Aubert](#) was appointed the Special Adviser on Crimes Affecting Children. While all Special Advisers incorporate

the Prosecutor appointed a Special Adviser on Gender Persecution to draft this Policy on Gender Persecution and to assist the Office in strengthening its capacity to respond effectively to gender persecution and applying a gender-competent approach to all aspects of its work.¹¹⁹

111. With guidance from the Special Adviser on Gender Persecution, the Office will create and maintain regular and situation-specific updates for investigative materials to further assist in identifying and investigating gender persecution, such as: (1) topic questionnaires, (2) elements guidelines, and (3) practical guidelines for implementation of this Policy, and materials specifically covering gender persecution crimes targeting men, women, LGTBQI+ persons and children of all of all ages, from birth to adolescence, including those vulnerable because of multiple and intersecting forms of discrimination or other grounds for persecution. The Office will also provide ongoing staff trainings on how properly to conduct Court examinations of cases for persecution contexts. The Office will also provide ongoing staff trainings on methodologies in the collection and analysis of evidence of gender persecution, presentation of in-court witness testimony, the relevant legal framework, and cultural and gender issues related to the situation and specific communities where the investigation is being conducted.

XII. Implementation of this Policy

112. The Office will monitor its practices to ensure that it conducts effective preliminary examinations, investigations and prosecutions of gender persecution, in accordance with this Policy. The Office will utilise its standardised institutionalised lessons-learned process to identify, document and implement best practices with regard to gender persecution. This will promote learning and the preservation of institutional knowledge gained from experience.
113. This Policy and other relevant internal rules and procedures, will be regularly reviewed in order to incorporate best practices and other relevant developments, including jurisprudence.
114. The Office will monitor and evaluate the implementation of this Policy.

a gender analysis to their work, these four mandates work to provide a holistic overview of gender crimes for the Office.

¹¹⁹ See the press release on the appointment: [“ICC Prosecutor Mr. Karim A.A. Khan QC appoints Seventeen Special Advisers”](#), 17 September 2021.

