



UNICEF Australia

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SUBMISSION

to the

Joint Standing Committee on Treaties

on

The Inquiry into the 1998 Statute of an International Criminal Court

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UNICEF SUBMISSION RELATING TO THE RIGHTS OF CHILDREN AND THE APPLICABILITY OF THE ICC

Executive Summary

The Australian National Committee of the United Nations Children's Fund (UNICEF Australia) takes this opportunity to present a written submission to the Joint Standing Committee on Treaties addressing the Statute of the International Criminal Court (the Statute) in relation to Australia's national interests.

UNICEF Australia is bound and guided by the UN Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to which Australia is a signatory.

UNICEF is operational before, during and after armed conflicts and sees how the same children that it has helped nurture, immunise and educate are now being systematically targeted and brutalised, many of them recruited as killers or pressed into service as porters and sexual slaves. Others end up maimed or psychologically traumatised. This horrific abrogation of child rights is intolerable.¹

In this new millennium, the success of individual states in their attempts to assist in the establishment of political and economic stability and world peace will, to some extent, lie in their ability to adopt a more flexible structure which can readily mirror changes in the international environment and ensure adherence to basic human rights standards. Ratification of the Statute will represent a substantial step in addressing these challenges. As a member of the United Nations, Australia has and should continue its efforts in promoting international human rights, and continue making financial contributions to the work of the UN and non-governmental organisations in delivering humanitarian relief. Moreover, the genuine commitment of the Australian Government to human rights is best demonstrated by ensuring that Australia's domestic laws do not breach the spirit of international human rights instruments and that it ratifies new human rights instruments such as the Statute in a timely manner.

¹ Bellamy, Carol, "Address to the Security Council's Open Briefing on the Protection of Civilians," 18 July 1998.



Recommendations in Summary

UNICEF Australia recommends that Australia

- ratify the ICC Statute as a matter of urgency.
- reject the opt-out clause in the Statute that might suspend the jurisdiction of the court, as it applies to the specific category of war crimes for up to seven years.
- lobby to ensure that the time frame for accepting the jurisdiction of the ICC is not extended so as to prevent the possibility of current perpetrators of atrocities against children and women never being brought to justice.



Background

UNICEF Australia welcomes the opportunity to contribute to the Joint Standing Committee on Treaties' examination of the Rome Statute of the International Criminal Court.

UNICEF Australia is a non-government organisation established in Australia to support the work of the United Nations Children's Fund. UNICEF is the only United Nations organisation dedicated exclusively to children.

UNICEF works with other United Nations agencies, governments and non-government organisations to provide community-based services in primary healthcare, nutrition, basic education, and safe water and sanitation in over 140 countries. UNICEF aims to reduce the terrible toll lack of such services takes on the world's youngest citizens.

UNICEF Australia is one of 38 similar committees in the industrialised world whose purpose is twofold: 1) to raise funds for UNICEF's programs for women and children in the developing world 2) to advocate for and work to promote and achieve the rights of all the world's children.

The most constant theme for UNICEF advocacy over the years has been that the vital, vulnerable years of childhood should be given first call on society's concerns and capacities.

Although UNICEF Australia's primary mandate is to assist women and children in the developing world, Australian children have urgent needs including health care, clean water, sanitation and education of Aboriginal and Islander children. Other problems include high levels of youth suicide, low levels of immunisation, access to quality education, unemployment, issues related to juvenile justice and family law, youth homelessness, abuse and neglect, and violence within families.

War crimes against children

It has been estimated that there have been some 250 international and regional armed conflicts since World War II which have produced an estimated 170 million casualties.² In just four years there has been an increase from 15 countries convulsed by conflict to some 55.³ Some argue that a major contributing factor to this devastation is the passivity of States.⁴ Additionally, many tragedies of the twentieth century are due to the absence of a permanent system of international criminal justice and as a result, perpetrators of these crimes have benefited from *de facto* and sometimes even *de jure* impunity.⁵ What the ICC represents is an opportunity for the global community to address *for the first time* international crimes on a regular, continuous and consistent basis, without infringing on national sovereignty. Through the principle of complementarity, the ICC Statute represents an international, rather than a "supranational"

² Bassiouni, M Cherif, "Policy Perspective favouring the establishment of the ICC" 52(2) *Journal of International Affairs* 795-810 (Professor Bassiouni was Chair of the Drafting Committee of the ICC Statute)

³ See Bellamy, n.1

⁴ Bassiouni, M Cherif, "Policy Perspective favouring the establishment of the ICC" 52(2) *Journal of International Affairs* 795-810 (Professor Bassiouni was Chair of the Drafting Committee of the ICC Statute)

⁵ *Ibid.*



institution and accordingly will "help ease the tension between state sovereignty and accountability on the international level".⁶

The strength of the ICC will lie in the universality of its application, and in this regard the example set by Australia's early ratification will be of major international importance.

Guided by the principles established in the CRC, the international community is increasingly promoting policies which acknowledge that children's rights are a special category of rights, based on the particular vulnerability of children to harm in armed conflict. This is reflected in the Statute.

Through its ratification of the Statute, Australia will play an important role in promoting greater recognition of children's rights in peacekeeping and peace-building processes and recognition of the far-reaching effects of armed conflict on children and young people.

The war against civilians in Sierra Leone is an example of the devastating effect armed conflict has on children.⁷ It has been reported that 1,192 children are missing after the attack on Freetown in January 1999. Women and children were mutilated. Young boys and girls were abducted by the rebels to serve as slave labour, porters, sex slaves and soldiers themselves.⁸

It is essential that Australia, in any future role in relation to the ICC, uphold and promote CRC principles as a guiding reference and framework for the work of the ICC, whenever the situation of children is at stake.

Article 39 of the CRC provides:

"States Parties shall take all appropriate measures to promote physical and psychological recovery and reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

Australia has demonstrated a strong commitment to practical and constructive outcomes in the field of human rights. Such outcomes have involved Australia's participation in establishing and support in administering institutions which promote and protect human rights. Australia should continue in this commitment by ensuring that the implementation of the Statute embraces this and all other articles of the CRC.

UNICEF Australia welcomes this opportunity to address the Joint Standing Committee on Treaties on a new international human rights treaty, the widespread ratification of which will safeguard the rights of hundreds of thousands of children affected by armed conflict.

⁶ Brady, Helen "What the future holds for war criminals" *Law Society Journal* 38(10) (November 2000) 46

⁷ See for example, Scheffer, David J "Blaine Sloane Lecture: War Crimes and Crimes Against Humanity" (1999) 11 *Pace International Law Review* 319 at 320-322

⁸ *Ibid*



Term of Reference:

The Treaties Committee shall inquire into and report to Parliament on whether it is in the national interest for Australia to be bound to the terms of the Statute for an International Criminal Court.

1. **The establishment of the ICC will demonstrate a commitment to human rights issues and the rule of law**
 - 1.1 The people at greatest risk from crimes and human right violations require conscientious States to protect their rights and of fundamental importance in this regard is the necessity that the ICC become operational and effective as a matter of urgency. Of the nearly 25,000,000 refugees and internally displaced people around the world, 80% are women and children. Many of these people are trapped in the highly militarised environments found in camps for refugees and the displaced, where children and women are especially vulnerable to violence and sexual assault.⁹
 - 1.2 There are issues that clearly transcend politics and there are crimes that are beyond the reach of any nation's power to hide or justify.¹⁰ Such issues include the rights of children and women that have been ignored for too long. Ratification of the Statute and the establishment of the ICC will go some way to addressing this issue.
 - 1.3 Australia has long shown a resounding commitment to practical and constructive outcomes where human rights issues are concerned. This commitment has extended to the building of institutions that have and will continue to make substantial contributions to ensuring that human rights, civil society and the rule of law are promoted and protected around the world. The ICC is one such institution that has the potential to radically improve the plight of disadvantaged minorities such as children.
 - 1.4 In addition to dispensing justice, the ICC will act in a positive two-fold manner in the protection of human rights in that it will act simultaneously as a deterrent to individuals to commit atrocities and to states in relation to the harbouring of such atrocities.
 - 1.5 Accepting the jurisdiction of the ICC with its capacity to deal with the most serious crimes which concern the international community, namely, genocide, crimes against humanity and crimes of war, is in keeping with Australia's deep seated philosophy and active role in the international arena, wherever the protection and enforcement of human rights is required. Hundreds of thousands of children globally are the victims of these crimes. The ICC will extend the force of international law to punish the perpetrators of crimes against children and will have a far-reaching effect in deterring such acts in the future. Genocide, crimes against humanity and war crimes are defined in Articles 6, 7 and 8 of the Statute respectively.
 - 1.6 War crimes against children take many forms, not all of them in a physical manifestation. Often a child's right to education, shelter and health services is denied. The Australian Government has long subscribed to the view that peace and development are interrelated

⁹ *Ibid.*

¹⁰ *Ibid.*



and that without these things children are denied their right to development. The Statute addresses this concern.

Article 8 (2)(b)(ix) provides that the following is a war crime:

"Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick or wounded are collected, provided that they are not military objectives."

- 1.7 Hundreds of thousands of women and children are raped or used as sexual slaves, often resulting in forced pregnancy every year. UNICEF advocates that girls who were forced to serve as wives and servants to the combatants require especially vigilant care, to ensure that they are not shunned or driven into further sexual exploitation, prostitution and the risk of HIV/AIDS.

Article 8(2)(e)(iv) provides that a person commits a war crime by:

"Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in Article 7, paragraph 2 (f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions."

- 1.8 Widespread ratification of the Statute will make it clear to perpetrators of crimes of sexual violence that the international community will not tolerate such actions.
- 1.9 In further recognition of the rights of children and women, the Statute provides at Articles 36 (8) (b) and 42 (a) that the ICC will take into account the special needs of these groups and include judges with legal expertise on specific issues such as violence against women or children, sexual and gender violence.
- 1.10 Article 11(1) provides:

"The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute."

Similarly, Article 24(1) states that:

"No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute."

Therefore, failure or delay in ratification means that current perpetrators of atrocities against children may never be brought to justice. This is a situation that is abhorrent to Australia and the international community.

- 1.11 Ratification by Australia early in 2001 would be a momentous event in preparation for the United Nations General Assembly Special Session on Children in September 2001.



Recommendations

- Australia should not support the inclusion of an opt-out clause in the Statute which might suspend the jurisdiction of the court, as it applies to the specific category of war crimes, for up to seven years. This clause, if exercised, could give those responsible for today's atrocities a green light to continue their nefarious violations of human rights and international law.
- Australia should lobby to ensure that the time frame for accepting the jurisdiction of the ICC is not extended so as to prevent the possibility that current perpetrators of atrocities against children and women will never be brought to justice.



2. The ICC is complementary to national jurisdiction.

2.1 Article 1 of the Statute provides:

"An International Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern,and shall be complementary to national criminal jurisdictions...."

2.2 The jurisdiction of the Court is designed to compliment and co-exist with the criminal law of Australia and every other signatory and therefore takes nothing away from national sovereignty.

2.3 The crimes within the jurisdiction of the ICC are well-defined, being the embodiment of existing international criminal law, rather than the creation of new law.

2.4 The Statute promotes a uniform body of law across all states so that all citizens will have recourse to justice, no matter where the crimes took place or where the perpetrators of the crimes are resident.

2.5 Through the principle of complementarity, the Statute represents an international, rather than a "supranational", institution and accordingly will "help ease the tension between state sovereignty and accountability on the international level".¹¹

2.6 Ratification will in no way erode Australia's national sovereignty as the jurisdiction of the ICC goes no further than that already in existence and already endorsed by Australia including:

- The Convention on the Rights of the Child;
- The International Covenant on Civil and Political Rights (particularly Articles 23 and 24);
- The International Covenant on Economic, Social and Cultural Rights (particularly Article 10);
- The Convention on the Elimination of All Forms of Discrimination Against Women;
- The Geneva Conventions and their additional protocols.

¹¹ Brady, Helen, "What the future holds for war criminals" *Law Society Journal* 38(10) (November 2000) 46



3. **By ratifying the Statute, Australia will be seen as a role model in the region.**

3.1 In ratifying the Statute Australia joins the following states to ensure the application of legal safeguards to children participating in the proceedings of the ICC:

Belgium	Mali
Belize	Marshall Islands
Botswana	Nauru
Canada	New Zealand
Fiji	Norway
France	San Marino
Gabon	Senegal
Ghana	Sierra Leone
Germany	South Africa
Iceland	Spain
Italy	Tajikistan
Lesotho	Trinidad and Tobago
Luxembourg	Venezuela

3.2 The ratification of the Statute by Australia would be seen as encouragement to the international community and in particular Australia's immediate neighbours to endorse the jurisdiction of the ICC.

3.3 In joining the Governments of New Zealand, Marshall Islands, Nauru and Fiji, which have already ratified the Statute, Australia will have significant influence on other Governments in the region.



Recommendations

- The Australian Government should harness its unique capacity to influence regional neighbours, through diplomatic, political, economic and trade means, to encourage its neighbours to ratify the Statute.
- UNICEF urges the Australian Government to ratify the Statute so that all children may live an individual life in society in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.

**Contact Details**

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