

**Launch of the Gender Report Card
Women's Initiatives for Gender Justice
10 December 2014, New York**

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Executive Director**

Welcome Excellencies, President of the ASP, Minister Kaba, distinguished guests, Court Officials, leaders in the international justice community and friends, to the launch of our 10th Gender Report Card on the ICC. When we began this publication in 2005, it was a small, discrete, 16-page booklet, much bolder in its critique than its size. This year the Gender Report Card is a 284-page encyclopedia on the ICC, the work of States parties and the status of gender justice, bigger than before and just as bold.

We selected today, international human rights day, to launch the Gender Report Card, because as we reflect on accountability for sexual and gender-based crimes through the International Criminal Court, it seems fitting to do so in the context of the wider landscape of women's rights and the ongoing commission of violence against women, the most widespread human rights violation in the world.

This has been an incredible year for the International Criminal Court.

During this reporting period, we have seen the opening of a new situation in the Central Africa Republic; the issuance of the second arrest warrants for offences against the administration of justice in relation to witness tampering, bribery and the falsification of evidence.

Two cases were concluded this year- firstly the case against Germain Katanga who was convicted of the war crimes and crimes against humanity of attacks against the civilian population, wilful killing, destruction of property and pillaging but who was acquitted of the charges of rape and sexual slavery. The case was concluded with the mutual withdrawal of appeals by the Defence and the Prosecution, and just last week we saw the conclusion of the case against Thomas Lubanga with the first Appeals Chamber judgment, upholding, by majority, his conviction for the war crimes of enlistment, conscription and use of children to participate actively in hostilities. Perhaps surprisingly given the ICC has been operating for 12 years, this judgment also signals the first time that the Appeals Chamber has interpreted a mode of individual criminal liability. We hope with this judgment and more to come that the potentially clarifying voice of the Appeals Chamber will contribute to greater consistency and certainty regarding judicial interpretations in this area.

In another first, this year the Office of the Prosecutor sought summons to appear for its own witnesses and some were subsequently characterised as hostile. For the first time a pre-trial chamber found a case inadmissible before the ICC, and a second reparations decision was issued.

Also during this period the court received the highest number of applications from individuals seeking to be recognised as victims before the ICC. Compared with last year, the number of female

Women's Initiatives for Gender Justice



applicants amongst the almost 2,800 applications received this year increased by 8% to 46% compared with 2013. Now more than 16,000 applications have been submitted to the Court by victims/survivors in nine situations.

It is clear with each of these decisions, announcements and developments that all organs of the Court and all aspects of its functions are fully operational and that the ICC is a dynamic institution, in some respects stretched to the limit to respond to the situations and cases in which it is currently exercising its jurisdiction.

This year, there have also been some very important developments in relation to gender justice. Overall, charges for gender-based crimes have been brought in six of the nine situations under investigation by the OTP and in 74% of the cases before the Court involving war crimes, crimes against humanity and genocide. Of the 31 individuals charged by the ICC, almost 60% have been indicted for sexual violence. Following the Lubanga case, the charging record of the OTP has been strong. But we are very pleased this year to be able to report for what we believe to be the first time that the retention rate for sexual violence charges has increased. Last year, more than half of the overall charges for sexual and gender-based violence sought by the OTP had been dismissed before the trial stage. In an important reversal, for the period under review in this year's gender report card, 61% of the sexual violence charges have been confirmed, for the first time all charges for gender-based crimes have successfully progressed to the trial stage and for the first time a chamber unanimously confirmed all charges for sexual violence.

In November, the case against Jean-Pierre Bemba reached the closing argument stage and the Chamber has now adjourned to consider the verdict. This case includes the largest number of victims testifying in relation to sexual violence in any case to date, and marks the first ICC case in which an accused has been charged with command responsibility for acts of rape.

In my view one of the most noteworthy progressions this year is in the case against Bosco Ntaganda where he is charged with crimes of sexual violence committed against civilians and in addition, for the first time in international criminal law, a senior military figure has been charged with acts of rape and sexual slavery committed against child soldiers within his own militia group and under his command. The combination of charging Ntaganda for gender-based crimes committed *within* the militia and *by* the militia reflects the multi-faceted use of sexualised violence in armed conflict, including by Ntaganda's militia group. These charges and the decision confirming them are enormously significant and good examples of the Office of the Prosecutor and the judges interpreting the evidence and the legal concepts with a gender-lens and as a result bringing the law more closely and more accurately in line with the human experience of being a child soldier and the purpose of sexual violence in conflict.

The last major development in gender justice I would like to highlight this year is the release of the Prosecutor's policy on sexual and gender-based crimes. This is the first such policy on this issue produced by an international court or tribunal and includes important, substantive, operational strategies to further strengthen each aspect of the OTP's work. With smart and comprehensive

Women's Initiatives for Gender Justice



implementation of the policy and under the leadership of Prosecutor Bensouda, the ICC is poised to usher in a new era of accountability for sexual and gender-based crimes.

Of all the many aspects of the ICC's work over the past year to focus on there are three issues I would like to highlight:

Witnesses

The Rome Statute system is intended to be rigorous in upholding the rights of the accused, meaningful for victims, and viable for witnesses. And it is this last point that I would like to reflect upon. There are serious concerns regarding the vetting, training and management of intermediaries engaged by the prosecution to assist in the identification of and liaison with witnesses. Issues of interference with prosecution witnesses by intermediaries hired by the prosecution has had a negative impact on four cases and led chambers to reject the credibility of critical witness testimony, or witnesses have changed their testimony or withdrawn, allegedly as a result of enticements or threats by intermediaries. Greater attentiveness to the selection and oversight of intermediaries by the OTP is essential in order for it to confidently build its cases, secure its evidence, protect its witnesses and ensure the veracity of their testimonies.

Secondly, in the past two years we have seen serious concerns regarding the safety of ICC witnesses; Defence Counsel have called into question the credibility of witnesses, particularly witnesses of gender-based crimes, before they have even provided their testimony; and the identity of a protected witness, one who had testified about acts of sexual violence, was unlawfully disclosed in the media. Such attempts to cast participation in the ICC as unsafe and intimidate witnesses before, during or after their testimony, are perhaps amongst the biggest threats to the ICC, the determination of truth and to the attainment of justice. More support must be provided to those individuals burdened with the responsibility of being a witness to serious crimes, who are willing to overcome threats and face the unfamiliar environment of a courtroom in order to testify. These are brave, solemn acts of heroism performed everyday by witnesses at the ICC.

Liability

The second issue I would like to draw attention to is the subconscious bias exercised in traditional interpretations of liability for acts of sexual and gender-based crimes.

Addressing and changing this approach is a double-edged responsibility shared by both the prosecution and judges. On the one hand, judges have persistently raised issues regarding sufficiency of prosecution evidence including with respect to meeting critical elements of individual criminal liability and the need for greater efforts to authenticate the age and identities of witnesses. We have observed specific challenges regarding liability and charges for sexual and gender-based crimes which, in our view, clearly requires the OTP to more strongly connect these charges to its theory of the case as a whole, and more effectively explain the accused's contribution to the commission of acts of sexual violence within the context of the common plan.

Women's Initiatives for Gender Justice



On the other hand, when it comes to sexual and gender-based crimes, historic and prevailing judicial approaches to individual criminal responsibility include an expectation that these crimes must be more explicit components of a common plan than any other category of crimes, and that preparation and contribution to acts of sexual violence must be unique to these crimes and different from the preparation and contribution to the other crimes which may be occurring at the same time, by the same perpetrators, under the same commander in the same attack. The use of sexualised violence as a tool for asserting ethnic dominance and political supremacy is still too often misinterpreted as incidental to these goals, despite the existing jurisprudence on this very issue.

We saw this approach and reasoning in the Katanga judgment issued this year, emblematic of so many of the ways in which sexual violence is treated differently and where a higher standard is required to satisfy the threshold of beyond reasonable doubt.

Until we change legal norms and gender perceptions in tandem, the ongoing practice of gender inequality, is going to continue to distort and impede the possibility of gender justice.

The OTP's Policy Paper on sexual and gender-based crimes released in June and launched this week indicates an unequivocal commitment by the Prosecutor and her Office to play their part in addressing this issue.

Institutional Development

The last area I would like to highlight is the development of the Court itself as a public institution of international justice.

The biggest external threats to the Court may be the efforts to intimidate witnesses, intimidate Court Officials or selectively amend the Statute when judicial decisions are displeasing.

But the biggest internal threats could be the development of a culture of non-compliance, indifference to the requirements of the statute and an inconsistent commitment to institutional accountability. This year the gender and geographical issues have reached a level of chronic imbalance with regressions in gender representation in mid and senior level posts in each organ of the Court, with some of the largest gender gaps we have ever seen since the establishment of the ICC.

Similarly, this year we were alarmed to discover some extraordinary geographical statistics including the over-representation of nationals from the host state (The Netherlands) by more than 186% above the range considered desirable by the Committee on Budget and Finance. This is the highest level of over-appointments of nationals from a single state party in the recruitment history of the ICC.



Adherence to the gender and geographical representation requirements of the Rome Statute and compliance with recruitment procedures are critical in regular recruitment activities and in the design and implementation of the new Revision project underway by the Registry, which provides a timely and important opportunity to address and lead on these issues.

None of us expect flawless leaders or perfect institutions, but we can all reasonably expect the ICC to be credible, rule-compliant, transparent and accountable and it has always been in the Court's interest to be committed to these principles.

Amongst the instruments to support compliance and credibility, is the Independent Oversight Mechanism (IOM). Our view since 2006 when this idea was first proposed by former ASP President, Prince Zeid, is that such a mechanism is necessary to protect the credibility and good standing of the Court and ensures that the system of the ICC is larger than any individual or group of individuals whose actions may bring themselves rather than the court into disrepute. Work on the IOM has been underway for eight years and we are concerned by the current and unexpected delay in appointing the preferred candidate as head of this mechanism, as unanimously recommended by the Recruitment Panel convened by States Parties and involving Ambassadors from every region. We hope the next Bureau will finalise this appointment and then focus its attention on the serious systemic issues of gender and geographical representation and require the Court as a whole and each of its organs to report on progress in implementing these requirements and provide the Bureau with a bi-annual breakdown of posts by gender, nationality and region. Representational issues cannot be solved by focusing on a single post or instrumentalising an appointment. It requires a system-wide approach to recruitment practices in order to address these statutory requirements. In closing, the Rome Statute without the institution is simply an aspiration. But it is the Court, its staff, states parties and NGO advocates, who are together transforming this aspiration into justice.

One of the critical leaders in this respect is the outgoing President of the ASP, Ambassador Tiina Intelmann and we would like to take this opportunity to honour her service and contribution to international justice. In particular during her time as President she presided over an important period of institution-building where she led efforts to strengthen the decision-making processes of the bureau and working groups, encouraged greater transparency, and negotiated complex agreements amongst the membership of the ICC. I think Ambassador Intelmann will be known as the hashtag president and her instinct and skills in using social media has engaged a wider and different generation of justice advocates. Tiina's additional focus during her Presidency has been on complementarity and the importance of strengthening responsibilities and responses to prosecuting international crimes at the national level. She leaves office to continue her extraordinary diplomatic career as head of the EU Delegation to Liberia, a role I am sure she will both relish and excel at.

Please join me in thanking Ambassador Tiina Intelmann.

We have often felt that ASP Presidents have not been properly thanked at the time of leaving office and so we are delighted to be able to honour another past President here with us this evening.

Women's Initiatives for Gender Justice



Ambassador Christian Wenawesser, who like Tiina, is one of the most talented diplomats of his generation. He presided over the ASP during some important milestones including the 10 Year ICC Review Conference in 2010 and the adoption of the very important Kampala Amendments in. Christian will probably be remembered most by those of us who participated in the process, and by history, for his facilitation and leadership on the crime of aggression leading ultimately to the adoption of this incredible provision. Once the threshold of more than 30 ratifications is reached, in 2017 the Assembly will consider activating the crime of aggression and if adopted, this crime will then fall within the jurisdiction of the ICC. The arc of this achievement is yet to be realised but would not have been even thinkable without Christian's leadership. Please join me in thanking Ambassador Christian Wenawesser.

As I come to the end, I would like to acknowledge my collaborators and colleagues on the 2014 Gender Report Card, some of whom are here. Our Senior Legal Officer, Diane Brown who played a leading role in coordinating the drafting process this year; Fanny Leveau our Legal Fellow for her research and drafting; and Megan Blue, our Communication Associate responsible for the printing of the Gender Report Card and organising tonight's launch. Not here but those who also made significant contributions to researching, drafting and fact checking this year's publication, I thank Danya Chaikel, María Mingo Jaramillo, Thomas Obel Hansen, Lori Mann, Kirsten Bowman, Rosemary Grey and Laura Meschino.

We also thank with admiration the beautiful work of our designer, Keri Taplin.

Finally, thank you to our donors, Board members, to all of you for your support for gender justice and your participation in this launch. Please enjoy the rest of the evening.

Women's Initiatives for Gender Justice

