



## Gender Justice and the ICC Overview of Key Gender Issues - ASP 2008

### Structures and Institutional Development

#### Recommendations to States Parties:

- The Bureau should progress, with urgency, the **development of a comprehensive, independent Oversight Mechanism and staff rules. These should address serious issues of misconduct, including fraud, corruption, waste, sexual harassment, exploitation, and abuse committed by ICC staff in the course of their work**, especially in the field, and should include the waiving of immunity and strict disciplinary accountability for staff that violate these rules (including termination of employment). “Serious misconduct” should be defined to expressly include sexual violence/abuse and sexual harassment. All staff should be provided with training on these rules.
- Appoint, with urgency, a **focal point of the Hague Working Group** to co-ordinate the development of the independent Oversight Mechanism.

#### Recommendations for the Court:

- The Court, particularly the senior elected officials in each organ, should prioritise co-operation with States Parties in 2009 to develop an effective and independent Oversight Mechanism for the prevention and redress of allegations of fraud, waste, sexual harassment, exploitation and abuse against ICC staff in the course of their duties.
- Develop and implement **effective programmes of outreach to local communities to explain the ICC’s policy against sexual violence/abuse and harassment** and provide effective mechanisms to enable individuals to make complaints in a confidential setting.
- During 2009, the **Presidency of the ICC should oversee a sexual harassment audit** of the Court. This should include each organ and be implemented at all levels of the institution. The results of the audit should be shared with the Bureau of the Assembly of States Parties. Amongst other areas, the audit should assess:
  - the current ‘Sexual and other Harassment’ Policy to ensure it fully covers the relevant issues;
  - whether adequate training is provided for staff and managers about the Policy;
  - whether appointments of ‘focal points’ have been made for staff to report harassment; and
  - whether new staff are given adequate orientation to this and other policies of the ICC.
- Recommendations to address any incidents or patterns of harassment should be developed to ensure that the legal rights of employees are respected, and to provide staff with a non-discriminatory, equality-based, human-rights respecting work environment.



- In light of the well publicized decision by the Administrative Tribunal of the International Labour Organisation (ILO)<sup>1</sup> against the Prosecutor for unlawful termination of an employee following a complaint filed by the staff member, it would be timely for the Court to undertake a **review of its internal complaints procedures** to ensure they are sufficiently robust, are transparent, provide adequate protection for staff, are an effective mechanism for accountability, uphold the rights of employees and ensure the positive reputation and good standing of the Court as a whole.

## Recruitment

### Current Status:<sup>2</sup>

- There are currently 590 staff from 80 countries employed by the ICC<sup>3</sup>. The vacancy rate is significantly lower than in 2007 and there have been improvements generally in the appointment of women to professional posts.
- There is a 4% difference<sup>4</sup> in the overall numbers of women and men appointed to professional posts across the Court as a whole. This represents a 6% improvement from 2007. The largest gap in the number of appointments continues to be in the OTP, where the figures are 58% men and 42% women respectively. For the second year in a row<sup>5</sup>, the OTP has the largest gender disparity across the Court.
- Both the Registry and the Judicial organ (excluding the Judges) have more female than male employees. However, women tend to be clustered in the lower-to-mid range professional levels, with few women in management posts. All the Heads of Division posts in the Registry are held by men, although 47% of Heads of Sections or equivalent posts are held by women. In the OTP only 21% of Heads of Sections or equivalent posts are held by women.
- Nationals from WEOG countries continue to account for 58% of the overall staff at the Court.
- For the second year in a row, GRULAC, which accounts for 11% of staff, is the only region in which the overall number of women in professional posts is higher than the overall number of men (60% women, 40% men).
- In all other regions, the number of men in professional posts is higher than women. In two regions it is significantly higher, with 70% of appointments from Africa being male, and 61.5% of appointments from Asia also being male. For both regions there has been an increase in the number of male professional appointments during 2008.

### Recommendations to the ASP:

- The ASP should continue to implement the detailed recommendations contained in the 2007 report to the Bureau on Geographical Representation and Gender Balance.

<sup>1</sup> *Palme v ICC*, Judgment No. 2757, 105<sup>th</sup> Session, 2008, International Labour Organisation Administrative Tribunal.

<sup>2</sup> All figures and analysis from the *Advance Preliminary Report: Structures and Institutional Development*, Gender Report Card 2008, Women's Initiatives for Gender Justice, 31 October 2008.

<sup>3</sup> The ICC forecasts a total of 640 staff by 31 December 2008.

<sup>4</sup> Professional Posts- 52% men; 48% women. Source: Human Resources ICC, 31 July 2008.

<sup>5</sup> For 2007 the gender disparity in professional posts in the OTP was 24%.

### **Recommendations to the Court:**

- **Urgently appoint a Gender Legal Adviser to the OTP.** This position is mandated by the Rome Statute but no appointments have been made since the establishment of the Court in 2002. This post should be included in the OTP budget for the next financial year.<sup>6</sup>
- The ICC should continue to **implement its strategy for managing human resources to ensure they address imbalances in gender and geographical representation, create an institution supportive of staff learning and development, and provide a safe environment for employees, including an adequate and integrated internal justice system** to deal with complaints, grievances, conflicts and disputes.

## **Victims Participation**

### **Current Status:**

- The court has reported that 960 victims have applied to participate in judicial proceedings in one of the situations or cases before the court.<sup>7</sup> Of the 625 applicants to the DRC situation and cases, 107 have been accepted in the situation, 4 in the Lubanga case, and 57 in the Katanga and Ngudjolo case. Of the 255 applicants to the Uganda situation, 14 were accepted in the Kony et. al case, and at least 5<sup>8</sup> have been accepted in the situation. Of the approximately 22<sup>9</sup> applicants to the Darfur situation, 11 have been accepted. 27 victims have applied to participate in the situation of CAR, but none have been recognized as of yet in either the situation or the Bemba case.

### **Recommendations to the Court:**

- During 2009 the **Victims Participation and Reparations Section (VPRS) should implement policies and practices for dealing with victims of sexual violence, children, elderly persons and persons with disabilities.**
- The methodology and safety practices of the VPRS country-based consultations regarding legal representation should be **immediately strengthened.**<sup>10</sup> The methodology should ensure victims have **full information about the options for legal representation, security issues, and the protection the ICC can/cannot provide.** Victims should **not feel pressured or forced into agreeing to a common legal representative** and should be provided with accessible information about what options exist for selecting or being appointed with a legal representative.
- The **security practices of the community consultations should be enhanced to not overly expose applicants,** to each other, to the wider community or to NGOs who are not directly involved with the specific victims.

## **Trust Fund for Victims**

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<sup>6</sup> The fine imposed by the ILO on the ICC following the finding of wrongful dismissal of an employee by the Prosecutor is approximately €190,000. This is equivalent to 2-3 years salary for a Gender Legal Adviser position.

<sup>7</sup> These figures are taken from ICC-ASP/7/25, and are current as of 29 October 2008. However, consistent and accurate information on the numbers of victims applying and accepted to participate is not readily available. There are inconsistencies and information gaps within and between the Court's own documents and between the statistics for victims quoted by different sections of the Court.

<sup>8</sup> According to Women's Initiatives for Gender Justice's review of available court filings.

<sup>9</sup> As stated in the Report of the ICC to the UNGA, 22 August 2008 (A/63/323).

<sup>10</sup> Women's Initiatives for Gender Justice makes these recommendations regarding VPRS field consultations based on feedback from victims applicants and partners in the situation countries.

### **Current Status:**

- Currently there is € 3,055,000 in the Trust Fund for Victims.
- During 2008, decisions from Pre-Trial Chambers I and II approved the Trust Fund to provide assistance to victims in both the situations in the DRC and in Uganda. In the DRC, 25% of the 16 projects to be funded provide direct assistance to women and girls victims/survivors. In Uganda 17% of the projects designated assistance by the Trust Fund are specifically for women victims/survivors. This year there were no projects for CAR or Sudan; these projects are planned for 2009.
- In September, the Trust Fund launched an appeal for €10 million to assist 1.7 million victims of sexual violence in situations under the Court's jurisdiction.
- Amongst other considerations, the Trust Fund grant-making process emphasizes addressing the special vulnerability of girls and women.

### **Recommendations to the Trust Fund:**

- In 2009 the Board of the Trust Fund and the Director **should establish effective fundraising strategies for the Trust Fund as a matter of urgency**. The amount of €3,055,000 currently in the Trust Fund is inadequate to provide assistance to victims and at a later stage, for reparations. We call upon States Parties to increase their financial contributions to the Fund.
- Through promotion of the Trust Fund and raising global awareness of the challenges faced by victims of war and armed conflict, the Secretariat should aim to **“leverage” other resources in support of victims**, beyond the scope of the Trust Fund itself.
- In addition to the criteria for the ‘special vulnerability of women and girls to be addressed’ in projects, the Secretariat should **adopt proactive strategies to solicit proposals explicitly from women’s groups and organizations**. Benchmarks should be established to ensure that applications from women’s organizations, for the purpose of benefiting women victims/survivors, are between 45%-55% of the overall number of proposals received and funded.

## **ICC Legal Aid Scheme and Legal Representation<sup>11</sup>**

### **Current Status:**

- The information on the ICC website regarding the List of Legal Counsel has not been updated since 24 October 2007. As such, the data available on the website is incorrect. Despite requests over several months from the Women’s Initiatives for Gender Justice for more current figures, and proposals that the website be updated, the Registry has not responded to these enquiries and suggestions. For the third year in a row, the Court has not implemented any proactive strategies to promote the List to women nor to address the significant gender disparity. In addition, the Court has not implemented mechanisms to ensure the List includes Counsel capable of representing the distinct interests of victims including victims of sexual and gender violence, as required by the Rome Statute<sup>12</sup>.
- According to the ICC website<sup>13</sup>, there are 221 lawyers on the List of Legal Counsel. Of these, 41 are women (19%), 180 are men (81%). Still, 68% of the List of Legal Counsel are from WEOG.

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<sup>12</sup> Rule 90 (4)

<sup>13</sup> Last updated 24 October 2007.

### Recommendations to the Court:

- The Head of the Division of Victims and Counsel and the Registrar should closely monitor the performance of the Defence Support Section, and ensure they **meet specific, time-set goals to provide regular updates on the List** for the ICC website, and **undertake activities to promote the List to women and increase the number of women on the List by 25%** by the 7<sup>th</sup> session of the ASP, 2009.
- To better inform communities and intermediaries about the how the Legal Programme operates, eligibility, and how to apply for Legal Aid, **the Court should have clear and transparent guidelines readily available for victims and Counsel, and undertake widespread promotion of the legal aid scheme** to ensure that victims/survivors can access this important mechanism.
- **Initiate specific strategies to promote the List of Counsel and the List of Assistants to Counsel amongst women’s organizations** and networks, women lawyers associations and other judicial associations such as national bar associations, the IBA, ICB and IAP, particularly in countries with situations before the ICC and countries under-represented at the ICC.
- The ICC is obligated under Rule 90(4) to “take all reasonable steps to ensure that in the selection of common legal representatives, the distinct interests of victims, particularly as provided in article 68(1)<sup>14</sup>, are represented and that any conflict of interest is avoided”. **The composition of the List is crucial to ensure it includes Counsel with the necessary experience, expertise and skills to effectively represent the range of victims of crimes, including gender based crimes, within the jurisdiction of the Court.**
- **Fund and appoint a financial investigation function for legal assistance to assist with the determination of indigence and support additional resources for the legal aid scheme.**

## Protection Issues

### Recommendations to the ASP:

- Approve the request from the Victims and Witness Unit (VWU) for a **new post of Trauma Expert with Special Expertise in Gender Based Violence.**
- Significantly **increase the resources of the VWU** to enable them to address their full mandate to provide support and protection not only to witnesses but also to victims and intermediaries whose lives may be at risk as a result of assisting ICC enquiries and investigations or at risk as a result of testimony provided by a witness<sup>15</sup>.

### Recommendations to the Court:

- Ensure that **protection and support measures are sensitive to the particular circumstances of women** in conflict situations and ensure women and girls who are recognized as ‘victims’ by the Court benefit from protection procedures, and provide appropriate protection for intermediaries and Counsel whose safety may also be at risk.
- Develop gender-inclusive **protection strategies for women witnesses and victims** to ensure relevant gender and social issues are effectively addressed.

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<sup>14</sup> Article 68 (1) obligates the Court to take “appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. ...the Court shall have regard to all relevant factors including age, **gender** ...and the nature of the crimes, in particular but not limited to, **where the crime involves sexual or gender violence or violence against children**’. [Emphasis added].

<sup>15</sup> Rule 16 (2), Rome Statute.

- **Stronger coordination is required between the OTP and the Victims and Witness Unit** to ensure witnesses, including women witnesses, are safely supported and protected.

## States Parties

### Recommendations to States Parties:

- Advance implementing legislation which **fully reflects the provisions and standards (including gender provisions) of the Rome Statute and provide the ICC with a copy of the legislation** to enable effective monitoring of standards and consistency in implementation.
- Actively carry out their responsibilities as State Parties to **assist the Court** with arrests and surrenders; freezing and seizing of assets; and promotion of universal ratification of the Statute by other States;
- Move forward with preparations for the Review Conference, and in particular **clarify the process for proposing amendments with a realistic timeframe for such a process**. At this ASP, States **should decide on the venue for the Review Conference so attention can then be paid to the substantive discussions** and preparations necessary for an effective review. Decisions regarding the venue should be based on a State which has shown unambiguous support for the Rome Statute and the ICC, respect for the participation of civil society, and a political and legal environment conducive to promoting international criminal law in general and the ICC in particular. States should avoid actual or perceived conflicts of interest and avoid locations where the ICC is, or could conceivably open, an investigation.
- In 2009, **successfully complete the negotiations on the Crime of Aggression and ensure that the mechanisms and definition are consistent with the current standards** and referral process for the existing crimes within the Rome Statute. The adoption of the Crime of Aggression at the Review Conference should not be an opportunity for weakening the totality of the Statute, but rather the opportunity to reinforce the importance of an independent, effective and impactful International Criminal Court.