

## **Gender Report Card on the ICC**

Brigid Inder  
Executive Director  
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I would like to welcome you all to the Launch of the Gender Report Card<sup>1</sup> on the International Criminal Court 2009.

This is the fifth year the Women's Initiatives for Gender Justice has produced the Report Card and in that time it has grown from a humble 16 page booklet to this year's 164 page encyclopaedia on the Court. The Gender Report Card (GRC) reviews all the major judicial decisions, developments in investigations, announcements of charges, issuance of arrest warrants, developments in victims participation, and witness protection issues. We consider the development of internal policies, recruitment and personnel statistics, the profile of those appointed to the List of Legal Counsel and the work of the Trust Fund for Victims. This year we also reviewed all the witness testimonies in the first ICC trial in relation to sexual violence.

In other words, in the GRC we analyse and summarise all the major developments at the ICC during 2009 both in its institutional development and its substantive work.

The Gender Report Card is one of our strategies to promote the inclusion of women in international criminal law as law-makers, practitioners, decision-makers, participants and beneficiaries of the justice process.

The Report Card provides a critique of the Court's work in the past 12 months in order to assess progress, analyse trends and focus the attention of the ICC, States Parties and NGOs to areas where implementation of the Statute is being diminished or underutilised. This allows us to act as an alert system for the Court and States Parties so that actions can be taken to ensure the Rome Statute is effectively implemented.

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<sup>1</sup> *Gender Report Card on the International Criminal Court 2009*, Women's Initiatives for Gender Justice, Brigid Inder, Katharine Orlovsky, Katrina Anderson, Lori Mann; Research and collation of statistics, Vanina Serra, October 2009.



And so we ask,

Does the Court have the financial means it needs?

Is it being sufficiently supported by States Parties in its requests for cooperation, with assistance for arrests and the freezing and seizing of assets?

Does it have the political will and political support?

Does it have the capabilities and leadership to deliver gender-inclusive justice?

## **The Court in 2009**

This year the Court operated with a budget of € 102,000,000, conducted numerous missions in four conflict situations, has seven situations under analysis, completed the prosecution case in the first trial, issued its first arrest warrant for a sitting head of State, successfully completed two further confirmation hearings, and publicly released its twelfth warrant of arrest. The Court had three Pre-Trial Chambers operational, issued decisions recognising almost 500 victims to participate in legal proceedings, created law through Appeals Chamber decisions on admissibility issues and the proper use of redactions regarding information for witnesses and victims.

## **Context**

The Court is operating in some of the most violent conflicts in the world. It is working in countries with limited functional state institutions and little public sector accountability and not surprisingly it is therefore working in some of the most corrupt political systems around the globe. According to the recent Corruption Perceptions Index released this week by Transparency International, all four ICC situations – Uganda, DRC, Sudan, the Central African Republic – rank in the top 30% of the most corrupt countries in the world.



The Court's work is compounded by the realities of ongoing conflicts, by the limited role states are able and willing to play in securing the arrests of indictees residing on their territory and by an international system of justice which is fragmented and still in the process of developing as a cohesive, mutually reinforcing body of law.

The context is therefore difficult for the Court, but much more so for women. The absence of human and legal rights for women in these conflict situations, the high levels of gender-based violence, the impact of cultural, traditional and religious practices which continue to oppress and subjugate, the lack of access to economic and political power, the absence of women from leadership positions, the overwhelming impunity for crimes committed in conflict, the nonexistence of a functioning state such as CAR and the DRC – or the over-functioning of an oppressive regime such as Sudan and to a lesser extent Uganda – are amongst the most difficult challenges and obstacles identified by women activists we work with in these four conflicts.

So it is not surprising then that for many women, the hope and expectations of the ICC as a mechanism for accountability and justice, and as an international body that recognizes human and legal rights of women that are denied domestically, are desperately high.

## **Justice**

This year the Women's Initiatives held workshops and strategy meetings with women's rights activists, victims/survivors and peace advocates in all four situations under ICC investigation. From Bangui to Goma, Soroti to El Fasher, women most affected by these ongoing conflicts speak about the need for accountability and justice as a means to improve their lives, restore their communities and transform their countries. In each of these situations, the work of the ICC is considered paramount. It is their greatest hope, perhaps their only chance for justice, for someone to be held accountable for what happened to them, with the hope that this should not happen to others.



The Rome Statute has the most advanced articulation in history of gender-based violence in international criminal law. As such, the expectations on the ICC are understandably high as women seek accountability through a Court with the distinct mandate and positive obligation to prosecute gender-based crimes.

### **International Criminal Tribunal for the Former Yugoslavia (ICTY)**

I would like to acknowledge the women and men from the ICTY who are, in my view, the unsung heroes in the development of international justice for gender-based crimes. The ICTY set the pace, it set the benchmarks, it gave the world the largest collection of international jurisprudence from a single institution and all without legal precedence, without a well-beaten path to follow, without an obvious course of action, without it having been done before.

The work of the ICTY gave the field of international criminal law, for the first time, jurisprudence for rape as torture, sexual violence as a crime against humanity and a war crime, and for a few years reinforced this jurisprudence with some consistency.

And to victims around the world the ICTY gave hope and proof that international tribunals are capable of calling to account those untouchable within their own jurisdictions, those who operate beyond the reach of the law and believed impunity was assured.

The ICC now carries this work forward.

### **So how is the Court doing in this regard?**

Gender-based crimes have been charged in all four Situations under investigation and in five out of seven cases brought by the Office of the Prosecutor (OTP).



In the three cases with charges confirmed, two have included charges for gender-based crimes.

Over time charges have become bolder and more descriptive, with charges for rape as genocide and torture; however, neither of these charges were confirmed by the Pre-Trial Chambers.

In the two cases where confirmation hearings have been held and gender-based crimes have been charged, 60 percent of the gender-based charges have been confirmed, with significant charges dropped. Of the 60 percent of charges confirmed, some were confirmed by a majority of the Judges, not by unanimous decisions.

So while gender-based crimes are being investigated and charged, the strategy underpinning the charges is still underdeveloped and not yet robust enough to sustain the charges even at the confirmation stage.

In our view, some of the judicial decisions this year have been harsh on the OTP, and in some instances we have respectfully disagreed, such as in the Bemba confirmation of charges decision where we sought and were granted leave to prepare an amicus brief contesting the deletion of charges for rape as torture and outrages upon personal dignity.

Although there are decisions from Chambers which we may not agree with, the message to the OTP has been clear. Judges across different Pre-Trial Chambers have consistently raised issues about the sufficiency of evidence, quality of the filings, and in some instances the incomplete information included in the Document Containing the Charges. Without this being addressed, charges, including those for gender-based crimes, will only succeed with partial confirmation.



We hope that next year we will be able to report that 100 percent, not 60 percent, of the charges for gender-based crimes brought by the OTP are confirmed, and we will be supporting the work of the Prosecutor in this regard.

One of our recommendations in the Gender Report Card, is that in addition to the renowned expert, Professor Catharine Mackinnon, the Special Adviser on Gender Issues, the OTP could appoint full-time internal staff with gender expertise within both the Investigation and Prosecution Divisions and strengthen the operational capacity of the Gender and Children's Unit. We think this will help ensure the integration of gender issues within the heightened caseload expected in 2010 and assist with the decision-making process regarding investigations, the construction of case hypotheses, the selection of cases and prosecution strategy.

### **Victims Participation**

Other areas of notable development this year are in relation to Victims Participation – this is one of the innovations of the Rome Statute and unique to the ICC. Since 2005 the court has received over 1800 applications from individuals seeking to be recognised as victims by the ICC in order to participate in the proceedings.

To date, approximately 40 percent of the applicants have been accepted to participate, and 85 percent of these were accepted in the last 12 months.

More than 80 percent of the participants recognized by the ICC relate to the situation of the DRC and/or one of the three cases arising out of this situation.

So what does this tell us? It tells us that those recognized to participate are not evenly spread across all four situations and are predominantly coming from the DRC. It tells us that awareness about the possibility to apply to the ICC to be recognised as a victim has increased amongst victimized communities. It also tells us that clarity from the Judges this year regarding the information they require for a victims application to be accepted



and considered complete, and the documents the Judges would consider valid as proof of identity, have enhanced the ‘success rate’ of victims applications during 2009.

## **Other Areas**

In the Gender Report Card you will find recommendations about the need to address the gap in the Court’s security framework. Currently victims and intermediaries are excluded from the security provisions of the Court and as such participate or assist the ICC at great risk to themselves, and their families.

Although victims have a *choice* about whether to apply to the Court for formal recognition, the *right* to do so and the subsequent ability to participate in the legal proceedings is a provision allowed for by the Rome Statute and as such should be supported by mechanisms that facilitate the exercise of this right.

In the Report Card you will also read about the Registry’s work to improve the effectiveness of the ICC field offices, the creative proposal by the Registrar to expand the relocation options for witnesses and the advances they are making in their outreach activities in all situations, although the women-specific outreach strategies remain low at only 7 percent of their overall activities.

In the GRC you will find information about the work of the ICC Trust Fund for Victims. In many respects, the Trust Fund has the strongest gender integration, as it is embedded in the Fund’s programmatic work, policy goals, and fundraising activities.

## **Recruitment**

One of the first areas of work the Women’s Initiatives prioritised in 2004 when we opened our office here was to launch a campaign to address the recruitment and appointment of gender competent women and men to the Court and to advocate for



more women to be appointed to the ICC given the striking gender inequalities in the staffing of the Court five years ago.

This year, as we reviewed the figures, we were heartened by the results. There are now 703 staff employed by the ICC, and for the first time professional posts are held evenly by women and men. We believe there are three reasons for this progress. Firstly, this figure has been achieved by a change in the gender composition of the Judiciary with more women judges elected to the bench in 2009. In another first, women judges are now the majority on the bench of the ICC with 11 women out of 19 judges presiding.

By comparison, of the 316 judges currently sitting on international and regional judicial bodies, including the ICC, only 72 are women. Given the low numbers of women serving on these institutions and serving as judges in most domestic jurisdictions, the results of the ICC elections show that when gender representation is mandated, it is an effective strategy for changing male domination on the bench.

The second reason the professional appointees are 50 percent female and male is because the Registry has maintained for the third year running its relatively balanced gender figures with 52 percent male and 48 percent female. The third reason for the 50/50 figure is that finally the number of women appointed to professional posts in the OTP broke through the low 40s and also reached 48 percent this year.

However, the analysis of the figures demonstrates, somewhat predictably, that although more women have been appointed to professional positions, they continue to be over-concentrated in the lower professional levels (P1-P2). In the mid-to-senior level professional posts there is a 30 percent differential in the number of men appointed to P3 posts and a staggering 46 percent more men than women appointed at the P5 level within the OTP. In the Registry there are twice as many men as women at the P5 level and to date no woman has ever been appointed to a Head of Division within the Registry.



It is fair to point out, however, that the Executive Committee of the OTP is 50/50 female/male and the Registrar of the ICC is a woman.

For geographical representation, the Western European Group continues to dominate with 61% of professional appointees. Within this group we were surprised to discover that the overwhelmingly dominant national group to emerge was France with a 60% increase in appointees over the past 12 months.

## **Spotlight**

In closing, the Women's Initiatives has a habit of focusing the spotlight where it is least wanted, and we are often considered the critical voice amongst NGOs in relation to the ICC. But our dissent is because we, like others, are amongst its most intense supporters. We question not to undermine but to strengthen, we demand and applaud, we criticise and encourage the Court to not settle for being adequate when it has the ability to be better, nor to settle for being good when the realities require it to be great.

Women around the world are supporting and urging the Court to prosecute gender-based crimes with vision and direction, with determination and purpose, *with clarity* about its intention to contribute to justice for women.

I would like to thank everyone who has made the launch this evening so special, the staff of de Grens, the band, and the Women's Initiatives team – Astrid, Kate, Katrina, Amira, Vanina, Daniela and Meghan.

Most importantly thank you for your attendance at the Launch. We hope you enjoy the rest of the evening and without further delay we officially launch the Gender Report Card on the ICC for 2009.

