



GENDER JUSTICE TEAM
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)
COMMENTS AND RECOMMENDATIONS¹
TO THE TENTH SESSION OF THE ASSEMBLY OF STATES PARTIES
12-21 December 2011, New York

5 December 2011

The Gender Justice Team (Team) of the Coalition for the International Criminal Court (CICC) was established to monitor the work of the Assembly of States Parties (ASP) and the International Criminal Court (ICC) regarding gender related issues and to ensure that the Rome Statute system of justice is gender-inclusive. In this paper, the Team makes recommendations to the tenth Assembly of States Parties and the Court on (a) the Judicial and Prosecutor Elections, (b) the List of Legal Counsel, (c) the Trust Fund for Victims, (d) recruitment of ICC personnel and (e) protection issues. This broad approach takes into account the cross-cutting nature of gender and reflects the need for an integral dimension of gender perspectives in the work of the ASP and the ICC.

A. Judicial and Prosecutor Elections

The Team views the tenth session of the ASP as an important opportunity to emphasize the importance of promoting transparent and merit-based elections of all International Criminal Court (ICC) officials, and stresses the need for the ASP to promote the fair representation of women and men in all electoral processes. The Team is convinced that more must be done to ensure that the ICC develops best-practice election processes capable of producing the nomination and election of the highest qualified officials, where a fair representation of women and men is achieved in the nomination process. To this end, the Team makes the following observations:

Judicial Elections

In order to be a fair, independent and efficient institution, the ICC Chambers must be composed of Judges who are impartial, highly-qualified and representative, and who meet the stringent qualifications required by article 36 of the Rome Statute. The Statute further provides that, in the nomination and election of Judges, States Parties shall take into account the need within the membership of the Court for the representation of the principal legal systems of the world; equitable geographical representation; and a fair representation of female and male Judges. Further, the Team recalls the judicial representation requirements in article 36, paragraph 8 (a), as well as those in paragraph (b) of the Rome Statute, which provides that “States Parties shall also take into account the need to include Judges with legal expertise on specific issues, including but not limited to, violence against women or children.”

¹ While the work of the Gender Justice Team reflects the positions of those Coalition members most active on particular issues and this paper has been prepared in consultation with other Coalition teams, this paper cannot be construed to represent the views of all organizations/members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.

Of the current Judges, eleven are female and eight are male, making the ICC the only international judicial body to have a majority of female Judges currently serving on the bench.

However, it's not clear that this balance will continue after the next round of judicial elections to be held in December 2011., because of the minimum voting requirements for regional and gender balance set out in Resolution ICC-ASP/3/Res.6. Under this Resolution, voting minimums in the December election require two male candidates to be elected, but no minimum number of female candidates. At the close of the nomination period for the December 2011 judicial election, only two of the 19 nominees are women. The Team regrets to note that the minimum voting requirement of two male candidates appears to have led national governments to nominate a significantly greater number of men for the position of judge at the ICC, and not to seek out more female candidates. The Team strongly encourages States Parties to ensure an equal gender balance in its nominations in future elections.

The Team welcomes actions by the ASP to establish an Advisory Committee on (judicial) nominations as envisaged in Article 36(4)(c) RS, and calls on the Committee to ensure that gender competence and an equal gender representation is at the centre of its work.

Prosecutor Elections

In respect of the process for the election of the next chief Prosecutor, the ASP established a Search Committee that was mandated to facilitate the process of identification and nomination of a consensus candidate for the December 2011 election. While the Terms of Reference for the Search Committee contained a requirement for regional representation on the Committee, they did not contain any provisions for gender representation. Consequently, all five members appointed to the Search Committee were men.

Between 8 February and 9 September 2011 "the Search Committee was in receipt of, or otherwise identified, expressions of interest from or recommendations for consideration in respect of 52 individuals."² After internal consultations and interviews with possible candidates, the Search Committee recommended four individuals for the position, of which only one was a woman. At the time of the preparation of this Paper after informal consultations in New York, an informal agreement had been reached amongst States Parties that Ms. Fatou Bensouda (The Gambia) would be nominated and elected by consensus.

The Team notes that, according to the Search Committee Report, in the interview process of shortlisted candidates, no questions were asked regarding the gender competencies of the candidates or regarding any experience prosecuting gender-based crimes, or that this was a criteria considered in the selection process for the shortlist. According to the Report, the candidates were not asked how they would structure the Office of the Prosecutor to ensure this competency, or how they would implement article 42(9) of the Rome Statute, requiring the appointment of advisers with legal expertise on specific issues, including but not limited to sexual and gender violence and violence against children.

The Team calls on States Parties to carry out a review of the process in light of the potential for the Search Committee process to be utilized in future Prosecutor elections.

² Report of the Search Committee for the position of the Prosecutor of the International Criminal Court, paragraph 27 available at <http://www.icc-cpi.int/Menus/ASP/Elections/Prosecutor/> (accessed 1 December 2011 and hereafter Search Committee Report).

Recommendations to the Assembly of States Parties

- The ASP should proceed to the election of the six new Judges by taking into account fair representation of male and female Judges and the legal expertise on violence against women and children as mandated by the Rome Statute.
- The ASP should review the nomination and election process for future elections of the chief Prosecutor. Should future bodies, such as the Search Committee, be utilised, the ASP should review its role, mandate and composition, and ensure it has balanced gender representation and gender competence.
- The ASP should ensure that women are equally represented in all future electoral processes.

B. List of Legal Counsel

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 those subjected to gender-based crimes (per article 68(1)³), are represented.” 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.

Current Status

As of 26 July 2011, there are 403 individuals on the List of Legal Counsel, of whom 95 (23.5%) are women and 308 (76.5%) are men.⁴ Although the list is still overwhelmingly composed of men, it is the first time since 2008 that the overall number of women appointed to the list increased. This growth is mainly due to the increase in the number of African women appointed to the list. This appears to be the result of the “Calling African Women Lawyers” campaign that was launched in May 2010.

The “Calling African Women Lawyers” campaign was launched by the ICC Registry, in collaboration with the International Bar Association (IBA), to address the consistent underrepresentation of African women in the List of Counsel. According to the ICC and IBA report on the campaign⁵ and information provided by the Registry,⁶ between May 2010 and July 2011 the number of African women appointed to the List of Legal Counsel increased by 22 individuals. This is the first time since 2006 that the number of African women on the list increased. In this same period, the number of African women appointed to the List of Assistants to Counsel also increased by 24 individuals.

In May 2011, the ICC launched the “Calling Arab Counsel” campaign to increase the number of lawyers appointed to the List of Legal Counsel and the List of Assistants to Counsel from Arabic-speaking countries. Unlike the first region-specific campaign launched by the Court, the “Calling Arab Counsel” campaign does not specifically target female counsel from Arabic-speaking countries. As of July 2011, only nine appointees to the List of Legal Counsel were from an Arabic-speaking country, of whom only

³ 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. ... [t]he 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).

⁴ Information provided by the Counsel Support Section of the Registry and current as of 26 July 2011.

⁵ Report on the 2010 ‘Calling African Female Lawyers’ Campaign, International Criminal Court and International Bar Association, 2010, p. 4, at <<http://www.icc-cpi.int/iccdocs/PIDS/femalecounsel/FemaleCounselReport2010Eng.pdf>>, last consulted on 31 August 2011.

⁶ Information provided by the Counsel Support Section of the Registry and current as of 26 July 2011.

one was a woman. In the List of Assistants to Counsel only one appointee (male) is from an Arabic-speaking country.

Recommendations to the Assembly of States Parties

- The impact of the “Calling African Women Lawyers” campaign and the strategies for its continuation should be evaluated.
- The ASP should request that strategies tailored to increase the number of women applying to the List of Legal Counsel and the List of Assistants to Counsel are included in any region-specific campaign from the outset.

Recommendations to the Court

The Registry should:

- Issue an updated report on the impact of the “Calling African Women Lawyers” campaign to the tenth session of the ASP, and on the strategies to continue to increase the number of women on the List of Legal Counsel.
- Report to the ASP about which gender-specific strategies will be integrated within regional campaigns, including the “Calling Arab Counsel” campaign.
- Include specific initiatives to inform female lawyers about the List of Legal Counsel and the List of Assistants to Counsel in all current and future region-specific campaigns from the outset.
- Ensure that lawyers with expertise on gender-based crimes are encouraged to apply.
- Ensure that information about candidates’ experience with victims of gender-based crimes is requested in the application forms for the List of Legal Counsel and the List of Assistants to Counsel.

C. Trust Fund for Victims

Current Status

- Out of 34 Trust Fund for Victims (TFV) projects approved by chambers, 28 are active, with 18 in northern Uganda and 16 in eastern DRC. Since 2007-2008, the total funds obligated in the DRC and northern Uganda amount to €5,344,545, of which €1,621,206 is allocated to northern Uganda, and €3,723,339 to the DRC. As of 30 June 2011, the funds available to the TFV amounted to €3,491,210.83. This includes €600,000 for future projects in the Central African Republic and €1,000,000 of reserves to supplement orders for reparations from the Chambers.⁷ As of the end of June 2010 the Fund had €3,760,527.15 available.
- Of the 18 projects approved for Uganda, three exclusively support women and girls victims/survivors. Of these, one uses earmarked funds from the Sexual Violence Fund and two receive un-earmarked funds. Of the 16 projects approved in the DRC, eight (50%) use earmarked funds for SGBV and work directly with women and girls victims/survivors. In both northern Uganda and eastern DRC, the remaining projects provide psychological and physical rehabilitation and material support to adults and children, including women and girls, as part of the integrated approach.
- The Trust Fund's priorities for 2012 are increasing its fundraising efforts, conducting an assessment of the Kenyan situation, initiating activities in the CAR supporting victims of sexual and gender-based violence, evaluating activities in the DRC and northern Uganda, publishing the

⁷ Information provided by the Secretariat of the Trust Fund for Victims and current as of 30 June 2011.

results of the longitudinal study carried out in 2010, and finally preparing for Court-ordered reparations.

Recommendations to the Assembly of States Parties

- The ASP must provide sufficient core funds for the operational budget of the Trust Fund.
- The ASP should not require the TFV to utilize voluntary contributions to cover institutional overhead and administrative costs, which detracts much needed resources to the development of projects. In this regard, the ASP should also approve the request by the Trust Fund for a Legal Adviser (P4), Financial Officer (P3) and Field Programme Assistant for Kenya (G5).
- The ASP should ask States Parties to increase their financial contributions to the Fund, especially now that assistance projects are underway and the Court is preparing for reparations orders.
- The Team also calls, in particular, for an increase in contributions to the Sexual Violence Fund to meet its target of €10 million. As of 31 July 2011, the Fund received €1,740,000 as earmarked donations for sexual and gender-based violence initiatives. The earmarked contributions in response to the appeal launched in September 2008 for victims of sexual violence should be complemented by other substantive donations by states parties.

Recommendations to the Trust Fund for Victims

- The Trust Fund for Victims should develop a fundraising strategy and embark on a vigorous campaign to mobilize resources. Such a campaign should consider: retaining current donors; attracting new donors amongst States Parties; reaching out to non-States Parties who may wish to engage with the Court through the Trust Fund; encouraging both cash and in-kind donations; developing a specific strategy with the private sector; implementing a scheme for individual donors; and launching more targeted donor appeals.
- The Board and Secretariat of the Trust Fund for Victims must ensure that implementation of Court orders for reparations through the Trust Fund integrate gender strategies and include women victims/survivors as recipients and participants.
- 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 the special appeal for victims of sexual violence.

D. Recruitment

Current Status⁸

In 2011, the overall number of staff employed by ICC including professional, general and elected officials, but excluding Judges, is 698, one more than in 2010. Of these, 54% are men and 46% are women. This figure represents only a small variation in the gender breakdown when compared to 2010, when 53% of the total staff were male and 47% were female.

This year, the number of occupied professional posts, including elected officials but excluding Judges, is 357. While this figure does not differ much from 2010, when the total number of professional staff was 359, this is the first time in the last two years that women professionals employed by the Court make up less than half of the total professional staff (48%). The gender breakdown in the Judiciary (excluding Judges) and the Registry remained substantially the same as in the last five years. In the OTP, female

⁸ Information provided by the Human Resources Section of the ICC and current as of 31 July 2011.

employees are 46% of the total Office staff against 49% in 2010. This decrease has been predominantly at the P3 level, with more men occupying posts at this level than in 2010. Women continue to be over-represented in lower-level professional positions across the Court (P1-P2), but particularly within the OTP where men outnumber women in the higher-level posts (P3-D1) with a gender gap reaching 45% at senior levels in some sections.

Recommendations to the Assembly of States Parties

- The ASP should continue to implement the detailed recommendations contained in the 2007 report of the Bureau on Geographical Representation and Gender Balance.⁹
- The ASP should adopt the draft provisions for inclusion in the ASP 10 'omnibus resolution' as proposed by the ASP New York Working Group requesting the Court to submit a comprehensive report on Human Resources to the Assembly at its eleventh session, which would include an update on the implementation of the recommendations on the topic which would be made by the Committee on Budget and Finance in April 2012.
- The ASP should increase the resources available to the Human Resources Section of the Registry to enable it to carry out its many functions, including ensuring compliance with recruitment processes and ensuring gender and geographical representation across all staff grades.
- The ASP should approve the requested posts in the following areas to strengthen and respond to the ICC's ability to meet the growing demands on specific services, particularly to victims of gender-based crimes, within the Court, including the VPRS, VWU, PIDS, OPCV and the TFV.

Recommendations to the Court

- The ICC should form an inter-organ committee to develop a three-year plan towards addressing imbalances in gender and geographical representation in the Court through active recruitment and the promotion of strategies across each organ. The three-year plan should contain specific strategies to redress the conspicuous under-representation of women in P3-D1 posts across all organs and related bodies.
- The ICC must address the imbalances in gender and geographical representation across all the organs and related bodies, with specific attention to the mid-to-senior posts.

E. Protection Issues

The Team aligns itself with the Victims' Rights Working Group¹⁰ in noting that without a robust system in place to ensure the protection of victims and witnesses, few would agree to engage with the Court, either as witnesses, participants or in any other category. While the continued existence of conflicts in many situation countries complicates the process of putting in place protection measures, this does not lessen the legal or moral obligation to ensure adequate and effective protection.

⁹ ICC-ASP/6/22. These recommendations were reaffirmed in the 2008 Report of the Bureau ICC-ASP/7/21.

¹⁰ *Issues and Concerns Presented by the Victims' Rights Working Group on the occasion of the 10th Session of the Assembly of States Parties 12 - 21 December 2011*, December 2011. The Victims' Rights Working Group is an informal network of national and international civil society groups and experts created in 1997 under the auspices of the Coalition for the International Criminal Court. Its membership includes international as well as local NGOs and experts from a wide array of countries, in particular those affected by ICC investigations and prosecutions.

Recommendations to the Assembly of States Parties

The ASP should significantly increase the resources available to both the Victims and Witnesses Unit and the Victims Participation and Reparation Section of the Registry to allow them to efficiently carry out their tasks and duties towards victims, particularly towards victims of gender-based crimes. Currently, the majority of victims applying to, and recognized by, the Court are male. More financial and human resources for the Units and Sections directly involved with victims are needed to address the lack of women and girls amongst recognized victims at the Court, including identifying and addressing any potentially discriminatory practices or assumptions in the process of identifying and registering victims.

Recommendations to the Court

- Develop a comprehensive security framework inclusive of witnesses, victims and intermediaries to ensure that protection mechanisms are tailored to their particular status, level of risk and specific circumstances. Currently victims and intermediaries are not included in the security provisions of the Court and as such participate or assist the ICC at great risk to themselves, their families and their communities.
- Ensure that protection and support measures are sensitive to the particular circumstances of women in conflict situations and are implemented in consultation with those to be protected or supported. Ensure also that women and girls who are recognized as ‘victims’ by the Court benefit from protection procedures.
- The protection framework must ensure that applicants and victims are not overly exposed to each other, to the community in which they live or to NGOs who are not directly involved as intermediaries with the specific victims.
- The Registry should urgently request, and the ASP should immediately provide, the necessary funds for the position of Psychologist/Trauma Expert to be upgraded to an established post. This position has been categorised as a GTA since 2009. Such expertise is mandated by article 43(6) of the Rome Statute and is essential to protect victims of gender-based crimes and torture victims in general from further harm in their dealings with the Court, and to enable them to assist the work of the ICC as witnesses. As such this position should be securely integrated within the structure of the VWU as an established post.

Summary of Recommendations to the Tenth ASP

A. Judicial and Prosecutor Elections

- The ASP should proceed to the election of the six new Judges by taking into account fair representation of male and female Judges and the legal expertise on violence against women and children as mandated by the Rome Statute.
- The ASP should review the nomination and election process for future elections of chief Prosecutor. Should future bodies, such as the Search Committee, be utilised, the ASP should review its role, mandate and composition, and ensure it has balanced gender representation and gender competence.
- The ASP should ensure that women are equally represented in all future electoral processes.

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- The ASP should ask States Parties to increase their financial contributions to the Fund, especially now that assistance projects are underway and the Court is preparing for reparations orders.
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D. Recruitment

- The ASP should continue to implement the detailed recommendations contained in the 2007 report of the Bureau on Geographical Representation and Gender Balance.¹¹The ASP should adopt the draft provisions for inclusion in the ASP 10 ‘omnibus resolution’ as proposed by the ASP New York Working Group requesting the Court to submit a comprehensive report on Human Resources to the Assembly at its eleventh session, which would include an update on the implementation of the recommendations on the topic which would be made by the Committee on Budget and Finance in April 2012.
- The ASP should increase the resources available to the Human Resources Section of the Registry to enable it to carry out its many functions, including that of ensuring the compliance with gender and geographical representation requirements linked to the recruitment process.
- The ASP should approve the requested posts in the following areas to strengthen and respond to the ICC’s ability to meet the growing demands on specific services, particularly to victims of gender-based crimes, within the Court including the VPRS, VWU, PIDS, OPCV and the TFV.

E. Protection Issues

- The ASP should significantly increase the resources available to both the Victims and Witnesses Unit and the Victims Participation and Reparation Section of the Registry to allow them to efficiently carry out their tasks and duties towards victims, particularly towards victims of gender-based crimes. Currently, the majority of victims applying to the Court and recognized by the Court are male. More financial and human resources for the units and sections directly involved with victims are needed to address the lack of women and girls amongst recognized victims at the Court, including identifying and addressing any potentially discriminatory practices or assumptions in the process of identifying and registering victims.

¹¹ ICC-ASP/6/22. These recommendations were reaffirmed in the 2008 Report of the Bureau ICC-ASP/7/21.