



**GENDER JUSTICE TEAM**  
**COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)**  
**COMMENTS AND RECOMMENDATIONS<sup>1</sup>**  
**TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES**  
**18 NOVEMBER – 26 NOVEMBER 2009, The Hague**

---

**Overview of Key Gender Issues – ASP 2009**

### **Implementing Legislation**

- States need to advance implementing legislation that fully reflects the provisions and standards of the Rome Statute including its robust gender provisions.

### **Independent Oversight Mechanism**

#### **Recommendations to States Parties:**

- The Team notes the Report of the Bureau on the establishment of an independent oversight mechanism<sup>2</sup> and urges the Assembly of State Parties ('ASP') to proceed with the establishment of the mechanism at its Eighth Session. The mechanism should be mandated to begin its work as soon as possible so that it can investigate any incidents of misconduct by ICC staff - including criminal offences - such as fraud, corruption, waste, sexual violence and harassment and exploitation.
- The Assembly should provide full oversight and support of the Oversight Mechanism, including: ensuring that it has adequate resources to conduct investigations, including in the field; ensuring that ICC staff found to have committed acts of misconduct or criminal acts are held accountable, including ensuring that immunities are waived for all criminal conduct.

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

- All staff should be provided with training so that there can be no misunderstanding regarding conduct that is not acceptable and the potential consequences of such misconduct.
- Develop and implement effective outreach programmes 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.

---

<sup>1</sup>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.

<sup>2</sup> ICC-ASP/8/2.

- Undertake a review of the ICC internal sexual and other harassment policy to ensure it fully covers the relevant issues; provide training for staff and managers about the policy; appoint 'focal points' for staff to report harassment; ensure new staff are given adequate orientation to this and other policies of the ICC.

## Recruitment

### Current Status<sup>3</sup>:

- In 2009, for the first time, the gender balance in professional posts at the Court was equal, a figure largely reached by significant changes in the composition of the judiciary. The OTP greatly increased its number of women appointed to professional posts, narrowing the 16% gap between men and women in 2008 to a 4% gap in 2009. Despite these improvements, the gap between men and women appointed to posts across the Court grew to 6% (53% to 47%) from 4% in 2008. In addition, women continue to be appointed to lower-level professional positions (P1-P2), particularly within the OTP, while men greatly outnumber women in the higher-level posts (P3-P5).
- The number of appointments from the WEOG region also increased by 3% in 2009 to a total of 61%. The distinguishing feature in the current composition of the Court is a 59% increase in the number of French nationals appointed over the past 12 months.

### Recommendations to the ASP:

- The ASP should continue to implement the detailed recommendations contained in the 2007 report of the Bureau on Geographical Representation and Gender Balance.<sup>4</sup>

### 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 promotion strategies across each organ.

## Legal Aid Scheme and Legal Representation

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>5</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.

### Current Status:

- Of the 302 lawyers on the List of Legal Counsel, 57 (19%) are women, while 245 (81%) are men. Despite a 1% increase in the number of women appointed this year, there

<sup>3</sup> Information provided by the Human Resources Section of the ICC and current as of 31 July 2009.

<sup>4</sup> ICC-ASP/6/22. These recommendations were reaffirmed in the 2008 Report of the Bureau. ICC-ASP/7/21.

<sup>5</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. ... [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).

remains four times as many men as women on the List. 67% of lawyers on the List of Legal Counsel are from WEOG, while the number of Counsel appointed from Africa, the site of the Court's four active Situations, remains stagnant at 28%.

#### Recommendation to the Court and States Parties:

- The Division of Victims and Counsel (DVC) should seek information about candidates' experience representing victims of gender-based crimes on the application form for the List of Legal Counsel.
- The Registry and States should encourage applications from lawyers with experience representing victims of gender-based crimes by promoting 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.

#### Recommendation to the Court:

- Develop a Legal Aid system for victims that operates under clearer and more predictable criteria and modalities than the one currently in place. The Victims' Protection and Reparations Section should better inform communities and intermediaries about how the Legal Aid Programme operates, its eligibility criteria, and how to both apply for Legal Aid and choose an appropriate Counsel. The Court should have clear and transparent guidelines readily available for victims and Counsel, and widely promote the legal aid scheme to ensure victim/survivors can access this important mechanism.

### Trust Fund for Victims

#### Current Status

- During 2009, the Trust Fund Secretariat started to implement 34 Trust Fund projects, and a total of €1,655,145 from the Fund was spent on victim-related activities. It is estimated that these projects will benefit, either directly or indirectly, 226,000 victims (72,000 in Uganda and 154,000 in DRC) by the end of 2009.<sup>6</sup> Three projects in Uganda (17%) and eight projects in the DRC (50%) provide direct support for women and girl victims/survivors.
- The Sexual Violence Fund, the global appeal launched by the Board of Directors in 2008 to assist 1.7 million victims of sexual violence under the jurisdiction of the Court over three years, currently has €702,481 in committed funds (including pledges), well short of its target goal of €10 million. At present these funds are being used for approved activities in Uganda and DRC.
- The Trust Fund's priorities for 2010 are the continued support of the projects in DRC and Northern Uganda. The Board has also approved the expansion of the Fund's activities to the CAR in 2010 to focus exclusively on support and assistance to victims of sexual violence.

---

<sup>6</sup> The total number of direct beneficiaries is 39,000 (14,000 in northern Uganda and 25,000 in DRC), while it is estimated that 187,000 persons (59,000 in northern Uganda and 128,000 in DRC) will benefit indirectly from the projects. The TFV defines direct beneficiaries as the primary recipients of physical and psychological rehabilitation and material support, and indirect beneficiaries as these direct recipients' families and communities.

#### Recommendation to States:

- The Team calls upon 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. 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:

- The Team encourages the Trust Fund to further strengthen transparency and visibility by making further communication efforts about its strategic priorities, the procedures for the selection of assistance projects and the relevant evaluation mechanisms in place, and by sharing the results of the projects currently supported.
- In 2010, the Board of the Trust Fund together with the Secretariat should further develop and implement effective fundraising strategies for the Trust Fund as a matter of urgency. The Team is particularly concerned that the amount of €3,149,950 currently in the Trust Fund may be inadequate to provide assistance to victims and, at a later stage, for reparations.
- 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.

#### Protection Issues

##### Recommendation to the ASP:

- Approve the Court's request to convert the post of psychologist/psychological trauma expert (P3) within the Victim and Witness Unit (VWU) into a permanent post. The Team is concerned that the recommendation of the Committee on Budget and Finance not to convert this post to a permanent position fails to take into account the Rome Statute provision requiring the VWU to have staff with expertise in trauma or the increasing frequency with which psychological services have been requested to facilitate witness testimony. The Team considers that given the projected increased number of trials before the Court, the need for permanent specialized expertise will increase.

##### Recommendation 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.
- Ensure that protection and support measures are sensitive to the particular circumstances of women in conflict situations and ensure that women and girls who are recognized as 'victims' by the Court benefit from protection procedures.