

# Launch of the Gender Report Card on the ICC 2012

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President of the Assembly of States Parties, Ambassador Tiina Intelmann, Ambassadors, Judges of the ICC, Chief Prosecutor Fatou Bensouda, Registrar Silvana Arbia, the newly elected members of the Board of the Trust Fund for Victims, States Parties delegates, ICC staff and other colleagues in the international justice community – welcome to the launch of the *Gender Report Card on the ICC* for 2012.

This is the eighth year the Women’s Initiatives for Gender Justice has produced the Report Card on the ICC and in that time it has grown from a 16 page booklet to this year’s 300 page encyclopaedia on the Court in which we review major judicial decisions, announcements of charges, issuance of arrest warrants, developments in victims participation, witness protection issues, the work of the Trust Fund for Victims as well as the institutional development and staff profile of the Court - from a gender justice perspective.

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 and with the overall goal of supporting the ICC to become an institution capable of providing gender-inclusive justice.

## Integration of Gender Provisions

One of the challenges for the ICC as for any Court is how to integrate women, and other marginalised communities and identities of people, into the structure of justice. Fortunately, the authors of the Rome Statute anticipated this challenge and provided a robust integration of gender provisions including within the definition of crimes; the overarching hierarchy of the law; and within the Rules of Procedure and Evidence. The need for staff with expertise on sexual and gender-based violence, as well as gender and geographical considerations were also integrated into the Statute in recognition that inequalities are sustained by being institutionalised and so by seeking to institutionalise equality, it was hoped that different types of justice outcomes and results could be expected. The gender requirements within the Statute are a helpful mechanism to assist the Court in avoiding the challenges of itself struggling with gender inequality, whilst also attempting to address the criminality of gender-based crimes.

On this issue, although in the overall figures, the ICC has the best record of any of the tribunals in relation to the appointments of men and women to professional posts, somewhat predictably women are clustered in the low-to-mid level posts with significantly fewer women in decision-making and

**Women’s Initiatives for Gender Justice**



leadership positions. The best record in this area for the last five years has been in the Registry.<sup>1</sup> The largest gender differential has been and is within the OTP where more than three times more male than female appointees occupy P5 posts and twice as many men than women have been appointed to the P4 and P3 levels.<sup>2</sup> As the Prosecutor mentioned in her speech yesterday, this is an area she will be paying particular attention to in the new strategic plan for her office. Within the judiciary, women are in the majority on the bench; in fact, the ICC has the highest number of female judges when compared with any international tribunal or special court.<sup>3</sup>

Since our last *Gender Report Card*, the first woman, Fatou Bensouda, was elected as the Chief Prosecutor of the ICC; the first woman, Ambassador Tiina Intelmann, was elected to be the President of the Assembly of States Parties (ASP), and of course since 2008, the Registry has been led by Silvana Arbia, the first woman appointed as the Registrar of the ICC. The only principal position remaining which has not yet been occupied by a woman is that of the President of the Court, and we look forward to that important milestone in the future.

### **So what did the ICC look like in 2012?**

This year the Court operated with a budget of € 108.8 million, conducted 185 missions<sup>4</sup> in relation to investigations in seven Situations, had three active trial proceedings,<sup>5</sup> issued two decisions on the

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<sup>1</sup> For the past six years, the overall recruitment statistics for professional appointments within the Registry has remained within the 52% – 48% range. This year, the majority of employees within the Registry are women with 51% (91) female and 49% (89) male appointees of the total number of professional staff (180). Last year, female employees were 48%, in 2010 49% and in 2009 women employees were the majority at 52% of the total number of staff. This year, two men and one woman occupy posts at the D1 level, and 20% more men than women are appointed at the P3 level. In 2011, there were 26% more men than women appointed at the P3 level. In 2012, there are nine men (one more than in 2011) and seven women appointed at the P5 level. Women are the majority at the P4 (53%), P2 (61%) and P1 (67%) levels. In 2011, these figures were respectively 56%, 53% and 62%. See further *Gender Report Card 2012*, p 14.

<sup>2</sup> The gender breakdown of female and male employees within the OTP is the same as in 2011, with female professionals comprising 46% (65) of the total number of professional staff (141). This figure is 3% less than in 2010 when female professionals comprised 49% of the OTP professional staff. In the past four years, the recruitment statistics for appointments of professional staff members in this Organ remained in the 54%-46% range. As in past years, the female/male differential remains high in all senior positions with both D1 posts occupied by men and almost three times the number of male appointees than female at the P5 level (three women and eight men). At the P4 level, there are currently twice as many men than women (eight women and 16 men). In 2011, there were 10 women and 16 men appointed at the P4 level. At the P3 level, there are 16 (36%) female appointees and 28 (64%) male appointees. This figure represents a slight change in the staff composition at this level compared with 2011, when there were 15 (36.5%) women and 26 (63.5%) men employed at the P3 level within the OTP. As in 2011, female professionals are the majority at the P1 and P2 levels, comprising respectively 67% and 61% of those appointed to these posts. See further *Gender Report Card 2012*, p 14.

<sup>3</sup> As provided for by Article 36 of the Rome Statute, there are 18 judges on the bench of the ICC of which 10 (55.5%) are women and eight (44.5%) are men. For the fourth year in a row, women are the majority on the bench. See further *Gender Report Card 2012*, p 14, 82-85.

<sup>4</sup> ICC-ASP/11/21, paras 45-64.

<sup>5</sup> *The Prosecutor v. Thomas Lubanga Dyilo*; *The Prosecutor v. Germain Katanga & Mathieu Ngudjolo Chui*; and *The Prosecutor v. Jean-Pierre Bemba Gombo*.

## **Women's Initiatives for Gender Justice**



confirmation of charges<sup>6</sup> and issued three new arrest warrants,<sup>7</sup> bringing to 29 the total number of individuals indicted by the ICC.<sup>8</sup> The ICC had two Pre-Trial Chambers and five Trial Chambers operational and since the publication of our last Gender Report Card more than 2,960 victims were recognised to participate in legal proceedings.<sup>9</sup>

This year, the 10<sup>th</sup> year of ICC operations, has been one of multiple milestones – the first judgement was issued,<sup>10</sup> the ICC delivered its first conviction,<sup>11</sup> held its first sentencing hearing,<sup>12</sup> and issued its first decision on reparations.<sup>13</sup> These are signs of a functioning and fully operational Court and signs of confidence in the ICC being recognised as a voice for victims and a credible arbiter of global justice.

## Challenges

Amongst the areas emerging as a challenge for the Court is the issue of sufficient resources as the ICC enters its busiest year ever with five cases at trial stage,<sup>14</sup> seven Situations under investigation<sup>15</sup> and thousands of participating victims.<sup>16</sup>

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<sup>6</sup> *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Josua Arap Sang* (ICC-01/09-01/11-373); and *The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* (ICC-01/09-02/11-382-Red).

<sup>7</sup> *The Prosecutor v. Sylvestre Mudacumura* (ICC-01/04-01/12-1-Red); *The Prosecutor v. Laurent Koudou Gbagbo* (ICC-02/11-01/11-9-Red); *The Prosecutor v. Bosco Ntaganda* (ICC-01/04-02/06-Anx-tENG).

<sup>8</sup> Thomas Lubanga Dyilo, Germain Katanga, Mathieu Ngudjolo Chui, Bosco Ntaganda, Callixte Mbarushimana, Sylvestre Mudacumura (DRC Situation); Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya (Uganda Situation); Ahmad Muhammad Harun, Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb'), President Omar Hassan Ahmad Al Bashir, Bahar Idriss Abu Garda, Abdallah Banda Abakaer Nourain, Saleh Mohammed Jerbo Jamus, Abdel Raheem Muhammad Hussein (Darfur Situation); Jean-Pierre Bemba Gombo (CAR Situation); William Samoei Ruto, Henry Kiprono Kosgey, Joshua Arap Sang, Francis Kirimi Muthaura, Uhuru Muigai Kenyatta, Mohammed Hussein Ali (Kenya Situation); Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi, Abdullah Al-Senussi (Libya Situation); Laurant Koudou Gbagbo (Côte d'Ivoire Situation). See further *Gender Report Card 2012*, p 164-197.

<sup>9</sup> During the period covered by the *Gender Report Card 2012*, a total of 2,968 victims were accepted to participate in proceedings before the ICC. Figures as of 31 August 2012, provided by the Victims Participation and Reparations Section (VPRS) by email dated 20 September 2012. See further *Gender Report Card 2012*, p 262-273.

<sup>10</sup> On 14 March 2012, Trial Chamber I delivered the first trial judgement of the ICC in the case against Thomas Lubanga Dyilo (Lubanga), convicting Lubanga, as former President of the *Union des patriots congolais* (UPC) and Commander-in-Chief of the *Forces patriotiques pour la libération du Congo* (FPLC), of the war crimes of conscripting and enlisting children under the age of 15, and using them to participate actively in hostilities within the meaning of Article 8(2)(e)(vii) and 25(3)(a) of the Rome Statute, from early September 2002 to 13 August 2003. ICC-01/04-01/06-2842. See further *Gender Report Card 2012*, p 132-163.

<sup>11</sup> On 10 July 2012, Trial Chamber I issued the first sentencing decision of the ICC in the Lubanga case, sentencing Lubanga to 14 years imprisonment. ICC-01/04-01/06-2901. See further *Gender Report Card 2012*, p 199-205.

<sup>12</sup> The sentencing hearing in the Lubanga case was held on 13 June 2012.

<sup>13</sup> On 7 August 2012, Trial Chamber I decided on the principles and procedures to be applied to reparations for victims in the context of the case against Lubanga. ICC-01/04-01/06-2904. See further *Gender Report Card 2012*, p 206-223.

<sup>14</sup> *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui* (currently awaiting trial judgement); *The Prosecutor v. Jean-Pierre Bemba Gombo*; *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* (trial scheduled to begin in April 2013); *The Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta* (trial scheduled to begin in April 2013); *The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus* (beginning of trial subject to translation issues being resolved).

<sup>15</sup> The Democratic Republic of the Congo, Uganda, the Central African Republic, Darfur, Kenya, Libya and Côte d'Ivoire.

## Women's Initiatives for Gender Justice



Based on our analysis of the budget over eight years and considering the current budget proposed by the Committee on Budget and Finance (CBF), for the first time, the performance of the Court in 2013 will be linked to the availability of resources. Calls for greater efficiencies and an expectation of broader impact are right and justified - but to tackle these issues primarily through the budget may not in the end produce the outcomes States desire, victims demand and the Statute requires.

Like many of you, we will be looking to the structural review process to shine the spotlight on areas to further support the Court including, in our view, by emphasising the need for stronger quality management procedures as well as highlighting areas which require more funding and greater resources. This review will provide a helpful reflection for the Court on its internal practices and address what had been isolated incidents of non-compliance, which have with time become habits and if left unchecked may threaten to compromise and unhinge the Court from within.

## **Recommendations**

Looking forward, the *Gender Report Card* includes recommendations for the ASP and the ICC. Amongst these recommendations is support for the creation of an ICC-AU Liaison Office and we are very pleased to see in the draft omnibus resolution an affirming reference on this issue. This is the time and this is the year for a fully-fledged office to be opened before the next ASP.

The ground-work has been laid by the Court with diplomatic missions and technical meetings and now more than ever there is an opportunity to strengthen understanding and cooperation between the Assembly and the AU, and between the ICC and the union of African States. This is particularly important as a means to increase awareness among African peoples of the work and mandate of the ICC and to foster understanding as the AU considers expanding its complementarity regime through the inclusion of war crimes, crimes against humanity and genocide within the jurisdiction of the African Court for Human and Peoples Rights.

Another recommendation in the Report Card this year is for the establishment of a gender advisor post within Chambers given the number of cases with charges for gender-based crimes now under consideration across three judicial divisions. The complexity of these crimes, the charging structure and the theories of liability, when considered against the Statute and existing jurisprudence, necessitate a dedicated post serving as an expert resource for the judges. The volume of charges and the range of determinations thus far suggest a gender advisor would support the overall cohesion of judgements and consistency of interpretations across the Chambers and between judicial divisions.

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<sup>16</sup> Of the 12,641 applications for victim participation received by the Court as of 31 August 2012, 6,237 victims were authorised to participate in proceedings. See further *Gender Report Card 2012*, p 262-273.

## **Women's Initiatives for Gender Justice**



## **Rape and other forms of sexual violence**

We often hear that rape is a weapon of war but we seldom here how or why this is the case. Typically, sexual violence is a part of the larger regime of violence all of which exists in the service of the political agenda of the parties in conflict. Sexual violence is not premised on the perpetrators' sexual intent, sex drive or on motivations of a sexual nature.

Rape and other forms of sexual violence are an effective strategy in armed conflict and war because they rely on pre-existing norms, standards and belief-systems regarding gender and other inequalities to fracture individual, family and community networks; to splinter social and cultural connections; and to assert ethnic and political supremacy through the use of acts already legitimised as the means of expressing dominance, that is – through sexualised violence, most commonly rape, predominantly against women.

Beyond the determination of guilt or innocence, of conviction or acquittal, the ICC overtime will play an important role not only in the determination of individual criminality responsibility, but also in the dismantling of the architecture of impunity – challenging the structures, systems, political relationships and economic interests, which sustain and necessitate conflict.

And in addition to this, the ICC is also in a position to advance the legal concept of crimes within its jurisdiction and nowhere is this needed more than in relation to sexual violence and gender-based crimes. The law typically lags behind human experience, and prosecutions and jurisprudence which successfully reflect the purpose of sexualised violence and its intended individual and collective impact, will help bridge the gap between the experience of the violence and the adjudication of the acts and in doing so provide satisfaction to victims/survivors beyond the blunt determination of guilt or innocence.

## **Living Legacy**

Lastly, this Court, our Court is a living legacy- every ASP resolution provides a record; each case creates a footprint; every decision is a stimulant for future accomplishments. This ambitious collective endeavour of the Rome Statute and the ICC requires our best and brightest efforts every day.

I would like to thank my co-authors for this year's Report, Kate Orlovsky, Dieneke de Vos, Lori Mann and Niamh Hayes. Thank you also to Vanina Serra for the statistical analysis and to Jane Adong, Amira Khair and Jane Akwero who contributed to various sections of the Report. Thank you to our interns Megan Kammerer, Sarah Pepper and Laila Alodaat for their research and support.

Thanks also to our designer, Keri Taplin for her creative eye and abilities, and lastly thank you to all of you for celebrating with us the Launch of the *Gender Report Card on the ICC 2012*.

**Women's Initiatives for Gender Justice**

