

Launch of the Gender Report Card, 2007

Brigid Inder
Executive Director

I would like to welcome you all to the Launch of the Gender Report Card for 2007. This year the launch is being co-hosted by the Women's Initiatives for Gender Justice and the Global Justice Centre, and we thank Andrea Friedman and her colleagues for their support for the Launch.

This is the **third year** the Women's Initiatives for Gender Justice has produced the Report Card, which provides an assessment of the implementation by the ICC and Assembly of States Parties, of the Rome Statute as a whole, with a particular focus on the gender mandates the Statute embodies.

We have prepared the Report Card in three sections - each of which provides an overview of the relevant articles in the Statute, a detailed gender assessment and recommendations to address some of the areas of most concern and greatest urgency. These sections are:

- Structures and Institutional developments;
- Jurisdiction and procedures;
- Substantive work of the ICC and the ASP

The purpose of the Gender Report Card is to provide a critique of the Court's work in the past 12 months and to focus the attention of NGOs, the ICC and States Parties to areas where implementation of the Statute is lacking or diminished – in order to alert key actors to the likely implications of these problems so that actions can be taken to ensure the Statute is effectively implemented – *effectively implemented* meaning:

- inclusive of women;
- establishing international standards for the prosecution of gender based crimes;
- creating benchmarks for States to emulate in their national legislation and judicial proceedings; and
- where victims and survivors of conflict, including women, benefit from the justice and reparations processes.

So where is the Court in 2007 and what are some of the big revelations in this year's Gender Report Card ?

In 2007 the Court operated with a budget of Euro 88.9 million, conducted more than a hundred (100) missions in 4 conflict situations, had 3 Pre-Trial Chambers operational, constituted its first Trial Chamber, and issued decisions of the Appeals Chamber. This is the first year all judicial divisions have been engaged and active.

The Secretariat of the Trust Fund became staffed and operational, providing assistance to almost 20 projects mostly in the DRC¹ and Northern Uganda. Outreach conducted by the Registry increased this year particularly in Uganda and the DRC however still no specific consultations or workshops have been held with women or women leaders in these situations - in fact after 4 years

¹ Democratic Republic of The Congo

of outreach activities, only one consultation has been held with women and this is in relation to the Darfur situation.

Last year, as some of you will recall, the Office of the Prosecutor (OTP) faced heavy criticism especially from local NGOs in the DRC and the Women's Initiatives for Gender Justice, in relation to the failure to charge Thomas Lubanga Dyilo, the first suspect to be taken into custody by the ICC, for gender based crimes.

Lubanga is charged with 6 counts of war crimes – the enlistment and conscription of child soldiers and forcing them to participate actively in hostilities². Despite the documentation from many sources (United Nations Agencies, Letters from the Secretary General of the UN to the Security Council, NGOs including the Women's Initiatives) reporting the widespread commission of gender based crimes, including crimes against girl soldiers, no such charges were brought against the accused. NGOs wrote letters and agitated, the Women's Initiatives submitted to the OTP 55 interviews with victims/survivors of gender based crimes committed by the UPC³ including eye witness accounts of Thomas Lubanga himself, and we filed before the Judges requesting leave to prepare an amicus for the Pre-Trial Chamber on issues of judicial oversight of prosecutorial discretion in the selection of charges and victims rights.

Focusing the spotlight where it was least wanted, proved to be effective, not in the Lubanga case, but every situation announcement by the OTP since Lubanga has included either the explicit intention to investigate gender based crimes as a matter of priority (as in the Central African Republic) or the announcements have included charges for gender based crimes as in Darfur and the second DRC case. The ICC has just taken into custody Germain Katanga, the former senior commander of the FPRI militia group, charged with 9 counts of war crimes and crimes against humanity including sexual slavery, and we expect an expansion of these charges before the Confirmation Hearing in February 2008.

Overall the OTP has included charges for gender based crimes against 5 out of the 8 individuals (62.5%) against whom charges have been brought.

In truth it should be all 8 – why ? Because as either Government Ministers, leaders, founders, or senior commanders of militia groups or armed forces they bear the greatest responsibility for the ordering and carrying out of these crimes. Although there are charges, they are not comprehensive against any of the individuals nor in any of the situations - there are a range of gender based crimes committed for which there are no charges, and there are charges for crimes that lack fullness. At the ICTY and ICTR they were more descriptive in their charging - for example rape was charged as a crime in itself but was also charged, where there was evidence, as other forms of grave crimes such as torture and genocide. At this time there is a texture missing from ICC charging which we hope will emerge in the coming year.

One of the areas I would like to highlight from the year, is victims participation.

The court has now received more than 500 applications from victims/survivors seeking to be formally recognised as victims by the Court with the right to participate in legal proceedings. Of the more than 500 applications received by the court, only 38% are from women, on average women are around a third of the applicants from 3 situations – Uganda, DRC and Darfur with

² The charges are within the context of the conflict in the DRC which is described as both international and non-international in character.

³ Union des Patriotes Congolais –the militia group founded and led by Thomas Lubanga Dyilo.

slightly higher for Uganda, and slightly lower for Darfur. As yet there have been no applications from the Central African Republic.

Major developments in victims participation include the assigning of the Office of the Public Counsel for Victims to represent applicants who do not have legal representation; and issues of redaction of victims applications and access of the Defence Counsel and Office of the Prosecutor to the full applications with information regarding victims identity. This is obviously of concern given the security risks faced by victims and their families, however Pre-Trial Chamber 1 (for both the DRC and Darfur situations) ordered that unredacted applications of victims be made available to the Prosecutor and the Defence at the situation stage and that unredacted information about intermediaries should also be given to both Parties. The Chamber stressed the need for confidentiality, for the Parties to only refer to the applicants with the numbers they have been assigned, and to only contact the applicants through their legal representatives. To us this seems inadequate as measures of protection, given for example the Defence Counsel Team for Lubanga has included a member and supporter of the UPC party/militia group and the Government of Sudan has a security service second-to-none whose ability for information gathering is renowned.

In the first case before the Court -

- No victims of gender based crimes have been recognized;
- Despite the charges against the suspect relating to child soldiers, no girl soldiers have been recognized by the ICC with the right to participate in the case;
- Only 4 applicants have been recognized as victims in the first case.

These figures have not changed for a year. Overall only 17 individuals have been recognized as victims by the ICC cross all the situations.

Of the 4 victims/survivors who have been recognized to participate in the first case, what of the quality of the participation ? Of the 62 hours of Confirmation Hearing in 2006, only 132 minutes was dedicated to victims participation – this is through their legal representatives.

So victims participation at this stage lacks meaning and substance largely due to the narrowness of the charges, the modalities for victims participation as outlined by the Judges, and the lack of integration of gender crimes by all parties including the victims legal representatives. During the Confirmation Hearing ‘rape’ was mentioned once, this was by a legal representative, and ‘rape and sexual exploitation’ was mentioned once by the Expert Witness for the Prosecution.

So at this point victims access to the process of justice is partial and unsatisfactory – thus creating the illusion of participation and justice without the experience of it.

Recruitment

There is a 10% gap in the number of women and men in professional posts in the ICC, and while progress has been made in the Judiciary and the Registry, the biggest problem is in the Office of the Prosecutor where there is a 24% gender gap in professional posts. This has worsened since last year. In the senior level professional posts (P.3-P.5) there are more than 3 times more men than women at each level.

Of concern is the high number of vacancies in management positions – in the OTP out of 13 Heads of Sections, 46% are vacant and of the 54% of positions filled all are held by men.

Two out of three Heads of Divisions in the OTP are led by women, in Registry all Heads of Divisions positions are held by men.

The top 5 countries with the highest number of nationals appointed to staff of the ICC are all from WEOG: France; Germany; UK; Canada and Netherlands; Austria Spain. The regions most under represented at the Court are Eastern Europe and Asia/Pacific. We also have an analysis of the top 5 countries by region and by region and Gender in the Report Card.

On the **List of Legal Counsel**, there are 41 women out of a total of 221 individuals who have been appointed to the List. There are still more than 5 times the number of men on the List than women and 70% of the List continues to be from one region, WEOG.

Overall we have three C's to recommend to the ICC:

- Greater Institutional Competency;
- Stronger Commitment to implement the Statute in its entirety and ensure an accessible and administratively efficient court; and lastly
- Courage - the courage to lead, the courage to stand out from the pack, to be bold, to bring comprehensive charges, to make bold judicial decisions, to be visionary not only pragmatic, to embrace the ambiguity in the Statute which allows room to advance rather than retreat from the provisions.

To adapt the words of Rebecca Solnit⁴, there will always be destruction, there will always be violence, there will always be some type of conflict, we cannot eliminate it altogether- but with the ICC we can reduce it, we can prosecute it, insist on accountability for it, we can marginalize it, and we can undermine its sources and financing.

Thank you for your attendance at the Launch, and thanks again to the Global Justice Centre for co-hosting this event with us. We hope you enjoy the rest of the evening and without further delay we officially launch the Gender Report Card for 2007.

⁴ Rebecca Solnit, *Hope in the Dark: Untold Histories, Wild Possibilities*, 2004