

Gender Report Card



on the
International Criminal Court

2007

Women's Initiatives for Gender Justice



November 2007

Introduction

This is the third Gender Report Card produced by the Women's Initiatives for Gender Justice. Its purpose is to assess the implementation by the International Criminal Court (ICC) of the Rome Statute, Rules of Procedure and Evidence (RPE) and Elements of Crimes (EoC) and in particular the gender mandates they embody, in the more than five years since the Rome Statute came into force.¹

The Rome Statute is far-reaching and forward-looking in many aspects including in its gender integration in the following key areas:

- ◆ *Structures* – requirement for fair representation of female and male Judges and the International Criminal Court (“ICC”) staff as well as fair regional representation; requirement for legal expertise in sexual and gender violence; requirement for expertise in trauma related to gender based crimes; the unique establishment of the Trust Fund for Victims.
- ◆ *Substantive Jurisdiction* – crimes of sexual violence as well as definitions of crimes inclusive of gender and sexual violence, constituting genocide, crimes against humanity and/or war crimes; principle of non-discrimination in the application and interpretation of law, including on the basis of gender.
- ◆ *Procedures* – witness protection and support; rights of victims to participate; rights of victims to apply for reparation; special measures especially for victims/witnesses of crimes of sexual violence.

While implementing the Rome Statute is a task we all share, it is the particular responsibility of the Assembly of States Parties (ASP) and the ICC. This Gender Report Card is an assessment of the progress to date in implementing the Statute and its related instruments in concrete and pragmatic ways to establish a Court that truly embodies the Statute upon which it is founded and is a mechanism capable of providing gender-inclusive justice.

The Gender Report Card analyses the work of the ICC in three sections: (1) Structures and Institutional Development; (2) Substantive Jurisdiction and Procedures; and (3) Substantive Work of the ICC and ASP. Within these sections we review and assess the work of each organ of the Court and summarise the most important judicial decisions, the investigations, charges and prosecutions brought by the Office of the Prosecutor (OTP), and the work of the many sections of the Registry towards an accessible and administratively efficient Court.

¹ The importance of these three instruments is evidenced by Article 21(1) of the Rome Statute, which states that “the Court shall apply: (a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence.”

Structures & Institutional Development

Judiciary, Office of the Prosecutor, Registry

Gender Equity

The Rome Statute requires that, in the selection of Judges, the need for a ‘fair representation of female and male judges’ be taken into account. The same provision applies to the selection of staff in the Office of the Prosecutor (OTP) and in the Registry (Articles 36(8)(a)(iii) and 44(2) Rome Statute).

Geographical Equity

The Rome Statute requires that, in the selection of Judges, the need for ‘equitable geographical representation’ be taken into account in the selection process. The same provision applies to the selection of staff in the OTP and in the Registry (Articles 36(8)(a)(ii) and 44(2) Rome Statute).

Gender Expertise

Expertise in Trauma

The Registrar is required to appoint staff to the Victims and Witnesses Unit (VWU) with expertise in trauma, including trauma related to crimes of sexual violence (Article 43(6) Rome Statute).

Legal Expertise in Violence Against Women

The Rome Statute requires that, in the selection of Judges and the recruitment of ICC staff, the need for legal expertise on violence against women or children must be taken into account (Articles 36(8)(b) and 44(2) Rome Statute).

Rule 90(4) of the RPE requires that, in the selection of common legal representatives for the List of Legal Counsel, the distinct interests of victims are represented. This includes the interests of victims of crimes involving sexual or gender violence and violence against children.

Legal Advisers on Sexual and Gender Violence

The Prosecutor is required to appoint advisers with legal expertise on specific issues, including sexual and gender violence (Article 42(9) Rome Statute).

Trust Fund for Victims

The Rome Statute requires the establishment of a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and for their families (Article 79 Rome Statute; see also Rule 98 RPE).

Recruitment of ICC Staff²

	Men	Women
Overall staff ³ (professional, general and elected officials)	54%	46%
Overall professional posts ⁴ (including elected officials)	55%	45%
Judiciary	Judges ⁵	53%
	Overall professional posts ⁶ (excluding Judges)	48%
OTP overall professional posts ⁷	62%	38%
Registry overall professional posts ⁸	50%	50%

² Figures as of 1 October 2007: Information provided by the Human Resources Section of the ICC.

³ This overall figure is the same as 2006 and represents a 1% decline in female appointments from 2005. The total number of overall staff (professional, general and elected officials) at the ICC is 506.

⁴ There has been a 1% increase in female appointments to professional posts from 2006. The total number of overall professional posts (including elected officials) at the ICC is 249; 49% of the overall staff (including elected officials) is therefore comprised of professional staff.

⁵ During 2007 three out of 18 Judges (2 male Judges and 1 female Judge) resigned. During the 6th ASP in 2007, elections will be held to fill the three judicial vacancies. Currently there are 7 female Judges and 8 male Judges.

⁶ This represents a 4% increase from 2006 of women in professional posts in the Judiciary.

⁷ This figure represents a 1% decrease from 2006 of women in professional posts in the OTP. There is a 24% difference between male and female professional appointments (22% in 2006). The statistics for women and men are similar for P1 and P2 positions however from the P3 –P5 there are three times more men appointed at each level than women. P3: 6 women - 21 men; P4: 4 women - 11 men; P5: 1 woman - 4 men.

⁸ This figure represents a 4% increase from 2006 of women in professional posts in the Registry and brings the overall figure of male and female appointments to professional posts in the Registry to a gender balance of 50% - 50%. Although there are similar figures for women and men in P1 - P3 posts (with more women in the P1 and P2 levels), the gender imbalance emerges in the higher level positions. [P4: 15 women - 12 men; P5: 3 women – 7 men; D1: 0 women; 2 men].

Executive Committee and Senior Management

	Men	Women
Judiciary – Presidency	67%	33%
OTP – Executive Committee ⁹	50%	50%
OTP – Heads of Division	33%	67%
OTP – Heads of Sections ¹⁰	100%	0%
Registry – Heads of Divisions	100%	0%
Registry – Heads of Sections ¹¹	67%	33%

ICC Related Bodies

Trust Fund for Victims – Board of Directors	80%	20%
Trust Fund for Victims – Secretariat	33%	67%
ASP Bureau – Executive	67%	33%
ASP – Secretariat	33%	67%
Investment Court Premises (1 person)	100%	0%
Disciplinary Board for Counsel (3 people)	33%	67%
Disciplinary Appeals Board for (3 people)	100%	0%

⁹ The Executive Committee is composed of the Prosecutor and the three Heads of Division in the OTP. Note that the Head of Division (Investigations) resigned in 2007 and that this post is currently filled by an acting Head of Division (male).

¹⁰ OTP: Out of 13 Heads of Sections and equivalent posts (such as heads of investigation teams and prosecution teams), there are six vacant Heads of Sections or equivalent posts (46%). Of the 54% posts that are filled, all are occupied by men (100%).

¹¹ Registry: Out of 21 Heads of Sections and equivalent posts, there are three vacant Heads of Sections or equivalent posts (14%). Of the 86% of posts that are filled, 67% are occupied by men and 33% are occupied by women.

Geographical and Gender Equity Among Professional Staff (including elected officials, excluding language staff): ¹² 'The Top 5' of the Region and Gender and the 'Top 10' overall¹³

WEOG¹⁴
(57.9% overall)

—
(58.4% men and
41.6% women)

'Top 5' Countries in the Region (range from 9 - 20 Professionals):

- (1) France
- (2) Germany
- (3) United Kingdom
- (4) Canada / The Netherlands (tied)
- (5) Australia / Spain (tied)

'Top 5' Countries by Gender (range from 3 - 10 female Professionals):

- (1) France
- (2) Germany
- (3) Spain
- (4) Australia, Italy, New Zealand, The Netherlands (tied)
- (5) Canada / United Kingdom (tied)

Africa
(16.7% overall)

—
(63.9% men and
36.1% women)

'Top 5' Countries in the Region (range from 1 - 7 Professionals):

- (1) Nigeria
- (2) Sierra Leone
- (3) Gambia / South Africa (tied)
- (4) Benin, DRC¹⁵, Egypt, Kenya, Mali (tied)
- (5) 9 other countries each have one national appointed¹⁶

'Top 4' Countries by Gender (range from 0 - 3 female Professionals):

- (1) Nigeria
- (2) Sierra Leone
- (3) The remaining 8 African countries each have one female national appointed¹⁷
- (4) No other African countries have a female national appointed to professional posts

¹² Situation on 1 October 2007: information provided by the Human Resources Section of the ICC. For geographical information the ICC does not include Language Staff for the breakdown of geographical representation. Based on this information, excluding Language Staff, there are 216 professional posts (including elected officials), of which 125 are occupied by men (57.9%) and 91 by women (42.1%). The occupation of men and female professional posts per region is as follows: WEOG (125 staff in total: 73 men or 58.4% – 52 women or 41.6%); Africa (36 staff in total: 23 men or 63.9% – 13 women or 36.1%); GRULAC (25 staff in total: 11 men or 44% – 14 women or 56%); Eastern Europe (17 staff in total: 10 men or 58.8% – 7 women or 41.2%); and Asia (13 staff in total: 8 men or 61.5% – 5 women or 38.5%). Note that the only region in which the overall number of women in professional posts is as high or (as in this case) higher as the overall number of men in professional posts is GRULAC.

¹³ Note that it has not always been possible to establish the 'Top 5' of a Region and/or Gender in light of the fact that there are simply not enough nationals or female nationals appointed to professional posts from certain regions to even arrive at a 'Top 5' of Region and/or Gender. In those cases, a 'Top 3' or 'Top 4' was possible to establish and has therefore been established; the range of professionals appointed starts in those cases with 0. Similarly, as there have not been sufficient female national appointments to professional posts, a 'Top 10' of Gender overall could not be established and has rather become a 'Top 8' of Gender.

¹⁴ Western European and Others Group.

¹⁵ Democratic Republic of the Congo.

¹⁶ Burkina Faso, Guinea, Lesotho, Mauritania, Niger, Senegal, Sudan, United Republic of Tanzania, Zambia.

¹⁷ Gambia, Kenya, Mali, Mauritania, South Africa, Sudan, United Republic of Tanzania, Zambia.

<p>GRULAC¹⁸ (11.6% overall) – (44% men and 56% women)</p>	<p><i>'Top 5' Countries in the Region (range from 1 - 6 Professionals):</i></p> <ol style="list-style-type: none"> (1) Colombia (2) Trinidad and Tobago (3) Argentina / Brazil (tied) (4) Costa Rica / Ecuador (tied) (5) 5 other countries from GRULAC each have one national appointed¹⁹ <p><i>'Top 4' Countries by Gender (range from 0 - 4 female Professionals):</i></p> <ol style="list-style-type: none"> (1) Colombia (2) Costa Rica / Trinidad and Tobago (tied) (3) The remaining 6 countries each have one female national appointed²⁰ (4) No other countries from GRULAC have a female national appointed to professional posts
<p>Eastern Europe (7.9% overall) – (58.8% men and 41.2% women)</p>	<p><i>'Top 4' Countries in the Region (range from 0 - 4 Professionals):</i></p> <ol style="list-style-type: none"> (1) Croatia / Romania (tied) (2) Serbia (3) 7 other countries from Eastern Europe each have one national appointed²¹ (4) No other countries from Eastern Europe have a national appointed to professional posts <p><i>'Top 3' Countries by Gender (range from 0 - 2 female Professionals):</i></p> <ol style="list-style-type: none"> (1) Croatia, Romania, Serbia (tied) (2) Estonia (3) No other countries from Eastern Europe have a female national appointed to professional posts
<p>Asia (6% overall) – (61.5% men and 38.5% women)</p>	<p><i>'Top 4' Countries in the Region (range from 0 - 3 Professionals):</i></p> <ol style="list-style-type: none"> (1) Jordan / Republic of Korea (tied) (2) Islamic Republic of Iran (3) 5 other countries from Asia each have one national appointed²² (4) No other countries from Asia have a national appointed to professional posts <p><i>'Top 3' Countries by Gender (range from 0 - 2 female Professionals):</i></p> <ol style="list-style-type: none"> (1) Jordan (2) India, Philippines, Republic of Korea (tied) (3) No other countries from Asia have a female national appointed to professional posts

¹⁸ Group of Latin American and Caribbean Countries.

¹⁹ Chile, Mexico, Peru, Saint Vincent and the Grenadines, Venezuela.

²⁰ Argentina, Brazil, Ecuador, Mexico, Peru, Saint Vincent and the Grenadines.

²¹ Belarus, Bulgaria, Estonia, Georgia, Serbia, Ukraine, Albania.

²² India, Iraq, Mongolia, Occupied Palestinian Territory, Philippines.

**‘Top 10’
Region and
Gender overall**

‘Top 10’ Countries (range from 3 - 20 Professionals):

- (1) France
- (2) Germany
- (3) United Kingdom
- (4) Canada / The Netherlands (tied)
- (5) Australia / Spain (tied)
- (6) Italy
- (7) Nigeria
- (8) Belgium / Colombia (tied)
- (9) Croatia, Finland, Ireland, New Zealand, Romania, Sierra Leone, Trinidad and Tobago (tied)
- (10) Argentina, Brazil, Gambia, Jordan, Republic of Korea, Serbia, South Africa, Switzerland (tied)

‘Top 8’ Countries by Gender (range from 0 - 10 female Professionals):

- (1) France
- (2) Germany
- (3) Spain
- (4) Australia, Colombia, Italy, New Zealand, The Netherlands (tied)
- (5) Canada, Nigeria, United Kingdom (tied)
- (6) Austria, Costa Rica, Croatia, Jordan, Romania, Serbia, Sierra Leone, Trinidad and Tobago (tied)
- (7) 24 other countries from WEOG, Africa, GRULAC, Eastern Europe and Asia each have one female national appointed²³
- (8) No other countries from WEOG, Africa, GRULAC, Eastern Europe or Asia have a female national appointed to professional posts

²³ Argentina, Belgium, Brazil, Ecuador, Estonia, Finland, Gambia, India, Ireland, Kenya, Mali, Mauretania, Mexico, Peru, Philippines, Portugal, Republic of Korea, Saint Vincent and the Grenadines, South Africa, Sudan, Switzerland, United Republic of Tanzania, USA, Zambia.

Appointments to the List of Legal Counsel²⁴

Overall (221 individuals on the List of Legal Counsel ²⁵) <i>'Top 5': 1. USA, 2. France, 3. UK, 4. DRC, 5. Canada</i>	81%	19%
WEOG ²⁶ (68% of Counsel) <i>'Top 5': 1. USA, 2. France, 3. UK, 4. Canada, 5. Belgium and Germany</i>	81%	19%
Africa ²⁷ (26% of Counsel) <i>'Top 5': 1. DRC, 2. Mali, 3. Kenya, 4. Cameroon, 5. Morocco and Uganda</i>	84%	16%
Eastern Europe ²⁸ (3% of Counsel) <i>Only 7 appointments from Eastern Europe: Croatia, Romania, Serbia (2 appointees), Slovenia, The Former Yugoslav Republic of Macedonia (2 appointees)</i>	57%	43%
GRULAC ²⁹ (2% of Counsel) <i>Only 4 GRULAC appointments: Brazil, Trinidad and Tobago, Argentina and Mexico (1 appointee each)</i>	100%	0%
Asia ³⁰ (1% of Counsel) <i>Only 3 appointments from Asia: Japan, Malaysia and Philippines (1 appointee each)</i>	100%	0%

²⁴ Situation on 24 October 2007. See http://www.icc-cpi.int/library/defence/Defense_Counsel_List_English.pdf Note that some counsel have dual nationality in which case the first mentioned nationality on the List of Legal Counsel has been chosen for purposes of the regional calculations.

²⁵ A total of 350 individuals applied to the List of Legal Counsel of which 221 individuals were appointed. Only 56 of the 350 (16%) individuals who applied to the List of Legal Counsel were women. Of the 221 individuals appointed there are 41 women and 180 men.

²⁶ Compared with 70% in 2006. Appointments from the USA, which is not a States Party, have been included in the calculation for the WEOG region.

²⁷ Compared with 24% in 2006. Appointments from Algeria, Cameroon, Mauritania, Morocco and Tunisia, which are not States Parties, have been included in the calculation for the Africa region. Note that from the situations before the Court, there are 20 appointments from the DRC, 3 from Uganda, 1 from CAR and none from Sudan. Of these appointments, only 2 are held by women, both from the DRC.

²⁸ Compared with 4.2% in 2006.

²⁹ Compared with 1.8% in 2006.

³⁰ Compared with 0.6% in 2006. Appointments from Malaysia and the Philippines, which are not States Parties, have been included in the calculation for the Asia region.

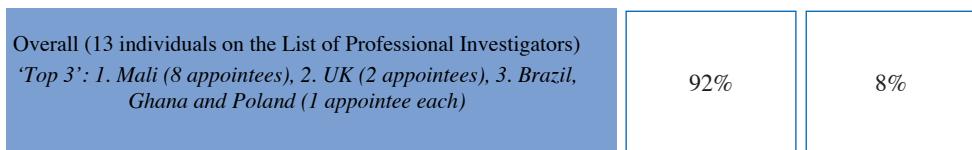
Appointments to the List of Assistants to Counsel³¹



WEOG – 13
Africa – 1
Rest – 0

Appointments to the List of Professional Investigators³²

Overall (13 individuals on the List of Professional Investigators)
'Top 3': 1. Mali (8 appointees), 2. UK (2 appointees), 3. Brazil, Ghana and Poland (1 appointee each)



³¹ Situation on 24 October 2007: information provided by the Defence Support Section of the Court. The List of Assistants to Counsel was not available at the time of printing this Gender Report Card.

³² Situation on 24 October 2007: information provided by the Defence Support Section of the Court. The List of Professional Investigators will not be made public by the Court for security reasons.

Structures: Overview of Trends

There is a 10% gap (22 positions) between the appointment of men and women to professional posts across the Court. This is a decrease of 2% from 2006. This 10% gap is largely due to the low numbers of female appointments to professional posts in the OTP where there is a 24% differential between male and female appointments. There are 3 times more men than women appointed at each of the P3 to P5 levels in the OTP. In the Judiciary there is overall a 4% differential and in Registry there are equal numbers of professional appointments. However, for both organs there are more men than women in the most senior positions.

2 out of 3 Heads of Divisions in the OTP are women.
There are no women as Heads of Divisions in the Registry.

There are no women as Head of Section (or their equivalents) in the OTP. There are 13 sections and 6 vacancies.

There are 21 Head of Section positions (or their equivalents) in the Registry with 3 vacancies. Of the positions filled (18) women occupy 6 Head of Section Positions (33% of filled posts), men occupy 12 Head of Section positions (67% of filled posts).

Overall there are 506 staff (including elected officials) at the ICC. 49% of this figure represent professional staff.

For the geographical breakdown, excluding language staff, (as determined by the ICC), there are 216 professional staff members representing 64 nationalities. WEOG: 57.9%, Africa: 16.7%, GRULAC: 11.6%, Eastern Europe: 7.9% and Asia: 6%.³³ From 2006, these figures represent an increase of 1% for Eastern Europe and 1.2% for Asia and a decrease of 1.1% for WEOG, 0.9% for Africa and 0.1% for GRULAC.

The only region in which the overall number of women in professional posts is as high or higher as the overall number of men in professional posts is GRULAC: 44% men and 56% women. In all other regions, the overall number of men is significantly higher than the overall number of women appointed to professional posts: WEOG (58.4% men and 41.6% women), Africa (63.9% men and 36.1% women), Eastern Europe (58.8% men and 41.2% women), and Asia (61.5% men and 38.5% women).

Among the 'Top 5' countries with professional staff at the Court, all are from WEOG. The 'Top 5' ranges from 9 – 20 professionals appointees.

Among the 'Top 10' countries with professional staff at the Court, very few staff members are from countries in Africa (4 staff members), GRULAC (4 staff members), Eastern Europe (3 staff members) or Asia (2 staff members).

With the exception of female professionals appointed from WEOG, it was not possible to establish a 'Top 5' of Gender per region because there were simply not enough female nationals appointed to professional posts from these regions to arrive at such a 'Top 5'. For this reason the 'Top 3' or 'Top 4' on Gender ranges from 0 – 4 female professionals. For similar reasons, a 'Top 10' of Gender overall could not be established, rather a 'Top 8' of Gender was possible with ranges from 0 – 10 female professionals.

Despite the high number of ratifications from African countries and all the situations before the Court being in Africa, less than 5 professionals from the situations before the Court have been appointed. None of the Heads of the Judiciary, OTP, Registry, ASP Secretariat, ASP Bureau, Board of the TFV or Secretariat of the TFV are from Africa, Asia or Eastern Europe.

There are 221 individuals on the List of Legal Counsel of which 41 are women (19%) and 180 are men (81%). This represents a 3% increase in the number of women appointed to the List of Counsel from 2006. However, there are over 4 times more men than women recognized as Counsel on the List and over 5 times more men than women applied to the List, reflecting the lack of targeted efforts by the Registry to promote the List amongst women jurists, lawyers, magistrates, and academics.

Although the Rome Statute and the RPE require that there should be legal representatives on the List of Legal Counsel with expertise on sexual and gender violence, this criteria is not taken into account by the Court when assessing the eligibility of applicants to the List, nor is information sought from applicants with regard to their experience in this area.

68% of the List of Legal Counsel are from WEOG compared with 70% in 2006.

From the situations before the Court, there are 20 appointments to the List of Legal Counsel from the DRC, 3 from Uganda, 1 from CAR and none from Sudan. Of these appointments, 2 are held by women, both from the DRC.

There are 14 individuals on the List of Assistants to Counsel, all appointments are from WEOG region except one from the DRC. There are 28% more women than men on the List of Assistants to Counsel.

There are 13 individuals on the List of Professional Investigators, with 9 appointments from Africa, 3 from WEOG, 1 from Eastern Europe and 1 from GRULAC. There is only 1 woman on the List of Professional Investigators.

Despite explicit mandates within the Rome Statute for legal expertise in relation to sexual and gender violence, and expertise in trauma also related to sexual and gender violence, not a single position has been recruited by the Court with this expertise as the *primary* criteria.³⁴ Appointing ICC staff with legal expertise on violence against women or children recognizes the significance of crimes against women, and the need for expertise at every level to ensure these crimes are prosecuted.

The position of Gender Legal Adviser in the OTP, obligated under Article 42(9) of the Rome Statute, has not been appointed. This position is important to ensure that gender crimes are both effectively investigated and prosecuted. The position was advertised in December 2005 and despite the urgent need for the appointment of a Gender Legal Adviser, no one has been interviewed nor appointed for the position.

³³ These figures include elected officials and exclude language staff.

³⁴ A vacancy of Associate Legal Officer (P2) with Chambers requiring knowledge of legal and gender issues, particularly in relation to crimes of sexual violence, was posted early 2007, but was later cancelled for unknown reasons. See <http://www.icc-cpi.int/jobs/vacancies/647.html>

³⁵ See 'Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims for the period 1 July 2006 to 30 June 2007', 14 September 2007, ICC-ASP/6/11, p. 4.



The Regulations for the Trust Fund for Victims were adopted at the 4th Session of the ASP in 2005. During the course of 2007, the Secretariat for the Trust Fund was established and expanded. This year the Secretariat has developed programmatic and financial frameworks which define the criteria for the acceptance of projects and voluntary contributions. To date, 3 projects that provide assistance to victims/survivors have been implemented through the Fund, of which one provides assistance to victims/survivors of sexual violence in South Kivu, DRC. The Secretariat of the Trust Fund plans for 7 projects to begin by the end of 2007. To date, the Trust Fund has received a total of 42 project proposals, mainly from the DRC and Uganda. As at 30 June 2007, the total balance of the Trust Fund was € 2.6 million,³⁵ which represents an increase of only € 1 million from 2006 attributable to the increase in voluntary contributions.



1 out of 5 members of the Board of Directors of the Trust Fund is a woman (20% women and 80% men) in breach of the gender equity requirement specified in Resolution ICC-ASP/1/Res.6, para. 3 of 9 September 2002. Women are well represented at the Secretariat of the Trust Fund for Victims (67% women and 33% men).

Institutional Development: Gender Training

Registry

There has been no gender training in 2007 and no gender training has been identified within Registry for 2008. The Court Management Section has, however, requested contractual services including training which includes enhancing capacity to deal with more complex operations, such as sensitization on how to work more efficiently with traumatized victims.

Office of the Prosecutor

On 6 September 2007, the OTP hosted an expert meeting regarding the investigation and prosecution of sexual and gender violence crimes. This meeting was for senior level personnel within the OTP and external experts on sexual and gender violence, including the Women's Initiatives for Gender Justice.

No gender training has been identified within the OTP for 2008. The Planning and Operations Section did indicate, however, that six missions are envisaged for each situation under investigation to enable the Associate Victims Expert or a psychological expert from the roster to perform pre-interview assessments and/or assist with the interviewing of highly traumatized victims/witnesses by the investigators.

Judiciary

There has been no gender training in 2007.

No gender training has been identified for 2008.

Institutional Development: Policies

Sexual Harassment Policy³⁶

Policy ✓/✗ ³⁷	Although there is a policy, the parameters and procedures are lower than what is considered 'best practice' in this field.
Procedure ✓/✗	<p>Procedures are not featured in the policy itself but are outlined in Chapter X of the Staff Rules. Formal complaints are forwarded to the Disciplinary Advisory Board³⁸ which hears the case with brief statements and rebuttals by the staff member who has allegedly violated the Policy, and if the staff member wishes, by a representative (who must be a staff member or a former staff member of his or her choosing). There is no indication in the Staff Rules of a right for complainants to participate in the proceedings nor their access to a representative. The Board must make a decision within 30 days and the staff member may appeal the decision to the Administrative Tribunal of the International Labour Organization.</p> <p>Article 46 of the Rome Statute deals with senior ICC officials (Judges, the Registrar, Deputy Registrar, Prosecutor or Deputy Prosecutor) who can be removed from office if they are found to have committed "serious misconduct" or "a serious breach of his or her duties under Statute" as provided for in the Rules of Procedure and Evidence. Any individual may make a complaint which would be considered by a panel of judges formed by the Presidency. Should there be grounds to consider serious misconduct has occurred this is referred to the Bureau of the ASP to further investigate. A decision respecting removal from the office of a senior ICC official is dealt with by secret ballot of the ASP in various ways (see Articles 46(2) and 46(3) Rome Statute) depending on the office being dealt with (Rule 26 RPE).</p>
Training ✗	<p>There has been no training undertaken for staff on the Sexual Harassment Policy. Nevertheless, Section 4.5 of the Sexual Harassment Policy requires managers and supervisors to "ensure that all staff, including existing and new employees" have knowledge of the policy, their rights and how to use the grievance procedure. Section 4.6 of the Policy further requires all staff to be trained on issues related to harassment and for training programs to be held <i>on an ongoing basis</i>.</p>
Focal Point ✓/✗	Registrar or Prosecutor in the first instance, or a third party if the staff member feels uncomfortable approaching the Registrar or Prosecutor directly (i.e. manager, staff counselor, fellow staff member, representative of the Human Resources Section, Court Medical Officer or member of the Staff Representative Body). No designated focal point(s) apart from the Registrar or Prosecutor have been appointed.

³⁶ "Sexual and Other Forms of Harassment", Administrative Instruction ICC. Sexual harassment is defined as "any unwelcome sexual advance, request for sexual favour or other verbal, non-verbal or physical conduct of a sexual nature, which interferes with work, alters or is made a condition of employment, or creates an intimidating, degrading, humiliating, hostile or offensive work environment."

³⁷ The symbols ✓ and ✗ refer not only to whether the policy is in place, but also to whether the policy is adequate.

³⁸ The Disciplinary Advisory Board is comprised of one member and two alternate members appointed by the Registrar (in consultation with the Presidency); one member and two alternate members appointed by the Prosecutor; and one member and two alternate members elected by the staff representative body, at least one of whom shall be a staff member of the OTP.

Equal Opportunity Policy³⁹

Policy ✓	The Court “recruits, hires, promotes, transfers, trains and compensates its staff members on the basis of merit and without regard for race, colour, ethnicity, religion, sexual orientation, marital status, or disability.” Gender discrimination is not mentioned in this overarching provision, but it is enumerated in the Policy’s provision on non-discrimination in relation to opportunities for employment, transfer and training. Discrimination is described as both direct and indirect.
Procedure ✗	Grievance procedures are described in Section 6 of the Policy and are identical to the procedures for the Sexual Harassment Policy (see above).
Training ✗	There has been no training undertaken on the Equal Opportunity Policy for the designated focal points and staff.
Focal Point ✗	Registrar or Prosecutor in the first instance, or a third party if the staff member feels uncomfortable approaching the Registrar or Prosecutor directly. No designated focal point apart from the Registrar or Prosecutor is appointed.

Parental Leave within the Staff Rules

Policy ✓	ICC staff are entitled to a continuous period of 16 weeks’ maternity leave with full pay; a continuous period of 8 weeks’ adoption leave with full pay; and 4 weeks of “other parent leave” with full pay in connection with the birth or adoption of that staff member’s child.
Procedure ✓	A staff member seeking maternity leave must present a medical certificate stating the probable date of delivery of her child; maternity leave may commence between 6 and three weeks prior to the probable date of delivery. A staff member seeking adoption leave shall inform the Registrar or the Prosecutor at least one month prior to the anticipated commencement of the adoption leave and submit the documentary proof available at that time. A staff member seeking “other parent leave” must submit proof of the birth or adoption of the child within three months of the other parent leave ending.
Training ✗	Staff are not given an orientation on staff rules and conditions including the parental leave provisions.
Focal Point ✓	Direct managers for maternity leave and other parent leave; Registry or Prosecutor for adoption leave.

³⁹ “Equal Employment Opportunity and Treatment”, Administrative Instruction ICC.

Compensation of Judges⁴⁰

Policy ✓	As adopted by the ASP 2004, “spouse” is defined as a partner by marriage recognized as valid under the law of the country of nationality of a Judge or by a legally recognized domestic partnership contracted by a Judge under the law of the country of his or her nationality.
Procedure ✓	See Recommendations.
Training ✗	See Recommendations.
Focal Point ✓	Assembly of States Parties.

⁴⁰ “Draft Conditions of Service and Compensation of Judges of the International Criminal Court”, ICC-ASP/3/12, 10 August 2004, as adopted by the ASP in 2004 in Resolution ICC-ASP/3/Res.3.

Structures and Institutional Development: Recommendations

Structures

Appoint a Gender Legal Adviser to the OTP as a matter of urgency and aim to have the candidate in place by March 2008.



Alongside the Prosecutor's decision to "mainstream gender" within the activities of the OTP, a "two-track" approach, involving both gender mainstreaming and designated gender positions, including the Gender Legal Advisor post, across all organs of the Court, is vital for a gender competent Court.



Form an inter-organ committee to prepare a 3-year plan to address gender and geographical equity and gender competence at the Court. The 3-year plan should encourage a proactive role for the Court and provide a common framework for the activities of each organ in recruitment, including specific objectives to guide the Court in its employment practices. The Plan should include indicators and markers to assess progress towards gender and geographical representation across all organs and related bodies, including the Trust Fund for Victims and the ASP Secretariat. The 3-year plan could also be integrated into the Court's overall Strategic Plan as critical aspects of its strategic goals for "quality of justice" and being "a model of public administration". While the Court's Strategic Plan is for the next 10 years, its particular emphasis is on the first 3 years of implementation.



As part of the 3-year plan, the Court should establish time-specific "placement goals" for hiring women and staff from under-represented countries and regions. Placement goals are not quotas, but serve as reasonably attainable objectives or targets that are used to measure progress towards achieving equal employment opportunities, and enable the Court to identify "problem areas" resulting in disparities in relation to the appointment, promotion or attrition of women or staff from under-represented countries



Apply 'best practices' in the recruitment process encouraging those involved in recruitment to undergo training on potential discrimination, including unconscious and institutional gender and racial biases, which may be occurring (i.e. in relation to establishing criteria, advertising positions, reviewing CVs, recognizing diverse expertise and interviewing).



Establish "search committees" for professional vacancies comprised of ICC staff, including women and staff from under-represented regions of the Court, especially those with a track record of promoting competence. Search committee members should be encouraged to also undertake training in relation to "best practices" in the recruitment process. A search committee could review or oversee applications after the initial vetting process, participate in or conduct interviews and participate in the decision concerning appointments.



Place greater emphasis on recruiting expertise (both legal and trauma) in relation to sexual and gender violence across all three organs of the Court. Seek candidates with a background in a gender analysis of women's human rights and/or dealing with or representing victims of gender based violence by including this as a primary criterion in new positions and indicating this preference on the website and on the Personal History Form.

Diversify the advertisement of ICC vacancies in media or e-mail listserves which target or have a higher readership of individuals: (1) from “non-WEOG” countries, such as websites, listserves or newsletters of NGO networks and regional or national bar associations and national or regional print media in countries under-represented amongst Court staff and (2) with a background in gender issues, such as websites or newsletters of national, regional and international women’s organizations and networks, national associations of women lawyers, women judges’ associations and women’s networks within other judicial associations such as the International Bar Association, the International Criminal Bar and the International Association of Prosecutors.

Engage in pro-active informational outreach activities, such as disseminating information about ICC recruitment during scheduled outreach activities or from field offices, obtaining e-mail listserves from professional associations or NGOs during outreach activities for the purposes of prospective advertisements and specifically inquiring about promising gender competent candidates.

Develop a “Frequently Asked Questions” page on the ICC website to promote a better understanding of the application process (describing, for example, which section within the Court vets the applications, the composition of the “search committees”, or the average timeframe for a decision).

Revisit the current system of geographical representation of ICC staff and consider adopting a staggered approach to an alternative calculation of geographical representation, which places increasingly less emphasis on contribution and increasingly greater emphasis on membership each consecutive year until the targeted calculation is met.

Provide a larger budget to the Human Resources Section of the Court for increasing staff in this area. The Human Resources Section is vital for implementing the plans identified by the inter-organ Committee regarding gender and geographical representation.

Seek information about candidates’ experience representing victims of gender based crimes on the application form for List of Legal Counsel. Explicitly encourage applications from lawyers with this experience on the ICC website and develop a “Frequently Asked Questions” page on the ICC website to promote a better understanding of the application process.

Increase the number of women on the Lists of Legal Counsel and actively promote the List to women’s lawyers associations and within countries with situations before the ICC. Seek information regarding candidates’ experience representing or interviewing victims of gender based crimes and explicitly encourage applications from lawyers and investigators with such experience (as above). Set time-specific targets to increase the number of women on the Lists of Assistants to Counsel and Professional Investigators (as above).

Give consideration to amending Article 112(3)(b) of the Statute, so that gender competence within the ASP Bureau is mandated, in addition to equitable geographical distribution and adequate representation of the principal legal systems of the world.

The Board and Secretariat of the Trust Fund for Victims should embark on a vigorous fundraising campaign. Currently there is only € 2.6 million in the Fund. More pledges need to be encouraged from States and individual donors should be sought to contribute to the scheme.

Increase funds for the Trust Fund Secretariat so it can be adequately staffed with permanent positions.

- ➡ Prioritize the need for ongoing gender training for staff of all organs of the Court and make attendance at gender training seminars mandatory. The President, Registrar and Prosecutor should ensure staff attendance for each organ of the Court.
- ➡ Prioritize the need for training individuals on the List of Legal Counsel, the List of Assistance to Counsel and the List of Professional Investigators on interviewing/working with victims of rape and other forms of sexual violence and the gender provisions within the Rome Statute.
- ➡ Develop training on issues of trauma and sexual violence.⁴¹
- ➡ Appoint advisers with legal expertise on sexual and gender violence⁴² to enable focal points within each organ of the Court to organize and develop gender training.
- ➡ Designate focal points for the Court’s Sexual Harassment Policy and Equal Opportunity Policy, clarify and/or amend the procedure involved in making formal complaints (i.e. whether complainants have a right to participate in the proceedings before the Disciplinary Advisory Board or whether complainants have access to a representative) and conduct staff-wide orientation on the grievance procedures for both Policies.
- ➡ Implement training for ICC staff on the grievance procedures for the Sexual Harassment and Equal Opportunity Policies.
- ➡ Develop and promote a flexible employment policy, so that ICC staff are aware of, and not discouraged from, taking parental leave, modified work schedules or other accommodation as needed. This facilitates the recruitment of, and enables the ongoing employment of staff members (primarily women) with family and other commitments.
- ➡ Ensure adequate access to and information about childcare resources or facilities, and encourage the Human Resources Section to include additional language on its Recruitment page indicating the ICC is responsive to the needs of those with family commitments.
- ➡ Establish a mentorship program for junior staff, particularly female staff and staff from under-represented regions to support their potential advancement to decision-making and senior positions.
- ➡ Encourage senior personnel at the Court to participate in training on “managing workplace diversity” to facilitate a positive workplace environment for women and individuals from other under-represented groups and provide the necessary resources to carry this out.
- ➡ Review and amend the current definition of “spouse” in the Conditions of Service and Compensation of Judges of the ICC to include all domestic partnerships including same-sex partners, whether legally recognized or not under the law of the country of a Judge’s nationality.
- ➡ Develop and implement sexuality based anti-discrimination training for the Judges and Bureau of the ASP.

⁴¹ Rule 17(2)(iv) RPE requires the VWU to make this available to the Court.

⁴² Pursuant to Articles 42(9), 44(2) in combination with 36(8)(b), and 43(6) of the Rome Statute.

Substantive Jurisdiction & Procedures

Substantive Jurisdiction

War Crimes and Crimes Against Humanity: Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization and other Sexual Violence

The Rome Statute explicitly recognizes rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence as war crimes in international and non-international armed conflict as well as crimes against humanity (Articles 8(2)(b)(xxii), 8(2)(e)(vi) and 7(1)(g) Rome Statute; see also corresponding Articles in the EoC⁴³).

Crimes Against Humanity: Persecution and Trafficking

In addition to the crimes of sexual and gender violence discussed above, persecution is included in the Rome Statute as a crime against humanity and specifically includes for the first time the recognition of gender as a basis for persecution (Articles 7(1)(h), 7(2)(g) and 7(3) Rome Statute; see also Article 7(1)(h) EoC).

The Rome Statute also includes trafficking in persons, in particular women and children, as a crime against humanity within the definition of the crime of enslavement (Articles 7(1)(c) and 7(2)(c) Rome Statute; see also Article 7(1)(c) EoC).

Genocide: Rape and Sexual Violence

The Rome Statute adopts the definition of genocide as accepted in the 1948 Genocide Convention (Article 6 Rome Statute). The EoC specify that genocide (by causing serious bodily or mental harm) includes rape and sexual violence (Article 6(b) EoC).

Non-discrimination

The Rome Statute specifically states that the application and interpretation of law must be without adverse distinction on the basis of enumerated grounds, including gender (Article 21(3) Rome Statute).

⁴³ The EoC (ICC-ASP/1/3) define the elements of each crime under the jurisdiction of the Court. Pursuant to Article 9(1) of the Rome Statute, the “Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7 and 8 [on genocide, crimes against humanity and war crimes]” and is therefore a non-binding, but guiding document for the Court.

Procedures

Measures during Investigation and Prosecution

The Prosecutor shall “take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children” (Article 54(1)(b) Rome Statute).

Witness Protection

The Court has an overarching responsibility to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, taking into account all relevant factors including age, gender, health and the nature of the crime, in particular sexual or gender based crimes. The Prosecutor is required to take these concerns into account in both the investigative and the trial stage. The Court may take appropriate protective measures in the course of a trial, including *in camera* proceedings, allowing the presentation of evidence by electronic means and controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation. The latter measures shall, in particular, be implemented in the case of a victim of sexual violence or a child (Article 68 Rome Statute; see also Rules 87 and 88 RPE).

The Rome Statute provides for the creation of a Victims and Witnesses Unit (VWU) within the Court’s Registry. The VWU will provide protective measures, security arrangements, counseling and other appropriate assistance for victims and witnesses who appear before the Court, and others at risk on account of their testimony (Articles 43(6) and 68(4) Rome Statute).

Evidence

The RPE provide special evidentiary rules with regard to crimes of sexual violence. Rules 70 (“Principles of Evidence in Cases of Sexual Violence”), 71 (“Evidence of Other Sexual Conduct”) and 72 of the RPE (“In Camera Procedure to Consider Relevance or Admissibility of Evidence”) stipulate that questioning with regard to the victim’s prior or subsequent sexual conduct or the victim’s consent is restricted. In addition, Rule 63(4) of the RPE states that corroboration is not a legal requirement to prove any crime falling within the jurisdiction of the Court and in particular crimes of sexual violence.

Procedures

Participation

The Rome Statute explicitly recognizes the right of victims to participate in the justice process, directly or through legal representatives, by presenting their views and concerns at all stages which affect their personal interests (Article 68(3) Rome Statute; see also Rules 89 – 93 RPE).

Rule 90(4) of the RPE requires that there be legal representatives on the List of Legal Counsel with expertise on sexual and gender violence.

Rule 16(1)(d) of the RPE states that the Registrar shall take “gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.”

Reparation

The Rome Statute includes a provision enabling the Court to establish principles and, in certain cases, to award reparation to, or in respect of, victims, including restitution, compensation and rehabilitation (Article 75 Rome Statute; see also Rules 94 – 97 RPE). The Statute also requires the establishment of a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court, and for their families (Article 79 Rome Statute; see also Rule 98 RPE).

Substantive Work of the ICC and ASP

Substantive Work of ICC and ASP

States Parties / ASP

Budget for the ICC	<p>In its annual review of the budget, the ASP should ensure the Court is sufficiently funded to carry out its mandate and exercises the most efficient use of resources for maximum impact. Under-resourcing in previous years has hindered the operational work in significant areas (i.e. investigation teams, outreach, field offices). The 2008 budget is €97.6 million. This is an increase of € 87 million or 9.8% from 2007. The increase is largely due to existing obligations. The total increase attributable to new resources approved is € 3.43 million (3.9%).</p>
Oversight Mechanism	<p>The ASP should develop an Oversight Mechanism and staff rules on sexual violence/abuse committed by ICC staff in the course of their field-based work (i.e. defining “serious misconduct” to expressly include sexual violence/abuse and sexual harassment) including the waiving of immunity and strict disciplinary accountability for staff who violate these rules (including termination of employment). All staff should be provided with training on these rules.</p>
Oversight of implementation of Gender mandates	<p>In 2006, the ASP Bureau appointed a Facilitator to monitor equitable geographical and gender representation amongst staff of the ICC. Significant attention has been given to these issues during 2007.</p> <p>However, there is still no institutional mechanism to assist States in their collective oversight of the implementation of the range of gender mandates within the Rome Statute. We propose formation of a Gender Sub-Committee of the ASP incorporating the work on geographical and gender representation and expanded to monitor implementation of the gender provisions more broadly.</p> <p>The ASP should pass a resolution at the ASP 2007 for the Bureau to undertake a study and development of a model for a Gender Sub-Committee of the Assembly to be established at the ASP 2008.</p> <p>On 3 October 2007, the Bureau adopted and decided to submit for consideration by the ASP the report from the Hague Working Group on equitable geographical representation and gender balance in the recruitment of staff of the Court. We urge the ASP to accept the report and adopt the recommendations within it to address geographical and gender balance in the recruitment process.</p>
Implementing Legislation	<p>Preliminary analysis conducted by the Women's Initiatives for Gender Justice reveals that States are selectively excluding the gender provisions within the Rome Statute in their domestic implementing legislation. In some instances, the enacted crimes legislation is only partly in conformity with ICC Statute standards and in a number of cases, the implementing crimes legislation simply excludes certain sexual violence crimes.</p>

Registry

Rights of victims to participate

In 2005, standard application forms to facilitate victims' applications for participation and reparation and a booklet explaining the functions of the Court, victims' rights and how to complete the participation and reparation forms were developed in English and French. On 10 and 17 August 2007, decisions by Pre-Trial Chambers II and I respectively, provided further clarification on the requirements for completion of victims applications and the standards necessary for determining proof of identity.

To date, **only 17 victims** have been recognised by the ICC - 9 in the DRC⁴⁴ situation, 4 in the Lubanga case; 2 in the Ugandan situation, 6 in the Kony and others case;⁴⁵ 0 in the Darfur situation and case. As of 27 September 2007, no applications had been received for the CAR⁴⁶ situation.

In total, the Court has received more than 500 applications from victims seeking to participate in ICC proceedings.⁴⁷

Breakdown of Applications by Situation:⁴⁸ Of the applications received by the Court 70% are in relation to the DRC; 26% are in relation to Uganda; 4% are in relation to Darfur.

Breakdown of Applications by Gender:⁴⁹ Overall 38% of applications received by the Court are from women. 37% of applicants from the DRC are women; 41% of applicants from Uganda are women; 27% of applicants from Darfur are women.

Of the 62 hours of hearing time during the Confirmation of Charges Hearing held 9-30 November 2006, (*The Prosecutor v. Thomas Lubanga Dyilo*), only 132 minutes was given to 'victims participation'. Despite the widespread documentation of sexual violence committed by the militia group relevant in this hearing, including sexual violence against girl soldiers, 'rape' was mentioned once by a legal representative of victims, 'rape and sexual exploitation' was mentioned once by the Expert Witness for the Prosecution. No girl soldiers have yet been recognised as victim of this case.

Rule 16(1)(d) of the RPE obligates the Registrar to take 'gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.'

Uganda <i>The Prosecutor v. Joseph Kony and others</i> ⁵⁰	On 1 February 2007, Judge Politi, the Single Judge of Pre-Trial Chamber II in the Uganda situation, ordered the Registrar to provide the Prosecutor and the Defence a redacted copy of the 49 victims' applications, expunging information that may identify applicants. Most applicants requested the Court to prevent disclosure of their identity to the general public or to the parties or to participants, due to security concerns for themselves and family members. The decision to provide redacted versions of the applications to parties was based on serious security concerns arising from the situation in the field and on fundamental considerations of fairness and 'equality of arms' between the Prosecution and Defence. On 10 August 2007, Judge Politi granted six (two women and four men) out of 49 applicants (ten women, five girls, 27 men and seven boys) the right to participate in the case in Uganda. Judge Politi considered the following: whether
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⁴⁴ Democratic Republic of Congo

⁴⁵ Of the 9 victims recognized in the DRC situation, 3 are also recognized amongst the 4 victims of the 'Lubanga' case; of the 2 victims recognized in the Uganda situation, 1 is also recognized amongst the 6 victims of the 'Kony & others case'. In total, 17 individuals have been recognized by the ICC as 'victims'

⁴⁶ Central African Republic

⁴⁷ Information as provided on 27 September 2007 by the Division of Victims and Counsel of the Registry.

⁴⁸ These figures are accurate as of 2 November 2007

⁴⁹ These figures are accurate as of 2 November 2007

identity had been established, whether the events described constitute crimes within the Court's jurisdiction, whether applicants claim to have suffered harm and whether the harm appeared to have arisen as a result of the event constituting a crime within the jurisdiction of the ICC. The Judge found that the six applicants were natural persons and the harm they suffered appeared to fall within the jurisdiction of the Court and was included in the arrest warrants issued in the Court's case.

In the context of the situation, Judge Politi held that applicant's statements must indicate how their personal interest is affected: i.e. a determination of victim status depends on the nature and scope of the proceeding and the personal circumstances of the victim in question. In respect of incidents outside of the arrest warrants, the Chamber must be satisfied that the applicants have suffered harm as a result of a crime within the jurisdiction of the Court. Applicants' statements must be corroborated by sufficient information from other sources such as UN and NGO reports, confirming at least to a high degree of probability the occurrence of the incidents related to the applicants, both in temporal and territorial terms. Of the 32 applications referring to incidents that are not included in the arrest warrants issued in the case, two victims/survivors, both men (one already recognized as a victim of the case), were granted the right to participate as victims of the situation.

Judge Politi deferred decision on most applicants due to "deficiencies in the proof of their identity". Confirmation of identity must be through a document (i) issued by a recognized public authority; (ii) stating the name and the date of birth of the holder; and (iii) showing a photograph of the holder. In applications from children, Judge Politi requested the Victims Participation and Reparations Section (VPRS) of the ICC to submit a report indicating the age at which Ugandan legal and administrative system allows documents meeting these three conditions before he ruled on their applications. Judge Politi further instructed the VPRS to contact applicants and inform them of the need to submit proper proof of identity.

DRC

*The Prosecutor v. Thomas Lubanga Dyilo*⁵¹

*The Prosecutor v. Germain Katanga*⁵²

On 28 July 2006 and 20 October 2006, a total of four applicants and their children, who were former boy-child soldiers, were recognized as victims of the case *The Prosecutor v. Thomas Lubanga Dyilo* (the "Lubanga case"), and therefore able to participate in the Court proceedings. At the time of the Confirmation Hearing (9 November 2006) and to the date of this publication, no victims of gender based crimes and no girl soldiers have been recognized as victims of the Lubanga case. Applications from such victims were submitted to Pre-Trial Chamber I prior to the Confirmation Hearing, however no decision was taken regarding their status, and as such they were not included in the case.

On 13 February 2007, the Appeals Chamber established the procedure and the criteria for victims to participate in an interlocutory appeal under Article 82(1)(b) of the Statute. The right of victims to participate before the Pre-Trial Chamber does not give an automatic right to participate in an Appeals Chamber hearing. An application by victims must state the impact of the appeal on their personal interest and why it is appropriate for the Appeals Chamber to permit their views and concerns to be presented (this follows from the language contained in Article 68(3)). Furthermore, while the Appeals Chamber must ensure that any views and concerns of victims are presented "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial", any submissions from victims on these important rights would be considered by the

⁵⁰ *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen* (ICC-02/04-01/05) (hereafter Kony and others case). See Section on "Charges" for more details

⁵¹ *The Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06) (hereafter the Lubanga case). See Sections on "Investigation and Prosecution Strategy" and "Charges" for details.

⁵² *The Prosecutor v. Germain Katanga* (ICC-01/04-01/07) (hereafter the Katanga case). See Sections on "Investigation and Prosecution Strategy" and "Charges" for details

Appeals Chamber in making its determination. An application to participate should be made as soon as possible after the appeal is filed.

On 13 June 2007, the Appeals Chamber held that the victims had not demonstrated that their personal interests would be affected in this particular hearing on whether the Appellant was entitled to appeal against the decision on confirmation of charges under Article 82(1)(b). The Appeals Chamber held that a determination of whether the personal interests of victims are affected must be on a case-by-case basis. Clear examples of where the personal interests of victims are affected are when their protection is in issue (Articles 68(1) and (2) of the Statute and Rules 87 and 88 of the RPE) and in relation to proceedings for reparations (Article 75 of the Statute).

On 17 August 2007, Pre-Trial Chamber I decided on the application process for victims' participation in the DRC situation. The Chamber ordered the Registrar to present only complete applications and a report on applications where the Registry is unable to gather the required information. The report shall only be presented to the Chamber [and not to the OTP and Office of the Public Counsel for the Defence (OPCD)]. The Decision also outlined the information for an application to be considered complete: (1) identity of the applicant; (2) date of crime(s); (3) location of crime(s); (4) description of harm suffered resulting from the commission of crime(s) under the jurisdiction of the Court; (5) proof of identity; (6) if application is made by a person acting with the consent of the victim, the express consent of that victim; (7) if application is made by a person acting on behalf of a victim, in the case of a victim who is a child, proof of kinship or legal guardianship; or, in the case of a victim who is disabled, proof of legal guardianship; (8) a signature or thumb print on the document and at least on the last page of the application. Proof of identity can be provided by submission of official documents, such as identity card, passport or birth certificate, but if such documents are not available (thereby taking into account the problems of availability of records in situations of conflict) other less official documents may be provided, such as voting card, student identity card, school documents or a statement signed by two witnesses attesting to the identity of the applicant.

The Registrar was ordered to notify unredacted versions of the applications to the Prosecution and the OPCD at the stage of the situation. Despite a request for redaction, the Chamber held that information regarding intermediaries should be provided to the OTP and the OPCD.

During the year, Trial Chamber I identified preliminary subjects that should be resolved prior to the trial in the Lubanga case and set a timetable for hearings⁵³ and submissions. On 18 July 2007, the Chamber specifically instructed the Registrar to inform the applicants for victim status in the Lubanga case of the timetable but held that only applicants who had been granted victim status by the Pre-Trial Chamber may participate in these hearings. The issues identified by the Trial Chamber included the role of victims in the proceedings leading up to and during the trial, implementation of the reporting system between the Registrar and the Trial Chamber, regarding the application for participation of victims in the proceedings, common legal representation criteria for granting victims status in accordance with Rule 85 (Rules of Procedure and Evidence). The hearings were concluded on 31 October 2007.

Darfur, The Sudan

The Prosecutor v. Ahmad Muhammd Harun ("Ahmad Harun") and Ali

On 23 May 2007 and 23 July 2007, Judge Kuenyehia, the single judge of the situation in Darfur, authorized the filing of observations from the Office of the Prosecutor ("OTP") and the Office of the Public Counsel for Defence ("OPCD") on five applicants for victim participation in the situation in Darfur filed on 27 June 2006⁵⁴ and 16 applicants for victim participation in the situation filed on 10 July 2007,⁵⁵ respectively.

Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)⁵³

The Court also made several orders on victim safety and confidentiality. On 23 May 2007, although the Court ordered the Registrar to provide the Prosecution and the OPCD with unredacted copies of the victims’ applications it stressed that applicants should only be contacted via their legal representative in order not to expose them to further security risks. On 31 May 2007, legal representatives of the victims in the Darfur situation requested the Court not to disclose their identity to the Defence (one applicant also wished not to be disclosed to the OTP) since members of their families still resided in Darfur or in IDP camps. This request was based on decisions by the Court to grant anonymity to applicants in the DRC and Uganda situations. The representatives further requested Judge Kuenyehia to (1) order the OTP and the OPCD to respect the confidentiality of the applications and to refer to the applicants in their submissions by their numbers only, and (2) be heard on matters related to the protection and safety of the applicants before any decision potentially affecting their safety and security is taken. In a decision dated 8 June 2007, Judge Kuenyehia ordered the OTP and the OPCD to respect the confidentiality of the applicants and refer to them only by the numbers that were assigned to them by the VPRS, and ordered the OPCD to file a “confidential version” of its observations on the applications until otherwise decided by the Chamber. On 23 July 2007, the Judge further ordered the OTP and the OPCD to ensure the confidentiality of the applicants and to only refer to them according to the numbers assigned by the VPRS and reiterated that all organs of the Court should only contact victims’ applicants through their legal representatives when necessary.

On 21 August 2007, Judge Ušacka, temporarily designated as single judge of the situation in Darfur, rejected the requests submitted by the OPCD and the legal representative of victims that the Chamber orders the Registry’s Report on the applications be transmitted to the OPCD and the victims’ legal representative. Judge Ušacka held that there is no express provision in the Statute or the Rules requiring the Chamber to transmit the Report to the Defence nor applicants (applicants a/0021/07, a/0023/07-a/0033/07 and a/0035-a/0038/07) and that the functions of the report is to assist the Chamber in issuing only one decision on a number of applications.

As of 1 November 2007, no victims of either the situation or the case had been recognized for Darfur.

CAR⁵⁸

As of 27 September 2007, no victim applications to participate in the CAR situation had been received by the Court.⁵⁷

⁵³ On various days of 18 July, 16 August, 5 & 25 September, 9 & 17 October

⁵⁴ Applicants a/0011/06 – a/0015/06.

⁵⁵ Applicants a/0021/07, a/0023/07-a/0033/07 and a/0035-a/0038/07.

⁵⁶ Prosecutor v. Ahmad Muhammad Harun (“Ahmad Harun”) and Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) (ICC-02/05) (hereafter Harun and Ali Kushayb case). See Sections on “investigation and Prosecution Strategy” and “Charges”.

⁵⁷ Information as provided on 27 September 2007 by the Division of Victims and Counsel of the Registry during the biannual meetings between the Court and NGOs.

⁵⁸ Central African Republic

Legal Representation for Victims

Victims can apply for legal representation through the ICC Legal Aid System. The Form to determine indigence in order to qualify for legal aid has not been approved and victims continue to have to use the indigence form designed for suspects. If victims can afford it, they can obtain their own legal representation to represent them before they have been granted victim status. On 17 August 2007, Pre-Trial Chamber I provided further clarification on the role of Office of the Public Counsel for Victims (OPCV) in representing applicants who have no legal representation until such time as the applicant has been granted victim status and a legal representative is chosen by him or her or appointed by the Court.⁵⁹

To date, only one victim has accessed the ICC Legal Aid System. Over 500 victims' applications have been lodged with the Court. No data is available for the number of victims who have applied for Legal Aid.

Although Rule 90(4) requires that there should be legal representatives on the List of Legal Counsel with expertise on sexual and gender violence, this criteria has not been promoted by the ICC, is not taken into account by the Court when assessing the eligibility of applicants to the List, nor is information sought from applicants with regard to their experience in this area.

Country	Number of Victims of Situation	Number of Victims of Case
DRC	9	4
Uganda	2	6
Darfur	0	0

The 9 victims who have been recognised to participate in the DRC situation and the 4 victims recognized in the Lubanga case all have legal representation. The Registrar has been requested to assist the 6 applicants in the Kony and others case in appointing a common legal representative and the Principal Counsel of the OPCV has been appointed as the legal representative of the 2 applicants recognized as victims of the Uganda situation, pending the appointment of a common legal representative. In May, the two legal representatives of 21 applicants in the Darfur situation granted power of attorney to the Principal Counsel of the OPCV, in relation to both the situation in Darfur and the case against Ahmad Harun and Ali Kushayb.

⁵⁹ As of 27 September 2007, the OPCV provided: "Legal assistance to 47 applicants in the Uganda situation and in the *Kony and others* case; legal representation to 2 victims in the Uganda situation, pending the appointment of a common legal representative; and legal representation to 81 applicants in the DRC situation and in the *Lubanga* case." See OPCV, Update on the work of the Office of Public Counsel for Victims, 8th Strategic Meeting with NGOs, 27 September 2008.

<p>Uganda</p> <p><i>The Prosecutor v. Joseph Kony and others</i></p>	<p>On 1 February 2007, Judge Politi requested the OPCV to provide “support and assistance” to 49 applicants for victim status in the Kony case although the Pre-Trial Chamber had not decided on the applicants’ victim status. While it decided that the applicants did not require a legal representative at this stage, it did not rule out the possibility of legal representation “in the interests of justice” prior to such a decision in other cases.</p> <p>On 26 March 2007, the OPCV filed its observations on the 49 applications and indicated that the victims/survivors included those who had been raped, sexually enslaved and tortured. On 16 April 2007, Judge Politi dismissed as inadmissible the OPCV’s observations on the 49 applications on the basis that the provision of support and assistance excluded the “role and responsibility of legal representative of the applicant victims” and the OPCV was not requested nor authorized to submit observations on the admissibility and merits of the applications.</p> <p>On 10 August 2007, Judge Politi held that while it is not compulsory to appoint a legal representative once victims have been afforded the right to participate, it might still be appropriate to prevent any adverse impact on the expeditiousness of the proceedings. It was held that it was appropriate to appoint a common legal representative, since the six applicants claim to have experienced the same attack. The Registrar was requested to assist the six applicants in appointing a common legal representative. The Registrar was also requested to assist the two applicants recognized as victims in the situation by appointing a common legal representative.</p> <p>On 28 August 2007, Judge Politi appointed the Principal Counsel of the OPCV as the legal representative of the two applicants recognized as victims of the Uganda situation, pending the appointment of a common legal representative, for the purpose of effectively enabling the applicants to file a response to the Prosecution’s 20 August 2007 application for leave to appeal the 10 August 2007 decision recognizing them as victims of the situation.</p>
<p>DRC</p> <p><i>The Prosecutor v. Thomas Lubanga Dyilo</i></p> <p><i>The Prosecutor v. Germain Katanga</i></p>	<p>The four victims who have been granted the right to participate in the Lubanga case have legal representation. One is supported by the ICC Legal Aid System.</p> <p>The six victim applicants who were accorded the status of victim in the DRC situation and allowed to participate in the proceedings at the stage of investigation, have legal representation.</p> <p>On 17 August 2007, Pre-Trial Chamber I ordered the Registrar to automatically transfer to the OPCV all applications for victim status regarding the DRC situation from applicants who have no legal representation, or in the absence of any document signed by that person, in order to provide support and assistance to the applicant until such time as the applicant has been granted victim status and a legal representative is chosen by her/him or appointed by the Court. The Chamber also held that anonymity of the Legal Representative is incompatible with the functions he or she needs to perform. Currently the OPCV provides support and assistance to 81 applicants in the DRC situation and in the Lubanga case.</p>

<p>Darfur, The Sudan</p> <p><i>The Prosecutor v. Ahmad Harun and Ali Kushayb</i></p>	<p>On 23 May 2007, Judge Kuenyehia ordered all organs of the Court to only contact the five applicants who sought recognition of the right to participate as victims in proceedings in the Darfur situation through their legal representatives.</p> <p>On 31 May 2007, the legal representatives of 21 applicants, granted a power of attorney to the Principal Counsel of the OPCV, in relation to both the situation in Darfur and the case against Ahmad Harun and Ali Kushayb. The powers granted to the OPCV include access to all information regarding the 21 applicants, permission to review filing documents and/or material from the Registry, Pre-Trial Chamber, OTP and OPCD, making written submissions before a Chamber on notice to the legal representatives, and representation of the legal representatives on an <i>ad hoc</i> basis subject to consultation with and appropriate notice to the legal representatives.</p>
<p>CAR</p>	<p>As of 27 September 2007, no victim applications to participate in the CAR situation had been received by the Court.</p>

Outreach

<p>Uganda</p>	<p>To date there have been no specific meetings or workshops with women victims/survivors of the conflict. The ICC has overlooked co-operation with women's groups in providing outreach.</p>
<p>DRC</p>	<p>In general there have been insufficient outreach activities in the DRC and to date there have been no specific strategies to reach women victims/survivors of the conflict.</p>
<p>Darfur, The Sudan</p>	<p>In general there have been insufficient outreach activities in relation to Darfur and to date there has been one specific consultation with women in relation to Darfur. In 2008, there is a proposed increase in outreach to 84 events. However, due to the prevailing situation in Darfur, it is likely that outreach activities will not be conducted as envisaged.⁶¹</p>
<p>CAR</p>	<p>In 2007, no outreach was anticipated. In 2008, there is a proposed increase to 84 outreach events. However, due to the prevailing situation in CAR it is estimated that not all outreach activities will be conducted as envisaged.⁶² Due to the focus on gender based crimes, specific strategies to reach women victims/survivors of the conflict should be a central feature of outreach activities in CAR.</p>

⁶⁰ Action plans for outreach in the DRC and Uganda are prepared every three months and are meant to make the Court's Strategic Plan for Outreach operational. The first three action plans (January to September 2007) can be found on the ICC website under http://www.icc-cpi.int/outreach/o_drc/odrc_calendar.html and http://www.icc-cpi.int/outreach/o_uganda/ou_calendar.html, respectively.

⁶¹ Proposed Budget Programme for 2008 of the International Criminal Court, ICC-ASP/6/8, 25 July 2007.

⁶² Proposed Budget Programme for 2008 of the International Criminal Court, ICC-ASP/6/8, 25 July 2007.

Office of the Prosecutor

Uganda <i>The Prosecutor v. Joseph Kony and others</i>	<p>Arrest warrants issued in July 2005 against five Lord's Resistance Army (LRA) commanders have yet to be executed. Two of the five commanders are charged with gender based crimes, including inducing rape as a war crime and rape and sexual enslavement as crimes against humanity (see section on "charges"). In light of the fact that all five suspects held senior command positions, each could have been charged with crimes of sexual violence and further charges of sexual violence could be added to the charges against the two most senior suspects.</p> <p>The Prosecutor has not announced an intention to investigate crimes committed by the Uganda People's Defence Force (UPDF) or any Government personnel despite evidence of the commission of crimes including gender based crimes which would amount to crimes against humanity and war crimes.</p>
DRC <i>The Prosecutor v. Thomas Lubanga Dyilo</i>	<p>In March 2006, Thomas Lubanga Dyilo, Founder and President of the Union des Patriotes Congolais (UPC), a militia group in the Ituri region, was the first suspect arrested before the Court. Lubanga is charged with the war crimes of the enlistment and conscription of child soldiers and using them to participate actively in hostilities. Despite widespread documentation of gender based crimes (see Gender Report Card 2006), the Prosecutor's case against Lubanga does not include charges for these crimes (see section on "charges"). On 28 June 2006, the Prosecutor announced the temporary suspension of further investigations in relation to other potential charges against Lubanga and indicated that the current charges would not be amended. As outlined by the Prosecutor, the investigations which had been underway included allegations of murder, pillaging, displacement of civilians and did not include investigations of gender based crimes.</p> <p>On 7 September 2006, the Women's Initiatives for Gender Justice requested leave to participate as <i>amicus curiae</i> to ensure other crimes, including sexual violence crimes, were not overlooked in the Lubanga case. On 19 and 25 September 2006, the Defence and Prosecution respectively submitted observations and asked the Pre-Trial Chamber to deny leave to the Women's Initiatives to file an amicus brief. On 26 September 2006, Pre-Trial Chamber I invited the Women's Initiatives to re-file its request for leave to submit observations in the DRC <i>situation</i> rather than the <i>case</i> against Lubanga. On 10 November 2006 the Women's Initiatives re-filed its request to prepare an amicus brief on the DRC situation. On 5 December 2006, the Prosecution responded thereto and requested the Pre-Trial Chamber to reject the Women's Initiatives' request. On 17 August 2007, the request to file an amicus brief was rejected by the Pre-Trial Chamber because it related to the situation and in addition the Chamber did not recognize the Women's Initiatives as having legal standing (see section on "key decisions").</p> <p>In November 2006, the Confirmation of Charges hearing took place to determine whether there was a case against Lubanga. Because of the narrow charges and the definition of victim stipulated by the Pre-Trial Chamber on 29 June 2006, only 4 applicants were recognised as victims of the case and able to participate in the confirmation proceedings. No victims/survivors of gender based crimes were recognised by the Court and able to participate in the confirmation proceedings and no girl soldiers were recognised by the ICC with the right to participate as victims in the case.</p> <p>On 29 January 2007, Pre-Trial Chamber I rendered the Confirmation of Charges Decision in which it confirmed the three charges brought by the Prosecutor</p>

*The Prosecutor v.
Germain Katanga*

against Lubanga (see section on Key Decisions).⁶³ In February 2007, the Defence and the Prosecutor requested leave to appeal the Confirmation of Charges Decision, which were both rejected on 24 May 2007.⁶⁴ A Trial Chamber was constituted in March 2007. Around the same period, the Lead Defence Counsel, Mr Flamme, withdrew from the case due to health reasons. In June Ms. Mabille took over as Lead Counsel. Hearings to discuss preliminary issues took place in October and November 2007. The trial is scheduled to begin mid-February 2008.

On 17 October 2007, the Congolese authorities surrendered and transferred Germain Katanga, a Congolese national and the former highest ranking commander of the Force de Résistance Patriotique en Ituri (Patriotic Resistance Force in Ituri or FRPI), to the ICC. He is the second suspect brought before the Court. Germain Katanga is alleged to have committed six war crimes and three crimes against humanity in the territory of Ituri, including sexual slavery as both a war crime and a crime against humanity. He is charged in particular in relation to the role he played together with other commanders of the FRPI and the Front Nationaliste et Intégrationniste (Nationalist and Integrationist Front or FNI) in the planning and implementation of an indiscriminate attack against the village of Bogoro, in the territory of Ituri, on or around 24 February 2003. Although the inclusion of sexual slavery is important (and an advancement in comparison to the Lubanga case), the charges of sexual slavery against Katanga could be considered relatively narrow in light of the senior position he held and the wide range of gender based crimes committed by the FRPI in Ituri.

A third investigation is well underway in the DRC situation and charges in a third case are expected in 2008. In light of widespread documentation of gender based crimes in the DRC, comprehensive investigation and prosecution of these crimes is expected.

Darfur, The Sudan

*The Prosecutor v.
Ahmad Harun and Ali
Kushayb*

On 27 February 2007, the ICC Prosecutor submitted evidence concerning two suspects, Ahmad Muhammad Harun, a former State Minister for the Interior and currently the State Minister for Humanitarian Affairs, and Ali Muhammad Ali Abd-Al-Rahman (also known as Ali Kushayb), an alleged Janjaweed leader, supporting 51 counts of war crimes and crimes against humanity. The Prosecutor requested the Chamber to issue summonses to appear against the two suspects. Amongst the charges are rape as a war crime and crime against humanity. Rape is also charged as other forms of violence including persecution and outrages upon personal dignity (see section on “charges”). For the first time, the ICC has brought evidence of criminal responsibility against a government official. On 2 May 2007, Pre-Trial Chamber I issued warrants of arrest against the two suspects by the Court, which have yet to be executed.

Although the charging of gender based crimes in Darfur is relatively limited considering the wider range of gender based crimes committed for which there are no charges, specifically sexual enslavement in Darfur which has been documented, the charging of rape as a crime in itself and as other forms of violence reflects the multi-faceted character of the sexual violence. Although the specific incidents and crimes selected by the ICC are not holistic, they are somewhat representative of the types of crimes and types of victims in the Darfur conflict.

⁶³ For detail on the charges confirmed against Lubanga, see section on “Key Decisions”.

⁶⁴ For detail on the Prosecutor’s and Defence’s Appeal against the Confirmation of Charges Decision, see section on “Key Decisions”.

CAR	<p>On 22 May 2007, the Prosecutor announced the decision to open an investigation in the Central African Republic (CAR) in response to the 7 January 2005 referral by the Government of the CAR. The Court's preliminary analysis of alleged crimes reveals that the peak of criminality occurred in 2002 and 2003 in the context of an armed conflict between the government and rebel forces.</p> <p>This was the first time the Prosecutor had announced at the outset of a formal investigation the intention to explicitly investigate gender based crimes as a priority. In the CAR, local women's rights advocates and NGOs have documented hundreds of incidents of sexual violence during 2002 and 2003. The OTP also announced its intention to monitor the current hostilities in the northern parts of the country. Women's organizations have reported that human rights violations continue to be committed in the North, especially by the Presidential Guard and the Army.</p>
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Charges

Uganda	<p>The case deals with five alleged senior leaders of the Lord's Resistance Army (LRA) charged with multiple counts of crimes against humanity and war crimes committed in Uganda since July 2002. Raska Lukwiya was killed during a fire fight between the UPDF and the LRA in August 2006 and the charges have been amended accordingly; the arrest warrant against the remaining four LRA leaders has yet to be executed. Two individuals are charged with gender based crimes: Joseph Kony has been charged with rape and sexual slavery as crimes against humanity as well as inducing rape as a war crime and Vincent Otti for sexual slavery as a crime against humanity and inducing rape as a war crime.</p>
DRC	<p>Gender based crimes have not been included in the charges against Lubanga, the first accused before the Court. The accused faces charges of the war crimes of conscripting and enlisting children under the age of 15 and using them to participate actively in hostilities. The Charges have been confirmed (see Section on "Key Decisions")</p> <p>Katanga, faces six charges of war crimes and three charges of crimes against humanity. These include sexual slavery as both war crimes and crimes against humanity. Mr Katanga's initial appearance before the Court was on 22 October 2007 and the date for the Confirmation of Charges Hearing has been set on 28 February 2008.</p>
	<p>A third investigation in the DRC situation is underway, currently there are no charges in this case.</p>
Darfur, The Sudan	<p>Harun is charged with 22 counts of crimes against humanity and 22 counts of war crimes. Ali Kushayb is charged with 22 counts of crimes against humanity and 28 counts of war crimes. The charges against both of them include rape both as war crimes and as crimes against humanity. Rape is also included under other charges on persecution and outrages upon personal dignity.</p>
CAR	<p>There are no charges to assess at this time.</p>

Key Decisions

Uganda <i>The Prosecutor v. Joseph Kony and others</i>	<p>The key decisions this year relate to victims' right to legal representation (on 1 February, 16 April, 10 & 28 August –see section on “Legal Representation for Victims”) and on victim participation including the need for protection of victim security (1 February); criteria for determination of victim status and means by which victims could prove identity (10 August 2007 – See section on “Right of victims to participate”).</p>
DRC <i>The Prosecutor v. Thomas Lubanga Dyilo</i> <i>The Prosecutor v. Germain Katanga</i>	<p>On 29 January 2007, Pre-Trial Chamber I confirmed the charges against Lubanga – but abbreviated the period for which Lubanga was criminally responsible from September 2002, when the military wing of the UPC, the Forces Patriotes pour la Libération du Congo (FPLC) was founded to 13 August 2003, when Lubanga was arrested by the Congolese authorities. The nature of the conflict in which Lubanga was involved was also modified to one of a partly international character from July 2002 to 2 June 2003, since the Chamber considered the presence of the Ugandan army (UPDF) as an occupying power in Ituri internationalized the conflict. From 2 June until the end of December 2003 The Chamber determined the conflict was not of an international character. The Prosecutor had charged Lubanga in relation to a non-international armed conflict only. With regard to the act “active participation in hostilities” the Pre-Trial Chamber held that “active participation” not only meant direct participation in hostilities (thus combat), but also active participation in ‘combat-related activities’ such as reconnaissance, spying, sabotage, and the use of children as decoys, couriers or at military checkpoints, or as guards either of military objectives or as body guards for military commanders. Notably the Chamber did not recognize forced participation in sexual acts and the carrying out of domestic duties in the camps of the militia group, crimes predominantly committed against girls soldiers, as ‘combat-related activities’.</p> <p>On 13 February 2007, the Appeals Chamber established the procedure and the criteria for victims to participate in an interlocutory appeal under Article 82(1)(b) of the Statute (See section on: “Rights of victims to participate”).</p> <p>On 6 March 2007, the Presidency of the ICC constituted Trial Chamber I in the Lubanga case as follows: Judges Odio Benito, Blattmann and Fulford.</p> <p>On 24 May 2007, the Pre-Trial Chamber in the Lubanga case rejected the applications for leave to appeal against the confirmation of charges by the Prosecution and Defence because the matters did not constitute issues that would “affect the fair and expeditious conduct of the proceedings or the outcome of the trial and its immediate resolution by the Appeals Chamber did not materially advance the proceedings” (82(1)(d) of the Statute). The Chamber ruled that “an interlocutory decision can only be appealed in exceptional circumstances and to avoid irreparable prejudice to the appellant. Greater emphasis should be placed on this principle with regard to a decision confirming charges, as any appeal against such a decision would significantly delay the start of the trial and thus the expeditious course of proceedings before the Court. Moreover, particular attention should be paid to the status of detention of the accused. To authorize the parties to appeal the decision confirming charges when the suspect is under detention would cause avoidable delay in the procedure, which has to be carefully counterbalanced with the interests of the suspect to a fair and expeditious trial.”</p>

The 24 May decision was a response to the Prosecutor's Appeal against the Decision on the Confirmation of Charges (5 February 2007). The Pre-Trial Chamber's finding that the armed conflict was of an international character from July 2002 to 2 June 2003 was, in the view of the Prosecution, essentially a substitution of the crime charged by the Prosecution (Article 8(2)(e)(vii) – crimes committed in non-international armed conflict) with a different crime (Article 8(2)(b)(xxvii) – crimes committed in international armed conflict). According to the Prosecution, the Chamber ought to have adjourned the proceedings and requested the Prosecution to consider amending a charge if the Chamber was of the view that the evidence submitted appeared to establish a different crime (Article 61(7)(c)(ii)). Moreover, in the Defence's appeal of the Confirmation of Charges Decision (30 January 2007 and 7 February 2007) it was argued that a party may appeal as of right "a decision granting or denying release of the person investigated or prosecuted" (Article 82(1)(b)). The Defence held that the Decision Confirming the Charges could be appealed under Article 82(1)(b) because the Decision had the effect of denying or granting the release of Mr. Lubanga.

The Court also made several decisions relating to Defence Counsel: on 6 March, the Presidency decided to suspend the transmission of the record of proceedings of Pre-Trial Chamber I to Trial Chamber I until new Defence Counsel was assigned to Mr. Lubanga and Counsel given adequate time to become familiar with the case. On 5 June 2007, the Pre-Trial Chamber rejected Mr. Lubanga's request for an order to the Registrar to take all necessary measures to guarantee that additional resources are granted to his Defence Counsel (according to Lubanga, the Registry pushed him to self-represent due to the lack of adequate resources for his defence). The Pre-Trial Chamber also rejected the request by l'Ordre des Avocats de Paris and the International Criminal Bar separately to file an amicus brief on the adequate provision of legal aid for Thomas Lubanga. The rejection was based on a conclusion that the Pre-Trial Chamber no longer had jurisdiction over the case.

DRC

The Prosecutor v. Thomas Lubanga Dyilo

The Prosecutor v. Germain Katanga

On 5 June 2007, the Presidency of the Court transmitted to Trial Chamber I the full record of the proceedings concerning Lubanga, including the decision confirming the charges and committing Lubanga for trial, Lubanga's application before Pre-Trial Chamber I seeking a review of the Registrar's decision on his application for additional resources and two *amicus curiae* applications mentioned above. On 14 June 2007, the Registrar granted Lubanga's 3 May 2007 request for additional resources by authorizing the following resources in conjunction with the resources already provided for in the legal aid scheme: (1) one additional legal assistant until the final pleadings; (2) one co-counsel allowed to join the team immediately; (3) the former Counsel authorized to assist the Defence team as a consultant for a period of 3 months; and (4) an additional investigation budget of 55,315 Euros. On 18 October 2007, the Trial Chamber held that the issue on which the Ordre des Avocats de Paris sought to intervene was moot.

On 13 June 2007, the Appeals Chamber gave a decision on victim's right to participate in appeals (See section on "Rights of victims to participate").

On 22 June 2007, the ICC Presidency ruled that resigning Judge Jordà would be temporarily replaced by Judge Ušacka, taking effect 25 June 2007, for the purpose of proceedings before Pre-Trial Chamber I. Pre-Trial Chamber I is therefore comprised of Judges Kuenyehia, Ušacka and Steiner. On 12 July 2007, the judges of Trial Chamber I elected Judge Fulford as Presiding Judge in the case against Mr. Lubanga.

Since 18 July 2007, Trial Chamber I began to formulate a list of non-exhaustive

preliminary subjects that require early determination, with a timetable (amended several times due to lack of Defence Counsel) for filing of submissions on those issues. The Chamber gave orders on victim participation in these preliminary proceedings and also identified several issues of relevance to victims as important preliminary subjects to be resolved (see section on “Rights of victims to participate”).

On 17 August 2007, Pre-Trial Chamber I decided on the Women’s Initiatives’ for Gender Justice second filing of 10 November 2006 requesting leave to present arguments in relation to the DRC situation on judicial oversight of prosecutorial discretion and the role and rights of victims under the Rome Statute. The Pre-Trial Chamber noted that the request from the Women’s Initiatives was the first “spontaneous” application for leave to participate as *amicus curiae* before the Court, but rejected the request because they state the “investigations in the Situation in the DRC are ongoing and the Prosecutor has not taken any decision not to investigate or prosecute.” The decision appears to depart from its decision of 26 September 2006 when they invited the Women’s Initiatives to re-file their request for leave in relation to the DRC situation (and not the specific case against Lubanga) because “the subject matter of the Request can be dealt with only in relation to the ongoing investigation into the DRC situation”.

The Pre-Trial Chamber also stated that they declined to invite the Women’s Initiatives to present arguments because it was not acting as a legal representative of victims admitted to participate in the proceedings. This reasoning amplifies the points made by the Women’s Initiatives regarding the limited number of victims recognized to participate due to the narrow charges brought by the Prosecutor and the definition of victim determined by the Pre-Trial Chamber. The filing by the Women’s Initiatives was ‘representing’ the broader interests and concerns of victims/survivors of the UPC militia group who have not been recognized as victims and therefore unable to participate in proceedings due to the limited charges in the case.

On 17 August 2007, Pre-Trial Chamber I decided on the application process for victims’ participation and legal representation. (See section on “Rights of victims to participate”)

On 26 September 2007, Pre-Trial Chamber I rejected the application on behalf of the 6 recognised victims of the DRC situation requesting the Chamber to review the Prosecutor’s decision to temporarily suspend the investigation in relation to other potential charges against Mr. Lubanga since it was equivalent to a tacit decision not to prosecute under Article 53(2)(c) of the Rome Statute and to request the Prosecutor to provide additional information and specific documents in order for the Chamber to exercise its function and responsibility in respect to preservation of evidence. The Pre-Trial Chamber, however, held that since the Prosecutor has not taken any decision under Article 53(1)(c) or (2)(c) of the Rome Statute, the request is not appropriate at the present stage and has no legal basis. The Chamber did not deem it necessary to exercise its authority in respect to preservation of evidence as there was no indication that the Prosecution had not taken the necessary measures to ensure the preservation of evidence.

On 18 October 2007, Single Judge Kuenyehia of Pre-Trial Chamber I decided that a hearing would be held on 22 October 2007 for Mr Katanga’s first appearance before the Court. On 2 July 2007, Pre-Trial Chamber I issued a sealed warrant of arrest for Mr Katanga after having examined the request and evidence submitted by the Prosecutor. The warrant was unsealed on 18 October 2007 and Mr Katanga was transferred to the Court. During Mr Katanga’s initial appearance on 22 October 2007, the Pre-Trial Chamber provisionally set the confirmation of charges hearing for 28 February 2008.

DRC

The Prosecutor v. Thomas Lubanga Dyilo

The Prosecutor v. Germain Katanga

<p>Darfur, The Sudan</p> <p><i>The Prosecutor v. Ahmad Harun and Ali Kushayb</i></p>	<p>On 27 April 2007, the judges of Pre-Trial Chamber I issued arrest warrants for Ahmad Harun and Ali Kushayb, holding that there are reasonable grounds to believe that Harun and Kushayb bear criminal responsibility for crimes against humanity and war crimes committed in Darfur in 2003 and 2004. In view of the information provided by the Prosecution, the judges decided to request arrest warrants instead of summons to appear, since they considered that the suspects would not appear voluntarily before the Court and that their arrests appeared to be necessary at this stage.</p> <p>On 23 May 2007 and 23 July 2007, Judge Kuenyehia, the single judge of the situation in Darfur, authorized the filing of observations from the OTP and the OPCD on victim applications and made orders relating to victim safety (see section on “Rights of victims to participate”)</p>
<p>CAR</p>	<p>There are no key decisions to assess</p>

Substantive Work of the ICC and ASP: Recommendations

States Parties /ASP

- ➡ Grant the increase for the revised ICC Legal Aid Scheme, which was not approved by the Committee on Budget and Finance in its report to the ASP from September 2007. Not granting the increase for legal aid would affect both defence and victims' representation.
- ➡ Pass a resolution at the 6th ASP in 2007, that during 2008 the Bureau will undertake to study and develop a model for a Gender Sub-Committee of the ASP. Establish by the 7th ASP in 2008, a Gender Sub-Committee of States Parties to monitor implementation of the gender mandates in the Rome Statute.
- ➡ Prioritize the completion of an “oversight mechanism” for the ICC for the prevention and redress of sexual violence/abuse and exploitation committed by ICC staff whilst carrying out their (field) duties.
- ➡ Undertake full and expansive implementation of the Rome Statute into domestic legislation ensuring the gender provisions are fully included, enacted and advanced in relevant legislation and judicial procedures.
- ➡ Elect 3 new Judges at the 6th Session of the ASP taking into account equitable geographical and gender distribution as well as the need for legal expertise on violence against women or children as mandated by the Statute in Articles 36(8)(a); 36(8)(b).
- ➡ As outlined in Article 43(4) of the Rome Statute, the ASP should recommend to the Judges of the ICC strong consideration of the relevant competencies required to effectively carry out the position of Registrar. Given the overall mandate of the Statute and the specific responsibilities of the Registrar, States Parties and the Judges should take into account geographical and gender representation, competencies in legal administration, inspirational leadership, and experience in institutional integration of gender issues within the overall work of the Registry as well as the specific integration in vital areas of legal aid, outreach, participation, and access to general information about the role and functions of the Court.
- ➡ Encourage the Board of Directors and Secretariat of the Trust Fund for Victims to be proactive in promoting the work of the Trust Fund to women's groups and organisations in the conflict situations where the Court is working. In addition the Secretariat should closely monitor the number of proposals submitted and funded for women in conflicts.
- ➡ On the agenda for the 6th ASP is the election of the President of the Assembly of States Parties. The two previous male Presidents have been from the Asia and Latin America regions. States should give close consideration to electing a woman President from one of the other 3 regions.
- ➡ Urge the Board and Secretariat of the Trust Fund for Victims to embark on a vigorous fundraising campaign. Currently there is only € 2.6 million in the Fund

Registry

- ➡ Promote the List of Legal Counsel, List of Assistants to Counsel and List of Professional Investigators, to women. Highlight the need for expertise on sexual and gender violence amongst all potential applicants and seek such information in the candidate application forms.
- ➡ Ensure that in the selection of a legal representative and common legal representatives the distinct interests of victims, particularly those of victims of sexual and gender violence and children, are represented and any conflict of interest is avoided as mandated by Rule 90(4) of the RPE.
- ➡ Increase promotion of and access to the ICC Legal Aid System. The lack of clarity and information provided by the Court about the Legal Aid System is creating a significant additional barrier for victims to apply to participate in the ICC international justice process.
- ➡ Increase resources for and promotion of the process for victims to apply to be recognized by the ICC. In 2008, prioritize information to women in the conflict situations, given the low numbers of women amongst those applying to the ICC to be recognized as victims.
- ➡ Develop a focused outreach strategy to target women and seek advice from and establish partnerships with local, national and international women's organizations to advise the Court's work in each of the four situations. While a Strategic Plan for Outreach has been developed and action plans for outreach in Uganda and DRC have been prepared every three months since January 2007, there are insufficient plans, strategies and indicators to target women.
- ➡ Enhance resources for ICC Field Offices in each situation to support victims' participation, to liaise with intermediaries regarding victims and potential witnesses, and to provide information and communication with local NGOs including women's groups and victims/survivors organizations.
- ➡ Recruit more staff for the Outreach Unit, with experience and expertise in community development and mobilization and working with victims/survivors of gender based crimes to ensure that effective programmes are developed to reach women and diverse sectors of communities in each conflict situation.

Office of the Prosecutor

- ➡ Appoint a Gender Legal Adviser as a matter of urgency and aim to have the candidate in place by March 2008. Such an appointment is mandated under Article 42(9) of the Statute and is long overdue.
- ➡ Consistently display a commitment to investigate, charge and prosecute gender based crimes in every situation where there is evidence such crimes have occurred. Review the strategy of narrow charging in light of experiences in the DRC 1 case which has negatively impacted on justice for victims and communities and reduced the ability of victims to participate in the judicial process.
- ➡ CAR: it is the first time the Prosecutor has announced the intention to explicitly investigate gender based crimes as a priority at the outset of a formal investigation. Local women's rights advocates and NGOs have documented hundreds of incidents of sexual violence during 2002 and 2003. Comprehensive charging and prosecution of gender based crimes is therefore expected.
- ➡ Develop consistent and more effective relationships with local intermediaries with greater clarity of expectations, security issues, and follow up.
- ➡ With the first trial beginning in 2008, the Prosecution and the Defence must be mindful of the manner of questioning of a witness or victim so as to avoid any harassment or intimidation with particular attention to attacks on victims of sexual violence.

Judiciary

- ➡ Supervise prosecutorial discretion, especially in cases where the Prosecutor decides not to include certain crimes in the charges brought against an individual, when there is evidence to the contrary. Narrow charges have a detrimental effect on victims' participation and outcomes for justice. Chambers have an important role in overseeing victims' interests.
- ➡ Immediately approve the Indigence Form for victims and ensure it is sensitive to the issues and the context regarding the circumstances of victims before the ICC.
- ➡ The Registry's proposed Legal Aid System lacks clarity and transparency, especially at the pre-trial phase. The absence of an effective legal aid system in the pre-trial phase will deny most victims, and especially victims/survivors of gender based crimes given the economic inequalities between men and women in the conflict situations, their right to participate in the proceedings.
- ➡ Ensure that in the appointment of a legal representative and common legal representatives the distinct interests of victims, particularly those of victims of sexual and gender violence and children, are represented and any conflict of interest is avoided as mandated by Rule 90(4) of the RPE.
- ➡ Urgently expand the modalities for victims' participation which allows for meaningful participation while balancing the rights of the accused. At the Confirmation Hearing in November 2006, only 132 minutes out of 62 hours of hearing time was given to 'victims participation'.
- ➡ Develop a consistent practice on whether applications from victims to participate need to be provided to the Prosecution and/or Defence and/or OPCD in a redacted or unredacted version, taking into account victims' concerns regarding security for themselves and their families.
- ➡ Utilize the special measures allowed for in the Rome Statute and the RPE to facilitate the testimony of a victim of sexual violence.
- ➡ With the first trial beginning in 2008, the Trial Chamber should be mindful of controlling the manner of questioning of a witness or victim so as to avoid any harassment or intimidation with particular attention to attacks on victims of sexual violence.
- ➡ Review and amend the current definition of "spouse" in the Conditions of Service and Compensation of Judges of the ICC to include all domestic partnerships including same-sex partners, whether legally recognized or not under the law of the country of a Judge's nationality.

Women's Initiatives for Gender Justice



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