

Gender Report Card



on the
International Criminal Court

2005

Women's Initiatives for Gender Justice



Anna Paulownastraat 103, 2518 BC The Hague, the Netherlands
www.iccwomen.org

“Let us not thwart some of the most important advances on gender justice that are embodied in the Statute by failing to act in practical ways to implement them.”

Sergio Vieira de Mello
UN High Commissioner for Human Rights to the
3rd Committee of the UN General Assembly
4 November 2002

Introduction

This is the inaugural Gender Report Card produced by the Women's Initiatives for Gender Justice. Its purpose is to assess the implementation of the Rome Statute, and in particular the gender mandates it embodies, in the more than three years since the Statute came into force.

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

- ◆ *Substantive Jurisdiction* – definitions of crimes inclusive of gender and sexual violence; establishing the principle of non-discrimination in the application and interpretation of the Statute; recognizing 'gender' as a basis for persecution.
- ◆ *Procedures* – witness protection and support; rights of victims to participate; use of special measures especially for victims/witnesses of crimes of sexual violence.
- ◆ *Structures* – requirement for fair representation of female and male judges and 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.

While implementing the Rome Statute is a task we all share, it is the particular responsibility of the Assembly of States Parties and the International Criminal Court. This Gender Report Card is an assessment of the progress to date in implementing the Statute 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.

Gender Integration in the Rome Statute – Structures

Women on the Court

The statute requires that the need for a “fair representation of female and male judges” be taken into account in the selection process. The same provision applies to the selection of staff in the Office of the Prosecutor and in the Registry (Article 36(8)(a)(iii); Article 44(2)).

Expertise in Trauma

The Registrar is required to appoint staff with expertise in trauma, including trauma related to crimes of sexual violence (Article 43(6)).

Legal Expertise in Violence Against Women

The statute requires that, in the selection of judges, prosecutors and other staff, the need for legal expertise on violence against women or children must be taken into account. This provision is in recognition of the significance of crimes against women, and the need for expertise at every level to ensure these crimes are effectively investigated and prosecuted. To achieve this it is imperative that individuals with expertise in the investigations and prosecutions of gender crimes are recruited by the Court (Articles 44(2) and 36(8)).

Legal Advisors on Sexual and Gender Violence

The Prosecutor is required to appoint advisers with legal expertise on specific issues, including sexual and gender violence. This is an important mechanism for ensuring both that gender crimes are properly investigated and prosecuted and victims properly respected and protected (Article 42(9)).

Trust Fund for Victims

The 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).

Gender Integration in the Rome Statute – Procedures

Witness Participation and Protection

The Court has an over-arching 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. The Court may take appropriate protective measures in the course of a trial, including *in camera* proceedings and allowing the presentation of evidence by electronic means. In addition, the Prosecutor is required to take these concerns into account in both the investigative and the trial stage. (Article 68).

Victim and Witnesses Unit

The statute provides for the creation of a Victims and Witnesses Unit (VWU) within the Court's registry (in recognition that protection of witnesses should be independent of prosecutorial imperatives). 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. (Article 43).

Participation

The statute explicitly recognizes the right of victims/survivors 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)).

Reparations

The statute includes a provision enabling the Court to establish principles and, in certain cases, to award reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. (Article 75).

Gender Integration in the Rome Statute – Substantive Jurisdiction

Rape, Sexual Slavery, Enforced Prostitution, Forced Pregnancy, Enforced Sterilization and other Sexual Violence

The ICC 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))

Persecution and Trafficking

In addition to the crimes of sexual and gender violence discussed above, persecution is included in the ICC Statute as a crime against humanity and specifically includes for the first time the recognition of gender as a basis for persecution. The ICC Statute also includes trafficking as a crime against humanity as among the crimes of enslavement. (Articles 7(1)(h), 7(1)(c) and 7(2)(c))

Genocide

The ICC Statute adopts the definition of genocide accepted in the Genocide Convention. (Article 6)

Non-discrimination

The 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))

“I cannot stress how critical I consider it to be that women are represented and a gender perspective integrated at all levels of the investigation, prosecution, defense, witness protection and judiciary.”

Judge Navi Pillay,
“Gender Based Persecution:
Report of the Expert Group Meeting”,
York University, Canada, November 1997

Recruitment and Appointments

		Men	Women
Overall staff (professional & general)		53%	47%
Overall professional posts		58%	42%
Judiciary	Judges	61%	39%
	Overall ¹	50%	50%
Registry ²		54%	46%
OTP ³		55%	45%

Executive Committee and Senior Management

Judiciary – Presidency	33%	67%
OTP – Executive Committee	50%	50%
OTP – Heads of Division	33%	67%
OTP – Heads of Sections	100%	0%
Registry – Heads of Division	100%	0%
Registry – Heads of Sections	56%	44%

¹ The overall figures show 50% male and female appointments however there is an over concentration of women in the lower professional posts (P.1-P.3) and only male candidates (100% WEOG) have been appointed to P.5 posts in the Judiciary.

² In the Registry there is an 8% difference in male and female appointments to professional posts. This figure has improved during 2005 particularly in the last 6 months, however there is an over concentration of women in lower professional positions.

³ In the Office of the Prosecutor (OTP) there is a 10% difference in male and female appointments, as with the other two organs there is an over-concentration of women in P.1-P.3 posts, and only one woman at a P.5 level.

Recruitment and Appointments

Appointments to the List of Legal Counsel

	Men	Women
Overall (109 individuals on the List of Counsel)	84%	16%
WEOG ⁴ (68% of Counsel)	91%	9%
Africa (22% of Counsel)	71%	29%
Eastern Europe (6.4% of Counsel)	57%	43%
GRULAC ⁵ (2.8% of Counsel)	100%	0%
Asia/Pacific (0.9% of Counsel)	100%	0%

⁴ WEOG- Western European and Others Group

⁵ GRULAC – Group of Latin American and Caribbean Countries

Recruitment and Appointments

Overview of Trends



Overall staff of the ICC are from 48 nationalities – WEOG 67%; Africa 12%; GRULAC 10%; Eastern Europe 7%; Asia/Pacific 3%



There is a 16% gap in the appointment to professional posts across the Court. This is particularly true for appointments in the senior level (P.4-P.5) posts. The lower level professional posts have comparable figures for men and women.



Women are well represented in the 'Executive Committee' structures of the Presidency and the OTP.



There are no women as Head of a Division in the Registry.



There are no women as Head of a Section in the OTP.



There are 12% fewer women as Heads of Sections in the Registry, however there has been an increase since the beginning of 2005 to the overall appointment of women to professional posts in the Registry.



On the List of Legal Counsel there are 5 times more men than women recognized as Counsel.



Almost 70% of the List of Legal Counsel are from WEOG.



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.



The position of Gender Legal Advisor (GLA) has been advertised in a combined function of GLA and Senior Legal Advisor. Appointment to the post is expected early 2006.

Gender Training

Judiciary⁶

Identified Need	Prioritized	Planned	Implemented
✓/✗ ⁷	✓/✗	✓/✗	✓/✗

Registry⁸

Identified Need	Prioritized	Planned	Implemented
✓/✗	✓/✗	✓/✗	✓/✗

Office of the Prosecutor⁹

Identified Need	Prioritized	Planned	Implemented
✓	✓	✓	✓

⁶ The Judges have participated in a half-day legal presentation on gender and children (2004) and an evening presentation on preventing secondary trauma for victims of sexual violence during court proceedings and gender-inclusive justice in the ICC (2005) – organized by the VWU and the Women’s Initiatives for Gender Justice. A substantive one-day gender seminar is planned for February 2006.

⁷ The use of ✓/✗ means that whilst some effort has been made in a certain area, the overall progress is insufficient.

⁸ The majority of victims and witnesses staff in the Registry participated in a one day gender training programme. The training was organized by the VWU and the Women’s Initiatives for Gender Justice.

⁹ All three investigation teams of the OTP have participated in a one day gender training seminar. This training was organized by the Gender and Children’s Unit, senior managers in the OTP and was conducted by the Women’s Initiatives for Gender Justice.

“Mainstreaming involves ensuring that gender perspectives and attention to the goal of gender equality are central to all activities – policy development, research, advocacy/dialogue, legislation, resource allocation and planning, implementation and monitoring.”

United Nations, Office of the Special Advisor on Gender Issues and Advancement of Women, 1997

Policies

Sexual Harassment Policy

Policy	Procedure	Training	Focal Point
✓	✗	✗	✗

Parental Leave Policy

Policy	Procedure	Training	Focal Point
✓	✓	✗	Direct Managers

Flexible Working Conditions Policy

Policy	Procedure	Training	Focal Point
✗	✗	✗	✗

Compensation of Judges

Policy	Procedure	Training	Focal Point
Discriminatory definition of 'spouse' ¹⁰ adopted by the ASP 2004 for compensation of Judges	Recommend - review and amend current definition ¹¹	Recommend - sexuality-based anti-discrimination training for the Judges and Bureau of the ASP	Assembly of States Parties

¹⁰ “Spouse” shall be 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’ *Conditions of service and compensation of judges of the ICC*. ICC-ASP/3/25

¹¹ Amend the definition of ‘spouse’ 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.

Implementation of Gender Mandates

States Parties / ASP

Budget for the ICC

Under-resourcing of the ICC in the 2004 and 2005 budgets have hindered its development and operational work in significant areas – under-staffing of investigation teams;¹² delay in appointment of key legal advisor positions in both the OTP and Judiciary; insufficient outreach; delay in production of materials and resources; under-staffing of field offices.

Establishment of Trust Fund for Victims

More than three years after establishment of the ICC, the regulations for the Trust Fund for Victims are not yet approved by the ASP. As such the ground-breaking Trust Fund is neither established nor operational.

Work of States Parties

Six days/year is insufficient meeting time for the ASP. Inefficient Bureau sessions and lack of communication to States Parties in the Hague, NY and capitals.

Oversight of implementation of gender mandates

There is no mechanism for states to effectively monitor implementation of the gender mandates within the Rome Statute. We propose establishment of a Gender Sub-Committee of the ASP.

Judiciary

Decisions

No decisions to assess

Interpretation of non-discrimination principle

No decisions to assess

¹² Addressed in 2006 budget

Implementation of Gender Mandates

Office of the Prosecutor

Investigation and Prosecution Strategy

- ◆ Inclusion of sexual violence in investigations in northern Uganda.
- ◆ Initial reluctance to prioritize gender based crimes in Darfur, although this has now been established as a priority by the OTP.
- ◆ Despite evidence of widespread and systematic sexual violence, no investigation has been formally opened in the Central African Republic (CAR) in response to the referral by the CAR Government, January 7, 2005.

Indictments

Two of five Commanders of the LRA have been charged with rape and sexual enslavement.

Registry

Staff expertise in trauma related to crimes of sexual violence

No appointments have been made with expertise in trauma and sexual and gender violence as the **primary** criteria.

Rights of victims to participate

The ability of victims to participate is contingent on information about the ICC, their knowledge of the right to participate and awareness of the process for applying to participate. These issues relate to outreach.

Victims' access to legal representation

Victims of sexual and gender violence do not have the opportunity to choose a lawyer from the List of Counsel recognized with expertise in gender based crimes. This criteria is not required by the Court when assessing eligibility of applicants to the list, nor is information sought from applicants with regard to their experience in this area.

Outreach

Insufficient outreach activities by the ICC is impacting on the ability of victims to participate at all stages of the ICC proceedings.

Recommendations



Affirmative action strategies for recruitment including active promotion of positions through women's professional associations, networks and NGOs.



'Best practice' in recruitment programmes emphasizes the importance of those involved in recruitment undergoing training on potential discrimination which may be taking place – in relation to establishing criteria, advertising positions, reviewing CVs, recognizing diverse expertise and the interview process.



Initiate specific strategies to promote the List of Counsel amongst women's lawyer associations, women judges associations, and women's networks within other judicial associations such as the IBA, ICB and IAP.



Set time-specific targets to increase the number of women on the List of Counsel. Currently there are 17 women on the List (16%). By July 2006, the ICC should aim to have women comprising 32% of the List, by November 2006 aim to have 50%.



Greater emphasis on recruiting expertise (both legal and trauma) in relation to sexual and gender violence across all three organs of the Court.



Attention to address the significant under-representation of women in senior professional posts (P.4-P.5).



Prioritize the need for gender training for staff in the Field Offices.



Prioritize the ongoing development of the institutional policy framework of the ICC.

Recommendations



Review and amend at the ASP 2006, the discriminatory definition of 'spouse' in the policy on the compensation of judges.



Significantly increase outreach activities including targeted strategies to reach all communities of victims.



Increase the budget for the ICC so it is able to implement its mandate more fully. The ICC should be a mandate-driven, not resource-deprived justice mechanism.



Increase efficiency in the work of the Bureau of the ASP including a more effective communication strategy between States Parties in the Hague, New York and capitals.



Increase the ASP meeting to 12 days/year with the possibility of a resumed session once per year of no more than 5 days.



Establish by the ASP 2006, a Gender Sub-Committee of States Parties to monitor implementation of the gender mandates in the Rome Statute.



Consistently display commitment to investigate, charge and prosecute gender based crimes in every situation where there is evidence such crimes have occurred.



Approve at the ASP 2005, the regulations for the Trust Fund for Victims and support the full operationalizing of the Fund.

“If we are to change the historical legacy that puts women at a disadvantage in most societies, we must implement what we have learnt on a larger scale. We must take specific, targeted action on a number of fronts.”

UN Secretary General, Kofi Annan, 2005