

Women's Initiatives for Gender Justice
Presentation to the ICC Committee on Budget and Finance
September 2016

I would like to begin by congratulating all of you on your election to and work with the Committee on Budget and Finance (CBF). We cannot emphasize enough the importance of the CBF as a voice of accountability. This Committee is a critical component of the checks and balances of the Court and essential to supporting and ensuring transparency in the administrative and financial functions and operations of the ICC. The independence of your work is vital to the institutional integrity of this Court.

Non-compliance with rules and regulations, non-adherence to standard practices and best practices, inaccurate information, incomplete material, contradictory 'facts', some of which have been noted by this committee in your reports in recent years specifically in relation to the restructuring process within the Registry, have, in a very short time, become the way business is done. This has not always been the case within the Court and as you know when these practices exist, they spread quickly and insidiously.

The role of the CBF in this context is therefore more important than ever, for you are well placed to probe information, question facts and clarify confusing assertions which, if left unchallenged, form a misleading or false basis upon which states parties make important decisions. To the Women's Initiatives for Gender Justice, it sometimes seems that the Court has become more concerned with *appearing* to be sound and rule compliant rather than *being* sound and rule compliant. In our view, the politics of appearance do not serve the Court well. On the contrary, this approach makes the ICC vulnerable to its own rhetoric and complicit in its potential destabilisation.

At this time, the CBF is the most important and possibly the only entity which can provide a voice within the ICC of querying facts, examining information and assessing its veracity, monitoring compliance with the rules and holding the Court accountable with respect to its institutional policies and practices.

Gender and Geographical Representation

The Women's Initiatives for Gender Justice enjoys receiving the CBF reports and we always read these very closely. We appreciate your succinct reviews and your often incisive summaries of key issues. As such, we were surprised to see the CBF's congratulatory comments to the Court in your most recent report regarding its performance on gender and geographical representation.¹ Your reviews of these issues in the past have rightly pointed to concerns

¹ ICC-ASP/15/5, p 17-18, paras 87-91.



regarding the chronic disparity on both of these issues across the Court and consequently you have urged the ICC to pay attention to these statutory requirements. Unlike last year, the comments in your recent report are very positive regarding gender and geographical issues based on the future plans presented by the Court to address these factors rather than the actual status of gender and geographical issues at this time. The CBF report appears to focus on the promise of things to come rather than the performance of the Court with respect to gender and geographical representation.

In fact, these issues have worsened across the Court as a whole and within each organ over recent years.

To give you a couple of quick examples:

Gender Representation

According to the figures presented in Annex II of the CBF report, only 25% of P5 appointments within the OTP are female, only 34% of P4 posts are held by women.² The P5 figures are lower than they use to be, and whilst the figures for women in senior posts within the OTP have never been good, this data suggests that not only has this not been rectified but that the gender disparity is worsening at senior levels.³ The figures are also lower at the P3 level than they were a few years ago.⁴ Overall, women have always been and continue to be clustered into the lower professional posts (P1-P3) within the OTP and significantly taper off at the senior P4, P5 and D1 levels.

Within the Registry we have a similar trend, although the difference here is that the Registry use to be much stronger than it is now on gender and geographical issues prior to 2013 when the Registrar took office and before the reorganization of the Registry.⁵

The figures we have utilized in this paper for the purposes of comparison are: ICC human resource figures as at 31 July 2012 which is the year before the current Registrar came into Office; ICC human resource figures as at 31 July 2014 which are the last figures available just prior to the abolishment of the first set of six P5 posts under the ReVision Project in October 2014; and ICC human resource figures as at 31 March 2016, (post-ReVision), provided within Annex II of the CBF report of July 2016.

² ICC-ASP/15/5, Annex II, p 39.

³ For comparison, as of 31 July 2012, women occupied 27% of the P5 posts. The figures we have utilised in this paper for the purposes of comparison for the OTP are ICC human resource figures as at 31 July 2012. This provides a reasonable time span with which to assess the trend of an increase or decrease in gender figures. Utilising this timeframe also ensures consistency with the same timeframe applied to the Registry.

⁴ For comparison, as of 31 July 2012, women occupied 36% of P3 posts. As of 31 March 2016, women have been appointed to 33% of P3 positions.

⁵ The Registrar assumed office in April 2013.

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In the recent years we have seen a steady decline with respect to gender and geographical representation with a growing disparity in both areas within the Registry. For example, there has been a 17% decrease in the number of women appointed at the P4 level within the Registry since the Registrar assumed office.⁶ This includes the appointments prior to as well as during the restructuring process. There are fewer women at the P4 and P5 levels combined after Revision than before this project which means there are now fewer women in management positions with access to, and participating in, decision-making processes. In its most recent report on the outcomes of the restructuring process, the Registry claims that the impact of the reorganization was neutral for women at the P5 level as there have been no changes in the number of women appointed to P5 posts as if this is a success.⁷ Given the unprecedented opportunities created by the ReVision Project to have rectified the under-representation of women at the senior management level within the Registry, this is a missed opportunity, especially as these kinds of positions (P4, P5 and D1 levels) are rarely vacant. In addition, the assertion that there have not been any changes in the number of women at the P5 level is incorrect. When the full timeframe of the restructuring process is factored in (October 2014) and all of the posts abolished under the restructuring project to which the enhanced separation package applied are accounted for, the result is that there are fewer women at the P5 level than before the restructuring process. Notably, the Registry does not apply the full timeframe or complete range of posts abolished under the restructuring process to the analysis of the gender profile of staff and the appointments following the end of the ReVision Project.⁸

The figures provided by the ICC in Annex II of the CBF Report are only up to 31 March 2016. When these are brought up to date, as of September 2016 there are now ten males at the P5 level with the appointment of the Chief of Staff within the immediate office of the Registrar and seven females at the same level. This expands the gender disparity at the P5 level compared with when the Registrar took office as well as before the ReVision Project. In other words, more men have been appointed to P5 positions as a result of the restructuring with no increase in the number of women appointed to this level.

When compared with figures from 31 July 2014, which is the last full set of figures we have prior to the restructuring process which began in October 2014 with the abolishment of six P5

⁶ ICC Human Resources figures for the Registry as at 31 July 2012. As of 31 July 2012, 53% of P4 posts were occupied by women. As of 31 March 2016, 36% of P4 posts are occupied by women.

⁷ 'Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court', *Registry*, August 2016, posted on the ICC website on 13 September 2016, p 58, para 113, available at <<https://www.icc-cpi.int/itemsDocuments/ICC-Registry-CR.pdf>>.

⁸ It appears from the Comprehensive Report on the Reorganisation of the Registry that the Registry considers the ReVision period to be between 30 April 2015 and 30 June 2016. See 'Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court', *Registry*, August 2016, posted on the ICC website on 13 September 2016, p 172, para 567, available at <<https://www.icc-cpi.int/itemsDocuments/ICC-Registry-CR.pdf>>.

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positions, there were 87 women in professional posts within the Registry.⁹ Of these, 67 were in the P1-P3 levels and 20 (only) at the P4 and P5 levels. Even at this stage the figures were weak and represented a decline since the Registrar took office. Following Revision and based on the figures provided by the Court to the period as at 31 March 2016, there are now 88 women in professional posts within the Registry.¹⁰ This is a modest increase of one, but it is where they are located which is more telling. As a result of ReVision, there are now more women at the lower P1-P3 professional levels (71 compared with 67) and fewer at the senior P4 and P5 levels (17 compared with 20).

Since 2013 there have been several recruitment opportunities within the Registry during which more women could have been appointed to P4, P5 and DI levels. The 2015-2016 period, in particular, has offered unprecedented opportunities to address the gender disparity of women in leadership positions within the Registry. Amongst other posts, during this time the Registry has recruited for the Head of the new Division of External Operations, the Chief of Staff to the Registrar, the Chief of Finance, the Chief of Information Management Services Section and the Chief of Budget. Only one woman was appointed within these five senior positions recruited in the last 12-18 months. In addition, prior to the restructuring project, in 2013 the Registrar appointed the Head of Legal Section, Head of the Victims and Witnesses Section and the Head of Human Resources. Amongst these posts, one woman was appointed. All three appointees were from the WEOG region. Of the eight P5 and D1 posts identified above appointed within the Registry since 2013, males have been appointed to six positions (75%) and women to only two posts (25%). Disappointingly, the unprecedented opportunity created by the restructuring process to rectify the under-representation of women at management, senior and directorship levels appears to have been squandered. The end result, as of September 2016, is that there are fewer women especially at the P4 level, more men appointed at the P5 level than before the restructuring, and no improvements at the D1 level to which no women have ever been appointed.

Geographical Representation

On issues of geographical representation, the picture is not dissimilar.

I would like to address here one of the assertions in the Registry's most recent paper summarizing the restructuring project.¹¹ The assertion in question is the increase in the number of nationals of African States within the Registry.¹²

⁹ ICC Human Resource figures for the Registry as at 31 July, 2014.

¹⁰ ICC-ASP/15/5, Annex II.

¹¹ 'Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court', *Registry*, August 2016, posted on the ICC website on 13 September 2016, available at <<https://www.icc-cpi.int/itemsDocuments/ICC-Registry-CR.pdf>>.

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This statement is disingenuous for at least two reasons.

Firstly, the period of time selected by the Registry upon which the assertion is based does not cover the full period relating to the abolition of posts associated with the restructuring process. The paper sites the period 30 April 2015-30 June 2016. By selecting this period it negates the posts abolished in October 2014 which are also associated with the restructuring project and to which the enhanced separation package applied. In addition, the statutory position of Deputy Registrar, held by a Senegalese national, was abolished in 2013 in one of the first major decisions reshaping the structural landscape of the Registry. Notably, the Registry does not apply this timeframe to the analysis of the geographical profile of staff and the appointments of nationals from the Africa region.

Secondly, the statement of improved representation of nationals from African states is disingenuous because it does not address the professional levels to which nationals from this region have been appointed. The fact is that there are now fewer nationals from African states in senior and leadership positions within the Registry since the Registrar took office and at the end of the ReVision process than before. It is also a fact that nationals of African states are now more than ever clustered into the lower professional posts within the Registry, predominantly at the P2 level. It is unclear whether there has been an actual increase in the number of nationals from African states when the larger period of the abolishment of posts as indicated above is taken into account inclusive of the abolishment of the Deputy Registrar position and the posts abolished in October 2014.

Unfortunately, the Registry hasn't provided the CBF with the breakdown by nationals for professional posts for each organ. The CBF could request this data from the Court for all organs and this should become part of the standard set of human resource statistics provided by the Registry to the CBF and states parties.

It is worth noting that within the eight senior posts mentioned earlier recruited by the Registry within the last three years, including the five noted above appointed as a result of the ReVision Project, no nationals of African states were appointed to any of these management or leadership posts. One national each from Asia, Eastern Europe and GRULAC and five from WEOG were appointed to these positions. The senior leadership is heavily dominated by men mostly from the WEOG region. For example, 66% of the Division Heads are males from this region and 100% of Division Heads are males (66% WEOG, 33% Asia). At the P5 level, at least 11 of the 17 individuals appointed at this level as at September 2016 are from the WEOG region (65%).

¹² 'Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court', *Registry*, August 2016, posted on the ICC website on 13 September 2016, p 172, para 567, available at <<https://www.icc-cpi.int/itemsDocuments/ICC-Registry-CR.pdf>>.



At the end of the restructuring process, there are fewer women and fewer nationals from African states in management positions, senior posts and leadership roles than before the restructuring process and fewer still than when the Registrar took office.

Architecture of Institutional Accountability

This brings me to the second issue I would like to address which is about institutional accountability and where we go from here. The ICC is now a sizeable employer, with over 1100 employees and this figure is projected to increase to 1300 in the 2016 budget.¹³ Given the complexity of its work and functions, the size of its staff, the experience of the Court with respect to the Registry's restructuring project and the cultural shift within the Court towards less compliance with regulatory requirements, it is our view that strengthening the ICC's architecture with respect to institutional accountability is an urgent priority.

In some respects it appears that States Parties have lower expectations of our international civil servants with respect to their compliance with rules and regulations than is expected of those employed in our domestic civil services. If rules can be breached with impunity then they cease to be rules. Unaccountability left unchecked is quite simply dangerous. As we said in 2014 at the launch of our annual Gender Report Card on the ICC,

'[] the biggest internal threat [to the Court] could be the development of a culture of non-compliance, indifference to the requirements of the statute and an inconsistent commitment to institutional accountability.'¹⁴

For example, if a domestic civil servant utilized funds without the necessary authorisation to do so, she/he would most likely be fired from her/his post. If a sizeable amount of funds were misappropriated for unauthorised purposes there would likely be a public outcry, a call for termination, an inquiry and a review of the system which had enabled the misuse of the funds. The individual may also face prosecution. By contrast, when this occurred at the ICC by a Court Official, the response by States Parties was muted and almost non-existent.

Given the pendulum of non-compliance has now swung so far off-course, certainly more so than we have ever seen at the Court in over 12 years of monitoring the ICC, what can and should be done to help bring the Court back to the steady, solid centre where adherence with regulations, best practice, transparency and the provision of real information intended to inform rather than bamboozle are once again the currency of the daily functions of the Court and its interactions with states parties?

¹³ ICC-ASP/15/5, Annex II, p 41-42.

¹⁴ Speech by Brigid Inder, Women's Initiatives for Gender Justice Executive Director, '*Launch of the Gender Report Card*', 10 December 2014, available at <<http://iccwomen.org/documents/Brigid-Inder-Speech-at-Launch-of-the-GRC-2014.pdf>>.



The Women's Initiatives has three suggestions which we believe will complement the work of the CBF and strengthen the ICC's architecture of institutional accountability:

1. Establish an Integrity Advisory Board. This should be external to the Court, meaning the Board members would not be within the staff structure. These appointments would not be full time positions but rather the Board could meet two or three times per year and report their findings directly to the President of the ASP and the Bureau. We suggest that the Board should be comprised of three members from relevant disciplines who are not selected on a regional basis but rather for their specific expertise in relation to institutional compliance and corporate/institutional ethics. The members may be drawn from states or non-states parties as they serve in their individual capacity and not as representatives of states or regions. Members may be drawn from the private sector, academia, and the field of compliance practitioners or others with relevant expertise.
2. Create three compliance officer positions within the Court responsible for reviewing the practices with respect to financial management, budget development and human resource practices. Essentially these are controller positions. We note that one of the first positions abolished under the restructuring process within the Registry was exactly this kind of financial control post. We propose two compliance officers for the Registry as the largest employer within the Court and given the level of compliance-related concerns to have emerged in recent years within the Registry including, but not limited to, the restructuring process. These officers should particularly focus on compliance in the areas of human resources, budget and finance as well as within the legal services section given its enlarged role under the new structure, and in light of concerns around the legal basis of many of the decisions taken with respect to the restructuring process and that this position is the only P5 post which reports directly to the Registrar. One compliance officer should be dedicated to both the OTP and Judiciary whose combined staff size is less than the Registry alone. Ultimately the creation of a compliance office within the ICC would likely be desirable.
3. Strengthen the Independent Oversight Mechanism (IOM) in terms of its actual and perceived independence and impartiality in order to avert any loss of efficacy or credibility of this very important mechanism.

The mandate of the IOM is to investigate, inspect and evaluate in order to enhance the Court's efficiency and economy.¹⁵

We were concerned to learn that shortly after taking office, the Head of the IOM reportedly stated to staff of the Registry that he did not see a role for the IOM with respect to the

¹⁵ ICC-ASP/12/Res.6, Annex, paras 6-7, 16-20, 27-30. See also *Gender Report Card 2013*, p 20-23.



restructuring project and that in his view there wasn't anything associated with this project that would warrant the concern of his office. How could such an assessment be made after so short a period in the post? According to the IOM's operational mandate, the ASP Bureau can request the IOM to conduct inspections of any premises or processes as well as evaluations of any programme, project or policy. Thus it was not up to, nor possible for, the IOM to foreclose its potential involvement in an inspection or evaluation of the ReVision process given the powers of the ASP Bureau to request it to do so at any time. Conducting its work without fear or favour is essential for the IOM to be credible and effective as a mechanism of internal accountability for the ICC. Its credibility and that of the ICC are closely aligned.

Therefore, establishing and maintaining the actual and perceived independence and impartiality of the IOM is critical. Any statements, arrangements or actions which compromise or could further call into question its impartiality should be avoided. We propose that the CBF support the IOM with the view to: safeguarding its independence; ensuring it has the necessary resources to carry out its mandate of investigation, inspection and evaluation; and ensuring that its own employment contracts and practices adhere to ASP decisions and resolutions as well as the Court's rules, regulations and best practice.

Under its mandate, the IOM is required to submit (written) quarterly reports to the Bureau as well as a consolidated annual report to the ASP.¹⁶ We are not aware whether any such reports have been duly submitted.

Like the CBF, the Women's Initiatives for Gender Justice and other members of civil society are invested in building and supporting a resilient and robust Court. We hope that our comments and suggestions today will help inform your deliberations particularly with respect to strengthening the architecture of institutional accountability and in supporting your critical role of motivating the Court and its leadership to ensure a culture of transparency and compliance.

Brigid Inder
Executive Director

¹⁶ ICC-ASP/12/Res.6, Annex, para 46. See also *Gender Report Card 2013*, p 23.

