

## Women's Initiatives for Gender Justice



7 February 2020

Dear Group of Independent Experts,

Women's Initiatives for Gender Justice is an international women's human rights organization that advocates for accountability and prosecution of sexual and gender-based violence (SGBV) crimes and gender justice through the International Criminal Court (ICC) and domestic mechanisms. Women's Initiatives welcomes the Review of the ICC and the Rome Statute system and congratulates you on your appointment as Independent Experts.

We thank you for the invitation to furnish written submissions on your mandate and would like to make the following observations.

Issues of gender equality permeate every aspect of the Court's work. Given their cross-cutting nature<sup>1</sup>, it is of particular importance to be mindful of existing discriminatory patterns, which can be revealed through a gender analysis of challenges at hand. We believe that as Independent Experts you are particularly well placed to tackle mindset changes on gender related issues, including addressing sexual and gender-based crimes, and offer concrete, achievable and actionable recommendations across the three clusters of your mandate. As such, we strongly encourage you to consider the issue of gender justice as a cross-cutting issue throughout your work.

In doing so, the following topics may warrant your attention.

### An ICC strategy on gender mainstreaming

The ICC, as a key institution in international criminal justice and the promotion of accountability, is encouraged to set high standards for the integration of gender in all areas of its work. In order to achieve this, it must actively seek to mainstream gender<sup>2</sup> within each of its units, functions and procedures, and ensure that staff, from field officers to legal officers, administrators to judicial officers, have gender specific competencies that are continually refreshed and strengthened. An ICC strategy on gender mainstreaming should be developed in this regard. Such strategy could serve to inform the overall gender responsive capacity of the Court's various units and sections. Next to a Court-wide policy, policy papers similar to the ICC-OTP's Policy Paper on Sexual and Gender Based Crimes could be useful to guide each specific organ to reach specific gender-related goals and promote uniformity within each organ or unit. There are a host of best practices and guidance documents to assist the ICC in developing such a strategy.<sup>3</sup>

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<sup>1</sup> As encouraged by the Assembly of States Parties (ASP), "particular attention shall be paid to issues or problems of a cross-cutting nature" in the Expert Review. ICC ASP, [Resolution ICC-ASP/18/Res.7](#), *Review of the International Criminal Court and the Rome Statute System*, adopted on 6 December 2019.

<sup>2</sup> Gender mainstreaming means integrating a gender perspective in all elements; it does not remove the need for policies and processes targeted specifically to women, nor does it replace the need for positive legislation or gender units and focal points.

<sup>3</sup> See UN Women, [Promoting UN accountability \(UN-SWAP and UNCT-SWAP\)](#); UNOPS, [Gender Mainstreaming Strategy. Enhancing gender equality through UNOPS projects](#), 30 August 2018; European Commission, [Strategic Engagement for Gender Equality 2016-2019](#), 2016.

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### Leadership and organisational culture

Having senior manager leadership (at the level of D1 and above) that advocates for gender equality and the empowerment of women is crucial, as is having an enabling environment and supporting organizational culture for all staff. There are concrete tools available that could be used to strengthen leadership and the organisational culture at the ICC on gender related issues. The UN System-wide Action Plan on Gender Equality and the Empowerment of Women (UN-SWAP) is an example of a tool that is helpful in this regard, in particular its blueprints for performance indicators.<sup>4</sup>

### An ICC Gender focal point

Women's Initiatives encourages the appointment of a Gender Focal Point at the ICC. Such appointment should be mandated to support gender mainstreaming by promoting gender balance, enabling a gender sensitive work environment, advocating, monitoring, and reporting on progress, among others.

The three current ICC Principals have made a commitment to create an 'ICC Focal Point for Women Mechanism' in 2018,<sup>5</sup> however no such Focal Point has been established to date. Women's Initiatives encourages the Court, and as such the Independent Experts in their recommendations, to consider the establishment of a Gender Focal Point rather than a Focal Point for Women. This would work to ensure inclusivity, a broader understanding of the issues at hand and counter the tendency to use the terms 'gender' and 'women' interchangeably, reinforcing a problematic binary paradigm.<sup>6</sup>

Within the UN system, UN-SWAP requires entities to designate focal points at the P4 level or equivalent or above, with written terms of reference and at least 20 per cent of their time allocated to focal point functions. Research shows that the designation of a Gender Focal Point, at the appropriate level, with written mandates and sufficient time to carry out their duties, will allow (international) institutions to be much better equipped to address gender-related inequalities.<sup>7</sup>

### Gender balance in ICC Staff

The gender imbalance in the ICC staff remains a persistent problem, especially in higher level positions.<sup>8</sup> For example, approximately 80% of the senior legal officer positions in the ICC's Office of the Prosecutor are currently filled by men. We encourage you to offer the ICC concrete and tangible

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<sup>4</sup> UN Women, [Performance Indicator 7. Leadership](#) and [Performance Indicator 13. Organisational Culture](#).

<sup>5</sup> International Criminal Court, Press Release, [International Gender Champions: ICC leaders join in pioneering initiative to break down gender barriers](#), 29 November 2018.

<sup>6</sup> Louise Arimatsu and Sheri Labenski, [Integrating a gender perspective into commissions of inquiry](#), London School of Economics Centre for Women, Peace and Security, 20 December 2019.

<sup>7</sup> UN Women, [Performance Indicator 11. Gender Architecture](#).

<sup>8</sup> The latest ASP Bureau report on the matter indicates that: "While female staff constitute more than 50 per cent at the P-1 (76 per cent) and P-2 (63 per cent) levels, female staff are severely under-represented at the higher levels: only 11 per cent of the staff at the D-1 level is female, 33 per cent at the P-5 level, 35 per cent at the P-4 level, and 45 per cent at the P-3 level." ICC ASP, [Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court](#), ICC-ASP/18/26, 2 December 2019.

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solutions to address this imbalance.<sup>9</sup> Gender awareness and sensitivity in recruitment should be prioritised. Additionally, the Court should ensure the recruitment of expertise for sexual and gender-based violence, gender analysis, women's rights, and prior experience engaging with or representing victims of sexual and gender-based violence in order to enhance the implementation of gender mainstreaming strategies and the work of each unit and organ.

### Gender responsive budgeting

It is important for the Court to move toward a gender responsive budget to ensure the distribution of resources pursuant to a gender analysis of each of the Court's functions and units to provide the basis for gender sensitive processes. A gender responsive budget allocates financial resources in order to ensure that women and men benefit equally from all resources. It should also aim to reduce existing patterns of the systematic inequality affecting women. Through gender responsive budgets, staff time, financial and other resources can be allocated to address the gaps identified in the gender analysis in furtherance of a unit's goals and objectives.

With regard to the ICC, a pilot project should be envisaged to include a gender marker in the ICC's financial tracking system, possibly with the ICC's Victim Participation and Reparations Unit or the Public Information and Outreach Section. A gender marker involves evaluating expenditures to assess the degree to which and how activities have taken gender into account. Gender markers also encourage an increased discussion of how to improve the gender responsiveness across a range of projects and programs, such as outreach to victims who may be entitled to participate in proceedings, or the messaging and reach of public information campaigns in affected communities.

### Training of ICC staff and elected officials

ICC staff members, from field officers to legal officers, administrators to judicial officers, should have gender specific competencies that are continually refreshed and strengthened. While it is expected of ICC staff to be well versed in how to address crimes such as murder, torture, persecution and others in the context of the ICC's mandates, the same expectation is not placed with regard to sexual and gender-based violence crimes. Moreover, we believe that this Expert Review could be instrumental in tackling the perceived 'stigma' attached to the issue of capacity strengthening of Judges, especially in areas where expertise could be strengthened.

### Strengthening the Judiciary

The ICC should consider creating a high-level gender legal adviser position within the Trial Division to augment sources of legal advice and support the cohesion of legal reasoning and consistency of interpretations across Chambers and between divisions. In light of the number of cases with charges of sexual and gender-based crimes now under consideration, as well as the complexity of these crimes and the theories of liability, dedicated posts serving as expert resources for the Judges could provide valuable assistance. Ongoing internal reflection on critical issues should be undertaken, including: interpretation of the modes of liability and conceptualisation of common purpose in

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<sup>9</sup> UN, [System-wide Strategy on Gender Parity](#), 6 October 2017.

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relation to sexual and gender-based crimes; analysis of sexual violence regarding prior commission, repetition and numerosity; and what makes violence sexual. Providing clear elaborations, to the extent possible, on reasonings for findings, especially those relating to elements of crimes of sexual violence, should be encouraged. Further elaboration will serve to provide clearer guidelines to the parties on what may make violence sexual and result in more useful jurisprudence.

### Strengthening the OTP

The Office of the Prosecutor should consider regular, ongoing internal gender focused seminars at which knowledge can be shared and strengthened within all OTP units. Moreover, Preliminary examinations teams should undertake a gender analysis of each situation. The analysis should include a mapping of relevant actors and explanation of the situation from a gendered perspective, including possible markers for sexual and gender-based crimes.

The OTP should also ensure a gender analysis is provided to an investigation team once it is appointed to facilitate the early consideration of possible sexual and gender-based crimes and linkage to relevant actors. Also, a discussion on how obstacles that have been impairing the investigation, prosecution and adjudication of sexual violence may be overcome is ever more important and timely given the further preliminary examinations, situations under investigation, and cases likely ahead for the Court.

We look forward to engaging with you throughout your mandate as Independent Experts, including at the meeting scheduled on 24 February 2020 and possible cluster specific meetings.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Melinda Reed', written in a cursive style.

Melinda Reed  
Executive Director  
Women's Initiatives for Gender Justice