

## **Advancing Gender Justice – A Call to Action**

*Rome Statute Review Conference, 31 May – 11 June 2010*

### **Political Context**

The 10-year Review Conference on the Rome Statute and the International Criminal Court (ICC), from 31 May – 11 June in Kampala, hosted by the Government of Uganda, will be attended by 111 States Parties to the Rome Statute and open to all United Nations members. This is the first global meeting on the Statute since its adoption at the 1998 Rome Conference, which laid the groundwork for the first permanent international criminal court with worldwide jurisdiction for genocide, war crimes and crimes against humanity. Amongst other issues to be addressed, the Review Conference will debate the adoption of the Crime of Aggression within the Rome Statute, thus expanding the jurisdiction of the ICC. This Conference will be one of the largest gatherings of States in 2010, outside of the UN General Assembly meeting.

This year also marks 15 years since the watershed Fourth World Conference on Women (Beijing +15) and coincides with the 10-year anniversary of the adoption of United Nations Security Council Resolution 1325 on Women, Peace and Security. This historic resolution makes explicit the necessity and right of women to both participate in peace negotiations and deliberations to end conflict in their countries and to help write the new rules for restoring and transforming conflict-ridden societies.

In the past two years the UN has passed three key resolutions in relation to women and armed conflicts.<sup>1</sup> These address the need to end impunity for those who commit sexual violence, strengthen the participation of women in peace talks and formally mandate UN Peacekeeping missions to ‘protect women and children from rampant sexual violence during armed conflict’. Of these, Resolution 1888 called for the appointment of a Special Representative of the Secretary-General for sexual violence in armed conflict.<sup>2</sup>

### **Gender Justice and the ICC**

The Women’s Initiatives for Gender Justice has a long history with the ICC, with the involvement of our predecessor, the Women’s Caucus for Gender Justice, in the negotiations of the Rome Statute and the integration of gender issues within this seminal global treaty.

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<sup>1</sup> S/RES/1820 (2008), S/RES/1888 (2009), S/RES/1889 (2009).

<sup>2</sup> In February 2010, Margot Wallström of Sweden was appointed to this position.

### **Women’s Initiatives for Gender Justice**



Since 2004 the Women's Initiatives has been working closely with the ICC in monitoring its institutional and substantive progress from a gender perspective. Our initiatives have included gender training for the ICC, advocacy for the prosecution of gender-based crimes in each of the situations under investigation, submission of legal filings, documentation of gender-based crimes, monitoring developments at the ICC<sup>3</sup> and advocacy for reparative mechanisms and assistance to women by the Trust Fund for Victims.

The Women's Initiatives for Gender Justice was the first NGO to file before the ICC<sup>4</sup> and the only international women's human rights organisation to have been recognised with *amicus curiae* status<sup>5</sup> by the Court.

Currently the Women's Initiatives for Gender Justice has country-based programmes in four ICC situation countries: Uganda, the Democratic Republic of the Congo, Sudan and the Central African Republic. Our strategic programme areas include:

- Political and legal advocacy for accountability and prosecution of gender-based crimes;
- Capacity and movement building initiatives with women in armed conflicts;
- Conflict resolution and integration of gender issues within peace negotiations;
- and implementation of Peace Agreements (Uganda, DRC, Darfur);
- Documentation of gender-based crimes in armed conflicts;
- Victims' participation before the ICC;
- Training of activists, lawyers and judges on the Rome Statute and international jurisprudence regarding gender-based crimes; and
- Advocacy for reparations for women victims/survivors of armed conflicts.

### **The ICC Review Conference 2010**

The Women's Initiatives for Gender Justice began our specific preparations for the ICC Review Conference in 2008 and has held two consultative events:

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<sup>3</sup> Since 2005 we have produced annual Gender Report Cards on the ICC.

<sup>4</sup> Women's Initiatives for Gender Justice, 'Request Submitted Pursuant to Rule 103 of the Rules of Procedure and Evidence for Leave to Participate as *Amicus Curiae* in the Article 61 Confirmation Proceedings (With Confidential Annex 2), filed 7 September 2006 in the case of The Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06-403, available at <http://www.icc-cpi.int/iccdocs/doc/doc192717.PDF>.

<sup>5</sup> 'Amicus Curiae Observations of the Women's Initiatives for Gender Justice pursuant to Rule 103 of the Rules of Procedure and Evidence, filed 31 July 2009 in the case of The Prosecutor v. Jean-Pierre Bemba Gombo, available at <http://www.iccwomen.org/news/docs/WIGJ-Amicus-Curiae-Submission-in-Jean-Pierre-Bemba.pdf>.

### **Women's Initiatives for Gender Justice**



- The **International Justice for Women Forum**, 6-8 October 2008, Kampala, Uganda brought together 155 women's rights and peace activists, predominantly from the conflict situations under investigation by the ICC. This meeting provided the opportunity for women directly affected by the conflict situations before the ICC to reflect on the work of the Court in providing accountability, contributing to local expectations of justice and an end to conflict and impunity.
- The **International Gender Justice Dialogue**,<sup>6</sup> 19-21 April 2010, Puerto Vallarta, Mexico assembled more than 50 advocates and leaders from current or recent armed conflicts<sup>7</sup> as well as leaders from the fields of international criminal law, Nobel Peace Laureates, representatives of the ICC, peace mediators, women's rights advocates, United Nations personnel, academics, communications specialists and donors to discuss the future of gender justice and the need for a global agenda to advance this work.

These two events along with our extensive country-based programmes and ICC-related advocacy work over many years provides the basis for this **global call to action** for the ICC, States Parties and the United Nations to advance gender justice and ensure accountability for gender based crimes.

### **A Call to Action**

**Priorities for advancing gender justice through the ICC, regional and national judicial systems include:**

#### **Institutional Strengthening**

- Enhancement of institutional gender capacity in judicial systems around the world including the ICC, the Inter-American Court of Human Rights, the European Court of Human Rights and the African Court on Human and Peoples' Rights.
- Development of a community of 'best practice', and exchanges of lessons learned. Developments in jurisprudence, expertise in investigations and collection of evidence for gender-based crimes, and experiences in reparations should be shared between legal systems and jurisdictions.
- Proactive and effective strategies by the ICC regarding the selection of more women to the List of Legal Counsel and greater gender competence amongst Legal Representatives for victims. The ICC is obligated under Rule 90(4) to "take all reasonable steps to ensure that in the selection

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<sup>6</sup> The International Gender Justice Dialogue was organised by the Women's Initiatives for Gender Justice in collaboration with the Nobel Women's Initiative.

<sup>7</sup> Iraq, Afghanistan, Palestine, Israel, the Democratic Republic of the Congo, Sudan and Uganda as well as activists from countries with a history of coups and military dictatorships including Guatemala, Chile, Honduras and Burma.

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of common legal representatives, the distinct interests of victims, particularly as provided in article 68(1),<sup>8</sup> are represented and that any conflict of interest is avoided.”

- Given the challenges for an institution to prosecute gender-based crimes while also grappling with internal issues of gender discrimination, judicial institutions should develop mechanisms to ensure they are developing a culture that is supportive of good work practices, respectful of diversity and equality and conducive to high quality prosecutions. As part of creating such an enabling environment, judicial institutions, including the ICC, should have a strong and transparent complaints process, training on diversity issues, and conduct regular sexual harassment audits.<sup>9</sup>
- The Appointment of Gender Legal Advisors to senior positions within judicial institutions including the ICC, the regional human rights courts and commissions, and national high courts and supreme courts.

### **Implementation of the Rome Statute and Complementarity Strategies**

- Domestication of the ICC through implementing legislation fully inclusive of the gender provisions of the Rome Statute; adoption of the Rome Statute Elements of Crimes and the ICC Rules of Procedure and Evidence; and in the absence of formal legislation the integration of practices and jurisprudence from the ICC into common law.
- Ratification of the Rome Statute should trigger a national review of existing laws from a gender equality perspective in order to ensure they comply with the Statute.
- Utilisation within the ICC and national jurisdictions of Article 21(3) of the Rome Statute, which establishes that the application and interpretation of law must be consistent with internationally recognized human rights and without adverse distinction on grounds such as gender.
- The urgent need to develop domestic sexual violence laws in the countries where the ICC is currently investigating, including Uganda, Sudan and the Central African Republic. Such domestic laws should comply with Rome Statute standards with inclusion of situation-specific

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<sup>8</sup> Article 68 (1) obligates the Court to take “appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In doing so, the Court shall have regard to all relevant factors including age, gender...and the nature of the crimes, in particular but not limited to, where the crime involves sexual or gender violence or violence against children’.

<sup>9</sup> Such audits should assess, amongst other areas: Sexual Harassment policies to ensure they cover the relevant issues; whether adequate training is provided for staff and managers about the Policy; whether appointments of “focal points” have been made for staff to report harassment; and whether new staff members are given adequate orientation to this and other relevant policies.

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forms of violence against women that are not explicitly articulated in the definition of crimes in the Statute.

- Enforcement of the Sexual Violence Act and prosecution of crimes of sexual violence in the Democratic Republic of the Congo.
- A significant increase in national and international resources and funding to support women's rights and legal advocacy, medical and psycho-social services to respond to gender-based violence.
- Domestic prosecutions of crimes potentially within the jurisdiction of the ICC should comply with the standards outlined in the Rome Statute, its Elements of Crimes and Rules of Procedure and Evidence. National compliance with the highest standards of international criminal justice for victims, communities, witnesses and the accused is vital if universality is to be achieved and if prosecutions are to act as a deterrent to the future commission of genocide, war crimes and crimes against humanity.

### **Victims Participation**

- Victims should have genuine and meaningful opportunities to participate in the justice process locally, nationally and internationally. In the case of the ICC,<sup>10</sup> although victims have a choice about *whether* to apply to the Court for formal recognition, the *right* to do so and the subsequent ability to participate in the legal proceedings is a provision allowed for by the Rome Statute and as such should be supported by mechanisms that facilitate the exercise of this right.
- The ICC must further develop a more accessible Legal Aid system for victims that operates under clear and predictable criteria and modalities. The Victims' Form for Indigence should be used to better inform communities and intermediaries about how the Legal Aid Programme operates, its criteria for eligibility, application procedures for Legal Aid, and guidelines for selecting appropriate Legal Counsel. The Court should have transparent guidelines readily available for victims and Counsel, and should widely promote the legal aid scheme to ensure victim/survivors can access this important mechanism.

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<sup>10</sup> As of 26 April 2010, the Court has reported that 2035 victims have applied to participate in judicial proceedings in one of the situations or cases before the court. In the DRC situation and cases, 196 have been accepted in the situation, 103 in the Lubanga case, and 359 in the Katanga/Ngudjolo case. For Uganda, 21 have been accepted in the situation and 41 have been recognized in the case against Kony et al. Eleven applicants have been accepted in the Darfur situation, 78 victims have been recognized in the Abu Garda case and 12 in the case against Al-Bashir. No victims have been accepted in the CAR situation, but 54 victims have been accepted in the Bemba case. Registry and Trust Fund for Victims Factsheet, produced 26 April 2010.

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- The ICC Registry should develop guidelines to ensure that when appointments of common legal representatives are made, the distinct interests and needs of individual groups of victims, including victims of gender-based violence, are specifically addressed.
- Judicial systems should include the capacity to address the diversity of victims' needs to enable participation in the justice process. This should include implementing policies and practices for dealing with victims of sexual violence, children, elderly persons and persons with disabilities to support their participation.
- Judicial institutions must ensure the safety of witnesses, victims and intermediaries. In this regard the ICC<sup>11</sup> should develop, as a matter of urgency, a comprehensive security framework inclusive of witnesses, victims and intermediaries to ensure that protection mechanisms are tailored to their particular status, level of risk and specific circumstances.

### **Trust Fund for Victims**

- A serious and significant increase in state and voluntary contributions to the ICC Trust Fund for Victims, including to their donor appeal for victims of sexual violence launched in 2009.<sup>12</sup>
- Development by the ICC judges of gender-inclusive, victim-centred guidelines on reparations for victims before the Court.
- Through promotion of the Trust Fund and raising global awareness of the challenges faced by victims of war and armed conflict, the Secretariat should aim to leverage other resources in support of the special appeal for victims of sexual violence.
- In addition to the criteria for the "special vulnerability of women and girls" to be addressed in projects, the Secretariat should adopt proactive strategies to solicit proposals explicitly from women's groups and organisations. Benchmarks could be established to ensure that applications from women's organisations, for the purpose of benefiting women victims/survivors, are between 45-55% of the overall number of proposals received and funded.

### **Prosecutions and Jurisprudence**

- Stronger and consistent jurisprudence from the ad hoc tribunals, special courts and the ICC on forced marriage, forced pregnancy, forced sterilisation and sexual mutilation.

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<sup>11</sup> Currently, victims and intermediaries are excluded from the security provisions of the Court and as such engage with or assist the ICC at great risk to themselves, their families and their communities. Lack of safety considerations regarding victims who have legal standing before the ICC is a persistent gap in the Court's security framework.

<sup>12</sup> € 10 million over 3 years

### **Women's Initiatives for Gender Justice**



- Investigation and prosecution of a sex trafficking case and prosecution of slavery (domestic labour) and sexual slavery cases before the ICC.
- The opening of at least one case by the ICC outside of Africa before the 10th session of the ASP.
- Consideration of a future case before the ICC against peacekeepers, under the complementarity principle, where there is credible evidence of such crimes.
- The adoption of a considered and responsive amendment policy by the ICC to allow the prosecutorial process to be able to correct itself when initial indictments exclude charges for which strong evidence exists.
- Greater emphasis and facilitation of public testimonies of gender-based crimes, bearing in mind necessary security measures for victims and witnesses.
- All States, including permanent members of the United Nations Security Council, who have committed acts of aggression should be held accountable by an independent judicial system capable of prosecuting these crimes.
- Preservation of existing benchmarks in gender justice jurisprudence and avoidance of judicial and conservative backlashes on gender issues.<sup>13</sup>
- Inclusion in future ICC investigations of individual corporate responsibility including environmental responsibility in relation to forced displacement and economic persecution.

### **State Cooperation**

- Actively carry out their responsibilities as State Parties to assist the Court with arrests and surrenders; freezing and seizing of assets; and promotion of universal ratification of the Statute by other States.
- An effective global campaign led by the United Nations, the African Union and the League of Arab States functioning at international, national and local levels to end impunity for gender-based crimes.
- The arrest of all outstanding ICC suspects for whom arrest warrants have been issued, including President Omar Al'Bashir of Sudan, Joseph Kony of Uganda, and Bosco Ntaganda of the DRC, for

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<sup>13</sup> For example, the reductive approach by Judges in the confirmation of charges decision in the case of Prosecutor v Jean-Pierre Bemba; failure to request consideration of further investigations at the confirmation hearing stage into gender based crimes in the Prosecutor v Thomas Lubanga case. See 'Legal Filings Submitted by the Women's Initiatives for Gender Justice to the International Criminal Court,' available at <http://www.iccwomen.org/publications/articles/docs/LegalFilings-web-2-10.pdf>

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war crimes and crimes against humanity as specified in the arrest warrants issued by the Judges of the ICC.

## **Peace and Justice**

The Women's Initiatives has been working in peace processes since 2007, particularly in the peace talks for Northern Uganda, as well as analyzing and reviewing the peace agreements signed between the Government of the Democratic Republic of the Congo and militia groups in eastern DRC and agreements reached between the Government of Sudan and rebel groups/movements involved in the Darfur Peace process.

In each of these situations we have found recurring themes regarding obstacles to the participation of women in peace talks and the failure by the United Nations to implement its own Security Council resolutions regarding peace-related impunity for gender-based crimes.

### **Priorities for advancing gender justice through peace processes include:**

- Appointment by the UN of a woman as a chief mediator during 2011.<sup>14</sup>
- The development of gender benchmarks in the next three years for the appointment of chief mediators with no more than 45% and no less than 55% of either gender appointed as chief mediators or Special Envoys for peace processes over a two-year cycle.<sup>15</sup>
- Education and gender training for mediators, technical advisors and mediation support staff regarding their responsibilities to implement Security Council resolutions along with support to develop the necessary technical skills.
- The mandate provided by the United Nations to Chief Mediators should include explicit requirements for appointees to demonstrate implementation of Resolutions 1325 and 1820 as part of the commission of their duties.
- Donors, States and the UN must demonstrate a greater commitment to capacity-building of civil society, particularly women's groups and advocates to be able to participate in peace talks.

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<sup>14</sup> To date no woman has ever been appointed as a chief mediator in a UN-sponsored peace process.

<sup>15</sup> Women's Initiatives for Gender Justice, 'Open Letter to Secretary General Ban Ki-Moon,' 17 June 2009, available at [http://www.iccwomen.org/publications/Open\\_Letter.pdf](http://www.iccwomen.org/publications/Open_Letter.pdf).

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