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[Draft] Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court

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I. Introduction

1. The Rome Statute provides that the International Criminal Court (“the Court”) shall ensure the highest standards of efficiency, competency and integrity, and shall have regard to fair representation of women and men for all positions, representation of the principal legal systems of the world for legal positions, and equitable geographical representation for positions in the professional category. The selection procedure is determined by the criteria set forth in articles 44(2) and 36(8) of the Rome Statute and resolution ICC-ASP/1/Res.10 of the Assembly of States Parties (“the Assembly”).

2. As decided by the Assembly, the system of desirable ranges applied by the Court is based on the system of the United Nations. The ranges are calculated on the basis of a State’s financial contribution to the budget of the Court and of a State’s population size, both criteria in relation to the total membership of the Rome Statute.

3. At its eighteenth session, in resolution ICC-ASP/18/Res.6 on “Strengthening the International Criminal Court and the Assembly of States Parties”, the Assembly “request[ed] the Bureau to continue engaging with the Court to identify ways to improve equitable geographical representation and gender balance in professional posts, as well as to remain seized of the issue of geographical representation and gender balance, and to report thereon to the nineteenth session of the Assembly.”¹ In addition, in resolution ICC-ASP/18/Res.7 on the “Review of the International Criminal Court and the Rome Statute System”, the Assembly requested the Bureau, through its working groups and facilitations, to address, *inter alia*, the issue of “equitable geographical representation and gender balance” as a matter of priority in 2020, and to report back to the Assembly at its next regular session on progress achieved.²

4. The mandate on the issue of geographical representation and gender balance was allocated by the Bureau of the Assembly to the New York Working Group and Mrs. Kristina Pelkiö (Czech Republic) was reappointed as facilitator on this issue by the Bureau on 6 February 2020.

II. Discussions in the New York Working Group

5. The facilitator convened a meeting on 9 November 2020 which was open to States Parties, Observer States and civil society. The meeting was held via remote-link due to the limitations imposed by COVID-19. At that meeting, staff from the Human Resources Section of the Registry presented relevant aspects of the annual report of the Court on Human Resources Management,³ as well as updated statistics and an overview of the Court’s efforts to achieve equitable geographical representation and gender balance. Delegations also had an opportunity to discuss proposed text for the omnibus resolution, which is annexed to this report.

6. At the meeting on 9 November, States Parties emphasized the importance of receiving the annual report on Human Resources Management from the Court as early as possible so that its contents could be properly considered in advance of the next Assembly session. In this regard, a request was made for the report to be made available by May each year.

7. States Parties noted that the report of the Independent Expert Review of the International Criminal Court and the Rome Statute System⁴ contained a number of important recommendations relevant to the topic of geographical distribution and gender balance and suggested that the facilitation on geographical representation and gender balance will consider recommendations falling within its ambit. In particular, it was noted that the Independent Experts recommended that the Court adopt a system of tenure for positions of P-5 and above.⁵ States Parties looked forward to considering those recommendations as part of the wider consideration of that report. A request was made for the Registry to begin

¹ ICC-ASP/18/Res.6, annex I, para. 13(d).

² ICC-ASP/18/Res.7, para. 18.

³ ICC-ASP/19/4.

⁴ ICC-ASP/19/16.

⁵ ICC-ASP/19/16, recommendation 104.

considering and evaluating the report from its perspective, including the kinds of measures which would need to be taken in order to implement a tenure system for new recruitments.

8. The facilitator also held bilateral meetings with interested delegations, aimed at providing specific information on statistics relevant to their respective States. As in previous years, the facilitation served, among other matters, as a platform to raise awareness on the staffing of the Court and provide updates regarding fluctuations of staffing.

III. Recruitment process

9. As at 30 September 2020, the Court had 497 staff members from 92 different nationalities in established professional posts (excluding the three elected officials and language staff). As at the same date, 45 established professional posts were vacant.⁶

10. Representatives of the Human Resources Section provided States with background information regarding the functioning of the recruitment process. It was advised that, in accordance with the Rome Statute, the Court selects the most qualified candidates and, when candidates perform equally well, the recruiting panel considers geographical and gender representation. It was stressed that diversity is also relevant for the composition of the panels, and that its members are provided with information regarding under- and over-represented countries, in an effort to ensure that nationals from these countries are properly considered for shortlisting.

IV. Gender balance

11. As at 30 September 2020, female staff comprised 49.2 per cent of the Court's professional staff, while male staff comprised 50.8 per cent. Throughout the years, there had been some stability regarding gender balance at the Court,⁷ however, imbalance in the staff composition within some Court programmes⁸ and severe under-representation of female staff in positions P-5 and above⁹ had been identified. While female staff constituted more than 50 per cent of staff at the P-1 (80 per cent) and P-2 (62 per cent) levels in 2019, female staff were severely under-represented at the higher levels: only 11 per cent of staff at the D-1 level were female, 30 per cent at the P-5 level, 37 per cent at the P-4 level, and 46 per cent at the P-3 level.¹⁰

12. The Court noted that although the quality of female candidates was not lower than that of male candidates, the pool of the latter for senior-level posts tended to be lower,¹¹ so measures aimed at increasing applications from female candidates had been adopted.

13. In order to contribute to better understanding and addressing this situation, the Court had established a "Mentoring Programme for Women" which aimed at supporting women in strengthening professional networks and defining and pursuing career aspirations with the coaching and support of an experienced mentor. The Court also planned to establish a "Focal Point for Women" in 2020 and to initiate training programmes on gender awareness and unconscious bias for managers involved in recruitment. The Focal Point for Women would assist and advise on addressing systemic organizational issues which may present obstacles for the career progression of women and, together with training programmes, would be instrumental for identifying and addressing potential unconscious bias. In relation to the Focal Point for Women and the activities related to the establishment of this role, the heads of Organ of the Court (the Prosecutor, President and Registrar) had joined the Gender

⁶ Information provided by the Human Resources Section in the virtual meeting with the New York Working Group on 9 November 2020, and included in the presentation which was subsequently circulated to States Parties.

⁷ Ibid. Percentage of male and female staff per year: 2014: 53.5%-46.5%; 2015: 56.2%-43.8%; 2016: 52.9%-47.1%; 2017: 53.6%-46.4%; 2018: 52.8%-47.2%; 2019: 52.7%-47.3%.

⁸ Ibid. Percentage of male and female staff per organ as of 30 September 2020: Judiciary: 35%-65%; Office of the Prosecutor: 47%-53%; Registry 58%-42%; Secretariat of the Assembly of States Parties: 56%-44%; Secretariat of the Trust Fund for Victims: 33%-67%; IOM 33%-67%; Office of Internal Audit 25%-75%.

⁹ Ibid. As of 30 September 2020 the percentage of female staff at P-5 or above positions was 23.5% while for male staff it was 76.5%.

¹⁰ ICC-ASP/19/4, para. 67.

¹¹ Op. cit. 7. In 2020, 38 per cent of applications for P-4 and P-5 positions were from female candidates and 62 per cent were from male candidates.

Champion Leadership Network, bringing together female and male decision-makers determined to break down gender barriers and make gender equality a working reality in their spheres of influence.

14. At its thirty-fifth session, the Committee on Budget and Finance made various observations regarding gender balance and recommended that the Court continue its efforts directed at narrowing gender disparity at the senior professional posts.¹²

V. Geographical representation

15. As of 30 September 2020, 92 nationalities were represented in the professional staff of the Court, of which: 20 nationalities were in balance with their targets; 23 nationalities were under-represented; 24 were over-represented; and 56 nationalities were not represented. The remaining 25 nationalities of the professional staff corresponded to States not Parties to the Rome Statute.¹³

16. As at 30 September 2020, in terms of absolute distribution, 89 staff were nationals from the African Group, 31 from the Asia-Pacific Group, 47 from the Eastern European Group, 33 from the Latin American and Caribbean Group (GRULAC), and 296 from the Western European and Others Group (WEOG).¹⁴

17. As at 30 September 2020, the number of staff per post, per region, was as follows:¹⁵

(a) D-1 (9): one from the African Group, one from the Asia-Pacific Group, two from GRULAC, and five from WEOG, with the Eastern European Group not represented; with an over-representation of GRULAC and WEOG nationals.¹⁶

(b) P-5 (42): eight from the African Group, one from the Asia-Pacific Group, two from the Eastern European Group, one from GRULAC and 30 from WEOG; with an over-representation of African Group and WEOG nationals.

(c) P-4 (81): 17 from the African Group, six from the Asia-Pacific Group, six from the Eastern European Group, six from GRULAC, and 46 from WEOG; with African Group and WEOG nationals being over-represented.

(d) P-3 (170): 35 from the African Group, ten from the Asia-Pacific Group, 11 from the Eastern European Group, 12 from GRULAC and 102 from WEOG; with the African Group and WEOG being over-represented.

(e) P-2 (161): 23 from the African Group, seven from the 102 from WEOG; with WEOG nationals over-represented.

(f) P-1 (33): five from the African Group, six from the Asia-Pacific Group, nine from the Eastern European Group, and 11 from WEOG, and one from GRULAC; with African Group, Eastern European Group and WEOG nationals over-represented.

18. While acknowledging that significant challenges to achieve equitable geographical representation persist, the Court underlined that its efforts have resulted in some signs of improvement in recent years, at least in relation to non-represented countries. The number of non-represented countries remained the same from 2019 to 2020.

19. From a broader perspective, the data regarding a five-year overview¹⁷ indicated that geographical representation remained relatively stable. This reveals the chronic nature of the imbalanced representation in the Court in respect to some countries and regions, in particular from Asia-Pacific and Latin American and the Caribbean.

¹² ICC-ASP/19/15, para. 213.

¹³ Op. cit. 7.

¹⁴ Information provided by Human Resources Section to the facilitator. It should be noted that these figures do not include staff on professional level language posts.

¹⁵ Information updated by Human Resources Section to the facilitator.

¹⁶ In this case, whether a region is over or under represented is determined by the percentage of individuals from a certain region who occupy the posts, compared to the percentage that human resources has determined as the target for the region.

¹⁷ Op cit. 7.

VI. Recruitment of nationals from non-States Parties

20. In comparison to the previous report on geographical representation and gender balance,¹⁸ in 2019, there was a net reduction of three staff from non-States Parties¹⁹ since one staff member joined and four separated.

21. It was observed that recruiting nationals of non-States Parties can be more expensive than hiring nationals of States Parties. According to the practice and fundamental principles of the International Civil Service, as determined by the Administrative Tribunal of the International Labour Organization (ILOAT), all employees of the Court are entitled to exemption from taxation on salaries, emoluments and allowances paid by the Court. The estimated tax liability for 2019 was €100 thousand, in relation to United States taxpayers on the payroll of the Court.²⁰

22. The Registry has acknowledged the concerns raised by a number of delegations and the Committee regarding recruitment of nationals of non-States Parties and has communicated the Court's commitment to find ways to address the situation, including through its internal recruitment practices.

VII. Measures to improve geographical representation

23. The Court has informed States that it continued its outreach activities specifically directed at non- and under-represented States Parties, which included: (a) recognizing the importance of managing geographical representation of the Court's future talent pools through the Internship and Visiting Professional Programmes; (b) continuing to actively support and promote its Junior Professional Officer Programme in which three under-represented States Parties participate and in which an additional under-represented State Party is expected to participate in 2020; (c) attending career fairs and other suitable events in non- and under-represented States; and (d) cooperating with the Public Information and Outreach Section to present career opportunities to groups of legal professionals from under-represented and non-represented countries visiting the Court.²¹

24. Other measures taken by the Court include: "(a) Vacancies continued to be advertised on various social media and platforms for international job vacancies; (b) All vacancy announcements were distributed in both working languages of the Court; (c) HR staff participated ex officio in all recruitment processes and assisted the panels in ensuring consideration of diversity at all stages of the recruitment cycle; (d) The Selection Review Board oversaw all recruitment; (e) Geographical diversity was ensured on all recruitment panels; (f) Updated information on geographical representation was disseminated to all recruitment panels; (g) Geographical representation was considered both at the shortlisting stage and when the decision as to the final selection of suitable candidates was made; (h) Geographical representation was considered for all types of appointments; (i) HR used social media to actively "source" qualified candidates from desirable profiles to improve the applicant pool; (j) During 2019, ImpactPool assisted in further increasing outreach efforts with a view to maximizing geographically diverse applicant pools; and (k) Key management personnel of the Court engaged in outreach activities alongside their regular travel and meetings. Geographical representation is considered an important agenda item with all travel and meetings with States and external stakeholders."²²

25. It was noted that States still have a critical role in ensuring wider dissemination of the vacancy announcements, with a view to providing more geographically representative pools of candidates.

26. At its thirty-fifth session, the Committee on Budget and Finance reiterated its previous recommendations that the Court come back with a medium to long-term plan and well-

¹⁸ ICC-ASP/18/26.

¹⁹ ICC-ASP/19/4, para. 72.

²⁰ Financial statements of the International Criminal Court for the year ended 31 December 2019 (ICC-ASP/19/12), item 13.2.

²¹ ICC-ASP/19/4, para. 69.

²² ICC-ASP/19/4, para. 70.

defined objectives for addressing the situation regarding geographical representation. The Committee recommended that the Court continue its efforts to narrow the gap in geographical representation. Moreover, the Committee urged the Court to evaluate the effectiveness of the measures and activities already taken and report to the Committee at its thirty-sixth session.²³

27. The Committee also recommended that, whenever any of the posts held by nationals from non-ratified States became vacant, the Court should try to fill them through the recruitment of candidates from non-represented and under-represented States.²⁴

VIII. Interns, JPOs and visiting professionals

28. States indicated that geographical representation and gender balance was also desirable in the selection of interns, visiting professionals (IVPs) and Junior Professional Officers (JPOs). Interest was also expressed in the inter-relationship between these programmes and the actual recruitment of the Court, given that IVPs and JPOs are frequently potential candidates for professional postings. It was therefore noted that measures aimed at promoting equitable geographical distribution in these programmes could have a positive impact in the diversification of the pool of applicants for professional postings.

29. The Court confirmed that it sought to address some of the geographical representation challenges through the IVPs Programme since it is considered that a diverse group of qualified professionals in this programme will encourage more potentially eligible and interested candidates from those countries for the Court's staff positions, now and in the future. To make this programme accessible to all, the Court has implemented a trust fund based on voluntary donations to enable funded placements for persons from developing regions who are also from States Parties, and preferably those that are non- or under-represented.

30. In 2018, 23 individual IVPs from Africa, Asia-Pacific, Eastern Europe and Latin American and the Caribbean region were funded by the Trust Fund. In 2019, no new individual IVPs have been funded by the Trust Fund. The Court has reinforced its fund-raising efforts and urges the continued contribution and collaboration of States. Together with contributions received from staff members and elected officials, the Court will hopefully be able to fund new IVPs again in 2021.

31. The Court advised that it had once again coordinated the implementation of the Legal Professional Programme (LPP), with funding from the European Commission. In 2019 the LPP saw placements for eight participants: six from developing regions and three from non-represented States Parties.²⁵

IX. Conclusions

32. States Parties and civil society have an interest in being kept updated regarding the fluctuations of staffing at the Court, from the perspective of geographical representation and gender balance. It was stressed that a fair representation of male and female staff and equitable geographical distribution benefits the Court by ensuring diversity of perspective which, internally, increases the creativity in the work environment and, externally, remains crucial to address perception challenges and advance the universality of the Rome Statute.

33. There is an overall balance in terms of gender with female staff slightly underrepresented. Still, there is a severe imbalance of women in the upper echelons. The Court should continue its efforts to narrow this gap and report on its activities in this regard.

34. Regarding geographical representation, there is a persistent and chronic imbalance in respect of some countries and regions. There are also some nationalities from over-represented groups that are under-represented in the Court's staff. Some States that rank among the highest contributors to the Court's budget are severely under-represented.

²³ ICC-ASP/19/15, para. 213.

²⁴ ICC-ASP/19/15, para. 210.

²⁵ ICC-ASP/19/4, para. 121.

35. Many States indicated that the issue of nationals of non-States Parties being recruited to the Court's staff should be examined in conjunction with the current challenges of achieving equitable geographic representation.

36. More efforts should be undertaken by the Court and the Assembly to ensure the visibility of employment opportunities and the application of qualified candidates from non- and under-represented countries and regions. The proactive role of the States Parties in question remains crucial to supporting the Court, *inter alia*, by helping to reach a pool of qualified candidates from non- and under-represented countries.

X. Recommendations

A. To the Court

37. The chronic imbalance in geographical representation, as well as that of women in senior levels, requires that the Court redouble its efforts in addressing this situation, in particular efforts should be made to identify, reach and recruit women qualified for senior-level positions, as well as to support the career advancement within the Court of female staff.

38. The Court should continue prioritizing outreach activities, in order to target potential candidates from non- and under-represented countries, especially developing ones, for internship, JPO and visiting professional programmes, including by encouraging voluntary contributions to the corresponding fund. Information on geographical and gender balance regarding these programmes should continue to be made available to the Assembly.

39. Vacancy announcements should:

(a) continue to be advertised through the Court's website and its social media profiles, as well as circulated via periodicals and publications, in particular in those with circulation in countries that are non- or under-represented;

(b) be regularly informed to the Assembly, in order to assist States Parties and civil society organizations in further disseminating them; and

(c) be circulated at least in both working languages of the Court.

40. All personnel policies, procedures and hiring practices should remain under review and improvement, and the Court should continue to apply and strengthen its recruitment policies to foster the selection of qualified candidates from non- and under-represented countries, in particular developing ones, including through the dissemination and full implementation of its Administrative Instruction on Staff Selection, which includes a provision granting qualified candidates from non- and under-represented States Parties priority for the purpose of short-listing.

41. The Court should address, within a reasonable timeframe, the issue related to the possibility of freezing the hiring of nationals of States that are not Parties to the Rome Statute, as repeatedly recommended by the Committee.

42. The Court should continue gathering, monitoring, analyzing and reporting data of female applicants and applicants from non- and under-represented countries, in particular from developing ones, in order to identify the specific challenges they face in successfully acquiring positions at the Court.

B. To the Assembly and States Parties

43. The chronic imbalance in geographical representation, as well as that of women in senior levels, requires redoubled efforts by States Parties.

44. States Parties engaging with the Court with respect to the JPO programmes should also consider providing financing for participants from non- and under-represented regions, in particular from developing countries.

45. States Parties should consider providing funding to cover stipends for participants from non- and under-represented regions, in particular from developing countries, in the internship and visiting professional programmes.

46. States Parties, especially those non- and under-represented, should develop targeted strategies to support the dissemination of Court vacancies to their national institutions and organizations, as appropriate, including universities, professional associations and chambers and judicial institutions.

47. The Bureau should engage in consultations to identify partners that could promote capacity-building in non- and under-represented countries or regions, in order to generate pools of qualified applicants at the Court, and interested States Parties are encouraged to provide financial support to civil society and institutions undertaking such capacity-building.

48. States Parties are encouraged to use the geographical representation and gender balance facilitation as focal point to address any concerns in relation to staff representation and balance.

Annex

Proposed text for inclusion in the omnibus resolution

A. Language for the omnibus resolution on recruitment of staff

Replace paragraphs 118 to 125 of the omnibus resolution adopted at the eighteenth session of the Assembly (ICC-ASP/18/Res.6) with the following text:

Takes note of the Court's report on Human Resources Management,¹ and requests the Court to further strengthen its efforts, in the recruitment of staff, to seek equitable geographical representation with a particular focus on candidates from non-represented and underrepresented States Parties, gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma-related psycho-social needs and violence against women or children, and encourages further progress in this regard;

Calls upon the Court to report the outcome of its efforts to seek equitable geographical representation with a particular focus on candidates from non-represented and underrepresented States Parties and gender balance to the Assembly at its twentieth session, including, but not limited to, improvements in the recruitment process and annual recruitment data;

Takes note of the continued dialogue between the Court and the Bureau with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, and welcomes the report of the Bureau and its recommendations;²

Urges States Parties to undertake efforts to identify and enlarge pools of potential applicants to the Court's professional positions from States Parties from non- and under-represented regions and countries, including through the financing by the Assembly of the Court's internship and visiting professional programmes, and by States Parties of Junior Professional Officer (JPO) programmes, through targeted outreach initiatives and through the dissemination among relevant national institutions and organizations of the Court's vacancies;

Welcomes the establishment by the Court of a programme to fund, through voluntary contributions, the placement of interns and visiting professionals from developing regions with a particular focus on candidates from non-represented and under-represented States Parties, welcomes the voluntary contributions received thus far and calls upon States Parties to contribute to this programme;

Requests the Court to further devise mechanisms that can ensure in a more sustainable and systematic manner the funding of placements of interns and visiting professionals from developing regions, and further requests the Court to explore and propose modalities for implementing Junior Professional Officer (JPO) programmes for candidates from non- and under-represented States Parties, particularly from developing regions, to be funded through voluntary contributions;

Requests the Court to look into measures to introduce a rotation policy at the ICC and further requests the Court to report the outcome to the Assembly;

Welcomes the Registry Strategic Plan for 2019-2021 and its three-year programme of action to improve the geographical representation and gender balance as one of the Registry's priorities;

Takes note of the report of the Independent Expert Review of the International Criminal Court and the Rome Statute System,³ and notes that the facilitation on geographical representation and gender balance will consider recommendations falling within its ambit.

¹ ICC-ASP/19/4.

² ICC-ASP/19/29.

³ ICC-ASP/19/16.

B. Language for the omnibus resolution mandates annex

Replace paragraph 13 of annex I to the omnibus resolution adopted at the eighteenth session of the Assembly (ICC-ASP/18/Res.6) with the following text:

With regard to **recruitment of staff**,

(a) *endorses* the recommendations of the Committee on Budget and Finance in relation to geographical representation and gender balance contained in the report of its thirty-fifth session⁴ and *urges* the Court to take the necessary steps to implement them;

(b) *requests* the Court to submit a comprehensive report on human resources by the end of May 2021, to be considered by the Assembly at its twentieth session, which would include an update on the implementation of the recommendations on the topic made by the Committee in 2020;

(c) *requests* the Court to include in that report an outline of its efforts to improve the recruitment process in seeking equitable geographical representation with a particular focus on candidates from non-represented and under-represented States Parties and gender balance, including annual recruitment data;

(d) *requests* the Bureau to continue engaging with the Court to identify ways to improve equitable geographical representation and gender balance in professional posts, as well as to remain seized of the issue of geographical representation and gender balance, and to report thereon to the twentieth session of the Assembly; and

(e) *urges* the Court to continue to seize the opportunities of the outstanding and future recruitment processes to implement measures that would contribute to the efforts of meeting the desirable ranges of geographical representation and gender balance;

⁴ ICC-ASP/19/15.