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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 sixteenth session, 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 seventeenth session of the Assembly.”¹
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 Mr. Patrick Luna (Brazil) was re-appointed as facilitator on this issue by the Bureau decision adopted via a silence procedure that ended on 4 March 2018. A roadmap for the facilitation was presented on 10 April 2018. As in previous years, the facilitation would serve, among others, as a platform to raise awareness on the staffing of the Court and provide updates regarding fluctuations of staffing.
5. In a meeting of the New York Working Group held on 15 October 2018, the Court—represented by the Human Resources Section, through videoconference—presented an overview of its efforts to achieve equitable geographical representation and gender balance. The Court further briefed delegations on the statistics on both matters and the data, updated to 30 September 2018, was shared electronically with delegations. The statistics were broken down by Court organs, permitting a horizontal view in addition to the vertical one. It should be recalled that information on geographical representation and gender balance of the Court’s professional staff is included as an annex to reports of the Committee on Budget and Finance (“the Committee”).²
6. The facilitator also held bilateral meetings with interested delegations, aimed at providing specific information on statistics relevant to their respective States and stressing the importance of better disseminating the advertisement of professional vacancies.

II. Recruitment process

7. As at 31 July 2018, the Court had 460 professional posts, comprised of 93 different nationalities (excluding elected officials and 43 language staff); 28 posts were vacant; 45 were under recruitment or had the recruitment completed.³
8. 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 should be provided with information regarding under- and over-represented countries, in an effort to ensure that nationals from these countries are properly considered for shortlisting.

¹ ICC-ASP/16/Res.6, annex I, para.13(c).

² Report of the Committee on Budget and Finance on the work of its thirtieth session (ICC-ASP/17/5), annex II, updated as of 31 July 2018 via document CBF/31/12P01 “Geographical Representation of ICC Professional Staff”.

³ *Ibid.*

III. Gender balance

9. As of 31 July 2018, female staff comprised 49.7 per cent of the Court’s professional staff, while male staff comprised 50.3 per cent.⁴ While female staff constitute more than 50% at the P-1 (76.5%, 26 out of 32) and P-2 (62.3%, 101 out of 162) levels, female staff are severely under-represented at the higher levels: only one out of nine staff at the D-1 level is female (11.1%), 13 out of 43 at the P-5 level (30.5%), 30 out of 83 at the P-4 level (36.1%), and 79 out of 172 at the P-3 level (45.9%).⁵

10. In spite of the slight decrease in the overall ratio of female employees in the Court’s professional staff in comparison to 2017, the overall gender balance continues within range. Ensuring gender parity on the recruitment panels is among the measures taken by the Court to preserve this achievement.

11. Female staff remain, however, severely under-represented at the higher levels. 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 approximately two-thirds of the applications, so measures aimed at increasing application from female candidates were being considered.

12. In order to contribute to better understanding and address this situation, the Court is working on establishing a “Mentoring Programme for Women” and a “Focal Point for Women”, as well as initiating training programmes on unconscious bias. The Mentoring Programme would support women in strengthening professional networks and defining and pursuing career aspiration with the coaching and support of an experienced mentor. 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 a training programme, be instrumental for identifying and addressing potential unconscious bias. In relation to the Gender Focal Point and the activities related to the establishment of this role, the Heads of Organ of the Court (the Prosecutor, President and Registrar) have joined the Gender Champion Leadership Network, that brings together female and male decision-makers determined to break down gender barriers and make gender equality a working reality in their spheres of influence.

13. It should be stressed that, due to the slow turnover of staff in senior positions, the strategy with respect to achieving gender balance at this level is long-term. To illustrate this point, the Court advised that, considering D-1 and P-5 positions, two vacancies emerged in 2018 (at P-5 level); one in 2017 (at P-5 level) and three in 2016 (one at D-1 level and two at P-5 level).⁶

14. At its thirtieth session, the Committee made some observations regarding gender balance. It recommended that the Court, particularly the Registry, continue its efforts to narrow the gender gap and to provide an update at its thirty-second session in 2019 within its annual report on human resource management.⁷ Noting, however, that the gender gap at the higher professional levels persisted in 2017, the Committee recommended that the Court continue its efforts to redress this situation and to provide an update at the same session within the same report.⁸

⁴ Information provided by Human Resources Section in the videoconference with the New York Working Group on 15 October 2018.

⁵ *Ibid.*

⁶ The figures provided in this paragraph are based on an informal document “Overview of turnover data ICC—P5 and D1”, electronically transmitted by the Court to the facilitator on 29 October 2018.

⁷ Report of the Committee on Budget and Finance on the work of its thirtieth session (ICC-ASP/17/5), para. 97.

⁸ *Ibid.* para. 98.

IV. Geographical representation

15. Of 123 States Parties, as of 31 July 2018, 93 nationalities were represented in the professional staff of the Court, of which: 23 nationalities were in balance with their targets; 19 nationalities were under-represented; 27 over-represented; and the remaining 54 nationalities were not represented.⁹ The remaining 24 nationalities of the professional staff corresponded to States not Parties to the Rome Statute.¹⁰

16. As at 31 July 2018, in terms of absolute distribution, 79 staff were nationals from the African Group, 31 from the Asia-Pacific Group, 46 from the Eastern European Group, 32 from the Latin American and Caribbean Group (GRULAC), and 272 from the Western European and Others Group (WEOG).¹¹

17. As at 31 July 2018, the number of staff per post, per region, was as follows:¹²

(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.¹³

(b) P-5 (43): eight from the African Group, one from the Asia-Pacific Group, four from the Eastern European Group (with one increased), one from GRULAC and 29 from WEOG; with an over-representation of African Group and WEOG nationals.

(c) P-4 (69): twelve from the African Group, seven from the Asia-Pacific Group, six from the Eastern European Group, five from GRULAC (with one increased), and 39 from WEOG; with African Group and WEOG nationals being over-represented.

(d) P-3 (151): 30 from the African Group, nine from the Asia-Pacific Group, ten from the Eastern European Group, 14 from GRULAC and 88 from WEOG; with the African Group and WEOG being over-represented.

(e) P-2 (154): 22 from the African Group, eight from the Asia-Pacific Group, 18 from the Eastern European Group, ten from GRULAC, and 96 from WEOG; with WEOG nationals over-represented.

(f) P-1 (34): six from the African Group, five from the Asia-Pacific Group, eight from the Eastern European Group, and 15 from WEOG, with GRULAC not represented; with African Group, Eastern European Group and WEOG nationals over-represented.

18. While acknowledging that significant challenges to achieve equitable geographic 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 was reduced by 3 from 2017 to 2018.

19. From a broader perspective, the data regarding a seven-year overview¹⁴ indicated that geographical representation remained relatively stable. This reveals the chronic nature of the imbalanced representation in the Court in disfavour of some countries and regions, in particular from Asia-Pacific and Latin American and the Caribbean.

20. States underlined that the Court's targets for geographical representation should be considered in both national and regional perspectives. It was stressed that the fact that a regional group was over-represented should not be held against nationals from a State from that group who is non- or under-represented. It was pointed out that some States that are among the highest contributors to the Court's budget remain severely under-represented.

⁹ Report of the Committee on Budget and Finance on the work of its thirtieth session (ICC-ASP/17/5), annex II, updated as of 31 July 2018 via document CBF/31/12P01 "Geographical Representation of ICC Professional Staff".

¹⁰ *Ibid.*

¹¹ *Ibid.* It should be noted that these figures do not include staff on professional level language posts.

¹² *Ibid.*

¹³ 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.

¹⁴ Information provided by Human Resources Section in the videoconference with the New York Working Group on 15 October 2018.

A. Recruitment of nationals from non-States Parties

21. In comparison to the previous report on geographical representation and gender balance,¹⁵ the number of nationals from non-States Parties remained the same (59 staff). Although a slight increase had been seen at 31 July 2018 (61, or 13.5% of total staff), as at 30 September 2018 this figure had been reduced to 59 staff (12.7% of total staff).¹⁶

22. States stressed that many posts are still occupied by nationals of non-State Parties, which could hamper the adequate representation of States Parties.

23. 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 calculated tax liability estimated for 2016 was €86 thousand, in relation to nine United States taxpayers on the payroll of the Court.¹⁷

24. At its thirtieth session, the Committee recalled its observation that there had been a significant number of staff that were nationals of the States that were not Parties to the Rome Statute.¹⁸ Reiterating its previous recommendation, the Committee recommended that the Court address the issue in conjunction with the existing imbalance in geographical representation.¹⁹

25. The Registrar has acknowledged the concerns raised by a number of delegations 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.

B. Measures to improve geographical representation

26. Diversifying the pool of candidates remains crucial for overcoming the challenges of achieving equitable geographical representation. The Court observed that the composition of the pool of candidates is frequently geographically imbalanced and presented measures implemented aiming at making them more representative.

27. The Court conducted outreach to embassies of most under-represented countries in The Hague and advertised vacancies not only through its website, but also through social media and various platforms for international job vacancies. The Court advised that it had started actively sourcing potential candidates from non- and under-represented countries through LinkedIn. It also advised that all vacancies are now advertised in both working languages. States generally welcomed these initiatives and encouraged the Court to consider possible ways to advertise vacancies in official languages other than the two working languages.

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

29. The Committee also recommended that the Court continue its efforts to attract nationals of non- and under-represented countries and submit a report to the Committee at its thirty-second session within its annual report on human resource management.²⁰ The Committee further recommended that the Court continue its efforts to alleviate this issue

¹⁵ ICC-ASP/16/35.

¹⁶ The figures provided in this paragraph are based on an informal document "GR: by regional group (including nationals from Non-Ratified states)", electronically transmitted by the Court to the facilitator on 29 October 2018.

¹⁷ Financial statements of the International Criminal Court of the year ended 31 December 2016 (ICC-ASP/16/12), item 13.2.

¹⁸ Report of the Committee on Budget and Finance on the work of its thirtieth session (ICC-ASP/17/5), para. 92.

¹⁹ *Ibid.*

²⁰ *Ibid.* para. 93.

indicating its human resources management report had not shown any tangible results in redressing the issue of the persistent disequilibria in relation to geographical distribution.²¹

V. Interns, JPOs and visiting professionals

30. 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 interrelationship between these programs 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 geographical distribution in these programs could have a positive impact in the diversification of the pool of applicants for professional postings.

31. The Court advised that the participation of nationals of non- and under-represented countries in IVPs and JPOs had increased significantly during the period of 2017-2018.

32. The Court advised that the Trust Fund based on voluntary donations for enabling the participation of IVPs from developing regions is now active. This Trust Fund was established to provide funded working opportunities to nationals from developing countries, which are parties to the Rome Statute, contributing to minimizing any financial hardship. Previous practice demonstrated that, when unfunded, such programmes tend to result in the placement of candidates mostly from the WEOG. In addition to these eligibility criteria, due consideration is paid to applicants from non- and under-represented States Parties. To date, 19 individual IVPs from 14 different nationalities have been funded by the Trust Fund. It is in the process of being extended for an indefinite period and is envisaged to be open to any prospective donors, in accordance with the Court's Financial Regulations and Rules.

33. In addition, the Court is in the process of engaging a coordinator for the JPO and IVP Programmes and will thereby enhance capacity for initiating and supporting outreach activities and to coordinate projects and measures aiming to improve geographical distribution within the IVP and JPO programmes.

34. The Court further advised that, as part of a Grant received from the European Commission for the programme "Building Legal Expertise and Fostering Cooperation", which consists of three sub-projects including (i) seminars, events, trainings and other relevant activities for fostering cooperation, sharing expertise and building national capacity; (ii) a Legal Tool Database; and (iii) a Legal Professionals Programme (LPP), each year it has a LPP which saw, in 2018, placements for nine Visiting Professionals from situation countries, countries under preliminary examination, and States Parties from developing regions, with a preference for non- or under-represented States. One State put forward a proposal that a special budgetary allocation be considered to cover the costs of IVPs and JPOs from non- and under-represented States, particularly from least developed States.

35. In the context of consultations on geographical representation and gender balance, Bangladesh circulated a non-paper on the IVP and JPO programmes, which was circulated electronically to delegations and uploaded to the Assembly's Extranet.

VI. Conclusions

36. There is an interest of State Parties and civil society 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.

²¹ Ibid. para. 94.

37. There is an overall balance in terms of gender balance. There remains, however, a severe imbalance in disfavour of women in the upper echelons. The Court should continue its efforts to narrow this gap.

38. Regarding geographical representation, there is a persistent and chronic imbalance in disfavour of some countries and regions, in particular from Asia-Pacific and Latin America and the Caribbean. 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. 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.

39. 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.

40. States requested that the Court study interplays between geographical representation and gender balance in the recruitment of staff of the Court and provide relevant statistics as an outcome of the study, for future consideration.

VII. Recommendations

A. To the Court

41. 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.

42. In order to bridge the persistent gender gap at the higher echelons, efforts should continue to be undertaken 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 who have the qualifications to advance to those positions.

43. The Court should prioritize outreach activities, in order to target potential candidates from non- and under-represented countries, especially developing ones.

44. 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.

45. Efforts should be undertaken to promote the participation of nationals of non- and under-represented States Parties, especially developing ones, in the 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.

46. 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.

47. The Court should address, within a reasonable timeframe, the issue related to the significant number of nationals of States that are not Parties to the Rome Statute staffed at the Court, as also recommended by the CBF.

48. 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

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

50. 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 countries.

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

52. Consultations amongst non- or under-represented States Parties, in particular developing ones, should be undertaken in order to develop targeted strategies that would serve to support the dissemination of Court vacancies.

53. States Parties, especially those non- and under-represented, should further disseminate Court vacancies to their national institutions and organizations, as appropriate, including universities, professional associations and chambers and judicial institutions.

54. 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.

55. 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

Draft provisions for inclusion in the omnibus resolution

A. As provided in para. 104 - 107 of the 2017 omnibus resolution ICC-ASP/16/Res.6, revised

Takes note of the Court's report on Human Resources,¹ and *encourages* the Court to strengthen its efforts, in the recruitment of staff, to seek equitable geographical representation and 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, encourages further progress in this regard;

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;

Urges States Parties to undertake efforts to identify and enlarge pools of potential applicants to the Court's professional positions from State 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;

B. New paragraphs

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;

C. As provided in para. 13 of the 2017 omnibus resolution ICC-ASP/16/Res.6, annex I

With regard to **recruitment of staff**,

Endorses the recommendations of the Committee on Budget and Finance in relation to geographical representation and gender balance contained in the report of its thirtieth and thirty-first sessions;²

Requests the Court to submit a comprehensive report on human resources to the Assembly at its eighteenth session, which would include an update on the implementation of the recommendations on the topic, which would be made by the Committee on Budget and Finance in 2019;

¹ See ICC-ASP/17/5, annex II.

² ICC-ASP/17/5 and ICC-ASP/17/15.

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 eighteenth session of the Assembly;

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;
