



**“Changing the Picture of International Justice”**

**Promoting Gender Parity Guidelines**

The Hague

3-5 October 2017

## **Workshop 5**

### **How to achieve gender parity in the International Criminal Tribunals**

**5 October 2017 from 1.45 – 4.00pm, The Hague Institute for Global Justice**

**Moderator:**

H. E. Ambassador Ugalde, Ambassador of Costa Rica to the Kingdom of The Netherlands,  
Vice-President of the Assembly of States Parties to the Rome Statute

**Rapporteurs:**

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#### **The Issue of Underrepresentation in ICT's**

A review of the composition of international tribunals and internationalized justice mechanisms shows that women are underrepresented in almost all cases. The disparity exists not only on the bench but also in high level positions in staff.

The International Criminal Court may be the best existent model of international tribunals in terms of nominating and voting requirements to ensure a gender balance among its judges. It has been called the ‘gold standard’ of gender parity, with currently its President, two Vice-Presidents and Prosecutor being women. These rules have enabled the ICC to have a much better record when it comes to parity than the other international criminal tribunals and mechanisms.

But are these rules enough?

The current ICC bench is composed of 12 men and 6 women. The upcoming ICC judicial elections in December 2017 will reveal that the ICC's bench will have *at best* a 11 men to 7 female ratio for the next three years. Statistics also reveal that the gender parity efforts for the bench do not trickle down to staff at the ICC, where women are heavily underrepresented in high-level positions. The same can be said for counsel representing the Defence in ICC cases, to date not one lead counsel has been a woman.

Yet the numbers of women in high-level and elected positions at the ICC represent a better balance than the numbers in other international tribunals and mechanisms.

From the lessons learned from the STL and the ICTY to assessing the impact of the gender parity rules in electing ICC judges, what are specific recommendations for international criminal justice actors to ensure that international criminal tribunals and mechanisms - current and future - can ensure gender parity among its high level staff and elected officials?

## Recommendations to consider

In 2016, the Assembly of States Parties to the Rome Statute recommended the following to the ICC to address the chronic imbalance of women in higher level positions at the Court (more information below):

- “Further efforts should be undertaken to adopt strategies to identify and support the career advancement within the Court of key female performers who have the potential to advance to senior professional and higher levels.”
- “Steps should be taken to bridge the gender gap by taking the necessary measures to identify, reach and recruit qualified women to fill senior positions.”
- “The Court should continue gathering, monitoring, analysing and reporting data of female applicants and applicants from underrepresented regions, in particular from developing countries, in order to identify the challenges they face in successfully acquiring positions at the Court.”

### What are other recommendations we can identify for the ICC and other international criminal tribunals?

To get the discussion going, let’s consider the following questions:

1. Are measures such as **quotas** or minimum nomination and voting **requirements** needed and effective?
2. Is there a need for **internal oversight mechanisms and/or accountability mechanisms for recruitment processes**, such as a “comply or explain” rule or an instituted Focal Point for Women involved throughout the recruitment process (including in the formulation of the vacancy announcement)?
3. What are useful strategies to build a **gender-inclusive workplace culture**? Examples could include recommendations for **Flexible Working Arrangements**, a **mentoring programme** to benefit female staff members and **training and capacity-building activities** aimed at female staff to increase women’s participation in leadership positions.
4. Should the **UN system of recruitment** be a main target for reform, as it is used by or used as a model by most ICT’s?<sup>1</sup>

At the start of the workshop, some of the main recommendations from the following GQual panels will be reported back on for your consideration:

- Dimensions of the underrepresentation of women in international tribunals and monitoring bodies (First Panel – First Day)
- Exploring the causes of gender under-representation (Fourth Panel – First Day)
- Best Practices and ideas for improving gender equality – examples from successful and creative initiatives (Fifth Panel – First Day)
- Guidelines for achieving gender parity through national nomination procedures (1st Panel – Second Day);
- Guidelines for achieving gender parity through improved voting procedures (2nd Panel – Second Day)

<sup>1</sup> See the Secretary General's Gender Parity Strategy Report of September 2017, which includes UN Gender Statistics from 2015 on page 5. [The Report can be found under https://iseek.common.un.org/genderparity.](https://iseek.common.un.org/genderparity)

## Background and some statistics

### Electing ICC Judges

According to article 36(8)(a)(iii) of the Rome Statute, States Parties “shall, in the selection of judges, take into account the need, within the membership of the Court, for [...] A fair representation of female and male judges.”

To make sure that the ICC bench remains fully representative each judicial election has Minimum Voting Requirements (MVRs). Minimum Voting Requirements are instructions that States Parties must follow in filling out the ballots during the first four rounds of voting. It demands that States Parties vote a minimum number of times, as determined by an established formula, for candidates from areas that are underrepresented. Minimum voting requirements can be put in place for one or more of the following categories: 1) The principal legal systems of the world / legal competence and expertise; 2) Equitable geographical representation; and 3) a fair representation of female and male judges.

The MVR requirement is not a quota system. It does not guarantee that each regional group or gender will obtain the same number of seats as stipulated by the MVRs. The ASP’s ‘Informal guide and commentary to the procedure for the nomination and election of judges of the International Criminal Court’<sup>2</sup> explains:

*“The MVRs make it more likely that candidates that fulfill underrepresented criteria are elected, but – different from outcome quotas – they do not guarantee such an outcome. This is because the MVRs channel some of the votes to certain underrepresented criteria, but that in itself does not guarantee that any particular candidate receives the required two thirds majority [of states parties present and voting at the Assembly of States Parties]. This is in keeping with the negotiation history of the MVRs, which were proposed as a compromise between those delegations that preferred fixed quotas (especially for regions, as is the case in many other elections) and those that preferred unrestricted elections.”*

In accordance with paragraph 21 of ICC-ASP/3/Res.6, the MVR for regional distribution and gender are discontinued after the fourth round of voting, regardless of whether the minimum amount of seats has been filled by the underrepresented group.

#### *The 2017 ICC elections*

At its sixteenth session in 2017, the Assembly of States Parties will elect six new ICC judges (out of 18) to replace the judges whose terms will end in 2018. A Minimum Voting Requirement of 5 female judges is in place. The nomination period lasts 12 weeks and can be extended three times by the ASP President if the regional or the gender Minimum Voting Requirement has not been met with *at least twice* the number of candidates fulfilling the requirement (thus 10 for female candidates). At the end of the third extension, 9 women and 3 men were nominated.

### External Oversight at the ICC – the role of States Parties

The Assembly of States Parties (ASP) is the ICC’s management oversight and legislative body. It is composed of all states parties to the Rome Statute and meets at least once a year to discuss and take decisions upon issues of importance in relation to the functioning and success of the ICC and the Rome Statute system. The ICC is requested on a yearly basis to provide the ASP with a report on its Human Resources. Developed by

<sup>2</sup> Informal guide and commentary to the procedure for the nomination and election of judges of the International Criminal Court, Stefan Barriga (Liechtenstein), 5 May 2017, [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP16/ICC-ASP-16-INF2-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-INF2-ENG.pdf), accessed on 29-9-2017, page 2.



two co-facilitators (state representatives based in New York), the ASP itself produces a yearly report on the “*Equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court*”.<sup>3</sup> The report gives recommendations to the ICC and to the ASP. For 2016, the ASP gave the ICC three specific recommendations to address the chronic imbalance of women in higher level positions, listed above.

The Committee on Budget and Finance (CBF) is an independent expert body responsible for the technical examination of any ICC related document submitted to the ASP containing financial or budgetary implications. The ASP may also entrust to the CBF any other matter of a financial, budgetary, or administrative nature with regard to the work of the court. The CBF also monitors the geographical distribution and gender balance of ICC staff and issues a report after each of its bi-annual meeting with findings and recommendations in this regard.

### Electing ICTY and ICTR Judges

Shortly after the Rome Statute was ratified, the statutes of the ICTY and the ICTR were amended<sup>4</sup> to include a fair gender presentation requirement in the nomination of *ad litem* judges. However, no procedures similar to the ICC’s MVR’s were in place for the election of ICTY or ICTR permanent judges or for the *ad litem* judges.

### Table of Gender Representation of Judges in International Courts and Tribunals

As at 21 September 2017 - including vacancies

	Total	Men	Women
International Criminal Court (ICC)	18	11	7
UN International Criminal Tribunal for the former Yugoslavia (ICTY)	8	8	0
UN International Criminal Tribunal for Rwanda (ICTR) <i>At its closure in 2015</i>	10	8	2
UN Mechanism for International Criminal Tribunals (MICT)	25 (roster)	19	5
Special Tribunal for Lebanon (STL)	11	8	3
Kosovo Specialist Chambers & Specialist Prosecutor's Office	19 (roster of international judges)	15	4

<sup>3</sup> Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court, ICC-ASP/15/32, 14 November 2016, [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP15/ICC-ASP-15-32-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP15/ICC-ASP-15-32-ENG.pdf).

<sup>4</sup> United Nations Security Resolution 1597 (2005).



**Table of Gender Balance of Professional Staff in the ICC's main organs**

As at 31 March 2017

**Office of the Prosecutor**

Grade	F	M	Grand Total
USG	1		1

Grade	F	M	Grand Total
ASG		1	1

Grade	F	M	Grand Total
D-1		3	3

Grade	F	M	Grand Total
P-5	4	13	17

Grade	F	M	Grand Total
P-4	13	22	35

Grade	F	M	Grand Total
P-3	26	45	71

Grade	F	M	Grand Total
P-2	44	23	67

Grade	F	M	Grand Total
P-1	24	8	32

**Registry**

Grade	F	M	Grand Total
ASG		1	1

Grade	F	M	Grand Total
D-1		3	3

Grade	F	M	Grand Total
P-5	8	13	21

Grade	F	M	Grand Total
P-4	14	24	38

Grade	F	M	Grand Total
P-3	33	37	70

Grade	F	M	Grand Total
P-2	44	32	76

Grade	F	M	Grand Total
P-1	1	2	3

**Judiciary**

Grade	F	M	Grand Total
P-5	2	1	3

Grade	F	M	Grand Total
P-4	1	2	3

Grade	F	M	Grand Total
P-3	11	8	19

Grade	F	M	Grand Total
P-2	4	7	11

**Table of Female Staff at Professional Level in the Office of the Prosecutor and Registry of the ICTY**

As at 31 March 2017

**In the Office of the Prosecutor**

USG	0%	(0 out of 1)
D-1	100%	(1 out of 1)
P-5	0%	(0 out of 4)
P-4	50%	(5 out of 10)
P-3	33%	(4 out of 12)
P-2	60%	(3 out of 5)

**In Registry (incl Judiciary)**

ASG	0%	(0 out of 1)
D-1	33.3%	(1 out of 3)
P-5	60%	(6 out of 10)
P-4	64%	(13 out of 20)
P-3	70%	(23 out of 33)
P-2	66%	(19 out of 29)

In Office of the Prosecutor 41% of the D and P staff and 58.5% of the GS staff are women

In Registry 65% of the D and P staff and 67% of the GS staff are women



## Stakeholders

Who should our recommendations be targeted at? Some suggestions for discussion:

### ICT Representatives

- President
- Registrar
- Human Resources Sections
- Heads of Sections
- Internal (independent) oversight mechanisms

### United Nations

### States

- State entities during the nomination process of elected ICT officials
- State entities during the voting processes of elected ICT officials
- State entities providing oversight

### External (independent) oversight mechanisms

### Civil Society organisations

### Academics