

## **A critical time for the ICC's credibility**

The Women's Initiatives for Gender Justice expresses its deep concern regarding recent media reports containing serious allegations about the former ICC Prosecutor, the practices of the Office of the Prosecutor (OTP) under his leadership and the alleged actions of current ICC staff members within the OTP.

The revelations, if true, suggest a series of examples of poor judgment, questionable ethical conduct and conflicts of interest.

The allegations in the media relate to actions that the former ICC Prosecutor took/may have taken whilst he was in office as well as his activities after the completion of his term.

The allegations against staff members of the OTP include, sharing potentially confidential information with the former Prosecutor and involvement in interactions with and/or about a key political figure and potential ICC suspect from a country with a situation under investigation by the OTP, at the behest of the former Prosecutor. These allegations are currently under investigation and at this time no findings have been made.

The allegations unquestionably hold serious implications for the ICC, its credibility, and its work, and it is vital that the Court, the Assembly of States Parties (ASP) and the OTP take all steps possible to address this serious situation. In many respects, the revelations could be considered emblematic of an under-lying culture within the Court, rather than exceptional to the overall environment.

We welcome the referral of this matter by the OTP to the Independent Oversight Mechanism (IOM) for investigation. We are also encouraged by the statements made by the Court that there has not been a breach of the ICC email system.

However, in addition to this referral, a number of other actions addressing both individual and institutional accountability are needed to strengthen the architecture of institutional accountability.

The Women's Initiatives accordingly urges the OTP to undertake an external review of the practices relevant to the allegations, with such a review to include: an investigation into the extent of the contact between the former Prosecutor and any OTP and ICC staff and officials; whether there was any coordination between the former Prosecutor and the OTP regarding the media allegations with respect to the Kenyan cases; and whether the alleged actions of the former Prosecutor in providing confidential investigative information to states parties is an ongoing practice by the OTP.

In light of the allegations, the external review of the OTP should also assess the financial practices of the office for the years of the former Prosecutor's tenure and examine whether any OTP funds were ever transferred to personal bank accounts of any staff members and if so for what purpose and whether any transfers were made to the personal off-shore accounts of the former Prosecutor.

### **Strengthening the Architecture of Institutional Accountability**

With the forthcoming election of six new judges and other appointments due early next year, this is an opportune time to prioritise strengthening the architecture of institutional accountability at the ICC and to renewing the ethical standards within the Court.

The current practices and culture within the ICC are not aligned strongly enough with its noble mandate nor its responsibilities as a public institution for international justice.



The failure within the ICC, over many years, to address impropriety and conflicts of interest as well as the willingness of states parties to look the other way have enabled an environment of non-compliance and unaccountability.

We call on the Assembly of States Parties (ASP) to pursue the following measures:

1. Include within the Omnibus resolution to be adopted at the forthcoming ASP, a directive calling for an ethics audit of the Court with respect to an assessment of the current policy framework, disclosure requirements and ethics-related training provided to all managers.
2. Establish an Integrity Advisory Board for the ICC. This should be external to the Court with advisors located outside of the staff structure. The Board could meet once or twice per year and report their findings directly to the President of the ASP and the Bureau. We suggest that the Board should be comprised of three to five members from relevant disciplines who are not selected on a regional basis but rather for their specific expertise in relation to institutional compliance and corporate/institutional ethics. The members may be drawn from states or non-states parties as they serve in their individual capacity and not as representatives of states or regions. Members may be drawn from the private sector, the field of compliance practitioners, academia or others with relevant expertise.
3. Immediately establish a compliance/ethics office within the Court. This should be comprised of staff members responsible for reviewing the practices of each organ with respect to compliance with rules, regulations, best practices, legal requirements and ASP resolutions. Essentially these are controller positions. We urge the ASP to proportionally reassign funds from the 2018 budget for each organ (based on the staff size) in order to begin the establishment of the compliance/ethics office in 2018.
4. Strengthen the IOM in terms of its actual and perceived independence and impartiality in order to avert any loss of efficacy or credibility of this very important mechanism.

Conducting its work without fear or favour is essential for the IOM to be credible and effective as a mechanism of internal accountability. Its credibility and that of the ICC are closely aligned. We propose that the ASP support the IOM with the view to: demanding and safeguarding its independence; ensuring it has the necessary resources to carry out its mandate; and ensuring that the IOM also adheres to ASP decisions and resolutions as well as the Court's rules and regulations.

### **Restoration of Credibility**

The current revelations have created a serious credibility crisis for the ICC.

The Women's Initiatives expresses its hope that the Court, the ASP, the OTP and States Parties will meet this challenge in a forthright manner and pursue actions to improve internal practices and ethical standards, strengthen the architecture of institutional accountability and ensure the Court's reputation and credibility are restored and fortified for the future.

This is an important moment for the ICC's evolution as a permanent court built for longevity, worthy of public trust and focused on the ethical fulfilment of its mandate.

