

FACTSHEET: The ICC and the Arab World

ON THE INVOLVEMENT OF ARAB STATES IN ESTABLISHING AN INTERNATIONAL CRIMINAL COURT:

- Arab States have been actively involved in the establishment of the International Criminal Court and the Rome Statute since negotiations for the Court began more than 20 years ago.
- The Arab World is underrepresented at the ICC with only three States Parties to the Rome Statute (of a possible 22): Jordan, Djibouti, and Comoros. In addition, Algeria, Bahrain, Egypt, Iran, Kuwait, Morocco, Oman, Syria, United Arab Emirates, and Yemen are signatories.
- All 22 states were present for the drafting of the Rome Statute, the founding treaty of the ICC, at the Rome Conference in July 1998; along with observer delegations from Palestine, the League of Arab States, African Union, and the Organization of the Islamic Conference.
- Several of the 7 States that voted against the Rome Statute were Arab States. Also voting against the Statute was the United States and Israel.
- At the 2010 Review Conference, 112 pledges were made by 37 states and by the European Union including commitments on the ratification of the Agreement on Privileges and Immunities (APIC), implementation legislation, cooperation with the ICC, contributions to the Trust Fund for Victims, capacity building on national investigations and prosecutions among other important issues. No pledges were made from Arab States.

ON THE INVOLVEMENT OF ARAB CIVIL SOCIETY IN DEVELOPING THE COURT:

- More than 300 civil society organizations in the Middle East and North Africa region are members of the Coalition for the International Criminal Court (CICC), with this figure on the rise every year.
- Civil society organizations across the Middle East and North Africa region are working to end impunity and protect the right to truth and justice for victims of atrocities. For these organizations, the Rome Statute provides high legal standards for prosecuting grave crimes that can be drawn upon to help establish similar standards as the norm, rather than the exception, in the region.

- 10 Arab States have national coalitions for the ICC that actively work on promoting ratification of the Rome Statute, implementing its provisions into national legislation, and raising awareness about the work of the Court. The CICC also has Gulf and Arab sub-regional coalitions for the ICC.

ON CONTINUING ARAB STATES' SUPPORT OF THE COURT:

- Jordan held the Presidency of the Assembly of States Parties (ASP) from 2002 to 2005, and was also actively involved in the Trust Fund for Victims, and through chairing conferences on the crime of aggression.
- The Non-Aligned Movement, to which all Arab States belong, has continuously called on its members to join the ICC.
- In 2005, the League of Arab States approved a model Arab Law on Crimes within ICC jurisdiction, to be used by Arab States for guidance in amending their national laws.
- Arab States have been instrumental in pushing forward with defining the crime of aggression, some citing its lack of inclusion in the Rome Statute as a primary reason for not joining the Court.
- Some Arab countries are considering preparing implementing legislation prior to ratification in order to be able to prosecute crimes against humanity, genocide, war crimes nationally before recognizing the Court's jurisdiction over their territories.

ON GLOBAL REPRESENTATION IN THE COURT:

- The Rome Statute requires regional representation based on States Parties. If more Arab States parties join the Court, there will be greater representation.
- As of September 2010, ICC judges come from Kenya, Bolivia, France, Mali, UK, Germany, Finland, Ghana, Botswana, Uganda, Costa Rica, South Korea, Brazil, Italy, Bulgaria, Latvia, and Belgium. According to Rome Statute Article 36(8), the selection of judges is based on: representation of the principal legal systems of the world; equitable geographical representation; and a fair representation of female and male judges. According to Article 36(4)(b), each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.
- The Prosecutor, Deputy Prosecutor, Registrar, and Deputy Registrar hail from Argentina, Gambia, Italy, and Senegal, respectively.

ON THE COURT'S WORK SO FAR:

- There are five situations currently under investigation at the ICC (the Democratic Republic of the Congo; Northern Uganda; Central African Republic; Darfur, Sudan; and Kenya). The first three of these were referred to the Court by the states themselves. The situation in Kenya was initiated by the Prosecutor *proprio motu* on the basis of information on crimes within the jurisdiction of the Court under Article 15 of the Rome Statute.
- The fourth situation before the Court (Darfur, Sudan) was referred by the UN Security Council in 2005; there were no dissenting votes among Council members on this resolution, including Arab and African Council members. Eleven UN Security Council Members voted in favor, including: Denmark, Philippines, Japan, United Kingdom, Argentina, France, Greece, Tanzania, Romania, Russian Federation, and Benin. The four abstentions included Algeria, Brazil, China, and the US.
- The OTP is currently conducting preliminary analysis of situations in a number of countries including Chad, Afghanistan, Georgia, Colombia and Palestine.
- On 22 January 2009, the Palestinian National Authority lodged a declaration with the Registrar under article 12(3) of the Rome Statute which allows states not party to the Statute to accept the Court's jurisdiction. The OTP is examining all issues related to its jurisdiction, including whether the declaration accepting the exercise of jurisdiction by the Court meets statutory requirements, whether crimes within the Court's jurisdiction have been committed and whether there are national proceedings in relation to alleged crimes (<http://www.icc-cpi.int/menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/palestine/summary%20of%20submissions%20on%20whether%20the%20declaration%20lodged%20by%20the%20palestinian%20national%20authority%20meets>).
- In 20 April 2009, the John Dugard-led Independent Fact Finding Committee on Gaza submitted its 254-page report to the Arab League calling for the referral of the situation to the ICC (http://www.arableagueonline.org/las/picture_gallery/reportfullFINAL.pdf).
- On 16 September 2009, the United Nations Human Rights Council-established the UN Fact Finding Mission on the Gaza Conflict (led by Justice Richard Goldstone), set up to investigate crimes committed in the Gaza strip at the end of 2008 and beginning of 2009, released its report. It was presented to the Human Rights Council on 29 September 2009. The report found that there was strong evidence of crimes against humanity and war crimes committed in the Gaza conflict and recommended that the UNSC require Israel and the Palestinian Authority to carry out national level investigations and prosecutions against

those responsible. It further recommended that if, in a 6 month period, no proceedings were forthcoming at the national level, that the situation to be referred to the ICC Prosecutor by the UN Security Council, as was done following the UN Commission of Inquiry on Darfur . (<http://www2.ohchr.org/english/bodies/hrcouncil/specialesession/9/factfindinmission.htm>).

- The OTP began keeping track of developments in Iraq in 2003 but on 9 February 2006 ascertained that the situation did not meet the statutory requirements for the commencement of a formal investigation. The OTP explained it did not have jurisdiction over non-State Party actors (Iraq and US), since their states are not parties to the Statute. The Court thus looked into the actions of ICC States Parties (UK, Canada, others) and found that actions by those actors did not rise to the level that would warrant an investigation. The OTP pledged on that date to reconsider his findings in light of new facts or evidence. There has not been any public development since then.

ON THE REGION'S NEED FOR AN INTERNATIONAL CRIMINAL COURT:

- The kinds of crimes the ICC was created to prosecute continue to occur in the region; the Court currently does not have jurisdiction over most of the states in the region and thus can not investigate or prosecute these crimes. The Court gains jurisdiction over the region when states become states parties to the ICC statute.
- Arab States should join the Court without delay. Doing so would make clear the region's commitment to the fight against impunity and would give the Court the power, as a last resort, to step in to do justice where justice is deserved.
- By attempting to punish those responsible for these crimes, the Court is standing up for victims and attempting to prevent the future occurrence of atrocities.

THE ICC IS NOT A WESTERN COURT UNFAIRLY FOCUSING ON AFRICAN AND ARAB STATES

IT IS A GLOBAL COURT WITH HISTORICALLY STRONG SUPPORT FROM NON-WESTERN STATES.

IT WOULD NOT BE THE COURT IT IS TODAY WITHOUT THE VALUABLE INPUT, INVOLVEMENT, AND SUPPORT OF THE MAJORITY OF ARAB AND AFRICAN STATES.

THE COURT SEEKS JUSTICE FOR VICTIMS OF GRAVE CRIMES; IT NEEDS WIDER SUPPORT OF ARAB GOVERNMENTS, CIVIL SOCIETY, AND THE PUBLIC IN ORDER TO ACHIEVE JUSTICE.

THE ICC IS AN INTEGRAL AND ESSENTIAL PART OF THE FIGHT AGAINST IMPUNITY ALL OVER THE WORLD.