

AL-MAHKAMAH

MIDDLE EAST AND NORTH AFRICA (MENA) UPDATE

SEPTEMBER 2013

TOGETHER FOR JUSTICE

ISSUE 18

LETTER FROM THE REGIONAL COORDINATOR, LEILA HANAFI

Under the umbrella of the Coalition for the ICC, civil society in MENA has been working to harness the momentum towards justice created by the Arab Spring.

One of the key topics discussed at the last Assembly of States Parties, and fittingly so, is complementarity, the principle under which national justice systems retain primary responsibility to investigate and prosecute grave crimes. Under that system, the ICC is a 'court of last resort', playing a role complementary to sovereign national jurisdictions. The challenge is for the region to try to take advantage of the opportunities created by the Rome Statute system.

Civil society groups serve as watchdogs over state organs to ensure governments' solid commitments

to combating impunity, and advancing the principles of good governance, justice, and the rule of law. As such, the Coalition will convene a MENA Strategy Meeting in early 2014, the fourth of its kind in the region. This meeting provides a platform to facilitate exchanges of expertise between Coalition members from the region, as well as with the ICC and international organization representatives. These discussions will allow the Coalition to map out challenges in increasing acceptance to the Rome Statute and promote the cross-fertilization of experiences to overcome these challenges.

The Coalition remains committed to advancing efforts in the region during this eventful time for the MENA region, and I look forward to working with you.



Regional Coordinator Leila Hanafi with Ambassador Tiina Intelmann, President of the ASP to the ICC. Credit: CICC

UPDATE ON THE CONFLICT IN SYRIA

After two years of bloodshed in Syria, the conflict continues to cause more casualties and wide scale destruction. More than 110,000 people, mostly civilians, have been killed, while thousands have been suffering from various human rights violations. No doubt the Syrian situation has witnessed, in two years, a scale of atrocities that have not been witnessed since the Rwandan genocide in 1994. (hard to prove. What about DRC? May need to temper that slightly) The "never again" promise of Nuremberg seems to be broken again.

Despite the international community's condemnation, not much has been done to stop the massacres and atrocities. In terms of accountability and deterrence, the international legal system seems paralyzed due to obvious political reasons. The firm belief of the Syrian regime, as well as some radical rebel groups, that international justice is impotent and cannot impose accountability has severely contributed to the culture of impunity in Syria. In fact, continuous crimes of torture and enforced disappearances have been taking place in Syria for decades without accountability.

The enforcement of international criminal law—the law that prosecutes and punishes the perpetrators of international crimes—can be done through two mechanisms: the domestic courts (indirect enforcement mechanism) and/or international courts (direct enforcement mechanism). I am personally not aware



In Majdal Shams, in the occupied Golan Heights, blood red graffiti reads "Stop killing the Syrian people." Credit: Mya Guarnieri/IRIN

of any domestic prosecutions against Syrian perpetrators that have taken place. He seems to mean under universal jurisdiction but we should clarify. This is probably because of jurisdictional hurdles, such as lack of double nationality among the alleged perpetrators or due to avoidance of visits to these countries by the alleged criminals. On the other side, the possibility of internationally prosecuting international crimes occurring in Syria is facing no less complications. The political realities do not allow for currently establishing an ad hoc tribunal for Syria under the auspices of the

United Nations. The last option, which is of no less difficulty, is the permanent International Criminal Court (ICC). As already known, Syria is not a state party to the Rome Statute (Treaty). The ICC cannot exercise jurisdiction except on nationals of state parties or on the territories of a state party.¹ In terms of a Security Council referral, there is a strong resistance among some of the permanent members of United Nations Security Council—specifically Russia and China—for any transfer of the Syrian situation to the ICC. With a deadlock such as this, what are the remaining possible solutions for ending impunity and deterrence for committing more crimes in Syria?

There are some creative—yet difficult—solutions that can circumvent this stalemate. Article 12(3) of the ICC Statute allows a non-state party to lodge a declaration that extends the ICC's jurisdiction to a defined situation on its territories.

It is improbable that the Syrian Government will lodge such a declaration. However, the breakthrough can be through the Syrian Opposition's recent declaration of a government in exile.² If the majority of the state parties of the ICC (the Assembly of State Parties) recognize this government as the legitimate representative of the Syrian State, then the ICC can consider such a government fulfilling the requirement of representing a "State which is not a Party" under article 12(3). If

CONTINUED...

¹ Article 12(2) of the Rome Statute of the International Criminal Court

² See "Interim Prime Minister Elected by Syrian Opposition", March 19, 2013, available online at: <http://www.npr.org/2013/03/19/174708595/interim-prime-minister-elected-by-syrian-opposition>. This step has been facing enormous challenges. The recent resignation of the Interim Prime Minister Ghassan Hitto is an indication of such difficulty, but this can be easily rectified by the representatives of Syrian opposition in the near future by reformulating a new government with wider representation. See "Another Leader Quits Post in Syrian Exile Group", July 8, 2013, available online at: <http://www.nytimes.com/2013/07/09/world/middleeast/syria.html>

UPDATE ON THE CONFLICT IN SYRIA

this materializes, then nothing can prevent the newly recognized government to lodge a declaration under article 12(3) accepting the jurisdiction of the ICC, and thus expanding its jurisdiction to the Syrian territories. However, the challenge remains in the political will to

support the ICC's investigation by then, and to provide the necessary cooperation to arrest the perpetrators.

In my opinion, the crimes widely committed in Syria with impunity have brought international criminal

justice on its head. I have no doubt that the path of humanity and justice will prevail eventually, but should it always come too late? Isn't true that justice delayed is justice denied?

COALITION ACTIONS IN MENA

IRAQ—On 23 February 2013, the Coalition participated in a conference entitled “Kurds and the International Criminal Court” in Erbil, the Kurdistan region of Iraq. While ratification still falls under the authority of the Iraqi Central Government, Kurdish officials were vocal in their support of the ICC during this time. In addition, civil society organizations in the Kurdistan region recently launched the “Kurdish Organizations’ Coalition for the International Criminal Court (KOCICC)”, which will work hand in hand with the Iraqi National Committee on the ICC for the support of Iraq’s ratification of the Rome Statute

UAE—The Coalition co-hosted a meeting at UAE University in February 2013, with the theme “The Law and Practice of the International Criminal Court: Achievements, Challenges and Prospects” which attracted the participation of over 80 law academics, law enforcement officials, and representatives from the legal community.

Palestine/Israel—On 18-31 January 2013, the Coalition’s MENA Program Officer with Palestinian and Israeli Coalition members in The Hague to discuss the implications of the UNGA’s resolution upgrading Palestine’s status at the UN from an observer entity to a non-member observer state and the prospects of Palestine’s ratification of the Rome Statute. These members are now working together on a se-

ries of advocacy meetings to place pressure on both governments to join the ICC.

During a meeting with ICC Prosecutor Fatou Bensouda, Tunisian Justice Minister Ali Muhanna handed the Prosecutor a letter on behalf of the Palestinian government. Ms. Bensouda said later on that she believed that Palestine qualifies now to join the ICC after the UN General Assembly voted to upgrade the country’s status as a non-member state on 29 November 2012.

MOROCCO—In July 2013, the Coalition, with Mohamed V University and the ICC, held a three day seminar on the “Rule of Law and the ICC within the Moroccan context and the broader Middle East and North Africa region.” In addition, there was a one day media training to educate journalists on international justice issues. Several recommendations ensued from the discussions, including organizing multi-stakeholder national workshops on the ICC, establishing partnerships with civil society experts and continuing dialogue with key national authorities.

YEMEN—In June 2013, the Yemeni government met in Sana’a to plan the implementation for its Transitional Justice Project with UNDP, OHCHR, the EU, and the Ministry of Legal Affairs. It was emphasized that Yemen would be supplied with logistical and programmatic support, and in addition,

would also focus on building accountable national institutions while providing sustainable capacity to support mechanisms of redress in Yemen. The same month, the Yemeni cabinet announced its approval to join the ICC and formed a ministerial committee chaired by the Human Rights Minister to oversee the preparation of draft legislation that would eventually be presented to the Yemeni Parliament.

TUNISIA—On 20 June 2013 in Tunis, Al-Kawakibi Democracy Transition Center (KADEM) and its international partner No Peace Without Justice (NPWJ) held a conference on “Transitional and International Justice in the Arab region”, with ICC Prosecutor Fatou Bensouda in attendance. Both KADEM and NPWJ are working in Tunisia to build civil society’s capacity to be effective in ensuring that abuses are dealt with transparently and effectively during Tunisia’s democratic transition.

LAS—On 26 March 2013, during the Arab League (LAS) Summit in Doha, LAS members welcomed and approved the establishment of a potential Arab Court for Human Rights. During this time, the LAS formed a committee of legal experts charged with drafting the Statute of the Court where it will be discussed shortly in the next LAS summit scheduled in September 2013. NGOs are pushing for all systems to be consistent with international standards.

COALITION FOR THE
INTERNATIONAL CRIMINAL COURT
WWW.COALITIONFORTHEICC.ORG



c/o WFM, 708 3rd Ave 24 Fl
New York, NY 10017 USA

Phone: +1 212-687-2863 • Fax: +1 212-599-1332
E-mail: cicc@coalitionfortheicc.org

Bezuidenhoutseweg 99 A, 2594 AC
The Hague, Netherlands

Phone: +31-70-311-1088 • Fax: +31-70-364-0259
Email: cicc-hague@coalitionfortheicc.org

To subscribe to our mailing lists, please visit: coalitionfortheicc.org/?mod=mailinglists and select the MENA option for MENA-specific updates.

Visit our website in Arabic at coalitionfortheicc.org/ar



The Coalition is deeply appreciative of the generous support provided by all of our many partners and donors from around the globe. Major funding has been provided by the European Union, the Ford Foundation, Humanity United, the John D. and Catherine T. MacArthur Foundation, the Open Society Institute and the Sigrid Rausing Trust, as well as by the governments of Australia, Austria, Belgium, Denmark, Finland, Ireland, Liechtenstein, Luxembourg, The Netherlands, New Zealand, Norway, Sweden and Switzerland, and a number of individual donors. Such support has been essential to the Coalition’s effort to secure a future in which justice is accessible to all.

If you would like more information about how you can join in this effort, please visit our website at www.coalitionfortheicc.org or contact us by phone at +1.646.465.8527 or via email at development@coalitionfortheicc.org. The contents of this publication are the sole responsibility of the Coalition for the International Criminal Court and should in no way be taken to reflect the views of the European Union, Irish Aid or any other donor. Views expressed here are those of the authors and not necessarily those of the Coalition Secretariat, our members or our funders. Articles without a byline have been written by CICC Secretariat staff.