Justice must be part of the response to the Syrian crisis

Effective justice is a shared responsibility
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The Coalition’s Steering Committee comprises a core group of member organizations which provide policy and program coherence for the Coalition’s efforts and activities.
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Asian Forum for Human Rights and Development
Asociación Pro Derechos Humanos
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Comisión Andina de Juristas
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Human Rights Network
Human Rights Watch
Justice Without Frontiers
No Peace Without Justice
Parliamentarians for Global Action
The Redress Trust
Women’s Initiatives for Gender Justice
World Federalist Movement-Institute for Global Policy

WHO WE ARE
Established in 1995, the Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries working in partnership to:

- Strengthen international cooperation with the ICC;
- Ensure that the Court is fair, effective and independent;
- Make justice both visible and universal;
- Advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.

For the latest #GlobalJustice news and civil society views, connect with us at coalitionfortheicc.org.

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The generous support provided by our dedicated partners allows us to further advance international justice and cooperation with the ICC. For more information, contact development@coalitionfortheicc.org.
WITH DEMANDS for justice and accountability for grave crimes growing around the world, the role and impact of the International Criminal Court (ICC) have never been so closely scrutinized.

Encouragingly, reforms underway aim to strengthen investigations and prosecutions, speed up trials, address sexual and gender-based crimes, bring justice closer to affected communities and streamline administrative processes.

Yet the indispensable role of governments and the ICC’s governing body, the Assembly of States Parties, also needs to improve. With one hand states enhance the ICC; with the other they inhibit the Court. Budget constraints, failures to arrest and isolate fugitives, and limited take up in national prosecutions and voluntary agreements, all contribute to delays in the delivery of justice.

Similarly, the United Nations Security Council limits the impact of international justice in failing to back up ICC investigations and in its outrageous inconsistency in referrals to the Court. The shameful misuse of the veto to block action to prevent or halt ICC crimes has been catastrophic, as in the case of Syria.

One of the places the ICC has been most effective is Africa. One African diplomat stated that the reason the ICC is in trouble there is because it is working. The message from our Africa strategy meeting in 2015 was that the Rome Statute continues to provide a critical blueprint for civil society to advance accountability and standards of good governance across the continent.

As the ICC president points out in these pages, the challenges facing the ICC system are likely to increase as the Court and its impact grows. We hope this 47th edition of The Global Justice Monitor makes clear that effective justice is the responsibility of all actors in the international system.

William R. Pace, convenor, Coalition for the International Criminal Court
ATROCITIES COMMITTED with impunity have had an untold human impact in Syria, set its development back almost four decades and fuelled the biggest refugee exodus since the Second World War. Justice must be part of the response to the crisis that has so exposed the ineffectiveness of the international community to protect civilians and deter the most heinous crimes.

Syria suffers

Grave crimes by government forces, rebels and terrorist groups have been well-documented since the outbreak of post-Arab Spring violence in Syria. The numbers are staggering. Since the onset of the crisis in 2011, around 220,000 have been killed, over one million injured and 50 percent of the population displaced. Four million have fled and over 12 million remain in urgent need of humanitarian assistance inside the country.

According to the UN, life expectancy is estimated to have shortened by almost 13 years and school attendance has dropped more than 50 percent. Syria has also seen reversals in all 12 recorded millennium development goal indicators. By the end of 2013, an estimated three in four Syrians were living in poverty, with 54 percent in extreme poverty. Fearing for their lives and livelihoods, it is no surprise so many leave.

Justice vetoed

With little hope for domestic accountability, it is the responsibility of the international community to advance alternative routes towards justice.

In March 2015, a UN commission of inquiry repeated its call for the UN Security Council to request the ICC prosecutor to investigate crimes by all sides in Syria. The UN secretary-general did similar later in the year.

“The rule of law must become a cornerstone of the international community’s approach to preventing mass human rights violations. We are fortunate to live in a world that finally has the legal tools and framework to hold perpetrators accountable. Governments must advance systemic solutions to the violence killing so many victims and driving the exodus from Syria. Regardless of the institution or forum, justice ultimately has to be part of the wider peace solution. Without it Syria will remain entrenched in cycles of violence.”

—Radwan Ziadeh, director, Damascus Center for Human Rights Studies
joining the call of dozens of states and hundreds of civil society groups. While vetoes by Russia and China of a referral resolution in 2014 make another attempt unlikely in the short-term, governments must keep the pressure on for accountability.

Some have suggested the establishment of a temporary international tribunal set up under UN auspices, separate to the ICC. However, this option would also be at the mercy of the veto-wielding states in the Security Council.

**National prosecutions?**

Several states and some civil society groups, have been collecting evidence of grave crimes in Syria in anticipation of future prosecutions.

In September 2015, France announced a national investigation under the principle of universal jurisdiction into torture allegedly carried out by Bashar al-Assad’s regime. Other governments may eventually be able to prosecute suspected war criminals that have fled Syria to their territories.

The ICC prosecutor has also urged ICC member states to prosecute their own nationals suspected of committing crimes in Syria and Iraq, indicating that ICC prosecutions of ISIS leaders would be unlikely given jurisdictional constraints.

While welcome, the efforts of individual countries will be of limited scope. They do not absolve the wider international community of collective responsibility to end the widespread abuses that continue to be committed with complete impunity.

“In Syria, a lack of accountability not only encouraged ongoing violence and contributed to the current refugee crisis, it helped carve out a space in which groups like the so-called Islamic State flourished. Yet while the barbarism of the Islamic State is hard to ignore, it is important to remember that the majority of suffering by far is being inflicted on the people of Syria by their own government. It is past time for the international community to wake up and insist on accountability both now, wherever possible and as part of an overall political solution to the conflict.”

—Alison Smith, director of the international justice programme, No Peace Without Justice
Peace and stability

Justice alone, through the ICC or other legal mechanisms, will not solve the Syrian conflict. But accountability must come in some shape if the country is to have any chance at ending the cycles of atrocious crimes still claiming the lives of thousands.

And as long as violence and impunity reign in Syria, the unprecedented pressures on governments and the international humanitarian system will continue to mount.

In the year that saw access to justice included in the new UN global development goals, governments must insist that accountability be central to efforts to bring peace and stability to Syria—and to the growing number of countries where heinous crimes are becoming ever-present.

—Nada Kiswanson van Hooydonk, senior legal advocacy officer and head of Europe office, Al-Haq

“Countries in the Middle East endured a tumultuous 2015: civil war, insurgency and occupation aimed at shifting the regional power dynamics and erasing the borders of states. The chaos has reverberated beyond the region as it has become the source of a refugee crisis that has caught Europe in the headlights. For Al-Haq, the lesson is clear: impunity for international crimes perpetuates human suffering, regional instability and undermines the human rights of all.”

—Nada Kiswanson van Hooydonk, senior legal advocacy officer and head of Europe office, Al-Haq

IN THIS FEATURE AND ON THE COVER

In September 2015, American visual journalist and photo editor Patrick Witty spent three weeks following refugees on their journeys across the Aegean to Greece, through Serbia, Croatia and Hungary. “I witnessed thousands of men, women and children landing on the coast of Greece, some crying with joy, others fearful of the next step. I was deeply moved by their strength and courage. Hopefully, I’ve offered a glimpse into what it feels like to be on this epic journey.” © Patrick Witty/Time
# The ICC’s Year in Numbers

Based in The Hague, the International Criminal Court tries individuals for war crimes, crimes against humanity and genocide committed from 2002 onwards. Victims can participate in proceedings and receive reparations.

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<td>Two suspects were transferred to ICC custody: Lord’s Resistance Army commander Dominic Ongwen and Tuareg rebel Ahmad al Faqi al Mahdi.</td>
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<td>Thirteen fugitives remain publicly wanted by the ICC. They include Sudan President Omar al-Bashir and his deputies, LRA leader Joseph Kony, former Côte d’Ivoire first lady Simone Gbagbo, Saif Gaddafi and three Kenyans suspected of witness tampering.</td>
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<td>The prosecution announced that it will add 60 extra counts to the charge sheet against LRA commander Dominic Ongwen, for a total of 67, including 19 counts related to sexual and gender-based crimes.</td>
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<td>Two states not party to the Rome Statute made article 12.3. declarations—a special mechanism to accept ICC jurisdiction. Ukraine made its second declaration in two years, extending ICC jurisdiction back to November 2013. Palestine’s declaration gives the Court jurisdiction back to June 2014.</td>
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<td>Mathieu Ngudjolo Chui spent three years in asylum detention in the Netherlands following his acquittal at the ICC. No government has agreed to take in acquitted ICC suspects. The Congolese militia leader was deported in May 2015 after Dutch authorities said they had serious reasons to believe he had committed grave crimes which disqualified him from refugee protection.</td>
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<td>There are now 123 states parties to the Rome Statute following Palestine’s accession in April 2015.</td>
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<td>2149 victims have been granted the right to participate in the trial of Congolese militia leader Bosco Ntaganda.</td>
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<td>The Kampala Amendment on the Crime of Aggression has now been ratified by 24 states. 30 states must ratify before the amendment can enter into force, subject to approval by a two-thirds majority of the Assembly of States Parties in 2017.</td>
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Côte d’Ivoire post-election violence

CÔTE D’IVOIRE’S former president Laurent Gbagbo refused to cede power following his defeat in the West African country’s 2010 presidential election. Ensuing violence saw up to 3,000 killed and thousands more injured. Following his defeat, Gbagbo was arrested and transferred to the ICC. He faces trial in 2016 alongside his protégé and political ally, youth leader Charles Blé Goudé. Both are charged with four counts of crimes against humanity, including murder and rape. The ICC prosecutor will set out to prove that they created and executed a common plan to hold on to power by encouraging attacks on the supporters of current president Alassane Ouattara. Simone Gbagbo, Côte d’Ivoire’s former first lady, is also implicated in the alleged criminal scheme and remains wanted by the ICC. In 2015, she was convicted of undermining state security by an Ivorian court and sentenced to serve 20 years in prison. ICC judges have confirmed Côte d’Ivoire remains obliged to surrender her.

Uganda back in the spotlight

Joseph Kony’s Lord’s Resistance Army (LRA) has been wreaking havoc in northern Uganda and surrounding countries since the 1980s, suspected of countless massacres, abductions, the use of child soldiers, sexual enslavement, torture and pillaging. The situation was among the first to be investigated by the ICC. In 2005, the prosecutor issued arrest warrants for Kony and four of his commanders. Yet all have eluded authorities by operating in remote border regions of central Africa—until now. In January 2015, following a reported falling-out with Kony, Dominic Ongwen handed himself in to authorities in the Central African Republic and was swiftly transferred to The Hague. At his first appearance hearing before ICC judges, Ongwen confirmed he was a senior LRA commander, but claimed he was abducted by the group at age 14. A confirmation of charges hearing to decide whether to send the case to trial will take place in January 2016. Ongwen faces 67 counts of crimes against humanity and war crimes.
In the context of the ICC’s first investigation, the long-awaited trial of militia leader Bosco Ntaganda marked another significant step in the fight against impunity in the Democratic Republic of Congo (DRC). The trial opened in The Hague in September 2015 and will continue well into 2016. Ntaganda—nicknamed “Terminator” for his reputation for leading from the front—was a commander in several armed rebel groups in the DRC’s troubled eastern provinces from the late 1990s onwards, including the Patriotic Forces for the Liberation of Congo and, most recently, the March 23 Movement (M-23). He also served as a general in the Congolese army from 2009 to 2012. Following two ICC arrest warrants, the first issued as far back as 2006, Ntaganda surrendered to the US embassy in Rwanda in 2013. He faces 13 counts of war crimes and five counts of crimes against humanity, including murder, rape, sexual slavery, and enlisting and conscripting children under the age of 15 and using them to participate actively in hostilities.

**First ICC witness tampering trial**

The first ICC witness tampering trial also opened in September 2015, sending a clear message to anyone attempting to interfere in the administration of international justice. The ICC prosecutor alleges that, since early 2012, defense witnesses testifying in the now-concluded ICC trial of Congolese politician Jean-Pierre Bemba were bribed to give false testimony. Bemba has been implicated along with four Congolese associates, including his former defense lawyer and a member of the DRC parliament. Although not core ICC crimes, offenses such as witness interference can have a great impact on the reliability of evidence and the ability of the judges to make an impartial judgment. The trial is expected to conclude in 2016.

**Arrest for alleged cultural destruction in Mali**

In the first ICC case involving suspected cultural war crimes, Tuareg rebel Ahmad al-Faqi al-Mahdi was arrested in Niger and transferred to ICC custody in September 2015. The prosecutor alleges al-Faqi worked closely with terrorist groups Ansar Dine and al-Qaeda in the Islamic Maghreb—heading the so-called Manners’ Brigade—following the invasion of Mali’s Timbuktu by Islamist rebels in 2012. He is charged with the war crime of intentionally directing attacks against historical monuments or buildings dedicated to religion in the UNESCO protected city. The pre-trial hearing to decide whether to send the case to trial is set to open in January 2016.

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**AL-BASHIR’S SHRINKING WORLD**

Civil society efforts to enforce two ICC arrest warrants for Omar al-Bashir is making the Sudanese president think twice about international travel

**2009—South Africa**

Al-Bashir declines invitation to attend President Jacob Zuma’s inauguration after activists threaten legal action.

**2010—Kenya**

Civil society protests as al-Bashir attends ceremony for Kenya’s new constitution.

**2010—Zambia**

Al-Bashir cancels planned attendance at the International Conference on the Great Lakes Region following outcry.

**2010—Central African Republic**

At the last minute, al-Bashir decides not to attend a celebration of 50 years of Central African Republic independence.

**2012—Malawi**

Malawi President Joyce Banda refuses to welcome al-Bashir for an African Union (AU) summit, forcing its relocation to Ethiopia.

**2013—Nigeria**

The Nigerian Coalition for the ICC applies for arrest warrant in a local court as al-Bashir makes a surprise visit to the country for an AU conference. He flees less than 24 hours after his arrival at an AU conference.

**2014—Democratic Republic of Congo**

90 civil society organizations call for al-Bashir’s arrest when attending a regional summit. He leaves early.

**2015—South Africa**

Al-Bashir is forced to flee after civil society applies for execution of ICC arrest warrants in Pretoria’s high court.

Next stop: The Hague?
VICTIMS OF GRAVE crimes by convicted militia leader Thomas Lubanga in the eastern Ituri region of the Democratic Republic of Congo (DRC) are in line to receive collective reparations following key developments in 2015. With former child soldiers recruited by Lubanga among those standing to benefit, a sensitive approach to redress is crucial to avoid deepening tensions in the yet-to-be resolved conflict.

The ICC is the first international tribunal to provide reparations to victims, a key restorative feature of the Rome Statute (RS) system of global justice. Recognized victims can claim reparations for harm that was suffered either directly or indirectly. Reparations can include restitution, compensation and rehabilitation. They can be awarded either individually, collectively, or both.

Lubanga’s conviction in 2012 in the Court’s landmark first trial, for the war crimes of recruiting and using child soldiers in Ituri in 2002-3, brought the Court’s reparations mandate into play for the first time.

In a decision in the Lubanga case in March 2015, the ICC Appeals Chamber set out five key principles for reparations. Judges decided that reparations would be awarded collectively given the potential number of victims. They also stated that all victims are to be treated fairly and equally, that reparations should include reintegration of former child soldiers and be gender inclusive.

Though the reparations order was directed against Lubanga, he is considered indigent and therefore unable to pay. The Chamber consequently instructed the Trust Fund for Victims (TFV) to implement the reparations award.

Established under the RS, the TFV is mandated to implement Court-ordered reparations, as in the Lubanga case. It also provides wider physical, psychological and material support to victims and their families in ICC situation countries. Its funds are provided voluntarily by states, organizations and other donors.

“Providing former child soldiers with the medical and psychological assistance they need and the tools necessary to re-engage with their communities as part of a broader campaign against discrimination and stigmatisation is crucial for their sustainable rehabilitation.”

—Jean-Claude Katende, president, ASADHO (African Association for Human Rights, DRC)

In November 2015, the TFV presented the Lubanga reparations plan to ICC judges, suggesting €1 million be awarded collectively to victims over three years. It lists both former child soldiers and indirect victims of Lubanga’s crimes as eligible for reparations and proposes several forms the awards may take.

Due to the ongoing conflict in Ituri, which has claimed the lives of an estimated 50,000 civilians since 1999, the Lubanga reparations awards must promote reconciliation by benefitting victims and affected communities alike. This is a crucial moment for the ICC as it moves to deliver on its promise of redress for victims of what are truly heinous crimes.
HOPES FOR 2016

Coalition members share their expectations for accountability for grave crimes

“From bolster the efficiency of the Rome Statute framework, states must give the ICC the cooperation it needs to succeed. We cannot fight against impunity without providing the Court with the appropriate instruments to uphold the values of democracy, rule of law, human rights and, most of all, justice for victims. Costa Rica’s commitment remains resolute. That is why, in July 2015, I tabled a bill to reinforce the cooperation of my country with the ICC. More states should do the same in 2016.”

— Ronny Monge Salas, member of Parliamentarians for Global Action, Costa Rica

“Those responsible for these crimes can successfully be held to account before national courts. Guinea could become a remarkable example of cooperation with the ICC, which has been conducting a preliminary examination since 2009, and the 28 September case a landmark in the implementation of the ICC’s principle of complementary.”

— Mathilde Chiffert, Guinea programme coordinator, International Federation for Human Rights
“We welcome the important agreement reached in Havana on the establishment of a Special Jurisdiction for Peace, and value that the agreement has incorporated several proposals put forward by victims and human rights organizations, as well as included standards from international human rights law [...]. We insist that upon its implementation, the agreement should **guarantee the deepest participation of victims and human rights organizations**, taking into account conditions of security that can guarantee their **fundamental rights to truth, justice, integral reparation and guarantees of non-repetition**.”

—Lawyers’ collective CAJAR, Colombia

“The unfolding legacy of Kenya’s transitional justice process is likely to reach its high water mark in 2016. The president has effectively shut the door to domestic prosecutions for the 2007-8 post-election violence. He has pledged **restorative justice for victims**. But that has not been actioned to date. The **ICC remains the only viable pillar of hope for justice**. We hope that the Ruto/Sang case proceeds to conclusion. In addition, a positive determination of the pending appeal on the prosecutor’s request for referral of Kenya to the Assembly of States Parties for non-cooperation and the witness tampering cases would be monumental in **bridging the impunity gap**. Without these, 2016 may be the year we admit that Kenya’s transitional justice agenda and **accountability for grievous ICC crimes**, have unfortunately gone the wrong way.”

— Andrew Songa, program manager, civil and political rights, Kenya Human Rights Commission

“In May 2015, ICC Prosecutor Fatou Bensouda warned that her office could investigate **violence in Burundi** that followed President Nkurunziza’s decision to run for a third term. If Burundian authorities do not investigate, an international investigation should follow. **The ICC should continue to closely monitor the situation**.”

—The League for Human Rights in the Great Lakes, Burundi
“Seven years after the August 2008 Georgian-Russian conflict over South Ossetia, **no effective national investigations have been carried out and perpetrators continue to live with impunity** while victims of grave crimes are left without redress. We welcome the ICC prosecutor’s move to open an investigation into the situation and hope that justice will be served. Effective investigation and prosecution is not only the right of victims, but the **duty of the international community to keep its promise that most serious crimes must not go unpunished**.”

—Ana Natsvlishvili, chair, Georgian Young Lawyers Association

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**FIVE FACTS ABOUT THE ICC’S NEW HOME**

**The ICC moves to a new and permanent premises in December 2015**

1. Located in The Hague’s famous dunes, the new premises boast 54,600m² of floor space, three courtrooms, 1200 workstations, a library, a public area and 72,000m² of grounds.

2. Six separate-but-connected buildings house the different Court organs and sections. The courtrooms are in the centrally-situated Court Tower.

3. The structure’s architecture recalls the rolling dune landscape while embodying seven values: Justice, Human Dignity, Openness, Credibility, Safety, Global and Icon.

4. Construction took three years and the project cost came in at €206 million, funded by the 123 ICC member states. As host state, the Netherlands provided the site at no cost.

5. The building’s five courtyards feature different landscape styles, representing each of the world’s regions.

© icc-permanentpremises.org
TEN WAYS STATES CAN SUPPORT THE ICC

The success of international justice depends on the cooperation of those who brought it into existence: governments

1. Arrest ICC fugitives

As the ICC has no police force, governments must ensure that anyone wanted by the Court is detained and transferred to The Hague, regardless of their rank or station. The ICC’s founding treaty, the Rome Statute (RS), obliges all member states to carry out arrest warrants. When they fail to do so, states add insult to injury for victims and endanger the international justice system. A lack of state cooperation curtails the Court’s effectiveness, as witnessed in June 2015 with South Africa’s failure to arrest ICC fugitive Omar al-Bashir while he attended an African Union (AU) summit. Non-ICC member states, particularly those on the UN Security Council, must also do more to arrest suspects.

2. Avoid ICC fugitives

There can be no business as usual with ICC fugitives. State representatives must avoid non-essential contact with wanted persons to isolate them and to reinforce the Court’s authority. Encouragingly, the UN, European Union and certain individual states have policies on avoiding non-essential contact with ICC fugitives. However, 2015 saw several representatives of ICC member states engage in non-essential contact with al-Bashir, including in South Africa, China and Egypt. Much work clearly remains to be done.

3. Prosecute nationally

The ICC assists the international community in closing the impunity gap for the most heinous international crimes. But it remains a Court of last resort. National legal systems have primary responsibility to prosecute perpetrators of atrocities. By incorporating ICC crimes into domestic legislation, states can undertake effective national prosecutions. Implementing the RS is also a chance to reform national criminal systems, thereby strengthening the rule of law, peace and security.

4. Facilitate cooperation

Cooperation with the ICC is usually reduced to simple terms: states either have the political will, or they don’t. While this is true of many high-profile cases, a failure to cooperate often stems from governments lacking resources or expertise. Designating focal points within state agencies and departments can go a long way to ensuring cooperation. Training police, military forces, lawyers, judges and prosecutors also integrates the ICC system into all facets of the state. Meanwhile, by ratifying the Agreement on Privileges and Immunities of the Court, governments can ensure ICC officials can conduct their work safely and independently, while securing the rights of the defense. Similarly, bringing national legislation in line with the RS facilitates better cooperation.
5. Promote justice

Governments should use their political and diplomatic clout to encourage support for accountability, both publicly and privately. They can steer states not party to the RS toward ratification/accession and the adoption of national legislation by vouching for the benefits that ICC membership entails: advancement of the rule of law, development and good governance. The major powers outside the ICC system—including China, Russia and the United States—should also be made aware of how they can facilitate cooperation with the ICC.

Governments should use their political and diplomatic clout to encourage support for accountability, both publicly and privately.

6. Sign voluntary agreements

State cooperation also includes signing voluntary agreements for witness relocation, enforcement of sentences, interim release and acquittal of suspects. These agreements are essential, but very few have been signed. Only Belgium has agreed to take suspects on interim release. As the Court’s workload increases, the consequences of the lack of such agreements are becoming apparent. With no acquittal agreements in place, Congolese militia leader Mathieu Ngudjolo Chui spent three years in asylum detention in the Netherlands following his release from the Court. ICC member states must take a broader view of their responsibilities to give the RS effect and building public confidence in the Court’s ability to deliver justice.

7. Protect more witnesses

As with national judicial systems, witnesses are essential to determining truth at the ICC. But they are vulnerable to intimidation or bribery or may have suffered trauma. Relocation agreements, though meant to be a last resort, have become a key part of the ICC’s protection program. Witness protection has become a critical issue at the Court in the past years. With people’s lives at stake, along with the integrity of ICC proceedings, it is crucial that more states make witness relocation an option.

8. Mainstream accountability

Greater ownership of international justice is needed at every level in the global system. Governments can press for accountability through their membership of international and regional organizations to advance policies and activities that build cooperation. States can similarly incorporate the ICC’s mission into the work of various UN organs and offices.

9. Push the UN Security Council

Governments must press the UN Security Council, which acts on behalf of the entire UN membership, to do more to ensure cooperation with the ICC. Concrete steps include: backing up ICC referrals by arresting suspects, ensuring that referrals can be adequately funded, ending the exclusion of nationals of non-ICC member states from the Court’s jurisdiction in referrals, following up on findings of non-cooperation referred by the Court and engaging in constructive dialogue with the ICC. States should also support initiatives to restrain the use of the veto by the permanent members of the Council when atrocity crimes are happening.

10. Support civil society

In countries such as Kenya, the Democratic Republic of Congo, Nigeria and South Africa, civil society litigation for the enforcement of ICC arrest warrants against Omar al-Bashir has demonstrated that national laws and courts remain the primary foundation of the RS system. With many countries around the world adopting draconian laws constraining civil society, governments should do more to support efforts to promote accountability.

In June 2015, ICC Prosecutor Fatou Bensouda called on the UN Security Council to “heed the cries of the victims of rape and sexual abuse, torture, mass displacement and other inhumane suffering Darfurians continue to endure.” © UN Photo/Loey Felipe
BUILDING TRUST A MUST

Much needed steps to bring the ICC closer to victims and affected communities risk failure if not adequately resourced

“The ICC field office brings welcome visibility for the ICC in Côte d’Ivoire. However, the delay in its opening and insufficient staffing are negatively impacting public opinion. Many Ivoirians perceive the ICC as a justice of the winners. The Court still needs to enhance its communication and outreach activities to address misinformation damaging its image, reaching all victims regardless of political allegiance and improve the efficiency of its administration of justice.”
—Ali Ouattara, president, Côte d’Ivoire Coalition for the ICC

WHILE VICTIMS of atrocity crimes are at the heart of the ICC’s work, local communities often find it difficult to understand or follow courtroom proceedings far away in The Hague. Ongoing efforts to strengthen the Court’s presence in the field are an important opportunity for reform, but can only succeed with adequate resources.

Outreach: an uphill battle

Several ICC offices have been engaged in making justice more visible over the past years. The Court’s registry, predominately through its outreach unit, promotes better understanding of the Court in ICC situation countries. Outreach is also vital to reducing security threats and creating conditions conducive to the Court’s operations more generally, for example by facilitating victim participation.

However, static budgets and understaffing coupled with an increasing number of investigations has forced the outreach unit to restrict its activities to victims directly affected by crimes in cases that reach trial stage. This has meant that other victims and communities are by and large not provided for.

There are also huge information needs not being met in situations where the ICC is conducting preliminary examinations, including Ukraine, Palestine, Colombia and Nigeria, among others.

Missteps in Côte d’Ivoire

In 2015, Human Rights Watch reported on the link between limited resources for outreach and persistent negative opinions of the ICC in Côte d’Ivoire. It found that perceptions of bias arising from the prosecution’s focus to date on former president Laurent Gbagbo and his allies were compounded by outreach that targeted only victims directly affected by a few specific incidents of grave crimes that the cases focused on.

Additionally, an outreach staff member was not deployed to Côte d’Ivoire until October 2014 due to a lack of funds, some three years after the investigation opened. If one lesson can be drawn from the ICC’s early years, it is that outreach to key local stakeholders at the earliest opportunity is critical.

With the politically sensitive Gbagbo trial—charged together with ally Charles Blé Goudé—opening at the ICC in January 2016, it is critical that outreach staff are present in Côte d’Ivoire.
to communicate key messages and counter misinformation throughout the proceedings.

**Resources needed**

In 2015-16, a restructuring plan—the ReVision project—will create a new division within the ICC registry for external relations and field-related functions, with greater resources and staffing for field offices. It envisages high-level heads of office empowered to engage at the diplomatic and political levels, becoming the in-country face of the Court.

The ReVision project represents a critical opportunity for the ICC to strengthen outreach, bring justice closer to victims and affected communities, and embed lessons learned from its first years. ICC member states who support an effective and efficient Court now need to insist that the registry has the resources to make an enhanced field presence a reality.

“The ICC acts on a global stage, but the heart of its mandate is delivering justice to communities affected by mass atrocities. ICC officials need to make sure that what the court does resonates in those communities. Strengthening the court’s impact on the ground shouldn’t be an afterthought.”

—Elizabeth Evenson, senior international justice counsel, Human Rights Watch

Special courts in Sierra Leone and Cambodia have demonstrated the success of local proceedings in promoting meaningful outreach. The Rome Statute allows for portions of proceedings to take place *in situ*—away from the seat of the Court in The Hague.

In 2015, judges recommended that the opening of the trial of Congolese militia leader Bosco Ntaganda take place in Ituri, a province gravely affected by the prolonged conflict in eastern Democratic Republic of Congo. Judges also recommended that a key pre-trial hearing scheduled for Lord’s Resistance Army commander Dominic Ongwen take place in Gulu, Uganda, close to the site of many of his alleged crimes.

However, the ICC presidency decided against both proposals, citing costs, administrative difficulties, security concerns, witness protection and victims’ well-being.

“We are extremely disappointed that the confirmation of charges hearing for Dominic Ongwen will not open in Uganda, for which there was widespread approval and excitement among victims and local leaders. This would have been the first opportunity for victims of the most heinous LRA atrocities to witness their alleged tormentor before justice. Governments must do more to ensure that the ICC has resources to make in situ proceedings happen. If not, we must ask: Who is this Court really for?”

—Mohammed Ndifuna, executive director, Human Rights Network-Uganda (HURINET-U)
What is the biggest lesson you have learned?

THAT ANY MAJOR accomplishment at the ICC is necessarily the result of collective efforts that require contributions from all organs of the Court within their respective mandates.

What are the ICC’s main challenges?

Because of what I just said, the main institutional challenge at the ICC is to ensure that the organs manage to coordinate their efforts effectively in pursuance of the One Court principle, whereas the main judicial challenge is to deliver high quality justice in expeditious proceedings. In addition, we face the constant institutional and judicial challenge of obtaining sufficient cooperation.

What are your main priorities?

My main priority is to lead a process of reforms at the Court aimed at expediting proceedings, improving the governance of the Court and enhancing the cooperation and support of the international community.

What is being done to expedite proceedings?

A lot is happening on this front and I am really satisfied with the progress that has been achieved this year. In June, all judges of the ICC held a two-day retreat in Nuremberg, Germany, to consider ways of improving the efficiency of the Court’s judicial work. This was a very fruitful event, which allowed for a collective discussion to which each judge was able to contribute his or her own experiences and expertise. The retreat and the subsequent work of the judges that followed from it have already resulted in the identification and adoption of various best practices, especially at the pre-trial level, notably including the issuance of a Pre-Trial Manual. Very active work continues in several other areas, for example, several judges are acting as focal points to coordinate the harmonisation of practices in relation to specific issues such as victims’ applications for participation and procedures for admission, drafting style and the use of protocols or practice directions for non-contentious technical aspects of proceedings. Efforts are also ongoing in all three judicial divisions to pursue enhanced efficiency through jurisprudence and further identification of practice changes and improved working methods. I am confident that we are on a very good track and I am particularly glad that all judges are engaged in this exercise.

How do the different Court organs work together?

I am happy to say that the working relationship between the principals of the Court—that is the president, prosecutor and the registrar—is very good and we meet regularly both in formal and informal settings to discuss issues of common concern. I am also keen to ensure that there is regular dialogue among the organs at the level of senior management and other levels. All of this is of course on the understanding that we respect the appropriate boundaries between the organs and their mandates, in particular taking into account the independence of the Office of the Prosecutor.
Are in situ proceedings likely to ever happen?

I think that in situ proceedings—holding parts of a judicial process at a location close to where the alleged crimes took place—can be extremely important. It is a way to bring the ICC’s activities closer to the affected communities, increase understanding of the Court and optimise the impact of what we do. That said, I would underline that in situ proceedings are by no means the only way to achieve that. Victim participation and outreach—as two constant aspects of what the ICC does—are also essential in ensuring that the process of justice is truly meaningful for those most affected by the crimes under the Court’s jurisdiction and takes their views into account.

I am sure that in situ proceedings will happen sooner or later—but the matter has to be assessed carefully on a case-by-case basis. As you know, there has already been consideration of the matter in some cases before the Court, but after a detailed assessment it was concluded that the potential benefits in those particular instances were outweighed by risks in areas such as the safety and well-being of witnesses and victims and the security of local communities.

Has the ICC secured its position in international affairs?

The ICC has gained entry into international affairs and the justice component is increasingly recognised in the settlement of crises and disputes. But this is a long process that requires constant attention—we can only maintain and consolidate our position by demonstrating that the Court is making a meaningful contribution to the promotion of justice and the rule of law.

Our stakeholders—civil society prominently included—are doing a lot and their efforts are highly appreciated. But I hope that they will constantly look for ways to do more, because the ICC has enormous needs in the various areas of cooperation—including political support, judicial and logistical assistance, financial support, outreach and awareness-raising, promoting universality of the Rome Statute and so on. The Court will always be subject to criticism no matter how well it performs. Actually, criticism may even increase as the ICC becomes more effective and as its role becomes more prominent in international affairs. This is why external actors should remain vigilant and ensure sustained, broad support for the Court and its activities.

“What does the ICC presidency do?”

The ICC presidency—consisting of the president and the two vice-presidents—provides strategic leadership to the ICC as a whole. It is responsible for the proper administration of the Court, overseeing the activities of the registry and giving input into a broad range of administrative policies. It conducts judicial reviews of certain decisions of the registrar and concludes Court-wide cooperation agreements with states and international organizations.
THE ICC OFFICE of the Prosecutor (OTP) has proposed to increase its capacity over the next three years to what it terms its “basic size,” resulting in an additional cost of €18 million annually. It says that this is the minimum size needed to respond to demands placed on the office with “quality, effectiveness and efficiency.”

If the basic size is implemented, the annual OTP budget will reach €60 million and the court’s total budget will undoubtedly exceed €150 million. This is a big investment. However, international justice will never be cheap and the budget does not stand out significantly when compared with other important international institutions and multilateral efforts.

A focus on defining the ICC’s core capacity promises a positive departure from the short-sighted annual ICC budget-setting processes. The court is funded by its member countries. In recent years, their decision-making has been driven by pressure from a small number of states to minimize costs and to even impose zero-growth, regardless of increasing demand and workload. This has undermined the court’s performance, allowed states to focus their budgetary negotiations on artificial bottom lines and distorted understandings of the court’s real resource needs.

Under the proposed basic size, the OTP would be able to open a new situation each year with a maximum of six active investigations across all situations. This is certainly a boost from its four active investigations in 2015. However, with a backlog of investigations in existing cases, a new request to investigate in Georgia and eight other countries under preliminary examination awaiting a decision on whether to open formal investigations, two additional investigations is unlikely to be enough.

The OTP fully recognizes these limitations. It states that its proposal will result in a “pace below the level of full demand,” requiring a “reasonable degree of prioritization” in its work potentially until 2021 and that further capacity will only be sought in this timeframe if “unforeseen exceptional circumstances materialize.”

In light of the current demands, if the ICC accepts such a limited capacity for such an extended period, it could fall even further behind, denying or delaying justice to victims. It could also increase criticism of the court’s performance and accusations of partiality in relation to those cases or situations it prioritizes over others.

In our view, a more ambitious approach is needed. At the same time as it works to achieve a more immediate expansion, the ICC should define its “optimal capacity”—that is, how many more investigations, cases and trials an efficient and high-performing ICC can achieve. ICC member states should start to consider now how to ensure that the ICC has sufficient resources to scale up and down quickly and effectively in response to periods of high demand once the “basic size” is achieved.

Elizabeth Evenson is a senior international justice counsel at Human Rights Watch. Jonathan O’Donohue is a legal adviser for Amnesty International and leader of the Coalition for the ICC Budget and Finance Team.

This is a shortened version of a contribution to the openGlobalRights debate on the ICC. Full article available at: https://www.opendemocracy.net/openglobalrights/elizabeth-evenson-jonathan-o-donohue/still-falling-short-icc-s-capacity-crisis
AS A PLATFORM for the international community to take stock of the state of human rights on a state-by-state basis, the UN Human Rights Council’s Universal Periodic Review (UPR) is key for the promotion of a universal ICC.

During the first UPR cycle from 2008 to 2011 more than 100 ICC-related recommendations were issued to about 60 states, the majority on ratification of the Rome Statute (RS). Since 2012, we’ve called on ICC member states to make specific recommendations regarding the Statute to states under review. In the last three years, over 600 ICC-related recommendations have been issued, covering almost every state that came under review during that period.

Part of the value of the UPR is that states must publicly respond to recommendations. When a state accepts a recommendation to join the ICC or pass related legislation, it commits to doing so by the time it next comes under review. The Coalition urges states to follow-through on these commitments.

Prior to each UPR session, we speak at meetings of the Geneva-based Friends of the ICC group of states. These meetings are a unique forum for states working at the forefront of human rights policy to discuss the relevance of the RS system to the UN Human Rights Council.”

The UN Human Rights Council exposes and condemns grave human rights violations around the world. Its fact-finding mechanisms—usually called commissions of inquiry—document gross violations and make recommendations to the international community, such as pursuing criminal accountability.

Our UPR CAMPAIGN calls on International Criminal Court member states to urge governments under review to:

- Adopt national legislation to prosecute grave crimes and ensure full cooperation with the Court
- Ratify or accede to the Rome Statute, the ICC’s founding treaty
- Ratify the Agreement on Privileges and Immunities, to ensure ICC officials can act independently
GLOBAL

AROUND THE WORLD
2014-15

AMERICAS

• Sudan President Omar al-Bashir cancels attendance at UN General Assembly
• UN Secretary General Ban Ki-moon calls for referral of Syria to ICC at UN General Assembly
• Botswana backs ICC at UN General Assembly
• Peace and justice in Colombia? Page 26
• Disappearances and alleged crimes against humanity in Mexico
• Jamaica commits to joining ICC
• 100 NGOs call for accountability for alleged United States torture and other abuses
• Ex-Guatemalan dictator Efrain Rios Montt declared mentally unfit to be sentenced

AFRICA

• ICC prosecutor warns against electoral violence in Nigeria and Burundi
• ICC fugitive Omar al-Bashir flees South Africa to avoid arrest
• Escalating violence in Nigeria’s fight against Boko Haram
• Proposed hybrid court in South Sudan to prosecute atrocities
• Civil society advances accountability in Africa at regional meeting. Page 24
• Alleged grave crimes in Darfur, the Blue Nile and South Kordofan states
• Ugandan international crimes prosecutor Joan Kagezi murdered
• Central African Republic votes for special war crimes court
• DRC passes a long-awaited Rome Statute implementation law
• Guinea military leaders to face trial for alleged role in Conakry stadium massacre
• Trial of ex-Chadian dictator Hissène Habré opens in Senegal
• ICC suspect Simone Gbagbo convicted of charges related to undermining state security and sentenced to serve 20 years in prison by an Ivorian court
• South Africa’s ruling ANC party moots withdrawal from the Rome Statute
GLOBAL

EUROPE
- Kosovo approves war crimes tribunal
- Switzerland ratifies Kampala amendments to Rome Statute
- Ukraine accepts ICC jurisdiction amid reports of widespread war crimes. Page 30
- UK arrests suspected Rwandan war criminal
- Germany sentences DRC rebels
- ICC prosecutor seeks to open investigation in Georgia. Page 31
- International Tribunal for the former Yugoslavia nears completion of mandate
- Austria adopts law to prosecute ICC crimes nationally
- Romania and Spain launch initiative for an international court against terrorism

MIDDLE EAST & NORTH AFRICA
- Calls for referral of Syria and Iraq to ICC as atrocities allegedly continue by ISIS and government forces
- ICC prosecutor warns UN Security Council over inaction over escalating violence in Libya
- ICC suspects Saif Gaddafi and Abdullah al-Senussi sentenced to death along with eight others in Libya
- Alleged atrocities by all sides in Yemen
- Palestine becomes 123rd ICC state party. Page 32
- UN report cites possible war crimes by both Israel and Palestinian groups in 2014 Gaza conflict
- ICC judges ask prosecutor to review decision not to investigate 2010 Mavi Marmara Gaza flotilla incident

ASIA
- China hosts ICC fugitive Omar al-Bashir for a second time
- UN urges Sri Lanka to set up civil war crimes court. Page 28
- Calls for justice for Burma’s persecuted Rohingya minority
- Trials of Khmer Rouge leaders continue in Cambodia
- UN vote calls for North Korea ICC referral
- Calls for independent investigation into air strike against Kunduz hospital in Afghanistan by NATO-led forces

UN
- Calls for referral of Syria and Iraq to ICC as atrocities allegedly continue by ISIS and government forces
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In June 2015, Coalition members travelled from over 20 countries to Benin to strategize on ending impunity for grave crimes in Africa. Here are the main takeaways:

1. **Civil society’s common goal remains championing the Rome Statute (RS) system** to advance accountability for the grave crimes that continue to blight many African countries. African nongovernmental organizations expressed solidarity with the efforts to hold the South African state to its obligations to arrest ICC fugitive Omar al-Bashir in June 2015, which underlined the crucial role that civil society plays in developing peaceful and robust democracies.

2. **The ICC continues to play a vital role in advancing justice in Africa.** People want justice for grave crimes nationally or through the ICC. The RS gives the framework to strengthen national accountability mechanisms. African governments should work to make the ICC system more effective. Much needs to be done to raise awareness of the ICC and its mandate to bolster support and counter politicization.

3. **African states have clear obligations to cooperate with the ICC.** African leaders must have the courage to voice their support for the ICC at the African Union (AU) and other fora. The continuing cooperation of many states with the ICC and a growing number of national proceedings demonstrate a strong desire for justice in Africa.

4. **The Assembly of States Parties (ASP) must put in place strong mechanisms to deal with instances of non-cooperation,** which undermine the ICC’s ability to deliver justice to victims of grave crimes.

5. **Accountability for grave crimes is the responsibility of the entire international community.** The UN Security Council must play its role in advancing justice. All states and international actors should renew their commitment to the ICC and RS, provide full cooperation and oppose any consideration of immunities for heads of state and senior government officials.

6. **The mandate of the AU is consistent with the RS on the protection of human rights,** including accountability for grave international crimes. The AU must advance its own mechanisms to ensure accountability, including its transitional justice framework and engage in dialogue with the ICC.

**What they said**

**Clement Capo-Chichi, Africa regional coordinator, Coalition for the ICC**

“Civil society travelled from across Africa eager to share what justice means for them. ICC and ASP representatives further enriched the debates. We are one step closer to enhancing civil society participation in the Rome Statute system.”

**Onyinye Okaah, coordinator, Nigeria Coalition for the ICC**

“A concerted effort from states parties and national coalitions for the ICC is badly needed to combat impunity.”
This meeting inspired me to continue promoting victims’ rights in Nigeria and to demand that those who commit these violations are investigated and prosecuted—either at home or at the ICC.”

Ali Ouattarra, president, Côté d’Ivoire Coalition for the ICC

“We took stock of the work of the ICC on the African continent, proposed new strategies to reduce the negative perceptions and shared best practices of national coalitions. This was an opportunity to propose ways to make the ICC in Africa more fair, efficient and effective.”

Aboubacry Mbodji, secretary general, Rencontre Africaine pour la Défense des Droits de l’Homme, Senegal

“This was an invaluable opportunity for NGOs to reiterate their respective missions to promote, defend and protect human rights, prevent, manage and resolve conflicts, promote the right to redress and access to justice for all, promote international criminal justice and advocate for the repression of grave crimes.”

Roland Abeng, coordinator, Cameroon Coalition for the ICC

“Judiciaries all over Africa should follow the South African example by taking their responsibilities and becoming a veritable, natural and independent arm of government for the enhancement of the rule of law both on a national and international scale.”

Mama Koite Doumbia, president, Mali Coalition for the ICC

“Even if it takes twenty years, Africa will not forget its victims.”

—International Federation for Human Rights and its Chadian and Senegalese members at the opening of the Habré trial

2015 saw several positive developments in advancing justice for grave crimes in Africa

Taking place before a special court created by Senegal and the AU, the landmark trial of Chad’s former leader Hissène Habré began in Dakar to widespread approval in 2015. Habré is charged with crimes against humanity and war crimes allegedly committed during his eight year rule in the 1980s. The push to try Habré was driven by the surviving victims of the regime, with over 4,000 participating as civil parties in the case.

The Central African Republic made history by becoming the first country to create a hybrid court for grave crimes through national legislation. The new special criminal court will work with existing justice mechanisms and the ICC. It plans to cover cases that would not necessarily have reached the ICC’s threshold, permitting a greater number of victims to access justice.

The national assembly of the Democratic Republic of Congo finally passed a bill incorporating the RS into domestic law, allowing Congolese courts to prosecute grave crimes. The law will also strengthen cooperation with the ICC. International and local civil society, through the DRC National Coalition for the ICC, has been working to advance the legislation since 2008.
PEACE AND JUSTICE IN COLOMBIA?

An historic deal brings Colombia close to ending 50 years of brutal conflict. But will it strike the right balance between lasting peace and justice for countless war-related crimes?

THE DEAL BETWEEN Colombia and the Revolutionary Armed Forces of Colombia (FARC) on justice for grave crimes during the country’s 50-year conflict made world headlines in September 2015. A Special Jurisdiction for Peace is to be set up to prosecute war-related grave crimes by all sides, but with lesser penalties for combatants who confess and contribute to establishing truth. The ICC’s watchful eye is now more crucial than ever before to ensure there is no impunity.

Peace agenda

In November 2012, Colombia and FARC drew up a five-point agenda to negotiate an end to the armed conflict that would address: rural development and access to land; political participation of demobilized FARC members; illegal drugs and drug trafficking; victims, including the issues of truth, justice and reparations; and cease-fire and end of the conflict.

An additional, yet-to-be agreed, sixth point involves the implementation of the agreements. This will tackle the complex issue of endorsement by the Colombian people, most likely by referendum or other form of consultation.

Over 50 years, the Colombian conflict has claimed over 200,000 lives and displaced millions

The Havana agreement

The delicate issue of justice and sentences was finally agreed on 23 September 2015 in a meeting between Colombian President Juan Manuel Santos and FARC leader Timoleón Jiménez in a deal brokered in Havana, Cuba. The parties set a six-month deadline for a final agreement, with FARC consenting to disarm within 60 days of its signing. The deal includes:

- The establishment of a Special Jurisdiction for Peace to prosecute conflict-related crimes committed by all sides;
- Reduced and/or alternative sentences for those who confess to crimes and contribute to establishing truth, provide reparation and contribute to non-repetition. Suspended sentences are not envisioned;
- Exclusion of all amnesties for crimes under international law as well as some grave human rights violations. However, amnesties would be granted for political crimes and connected offenses. The determination of the scope of the latter will be specified under an amnesty law to be adopted at a later date;
- FARC members must begin to disarm no later than 60 days after the signing of the final agreement.

Some aspects of the deal require further clarification. In particular, the specifics on alternative sentences—which could include a range of non-custodial measures—still need to be decided.

The participation of victims and civil society in the Havana negotiations was crucial to their advancement. Human rights organizations insisted on a careful balance between justice and peace.
determine whether a full investigation is necessary. The prosecutor has also been monitoring the peace negotiations closely. In reaction to the Havana agreement, the prosecutor expressed “optimism that it excludes amnesty for war crimes and crimes against humanity” and reaffirmed that the laudable goal of ending the conflict must “pay homage to justice as a critical pillar of sustainable peace.”

The OTP has put forward strict guidelines on the non-application of suspended sentences, an important aspect of the debate considering that the 2012 Legal Framework for Peace in Colombia envisioned the suspension of sentences. Writing in August 2013 to Colombia’s constitutional court, the OTP made clear its position rejecting suspended sentences, signaling that sanctions imposed must not result in impunity.

In May 2015, the OTP expanded its position on sentences during a seminar on transitional justice and the ICC in Bogotá organized by the Vance Center, Universidad del Rosario, United Nations, the International Center for Transitional Justice, Diario El Tiempo, the Hanns Seidel Fund and the Coalition for the ICC.

ICC Deputy Prosecutor James Stewart outlined that states have wide discretion in sentencing in light of the RS’s silence on the specific type or length of sentences for ICC crimes when prosecuted nationally. However, Stewart underlined that effective penal sanctions must “serve appropriate sentencing goals, such as public condemnation of the criminal conduct, recognition of victims’ suffering and deterrence of further criminal conduct.”

Stewart further stressed that suspended sentences are incompatible with the RS, since their intent is to shield perpetrators from criminal responsibility. Reduced sentences would be compatible with the Statute in so far as they fulfill certain conditions such as acknowledgment of criminal responsibility and guarantees of non-repetition. He also noted that given the wide array of custodial and non-custodial measures that could fit under alternative sentences, a number of factors would need to be considered in order to assess their compatibility with the Statute. He underlined that the question will be whether alternative sentences adequately serve appropriate sentencing objectives for the most serious crimes.

On the road to peace

The role of the ICC in the Colombian context is now more important than ever. The prosecutor must continue to monitor the process, ensuring that the implementation of the justice pillar is compatible with Colombia’s obligations under the RS. Should the outcomes be successful, the Havana agreement will no doubt represent a historic process for long-awaited peace in Colombia.

What they said

Colombian Commission of Jurists

“It is positive that the agreement centers around victims’ rights. We welcome the goal of ending to the cycles of impunity that led to gross violations of human rights, due to a lack of genuine and thorough investigations and non-execution of sentences.”

Corporacion Humanas, Red Nacional de Mujeres, Sisma Mujer and the campaign “No es Hora de Callar” (A coalition of Colombian NGOs working on justice and gender.)

“‘In this agreement we recognize an historic movement towards peace in Colombia. We welcome the recognition that sexual and gender-based crimes are among the gravest crimes. The government must ensure that the Special Jurisdiction has a particular focus on sexual crimes, remove the obstacles to judicial remedies that victims of such crimes historically face and ensure access to justice for all women and girls survivors.”

The International Crisis Group welcomed the agreement as a “sound, efficient and intelligent step forward” while Parliamentarians for Global Action hailed it as a “paramount development.”

The International Center for Transitional Justice said the deal underlined the critical role that transitional justice plays in creating lasting peace.

Amnesty International also welcomed the deal but raised concerns around vague definitions and amnesties which could deprive victims of justice. Human Rights Watch warned the agreement would allow those responsible for grave crimes to avoid any time in prison.
A SRI LANKAN PROMISE

International oversight crucial to holding Sri Lanka to its commitment to civil war accountability

SRI LANKA’S NEW leaders have vowed to implement a UN recommendation to establish a tribunal to prosecute those responsible for abuses during its decades-long civil war. But victims and civil society who have endured so many broken promises say the involvement of international actors is crucial to ensuring justice is finally served.

The long-awaited UN report on its Sri Lanka investigation had a strong and unequivocal message: patterns of grave violations wracked the country and little effort has been made to find lasting solutions towards reconciliation, redress and reparation.

Accountability delayed

Six years ago, in the same month that Sri Lanka’s civil war ended with the defeat of the Liberation Tigers of Tamil Eelam, 17 countries tabled a resolution at the UN Human Rights Council urging states to support an investigation into allegations of war crimes and for the protection of civilians and displaced persons.

Since then, three more resolutions have called for independent and credible investigations. The government of Mahinda Rajapaksa failed to comply each time. These ignored reports speak of the horrors of post-war Sri Lanka: thousands of displaced civilians, countless enforced or involuntary disappearances, torture, sexual violence, denial of humanitarian assistance and reprisals against human rights defenders, civil society, lawyers and journalists. They speak of a nation that has lived in fear, of leaders who have gone back on promises to genuinely address the painful past.

Released in September 2015, the long-awaited report of the UN Office of the High Commissioner for Human Rights on its Sri Lanka investigation had a strong and unequivocal message: patterns of grave violations wracked the country and little effort has been made to find lasting solutions towards reconciliation, redress and reparation. The report found deep-seated and institutionalized impunity that could cause the recurrence of such violations. It emphasized the crucial need to reform Sri Lanka’s domestic legal framework in alignment with international standards in order to “effectively address system crimes and bring effective remedy to their victims.”

The majority of civil society groups in Sri Lanka, including Coalition members, believe that the only way towards a genuine and credible process towards accountability and redress for victims
GLOBAL ASIA

CAMBODIA’S JUSTICE CAFÉ

In July 2015, one of the Coalition’s newest members, Destination Justice, opened the doors to its new Justice Café & Library in Cambodia’s capital Phnom Penh. The café brings to life a simple concept: to support, connect and inspire young people advocating for better justice.

“In Cambodia, freedom of expression, association and thought are increasingly under threat. The Justice Café & Library is our response to that: it’s a safe and participatory space where young people can meet and develop ideas that can change the world,” said Destination Justice President Rodolphe Prom.

Established in 2011, Destination Justice is a start-up non-profit aiming to strengthen human rights and the rule of law in a pragmatic, collaborative, sustainable and holistic way.

“The reality is that Sri Lanka’s record of domestic accountability throughout its post-independence history has been characterized by a lack of political will, lack of capacity, political interference and chronic failure. This is why international participation in any in-country mechanisms is crucial. For the new government to secure the trust of its citizens, Sri Lanka needs to break dramatically with the past and a process of attributing criminal liability for the most egregious crimes is a necessary starting point.”

—Niran Anketell, head of the legal and justice unit, the South Asian Centre for Legal Studies based in Sri Lanka

is to ensure international involvement and participation.

Join the ICC

The UN report also calls on the government of Sri Lanka to accede to the Rome Statute (RS) as part of a comprehensive approach to a transitional justice process that incorporates a full range of judicial and non-judicial measures. Alignment of Sri Lanka’s domestic laws with the Statute will strengthen any accountability process that the country embarks upon, ensuring it is in line with the principles of international law recognized by the community of sovereign nations.

Sri Lanka’s new leaders have been taking small but welcome steps towards acknowledging the country’s past failures and are now asking the world to accept that it will finally establish a genuine process towards accountability. But, against a background of politically motivated interference and inaction, trust must be earned with concrete moves such as ratification of the RS.

Accountability now

States at the UN Human Rights Council owe it to the victims of the civil war to ensure Sri Lanka’s leaders finally deliver justice for countless horrific crimes. To do otherwise risks leaving victims vulnerable to further violence and suffering. After 26 years, they have suffered enough.
UKRAINE’S ICC MOVE

Ukraine’s acceptance of open-ended ICC jurisdiction gives the prosecutor potential authority to investigate a broader range of alleged crimes in the conflict. Will ratification of the Rome Statute follow?

UKRAINE’S DECISION in 2015 to give the ICC open-ended jurisdiction to investigate could have far-ranging effects on accountability for alleged grave crimes in eastern Ukraine and in Crimea, as well as for the downing of Malaysian Airlines flight MH17. But ICC membership must now follow to guarantee the full protection of the rule of law.

Expanded ICC jurisdiction

In September 2015, Ukraine Foreign Minister Pavlo Klimkin submitted a declaration accepting ICC jurisdiction from 20 February 2014 onwards. Article 12.3 of the Rome Statute (RS) allows non-ICC member states accept the Court’s jurisdiction on an ad hoc basis. This followed a first declaration in April 2014 accepting ICC jurisdiction between November 2013 and February 2014, a period coinciding with the EuroMaidan protests in Kiev. Both declarations came following respective resolutions passed in Ukraine’s parliament, the Verkhovna Rada.

opened a preliminary examination. This was extended in kind in September 2015 after the second declaration. Preliminary examinations aim to establish whether the RS criteria for opening an investigation are met, considering issues of jurisdiction, admissibility and the interests of justice.

“Ukraine has taken a crucial step towards ending violence and armed conflict in the east of the country. Victims now have an opportunity to access justice for the heinous crimes they have suffered,” said Roman Romanov, human rights and justice program initiative director, International Renaissance Foundation, Ukraine. “This move sends an important message to both Ukrainian society and to the international community that Ukraine rejects impunity for grave crimes. The next step is for national investigations to be stepped up and for Ukraine’s full cooperation with the ICC. Peace comes not when the guns are silent, but when justice is done.”

What’s on the ICC’s radar?

A number of groups have been collecting evidence and testimony related to alleged grave crimes in Ukraine. In February 2015, a network of Ukrainian human rights organizations—the Coalition of Public Organizations and Initiatives for Combating Impunity of Crimes against Humanity—reported on alleged crimes against humanity committed during the Euromaidan protests.

In October 2015, a report by the International Partnership for Human Rights (IPHR) detailed allegations of violations of international humanitarian law and international criminal law committed in eastern Ukraine since March 2014. Specifically, war crimes and crimes against humanity are alleged to have been committed in the Donetsk and Luhansk oblasts (provinces), otherwise known as the Donbas region.

“When we started working on the report we did not know if it would ever be used by the ICC and the news about the Article 12.3 declaration submitted by the Ukrainian government came as a surprise. Now we hope that the OTP will act rapidly and process the evidence that we have shared with them,” said Simon Papasvashvili, IPHR project coordinator.

In March 2014, Russia annexed the Ukrainian region of Crimea, an act viewed by some as violating the UN Charter as well as the 1994 Budapest Memorandum on Security Assurances guaranteeing the sovereignty and territorial integrity of Ukraine. Others consider the move an act of outright aggression. While the ICC does not yet have jurisdiction over acts which could constitute the crime of aggression, allegations of ethnic cleansing in the region could merit consideration by the ICC.

The shooting down of Malaysia Airlines Flight 17 in July 2014—killing all 283 passengers and 15 crew—will no doubt come under scrutiny during the preliminary examination process. It remains to be seen if accountability will come from other avenues. In July 2015, Malaysia—supported by Australia, the Netherlands and Ukraine—proposed a UN Security Council resolution for an international tribunal to investigate and prosecute those suspected of the attack. While the proposal was supported by a majority of Security Council members (11 voted in favor, 3 abstained), Russia vetoed the plan. In October 2015, the Dutch Safety Board concluded that the MH17 crash was caused by a Buk surface-to-air missile. A separate investigation by public prosecutors from the Netherlands, Ukraine, Malaysia, Australia and Belgium has yet to be completed.

Ukraine is the first non-ICC member state to ratify the Agreement on Privileges and Immunities to the ICC, an essential mechanism for the effective functioning of the Court

“Ukraine’s decision to expand its acceptance of ICC jurisdiction is a clear signal of its commitment to accountability for grave crimes and an important step towards ending impunity,” said Kirsten Meersschaert, the Coalition’s director of programs.

Following the 2014 declaration, the ICC Office of the Prosecutor (OTP)
Full ICC membership

With the latest declaration effectively giving the ICC open-ended jurisdiction over Ukraine, it still falls short of full membership of the ICC.

“While the declaration is certainly indicative of Ukraine's commitment to addressing the alleged crimes, it must now be followed by concrete steps towards ratification of the RS to ensure Ukraine becomes a fully-fledged ICC member state,” Meersschaert continued. This has been the aim of several Coalition campaigns over the years—most recently in March 2015.

Although Ukraine signed the RS in 2000, it has yet to ratify it partly due to a 2001 constitutional court ruling which found the ICC's complementary nature to be incompatible with the country's constitution.

Yet, the incentives appear to far outweigh any reservations. Closer relations with the European Union (EU) are but one incentive promised under the 2014 EU-Ukraine Association Agreement which includes provisions encouraging both parties to work towards ratification and implementation of the RS.

“Another one-off declaration by the Ukrainian authorities does not absolve them from having to ratify the RS. Ratification would not only be the fulfillment of the conditions that Ukraine accepted when signing the Association Agreement with the EU. More importantly, it is quite probably the only hope for the victims of war crimes to see investigations into alleged crimes occurring in the occupied territories and to pass the guilty into the hands of international justice,” said Olexandra Matviichuk, head of the board of the Center for Civil Liberties in Ukraine.

A constitutional assembly established in 2012 has been working on a reform package in keeping with elements required of the EU-Ukraine agreement, including ICC membership. A first set of proposed reforms is subject to parliamentary approval in 2015.

Ukraine has been showing all the right signs for accountability for grave crimes. It is now time to cement gains and become a full ICC member state.

In October 2015, the ICC prosecutor requested judges’ authorization to open an investigation into the August 2008 armed conflict in Georgia, involving Russia, over the breakaway region of South Ossetia. In the course of a preliminary examination into the matter, the prosecutor concluded that there was a reasonable basis to believe that war crimes and crimes against humanity were committed in South Ossetia and in a “buffer zone” from August to October 2008. The prosecutor also said that obstacles and delays hampered domestic investigations in both Georgia and Russia, and that an ICC investigation was necessary as national proceedings in Georgia had stalled.

“This is a big step forward for finding the truth about the gross human rights violations committed in Georgia during the August 2008 war and for bringing perpetrators to justice,” said Nika Jeiranashvili, human rights program manager at the Open Society Georgia Foundation. “The August war was the result of an untold truth about the wars of 1990s, impunity for those crimes and nearly 20 years of injustice.”

For the ICC to open an investigation, a situation can be referred to the Court by an ICC member state or the UN Security Council, or initiated by the ICC prosecutor with the authorization of the judges (proprio motu). The Georgia request is the third time that the prosecutor has sought to open a proprio motu investigation. The other two, in Kenya and Côte d’Ivoire, were approved.
IN A WELCOME step toward justice for all victims of one of the world’s most prolonged conflicts, Palestine became the ICC’s 123rd member state in 2015. The international community must now ensure the accountability process moves forward unimpeded.

Palestine and the ICC

Civil society has long urged both Israel and Palestine to join the ICC in order to stem well-documented mass violations of international law during the course of the decades-long conflict. In November 2012, Palestine’s status at the UN was upgraded to non-member observer state, allowing it to join a number of international treaties—including the Rome Statute (RS). After depositing instruments of accession to the RS with the UN secretary general on 2 January 2015, ICC jurisdiction took effect on 1 April 2015 upon the Statute’s entry into force.

While the accession gives the ICC jurisdiction over any grave crimes committed within Palestinian territory and by Palestinian nationals from 1 April 2015 onwards, an additional declaration submitted to the ICC under RS article 12.3 grants the Court jurisdiction back to 13 June 2014.

Following Palestine’s article 12.3 declaration, the ICC Office of the Prosecutor (OTP) opened a preliminary examination to determine whether alleged crimes by all parties “in the occupied Palestinian territory, including East Jerusalem, since June 13, 2014 amount to war crimes, crimes against humanity or genocide.”

In June 2015, a commission of inquiry into the 2014 Gaza war—mandated by the UN Human Rights Council—presented a report detailing war crimes allegedly committed by both sides during the summer of 2014. Citing indiscriminate and disproportionate rocket fire into civilian populations by both Israeli and Palestinian armed groups, the report encouraged local authorities to conduct criminal investigations to uphold accountability and deter future escalations of violence.

Political backlash

Both the accession to the RS and the prosecutor’s preliminary examination prompted a worrying political backlash against Palestine and the ICC.

In early 2015, the United States, Canada and Israel stated that they do not recognize Palestine as a state and, consequently, consider it ineligible to join the ICC. According to Human Rights Watch, in December 2014, the US signed into law an act that would cut off some aid to the Palestinian Authority if Israeli nationals become subject to an ICC investigation. Human Rights Watch also reported that, from January to March 2015, Israel withheld approximately US$400 million in tax revenue that it collects on behalf of Palestinian authorities in response to the accession. Israel’s prime minister called the preliminary examination the “height of hypocrisy and the opposite of justice.” The foreign minister added that Israel would not cooperate with the Court and would seek to have it dismantled, calling on ICC member states to withhold funding.

Encouragingly, voices of support have been heard. Germany’s top human rights official dismissed Israel’s appeal to defund the ICC and urged it to cooperate with the Court. Several German, Dutch and Greek Members of the European Parliament—part of the Parliamentarians for Global Action network—also rejected the call. The French Coalition for the ICC called
on the French government to reaffirm its support for the ICC and the universality of the RS. Canada’s former UN ambassador, Paul Heinbecker, criticized the Canadian government for its opposition to Palestine’s accession to the ICC, calling it a betrayal of the country’s principles and support for international law.

More support needed

After decades of conflict marked by impunity, the wheels of justice are now turning. However, much work remains. Palestine’s responsibilities now include cooperating with the Court and its decisions, incorporating the RS into national legislation and assisting the OTP with its preliminary examination. Israel should also engage positively with the Court.

The international community—ICC member states in particular—must support the accountability process, through national courts or the ICC, in the face of political pressures that are sure to continue. Palestinian and Israeli victims deserve as much.

What they said

William R. Pace, convenor of the Coalition for the ICC

“The Coalition fully supports Palestine’s accession to the RS. For 12 years we have urged all states to join the ICC. The international community must now stand with the victims and support the ICC as it promotes accountability at the national level. When enforced, international humanitarian law both strengthens the peace process and gives victims recourse to legal remedy.”

Issam Younis, general director, Al Mezan Center for Human Rights

“The ICC can provide accountability for war crimes and crimes against humanity that were allegedly committed against the protected Palestinian civilians and their properties. It is another important step that moves us closer towards justice.”

Dr. Ishai Menuchin, executive director, Public Committee Against Torture in Israel

“All Israeli citizens who hold human rights and democratic values dear should support Palestine’s bid to join the ICC. It is time that universal values and norms become the framework through which the Israeli-Palestinian conflict is viewed and resolved. It is time that complaints of torture and suspicions of war crimes be examined by the Israeli justice system. Otherwise, they will be investigated by The Hague.”

Nada Kiswanson van Hooydonk, senior legal advocacy officer and head Europe office, Al-Haq

“We welcome with relief and excitement Palestine’s ratification of the RS and its submission of a 12.3 declaration. The preliminary examination of alleged crimes after June 2014, including in the context of Israel’s offensive on Gaza that left more than 2,219 Palestinians dead, has been long called for by Palestinians and human rights defend-

ers. But it is merely the beginning of a longer-term accountability process. Al-Haq expects that the Court will reach a decision that investigations are warranted. It is essential for the ICC to signal that impunity, as a root cause to the conflict, will not be tolerated.”

Balkees Jarrah, international justice counsel, Human Rights Watch

“Governments seeking to penalize Palestine for joining the ICC should immediately end their pressure and countries that support universal acceptance of the court’s treaty should speak out to welcome its membership. What is objectionable is the attempts to undermine international justice, not Palestine’s decision to join a treaty to which over 100 countries around the world are members.”

While the ICC has jurisdiction over grave crimes committed on Palestinian territory, or by Palestinian nationals, from 13 June 2014 onwards, the prosecutor will only investigate and/or prosecute where domestic authorities are genuinely unable or unwilling to do so. Before an investigation is opened, the prosecutor must determine:

- Does the ICC have jurisdiction?
- Have war crimes, crimes against humanity or genocide been committed?
- Are there genuine investigations occurring at the national level?
- Would an investigation be in the interests of justice?

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PRELIMINARY EXAMINATION: HOW WILL IT WORK?

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- Does the ICC have jurisdiction?
- Have war crimes, crimes against humanity or genocide been committed?
- Are there genuine investigations occurring at the national level?
- Would an investigation be in the interests of justice?
THE MOST MEMORABLE personal event of my life was the inauguration of Nelson Mandela as the first democratic president of South Africa. It was the culmination of four years of negotiations that were almost derailed a number of times by political violence. It was an event that was unimaginable only a few years before.

The greatest threat to that process was posed on 10 April 1993, by the assassination of Chris Hani, who, other than Mandela, was the most popular freedom fighter in our country. [...] Violence and bloodshed appeared to be both inevitable and imminent. President F.W. de Klerk, in an unusual act of statesmanship, handed national broadcasting authority to Mandela, who used television and radio to call for calm.

Fortunately, those words found their mark and violence was averted. It was undoubtedly Mandela’s call for justice that was crucial in achieving that result. Those responsible for the assassination of Hani were indeed brought to justice and sentenced to serve many years in prison.

It is justice in other contexts that has also played a role in calming emotions and calls for revenge. Bringing justice to victims was a major success of the two UN ad hoc criminal tribunals, for the former Yugoslavia and Rwanda. Bringing some of the leading war criminals to justice in The Hague and Arusha helped millions of victims find solace in the knowledge that their victimhood had been exposed publicly, not only at home but also in the global community.

It is that success that has encouraged 123 nations to ratify the Rome Statute and, in effect, withdraw impunity for the most serious war crimes by supporting the work of the ICC. In the aftermath of bloody war and egregious violence it is only justice that is able to bring about lasting peace.

The Honorable Richard Goldstone is a past chief prosecutor at the International Tribunal for the Former Yugoslavia, and a former justice of South Africa’s constitutional court.

This is an excerpt from his contribution to the Coalition’s 20th anniversary blog series When hope and history rhyme.

We are welcoming submissions throughout 2015-16. To add your voice, contact communications@coalitionfortheicc.org.
INDONESIA, NEPAL, Ukraine, Malaysia, Armenia, Benin, Ghana, Sri Lanka and Togo were among the focus countries for our Campaign for Global Justice in 2014-15, carried out in close consultation with national and local civil society.

In June 2015, we called on Benin to pass a domestic ICC law as civil society from across Africa gathered in the capital Cotonou for our regional strategy meeting. In September 2015, the campaign focused on Sri Lanka as the UN Human Rights Council adopted a resolution on alleged atrocities during the country’s civil war. The Armenia campaign kicked off on the 100th anniversary of the Armenian genocide on 24 April and lasted through the entire month of May. Meanwhile, political momentum is building in Togo to pass a long-awaited ICC bill pending before parliament following a Coalition mission to Lomé in September.

Following years of civil society advocacy, Palestine became the ICC’s 123rd member state with the entry into force of its accession in April 2015. Jamaica committed to joining the ICC during its Universal Periodic Review at the UN Human Rights Council. And the Democratic Republic of Congo and Austria adopted bills incorporating the Rome Statute into domestic law.

We also continued to campaign to strengthen state cooperation with the ICC system. In June 2015, ICC fugitive Omar al-Bashir fled South Africa after a Coalition member, the South African Litigation Centre, applied for the arrest of the Sudanese president in Pretoria’s high court. 

The Agreement on Privileges and Immunities of the ICC allows ICC officials and staff to work safely and independently. However, only 74 states have ratified the Agreement. In 2015-16, we’ll be aiming to change that.

### LATEST RATIFICATIONS/ACCESIONS*

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*As of 3 November 2015
Independent global civil society fighting for justice for war crimes, crimes against humanity and genocide.