

## ICC AT 10: A DECADE OF TRIALS AND TRIBULATIONS

IN JULY 2002, the world's first and only permanent International Criminal Court (ICC) opened its doors for business. An idea conceived in history, but remaining on paper for many years, finally became a reality thanks to the tireless efforts of civil society organizations and a group of progressive states, from north and south, bound together under the common goal of ending impunity for the world's most heinous crimes. This year, the fruit of that labor celebrates its 10th birthday. However, like all 10-year-olds, the ICC has yet to reach full maturity.

The road travelled by the ICC has not been without difficulties, controversies or criticisms. Yet, seeking to investigate crimes that shock the conscience of humankind was never going to be an easy task. Save for a handful of conflicts—such as the Second World War, the former Yugoslavia, Rwanda and Sierra Leone—the world has long been a place where appeasement and impunity have been the order of the day. However, the unique permanence and global reach of the ICC, along with its ability to deliver restorative as well as punitive justice, sets it apart from the ad hoc and hybrid tribunals. These institutions also suffered a great deal of criticism early on, but were ultimately instrumental in creating a new culture of accountability and reckoning. It is the ICC's task to build on this legacy and



TRIAL arranged for Geneva's "jet d'eau" to be illuminated in red on International Justice Day, 17 July 2012, one of a number of activities organized by Coalition members worldwide celebrating the Court's creation. Gestures of recognition for the ICC have been made by states, international organizations, civil society and individuals, reflecting on the tremendous achievements of international justice in the past 10 years. Credit: TRIAL

develop a new legal order at both at the domestic and international levels.

With its first few years dedicated to establishing the offices and units that would give life to its mandate, the ICC got off to a relatively slow start. Fast forward to the present day and it now has investigations ongoing in seven countries, with some 18 cases initiated at either pre-trial or trial level and is in the midst of its first ever reparations proceedings. Undertaken in different social and cultural contexts and in multiple languages, these are no small feats.

However, that the Court has, to date, only issued one verdict is problematic, despite the groundbreaking nature of the case against Thomas Lubanga in highlighting the specific plight of child soldiers. Moreover, the absence of charges for gender and sexual violence in the Lubanga case, an issue hotly contested by Coalition members, such as the Women's Initiatives for Gender Justice ("Women's Initiatives") and their partner organizations in the region, led many civil society organizations to question the work of the Office of the Prosecutor (OTP).

Heeding these concerns, a different approach was applied in other cases with charges involving gender and sexual violence, most notably in the case against Lubanga's co-accused Bosco Ntaganda—who

"Even with only 10 years of history, the ICC has brought hope to victims that when national or regional mechanisms fail, there is a court of last resort. It is upon us all to ensure that never again such horrendous acts will be committed, and if so, that justice be rendered accordingly."

—Loretta Ann Pargas Rosales, chair, Philippine Commission on Human Rights

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## NOTE FROM THE CONVENOR

THIS 44TH ISSUE of *The Monitor* is published in the auspicious year of the 10th anniversary of the entry into force of the Rome Statute (RS) and the establishment of the ICC. This past year the RS system has seen more states ratify or accede to the RS since its establishment. The challenges that the leaders of the Court and of the Assembly of States Parties (ASP) will face in the next decade are as great, and could be greater, than those of the Court's first decade. Encouragingly, ASP President Ambassador Tiina Intelmann and the new ICC Prosecutor, Fatou Bensouda, have been outlining progressive visions for their terms in office. The extremely difficult relationships between the ICC and the UN, the Security Council and the African Union, along with the failure of governments to cooperate with the ICC in executing arrest warrants, are among the most serious challenges confronting the Court. It is crucial that the Coalition help find ways to restore strong, high-level political support for the ICC. Towards this goal, the Coalition has worked with Dr. Aurelia Frick, foreign minister of Liechtenstein, to establish an informal ministerial network, which held an inaugural meeting in September when world leaders attended the opening of the 67th UN General Assembly. Regardless of claims made by the Court's opponents and professional skeptics, the ICC's achievements in its first decade have been historic. Indeed, historians will describe the achievements of international justice institutions in the last 20 years on a revolutionary scale. International justice has been the least expensive and most cost-effective sector of the entire peace and security spectrum. Costing a small fraction of what peacekeeping, peace-enforcement, humanitarian assistance and other sectors cost, international justice helps deter and reduce the worst and most destructive crimes, and contributes



## ABOUT US

The Coalition for the International Criminal Court includes 2,500 civil society organizations in 150 different 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; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.

*The Monitor* is the Coalition's flagship publication. It is distributed worldwide in English, French and Spanish and is available online at [www.coalitionfortheicc.org/?mod=monitor](http://www.coalitionfortheicc.org/?mod=monitor)

The Coalition encourages readers to submit letters on any of the articles or issues contained within the issue of *The Monitor*. Please write to the address below or email [communications@coalitionfortheicc.org](mailto:communications@coalitionfortheicc.org)

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*Together for Justice: Civil society in 150 countries advocating for a fair, effective and independent ICC.*

to peace agreements, to reconciliation and to post-conflict reconstruction. In this regard, the regressive financial strategy of some major governments towards the ICC is a monumental example of penny-wise and pound-foolish policymaking. During and after the upcoming 11th session of the ASP, the Coalition will strive to convince and work with other governments to channel the financial crisis towards constructive reforms and improvements in the organs of the ICC and the ASP. As the permanent International Criminal Court, one which could not be achieved in the world's current political environment, it is vital that all who support the Court resolve to redouble their commitment. As ever, the Coalition will participate at the ASP with a large delegation of global civil society representatives and will contribute to discussions through side events and the submission of position papers. This issue of *The Monitor* covers these important matters and others, such as current ICC cases, situations and preliminary examinations, as well as the Coalition's worldwide campaign for the universality of the RS.

*William R Pace*

William R. Pace, Convenor of the CICC

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## GLOBAL PARTNERS: SPOTLIGHT ON THE NETHERLANDS

THE COALITION FOR the International Criminal Court works with partners from around the globe in its mission to advance international justice. The government of the Netherlands has been a longtime partner of the Coalition and has provided major support for efforts around the world since 2001. The Netherlands' leadership has been crucial in supporting the engagement of civil society in the Rome Statute system and has enabled the Coalition to secure stronger access to justice, strengthen cooperation with the ICC, and further international justice in more than 150 countries. As the host nation of the ICC, the Netherlands will continue to play an important and active role in advancing the international justice system. Because of the Netherlands and other partners, the global community is continuing to move closer to a world in which all people have access to core human rights and the rule of law.

The Coalition is deeply appreciative of the generous support provided by all of its many partners and donors from around the world. In addition to support from the government of the Netherlands, 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 Foundations and the Sigrid Rausing Trust, as well as by the governments of Australia, Austria, Belgium, Denmark, Finland, Ireland, Liechtenstein, Luxembourg, New Zealand, Norway, Sweden and Switzerland, and numerous individual donors. Support from individuals, foundations, governments and other institutions is essential to the Coalition's efforts to end impunity. If you would like more information about how you can support the Coalition, please visit [www.coalitionfortheicc.org/donate](http://www.coalitionfortheicc.org/donate) or contact us at +1.646.465.8527 or at [development@coalitionfortheicc.org](mailto:development@coalitionfortheicc.org). ✖



ICC headquarters in The Hague, the Netherlands. Credit: ICC-CPI

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remains a fugitive—and that of Jean-Pierre Bemba, whose defense will conclude in 2013. The new ICC prosecutor, Fatou Bensouda, also prioritized the appointment of a new special advisor on gender and sexual violence shortly after taking office. Brigid Inder, executive director of the Women’s Initiatives, now takes over in this role from Professor Catherine MacKinnon. The appointment is arguably a recognition of the vital role that civil society organizations have played, and continue to play, in mainstreaming the issue of gender and sexual violence in the work of the ICC.

The some six years it took the Court to convict Lubanga from the time of his transfer to The Hague—exacerbated by delays related to the disclosure of evidence and other issues—came at great expense financially and in terms of victims’ needs for timely justice, as well as to the credibility of the Court to some extent. It is vital that over the next few years the ICC significantly reduces the duration of its trials, which will bolster confidence in the Rome Statute (RS) system and ensure the delivery of punitive and restorative justice as quickly as possible.

That said, lessons are being learned at the Court. For instance, draft guidelines on the use and protection of intermediaries—persons who provide instrumental assistance for certain Court activities, such as accessing territories and victims—have been produced. Meanwhile, a Court-wide lessons learned exercise is being led by ICC Vice President Sanji Monageng. The Coalition has consistently underlined the

need for such a process to be undertaken. It is imperative that the new prosecutor is supported both diplomatically and financially to implement these reforms, and that the Court has sufficient resources to ensure that her office and other organs of the Court have the means and expertise to conduct investigations that are comprehensive and far-reaching.

Allegations of bias in its investigations, specifically in Africa, have also plagued the Court for far too long in its relatively short life. All of the Court’s seven investigations have taken place in Africa. Despite opening preliminary examinations in nine countries around the world (three of which have since come to a close without an investigation being opened), not a single one located outside the African continent has moved to a formal investigation, even those seemingly rife with evidence of crimes under the Court’s jurisdiction. These allegations were exacerbated by a former prosecutor who would claim to go where the evidence took him, but which only ever seemed to take him to states on the African continent. Over time, this has worn the patience of even the most ardent supporters of the Court, leading many to argue that the ICC should have done a much better job communicating a more convincing rationale behind its decision-making processes. The failure to do so has given detractors an easy win in the court of public opinion.

In this respect, some African governments have cried foul, condemning the ICC through the African Union (AU).

“States still lag behind in the fight against impunity, including by welcoming ICC suspects to their territories. In addition, extending universal jurisdiction is one of the biggest challenges we face today.”

—Richard Greiner, TRIAL (Track Impunity Always), member of the Swiss Coalition for the ICC

Civil society organizations have sought to tackle the allegations of bias head-on, clarifying in dialogue with observers that the Court’s focus on Africa is a demonstration of support for victims in Africa. Working with the Court, NGOs have also tirelessly sought to encourage the ICC and states to engage with the AU to respond to these allegations and encourage African states parties to speak up in support of the ICC and RS system. With new leadership at the AU, now is the time for the ICC, supported by the ASP and individual state parties, to build a strong relationship with the African political elite.

NGOs have also consistently called on the ICC to step up its efforts and ensure greater transparency in terms of its activities during the preliminary examination phase. The OTP has taken some positive steps in this respect, most notably through a report in December 2011. However, civil society organizations in preliminary examination countries have questioned why some preliminary examinations have progressed to full investigations while others have not (i.e. Kenya compared to Colombia); why others have taken so long to rule on jurisdictional ques-

“The ICC is an essential step in the fight against impunity and a real hope for many victims in Côte d’Ivoire and worldwide who have had no justice. However, in order to overcome many challenges, it is essential that the ICC change its strategy in terms of procedure, communications and outreach.”

—Ali Ouattara, president, the Ivorian Coalition for the ICC

> CONTINUED ON P. 5

tions and then not provided thorough explanation (i.e. Palestine); or why, despite the ICC's scrutiny, no significant progress has taken place in some countries in terms of adoption of ICC implementing legislation or concrete advances in relation to investigation and prosecution of crimes that could potentially fall under the Court's jurisdiction (i.e. Afghanistan).

This lobbying has not been limited to states in Africa and the AU, however, as the Coalition and its NGO members have at every opportunity encouraged national governments to use their membership of other organizations to further the goals of the ICC, be it the Organization of American States, the European Union, the Organization for Security and Cooperation in Europe or the United Nations (UN), to name but a few. NGOs have consistently called on ICC states parties to use their permanent or rotational membership on the UN Security Council ("Council") in this regard. This includes, in this period of global financial difficulty, meeting the costs associated with Council

tary general to address the financing of Council referrals.

The lack of consistency in such referrals from the Council has also served to exacerbate the perception of ICC bias (why Libya and not Syria for example), leaving it to look weak even though it can only respond to certain ongoing conflicts if a political decision is taken by the Council. Stark political realities and failures to take concerted action in various conflict situations emphasize the need for the Council to institutionalize consistency and transparency in Council referrals by developing guidelines by which it refers situations to the ICC. In so doing, it could avoid the perception of politicized referrals, which serves to taint the implementation of the rule of law.

Nevertheless, the only fool-proof way of avoiding politicization of the ICC, or at least limiting opportunities for it, is by making the RS applicable throughout every territory in the world. Civil society has been committed to advancing universal ratification for 15 years. Having attained 121 states parties, the reach of the ICC now extends to two-thirds of the

"The creation of the ICC has given effect to a human rights system that was previously considered words on paper. We hope that the ICC will soon intervene in Syria where many victims are suffering from crimes under the Court's jurisdiction."

— **Ammar Qurabi, National Organization for Human Rights in Syria**

referrals, as is permitted in the RS. It is therefore crucial that UN member states assist the Court in facilitating its institutional dialogue with the UN as set-out in the ASP's resolution on the ICC budget, which mandated the Court to begin discussions with the UN secre-

globe. Despite the criticism and misperceptions surrounding the Court's first decade, interest in joining the ICC club has not abated, with more countries joining in 2011 than in any single year since 2002, thanks largely in part to the collaborative efforts of NGOs, the ICC presidency and like-minded states.

"Latin America must continue to provide important support to the RS system. Many states, including Mexico, still need to implement the Statute into their national laws, as well as ratify the amendment on the crime of aggression. Civil society and academia—relentless supporters of the Court—stand ready to assist."

— **Nancy J. Lopez Perez, Center for the Development of International Justice, Mexican Coalition for the ICC**

In many ways what unfolded in Rome in 1998 and in the preceding years represented a struggle between the old established order of power—large states whose authority derived either from wealth or a seat on the Council, or both—and those who sought to throw down the shackles of arbitrary or victors' justice to establish a new system of order based on equality and universal application, independent of the established UN system of global governance.

That goal has yet to be fully realized, but every RS ratification brings us closer, because with it comes domestic legislation criminalizing mass atrocities, judicial reform, training of police and the judiciary and a change in attitude towards the rule of law and accountability, or at the very least the potential for it. The ICC is here to stay; the challenge now lies in ensuring that its mandate is not diminished through decisions or actions that limit its ability to be a robust and efficient institution capable of delivering justice whenever and wherever the need should arise. This is the single most important task for NGOs and states parties in the coming decade. ✨

# ICC BUDGET: SAVINGS AT THE EXPENSE OF JUSTICE?

THE GLOBAL ECONOMIC crisis represents one of the biggest challenges facing states and the International Criminal Court (ICC) since its establishment a decade ago. Delivering justice in the current climate of austerity is no easy task for the Court or states parties to the Rome Statute (RS). Yet the allocation of an adequate budget to an ever-maturing Court is crucial for it to build on the achievements of its first 10 years and to continue fulfilling its mandate in those to come.

The Court's ability to find efficiencies has reached breaking-point and there will be dire consequences for its day-to-day operations should the Assembly fail to grant the Court the budget it needs for 2013.

It is widely recognized that the ICC should endeavor to deliver a budget that is rigorous, disciplined and based on efficient and transparent practices, strategies and assumptions. This approach is important, but should not have as its sole purpose the need to find reductions. The Court's ability to deliver on its mandate must not be compromised purely due to a desire for savings.

The Court's proposed budget for 2013 is €118.75 million, which is an increase of €9.95 million, or 9.15%, over the budget approved by the Assembly of States Parties (ASP) in 2012. Budget increases are unavoidable for a growing and maturing institution such as the ICC. However, the Court has this year proposed a budget that would absorb certain cost increases by finding efficiencies elsewhere when possible, demonstrating its commitment to austerity. Yet, the Court's ability to find efficiencies has reached a breaking-point and there will be dire consequences for

its day-to-day operations should the Assembly fail to grant the Court the budget it needs for 2013.

This year, discussions around the budget have again reflected the desire of certain states parties that the Court adopt a policy of "zero nominal growth"—in other words, lobbying against an increase on the budget from previous years—in its budgeting for 2013. Such an approach would again pose substantial risks to the Court's ability to properly undertake its activities. The Court has already heeded to this pressure, indicating in its proposed budget that it endeavored to propose a budget no greater than what it was allocated in 2012. The ICC is a dynamic institution which must be able to respond to the world's worst crimes when it is required. Imposing this limitation at a time when the Court has not yet reached its full judicial workload will result in it not being able to conduct its work effectively during periods of high activity or having to reduce its activities when its work is most needed.

Instead, it is imperative that the debate on the budget of the Court is shifted from the perceived need for zero-growth and reductions, to the real need for increased efficiency and transparency in the budgeting process. Misunderstandings and perceptions of inefficiencies can be addressed through increases in the transparency of the Court's budget and formulation process. Open dialogue between states parties and the Court throughout the year will allow for the development of a budgeting system which takes into account the scalability of the ICC's resources in relation to its workload and which states parties understand and are satisfied is efficient. ICC officials and the ASP also need to work towards developing a multi-year budget to avoid micro-management of the Court, something which takes valuable time away from discussions of more substantive issues. ✦

## COALITION HIGHLIGHTS IMPORTANCE OF ICC LEGAL AID AND COMMUNICATIONS

DURING THE PAST year, several aspects of the Court's operations have come under close scrutiny in the budgetary process, prompting the Coalition to undertake advocacy on the necessity to view all of the Court's functions as part of the wider RS system of international justice. Legal aid—a system whereby indigent defendants and victims are able to have their costs of legal representation paid for by the Court—was identified as a considerable cost driver and states instructed the Court to find reductions. Throughout 2012, the Coalition highlighted the importance of the provision of legal aid in order to ensure the fair trial rights of defendants and victims, and stressed that as the number of the Court's activities and cases increase, so too will the number of defendants and victims requiring legal aid.

Meanwhile, budget discussions during 2012 have at times singled out the ICC's outreach and public information activities as being somehow supplementary to its mandate. The Coalition has countered such positions, including in a letter calling on states to give active, vocal and financial support to the communications activities of the Court in 2013 and beyond. The letter articulates the intrinsic link of ICC outreach and public information activities to the Court's litigious activities and outlines its importance in ensuring that justice is visible and in maintaining an open dialogue with those most affected by its judicial processes, and further underlines the benefits brought by this engagement to the Court's overall cost-effectiveness, efficiency and fair and independent functioning. ✦

# ASP 11: SUBSTANTIVE ISSUES MUST NOT BE SIDELINED BY BUDGET DISCUSSIONS

WITH THE 2012 Assembly of States Parties (ASP) taking place in the auspicious 10th anniversary year of the International Criminal Court (ICC), early indications are that states will use this unique opportunity to break from the budget-dominated discussions of previous years by reflecting on the achievements of the Rome Statute's (RS) first decade and putting in place concrete means of overcoming some of its biggest future challenges.

From 14–22 November 2012, representatives of government, civil society and the ICC will meet in The Hague for the Assembly's 11th annual session. With last year's ASP session in New York having been dominated by elections and intense negotiations over the Court's budget, greater attention is required at ASP 11 on substantive issues that can strengthen the ICC's mandate, such as improving judicial and diplomatic assistance to the Court.

Conscious of the successful stocktaking sessions at the 2010 Kampala Review

Conference, the Coalition has consistently urged states parties and ASP leaders to use the opportunity presented by the annual meeting of the Assembly—which draws together key stakeholders from across the world—to debate and advance core issues relating to the RS system.

“ASP sessions have in recent years been heavily dominated by budget negotiations, often at the expense of substantive issues of concern to the future success of the ICC,” stated Sunil Pal, head of the Coalition's legal section. “If this trend continues, there is a danger that the ASP will not fully discharge its governance mandate and inadvertently contribute to inefficiencies at the Court.”

“Goal-oriented discussions on issues such as victims, reparations, cooperation, complementarity and outreach are need-



States representatives and civil society at the 10th ASP in New York. Credit: CICC/Solal Gaillard.

ed at ASP sessions based upon proactive inter-sessional planning in the working groups in New York and The Hague,” Pal continued. “While discussions over the Court's budget are of paramount importance, this issue should not be at the expense of the Assembly meeting its governance responsibilities.”

Throughout 2012, a group of six states parties—comprised of the Court's largest financial contributors—have continued their push for “zero nominal growth”

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## NEW ASP PRESIDENT BUILDS SUPPORT FOR ICC

ASP PRESIDENT AMBASSADOR Tiina Intelmann took office on the opening day of the Assembly's 10th session in 2011, immediately presiding over the election of six new judges and assisting in tense negotiations over the ICC budget. She brings broad experience in international relations to the office, having served as the permanent representative of Estonia to the UN as well as to the Organization for Security and Cooperation in Europe.

President Intelmann has outlined her priority to consolidate the achievements of the past 10 years by paying particular attention to the issues of cooperation and non-cooperation and achieving universality of the RS, as well as improving relations between the ICC and its constituencies, particularly in Africa. To these ends, the new president has convened several ASP Bureau meetings in The Hague and New York, and has visited Australia, Morocco, Ethiopia, Egypt, Estonia and Switzerland, meeting with representatives of states, international and regional organizations, and civil society, including many Coalition members.

Other activities have included: engaging with the UN Human Rights Council as a forum for encouraging the ratification and implementation of the RS as part of its Universal Periodic Review; working to increase EU support for the Court; reinforcing bilateral ties with states not yet party to the RS—particularly in the MENA region—or who have yet to complete the implementation process; as well as supporting greater prosecutions of international crimes at the national level. ✦



ASP President Tiina Intelmann speaks at a Coalition reception in New York on 13 December 2011. Credit: CICC/Solal Gaillard.

in the Court’s budget, lobbying against an increase on the budget from previous years. In response to an anticipated stand-off between those supportive of the Court’s own budget projections and its major funders, the ASP leadership has expressed a desire for negotiations over the budget to be largely concluded in advance of the November session.

If this occurs as planned, it is likely that there will be time for more focused and substantive discussions on the ASP agenda, in particular on cooperation and complementarity—the principle under the RS whereby national courts have priority over the ICC unless they are unwilling or unable to prosecute a particular case. In this respect, a high-level meeting on complementarity is expected to take place at the ASP, with the participation of Helen Clark, chair of the United Nations (UN) Development Group and administrator of the UN Development Programme. The meeting would build on the discussions amongst a small informal network of NGOs, states parties and UN agencies—known as the Greentree

process—with the intention of drawing the wider ASP membership back into the evolving dialogue on increasing the capabilities of domestic prosecutions.

Early signs indicate that cooperation is on the ASP agenda. With 12 ICC suspects still at large, cooperation with the Court is likely to remain an issue of critical importance in the ICC’s second decade and one which will have a direct bearing on its future success. Along with non-cooperation (see box, page 12), cooperation has been identified as a core priority for the new ASP president, Ambassador Tiina Intelmann. The Coalition has strongly supported the inclusion of this issue on the agenda for ASP 11 and continues to urge states parties to commit to a goal-oriented discussion aimed at producing decisions which strengthen their commitment in this critical area.

Looking back to last year, the 10th ASP session had mixed outcomes for NGOs. In addition to the budget discussions, elections dominated the agenda. The new ICC prosecutor and the ASP president were elected by consensus, along with 33

other ICC and ASP officers, including six new judges, an 18-member Bureau and two new ASP vice presidents. While this represented the most significant change in ICC and ASP leadership since the Court’s establishment, it left little time to discuss substantive issues.

The assembled delegates did, however, manage to adopt resolutions on cooperation, reparations, the permanent ICC premises, the “omnibus” resolution and an amendment to Rule 4 of the Rules of Procedure and Evidence. Other positive developments included the approval of a non-cooperation procedure for the ASP and consensus support for the establishment of the Advisory Committee on Nominations, the members for which will be appointed during ASP 11 (see box below).

Encouraged by the promising indications ahead of ASP 11, civil society will continue to push the Assembly to ensure that constructive debate is undertaken and important decisions are made on core issues related to the ICC and wider RS system as it moves into its second, crucial, decade. ✦

## KEY OFFICIALS TO BE ELECTED AT ASP 11

THE 11TH SESSION of the ASP will again take place against the backdrop of elections of key ICC officials who will play a critical role in the future management of the Court.

The Assembly is to elect a deputy prosecutor to fill the vacancy left by Fatou Bensouda when she became chief ICC prosecutor in June 2012. Bensouda has nominated three candidates for the position: Ms. Raija Toiviainen (Finland), Mr. Paul Rutledge (Australia) and Mr. James Stewart (Canada). The Coalition has issued questionnaires to the three candidates to raise awareness of their qualifications.

The ASP is also expected to formally appoint the nine members of its newly-established Advisory Committee on Nominations (ACN). The ACN is a standing body of independent experts mandated to facilitate the election of the highest-qualified individuals as ICC judges through the provision of objective assessments to the ASP on all candidates. The ASP Bureau is expected to recommend nine experts for the ACN from nominations received from all five regional groups.

This new ASP initiative builds on the work of the Independent Panel on ICC Judicial Elections, established by the Coalition in 2010 to consider whether candidates put forward by states parties meet the qualifications prescribed by the RS. The panel’s report on the 19 candidates for the December 2011 ICC judicial elections represented an important step toward transparent and merit-based international elections that must be taken further by the ACN.

Elections are also to take place for five members of the Trust Fund for Victims, established under the RS to work alongside the ICC’s reparative function to benefit victims of crimes within the jurisdiction of the Court and their families. The newly elected members will be responsible for the implementation of reparations to victims in the Lubanga case in eastern Democratic Republic of Congo.

Meanwhile, the term of ICC Registrar Silvana Arbia ends in April 2013. Although not an elected position, ASP 11 is expected to agree upon and submit guidance to the plenary of judges for consideration when appointing the next registrar from short-listed applicants. ✦

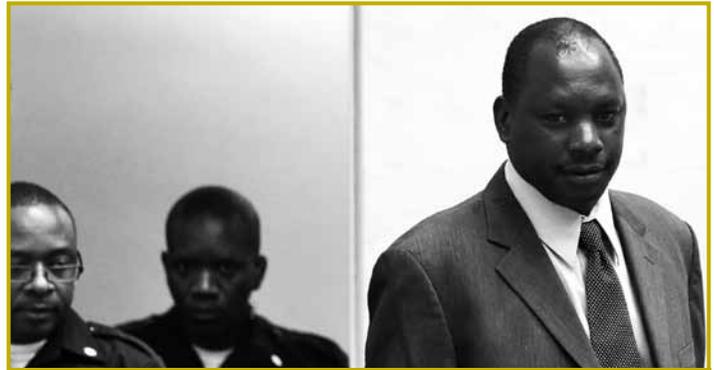
# FIRST ICC GUILTY VERDICT PAVES WAY FOR REPARATIONS TO VICTIMS

TEN YEARS AFTER its establishment, 2012 has been a year of firsts for the International Criminal Court (ICC) with the delivery of its first verdict, sentence and decision on victims' reparations in the trial of former Congolese rebel leader Thomas Lubanga Dyilo. In March, ICC Trial Chamber I found Lubanga guilty of the war crimes of enlisting, conscripting and using children under the age of 15 as soldiers in the conflict in Ituri, eastern Democratic Republic of Congo (DRC) in 2002-2003. In July, Lubanga was sentenced to 14 years imprisonment and the following month ICC judges set in motion the process that will lead to the awarding of reparations to the victims of his crimes, underlining the Rome Statute's (RS) unprecedented restorative potential.

"Lubanga's sentencing is a major step towards justice and acknowledgement of the suffering of the many victims in the Ituri conflict," stated Emmanuel Baudouin Unen Munganga of the DRC NGO

League for Peace, Human Rights and Justice and Ituri focal point of the DRC Coalition for the ICC. "However, for victims to feel that justice has truly been done, the ICC needs to ensure that reparations are adequate, inclusive of the largest number of victims and proportionate to the damage inflicted."

On 10 July, after considering aggravating and mitigating factors, ICC judges arrived at the sentence of 14 years for Lubanga, taking into account in particular the gravity of his crimes, the large-scale and widespread involvement of children in the conflict and Lubanga's knowledge that children would be conscripted and enlisted in his army, the *Forces Patriotiques pour la Libération du Congo*. But the Chamber also commended Lubanga on his notable cooperation during the trial,



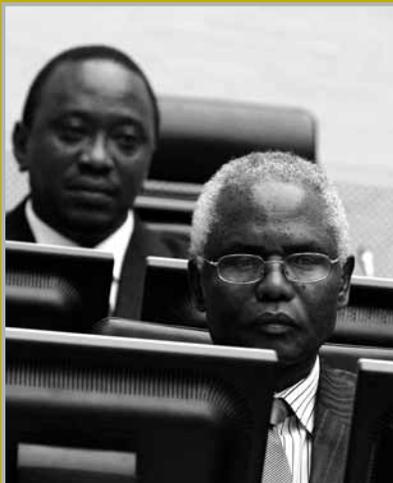
Thomas Lubanga Dyilo during his sentencing hearing on 10 July 2012. Credit: ICC-CPI/Jerry Lampen/ANP

despite two stays (suspensions) of the proceedings, as well as misleading and inaccurate public statements given by the Office of the Prosecutor.

Judge Odio Benito issued a dissenting opinion concerning the length of the sentence, stating that evidence of young boys and girls subjected to harsh punishment and conditions, sexual violence, and psychological damage should have been taken into consideration as aggravating factors. However, cruel treatment and sexual vio-

> CONTINUED ON P. 10

## KENYA: FOUR ICC SUSPECTS TO STAND TRIAL AMID 2013 PRESIDENTIAL ELECTIONS



Uhuru Kenyatta and Francis Muthaura at the 8 April 2011 initial hearing at the ICC. Credit: ICC-CPI/AP/Bas Czerwinski

IN THE MIDST of Kenya's presidential elections in March 2013, two trials against four prominent figures—including two potential presidential candidates—are to take place at the ICC.

On 10 and 11 April 2013 respectively, trials will begin against MP William Ruto and radio presenter Joshua Sang, and against former head of civil service Francis Muthaura and current Deputy Prime Minister Uhuru Kenyatta. The four are accused of committing crimes against humanity during violence which followed the 2007 Kenyan presidential elections. Ruto and Kenyatta are expected to run for president in 2013.

Civil society organizations and many victims of the 2007-2008 post-election violence have welcomed the decision to send the four suspects to trial, seeing it as sending a strong message that the entrenched impunity of powerful figures in Kenya will not be tolerated. However, many have also called for other perpetrators of post-election crimes to be held to account as well.

It is further feared that public anxiety and tension could increase ahead of the 2013 elections due to several factors, including rising ethnic polarization as the various parties build political coalitions, the prevalence of succession politics and a persistently weak culture of accountability and rule of law, as well as an increasing politicization of the ICC's intervention in Kenya by different actors.

With a credible electoral process critical to reducing tensions and maintaining respect for the rule of law in Kenya around the upcoming elections, increased levels of targeted outreach and public information on the ICC are therefore of utmost importance so that misperceptions and misrepresentations of its mandate and proceedings can be effectively counteracted. ✦

lence had not been included in the charges against Lubanga, provoking much reaction from victims and civil society.

“We are disappointed that the majority of judges did not recognize the widespread commission of sexual violence as an aggravating factor in the sentencing decision, especially given the number of witnesses—both prosecution and defense—who testified about this issue, as well as the filings on sexual violence submitted by the legal representatives of victims,” said Brigid Inder, executive director of the Women’s Initiatives for Gender Justice. The Women’s Initiatives noted that the authenticity issues raised in the trial judgment regarding possible interference by a small number of intermediaries in testimonies given by former child soldiers meant that some of the strongest evidence of sexual violence could not be fully considered by the judges. “The 2006 decision by the ICC to not explicitly charge Thomas Lubanga

with gender-based crimes unfortunately hampered its ability to draw attention to these issues later in the case, although significant efforts were made by the OTP to highlight issues of sexual violence during the trial stage,” Inder said.

On 7 August, the Chamber issued a landmark decision setting out the principles and procedures for the award of reparations to the victims in the case—many of whom are former child soldiers. Several organizations, including Coalition NGO members, applied and were granted the right to make observations on this issue. The Trust Fund for Victims, also established by the RS, has now been instructed to collect reparations proposals from victims and affected communities, which are to be then approved by the Chamber.

“Reparations are a key feature of the RS and vital to the overall success of the ICC, but in order for them to be meaningful,

and to avoid fuelling tensions on the ground, the process will be as important as the result. It is crucial for victims to be fully consulted on the most appropriate reparations measures, and the best way to implement them,” said Carla Ferstman, director of REDRESS. “It is also essential that the ICC undertakes adequate and swift outreach to victims and affected communities to explain the sentence and what the next steps are, including the reparation proceedings. It is important that justice is done, but also that victims see and understand that justice is done.”

It is hoped that the eventual reparations awards will contribute to relieving the suffering caused by Lubanga’s crimes, as well as to the effective reintegration into society of the former child soldiers involved in the case. On 3 October 2012, Lubanga appealed both the guilty verdict and sentence, while ICC Prosecutor Fatou Bensouda appealed for the sentence to be revised upwards. ✦

## CÔTE D’IVOIRE: KEY HEARING IN GBAGBO CASE TWICE POSTPONED



Initial appearance of Laurent Koudou Gbagbo before the ICC, 5 December 2011. Credit: ICC-CPI/AP Photo/Peter Dejong

A KEY HEARING to decide whether the case against former Côte d’Ivoire president Laurent Gbagbo will be sent to trial was twice postponed by ICC Pre-Trial Chamber I in 2012. On the first occasion, on 12 June, the confirmation of charges hearing was postponed in order to safeguard the fair trial rights of the defense and to ensure that it had adequate time and facilities to prepare its case. On the second occasion, on 2 August, the hearing was postponed until a medical evaluation of Gbagbo’s fitness to take part in the case is carried out. On 2 November, judges ruled that Gbagbo was fit to take part in the proceedings and the hearing would be rescheduled.

The postponements have provoked mixed reactions in Côte d’Ivoire, with some of Gbagbo supporters claiming they are evidence of his innocence, while many victims are reported to be worried that the ICC process will drag on indefinitely. The Ivorian Coalition for the ICC has called on the Court to intensify its outreach activities—including by opening its planned Côte d’Ivoire field office as soon as possible—to raise awareness on the reasons behind the

delays. To date, 139 victims have been authorized to participate in the case.

Gbagbo, the first former head of state to appear before the Court, is suspected of crimes against humanity committed during violence in Côte d’Ivoire following the country’s disputed presidential election in November 2010. Following an affirmation by ICC judges that the Court’s jurisdiction extends back to 2002, the Ivorian Coalition has also urged the ICC prosecutor to investigate crimes committed by both sides of the political divide during this period. In August 2012, a defense challenge to the jurisdiction of the Court was rejected by ICC judges. ✦

## REFORMING THE WORKING METHODS OF THE UN SECURITY COUNCIL TO STRENGTHEN ITS RELATIONSHIP WITH THE ICC



In Majdal Shams, blood red graffiti reads “Stop killing the Syrian people.” Despite many calls from the international community, there has been no UN Security Council referral of the Syrian situation to the ICC. Credit: Mya Guarnieri/IRIN

WITH THE POWER to refer states not party to the Rome Statute (RS) to the International Criminal Court (ICC), the United Nations Security Council (“Council”) has a unique role to play in ending impunity for the gravest crimes as part of its wider mandate to maintain international peace and security. However, conflicts arising from the Arab Spring—in addition to many others around the world—have allowed for sharp comparisons on the selective use of this power by the Council, leading to confusion about the relationship between the two bodies and their respective mandates, as well as to unfair accusations of bias against the ICC. While recent attempts to reform the working methods of the Council when dealing with the commission of grave crimes disappointingly failed to get the necessary backing, they have reignited

discussion on achieving consistency in ICC referrals from the Council. In the meantime, however, the Council urgently needs to step up the enforcement of its referrals to the Court, in particular to ensure cooperation regarding ensuing ICC cases.

The unprecedented and unanimous adoption of Security Council Resolution 1970 on Libya last year, which included a referral of the conflict for investigation by the ICC prosecutor, demonstrated great leadership by the international community in protecting civilians and in attempting to end impunity. That same leadership, however, faded away when it came to ensuring the provision of funding for any potential cases arising from the referral. Meanwhile, as the conflict in neighboring Syria has descended further into bloodshed and civilian deaths, calls

for the Council to refer the situation to the ICC have come from many inside Syria, neighboring states, the European Union, the Arab League, the Friends of Syria group, UN High Commissioner for Human Rights Navi Pillay and civil society organizations the world over, including many Coalition members such as the International Federation for Human Rights, No Peace Without Justice, Amnesty International and Human Rights Watch. However, as there has been no Council referral of the Syria situation, accusations of bias are being unfairly leveled at the ICC for not undertaking an investigation into alleged crimes. The fact remains that the Court can only investigate in a state not party to the RS when mandated to do so by the Council, and the Court has no influence over the decisions of the Council to refer situations.

While recent attempts to reform the working methods of the Council when dealing with the commission of grave crimes disappointingly failed to get the necessary backing, they have reignited discussion on achieving consistency in ICC referrals from the Council.

In May 2012, a golden opportunity was lost to reform the working methods of the Council when dealing with the commission of grave crimes that would have allowed a strengthening of its relationship with ICC and a greater consistency.

> CONTINUED ON P. 12

## REFORMING THE UN SECURITY COUNCIL (continued from page 11)

tency of approach that would go some way to alleviating perceptions of politicization or bias wrongly attributed to the Court. Part of a proposed resolution put forward by the group of five small countries (Costa Rica, Jordan, Liechtenstein, Switzerland and Singapore), commonly referred to as the “S-5 Resolution”, called on permanent members of the Council to consider “refraining from using a veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity.”

In a letter to UN member states, the Coalition expressed support for the proposal—which identifies the core crimes in the mandate of the ICC—indicating that it would help strengthen the relationship between the Council and the ICC. Disappointingly, the resolution was eventually withdrawn as it did not receive the necessary support; the permanent members of the Council considered the General Assembly-led initiative to be intruding on the work of the Council, while certain other states prioritize discus-

sions on the expansion of the seats on the Council over reform of its working methods. Nevertheless, the proposal represents an important shift in thinking about how the Council could be more consistent in its approach to dealing with the commission of grave crimes, which would in turn bolster the perceived independence of the ICC.

The Council’s inaction in enforcement of its referrals to the Court undermines not only its own credibility, but also threatens to undermine the ICC, which has agreed to assist the UN in maintaining international peace and security in these situations, yet is again exposed to unfair criticism when states fail to execute its arrest warrants. The situation in Darfur is a case in point, where five ICC arrest warrants remain outstanding.

Meanwhile, the increasingly worrisome wrangles over the ICC budget are revealing a stark inconsistency of attitude on the part of some Council members who are among the ICC states parties pushing for a zero-growth budget for the Court year-after-year.

Increases in the Court’s requested budget for 2012 were due in large part to costs associated with the Council’s referral of the situation in Libya. These states must give due consideration to where funding for referrals is going to come from—be it through the regular budget of the Court or from the UN itself.

In the short-term, to bring justice to all populations affected by grave crimes and to restore the legitimacy of both the Council and ICC, states and Council members need to clearly communicate their motivations for referring certain situations to the Court and not others. Issues such as enforcement and cooperation also demand immediate attention. In the longer-term, however, members of the Council forgoing their veto when it comes to referring situations to the ICC would allow the Court to make a legal analysis of the case for investigation, thereby reducing the grounds for criticism of both bodies and removing power politics from decisions related to bringing justice to victims of the most heinous crimes. ✦

### FIRST YEAR OF ASP PROCEDURE ON NON-COOPERATION

AT ITS 10TH session, the ASP adopted a procedure relating to the non-cooperation of states parties with the ICC. Civil society had been instrumental in encouraging the Assembly to formalize such a procedure, which in some respects codifies existing practices within the office of the ASP president.

The non-cooperation procedure formalizes how the ASP deals with states who fail to comply with specific Court requests. The procedure was almost immediately brought into effect in decisions issued by ICC Pre-Trial Chamber I against both Chad and Malawi in December 2011, relating to the visits of Sudanese President and ICC suspect Omar Al-Bashir to each country.

The Chamber subsequently sent letters to the UN secretary general on the non-cooperation findings of the Court with respect to both countries, which were then forwarded to the UN Security Council. While this served to formally notify the Council, it did not trigger any action or reply, highlighting the limitations of this system and need for a formal ASP follow-up procedure.

Drawing upon the newly adopted non-cooperation procedure, ASP President Tiina Intelmann sent letters to Chad and Malawi and raised the issue in bilateral meetings with their permanent representatives in New York.

Malawi’s constructive engagement with the ASP took place against the backdrop of preparations for the July 2012 African Union (AU) summit, which had been scheduled to take place in Malawi. Prior to the summit, Malawi withdrew its invitation to Al-Bashir, prompting the AU to move the meeting to Ethiopia. However, the same level of cooperation has not been forthcoming from Chad.

The development of the non-cooperation procedure is a clear sign of willingness on the part of the ASP to strengthen cooperation with the ICC. However, it is still early in the procedure’s implementation, and it is therefore crucial that the ASP keep it under constant review and consider adaptations to ensure that all instances of non-cooperation are effectively resolved. ✦

## CIVIL SOCIETY COMMENDS MALAWI FOR REJECTING ICC SUSPECT AL-BASHIR AND PETITIONS AFRICAN UNION

IN 2012, CIVIL society closely followed important developments at the 19th African Union (AU) summit relevant to the work of the International Criminal Court (ICC). A diplomatic row was sparked when Malawi, which was to host the summit in July, announced that Sudanese President and ICC suspect Omar Al-Bashir would not be invited to attend. Meanwhile, after the summit was hastily relocated to Ethiopia, attempts to expand the jurisdiction of the African Court of Justice and Human Rights to include the prosecution of individuals for international crimes foundered over budgetary concerns.

Following Malawian President Joyce Banda's announcement that Al-Bashir would not be invited to attend the annual meeting of African heads of state, the AU leadership made the decision to withdraw the right for Malawi to host the summit and moved it from the capital, Lilongwe, to Addis Ababa. Banda stood firm, despite pressure from the Sudanese government, which argued that Malawi did not have the authority to block Al-Bashir's attendance.

A number of African states supported Malawi's position, with Botswana protesting the attempts of the AU and Sudan to bully Malawi into allowing Al-Bashir to attend the summit. Other states argued that Malawi's actions were consistent with AU rules allowing sovereign governments to determine the form and means to be used when implementing AU directives.

African civil society and international organizations with a presence in Africa, including the Coalition, commended Malawi for standing with victims of grave crimes in its decision not to invite Al-Bashir summit. Assembly of States Parties President Tiina Intelmann and nine Malawian NGOs similarly commended the government for upholding its obligations under the ICC's Rome Statute (RS) and isolating and deterring Al-Bashir from visiting yet another state party to the RS.

When the summit finally took place in the Ethiopian capital, the gathered leaders decided to suspend endorsement of the proposed expansion of the jurisdiction of the African

Court of Justice and Human Rights to the prosecution of individuals for crimes including, but not limited to, genocide, war crimes and crimes against humanity, until costs associated with such an expansion could be determined. A draft legal instrument had been finalized at a May 2012 meeting before submission for adoption by the AU Assembly. Some have argued that this suspension will be indefinite, while others believe the discussion will be reopened in January 2013.

Forty-nine African and international NGOs had written to African states ahead of the summit to share concerns on the proposal. NGOs were concerned that empowering the African Court with criminal jurisdiction would undermine progress in the development of Africa's human rights system and dilute the work of the court itself, draining away resources needed to shore up its human rights mandate and creating a disincentive for some states to join. They further argued that the expansion of its jurisdiction could confuse African states' relationships with the ICC by creating competing obligations. ✪

### AFRICAN NATIONAL COALITIONS COMMEMORATE ICC 10TH ANNIVERSARY

**Benin**—The Benin Coalition for the ICC organized commemorative activities from 30 June to 17 July, including debates on television and the national radio station. The executive board also visited the chief justice of the supreme court and senior officials in the ministry of foreign affairs to discuss the ICC and Benin.

**Cameroon**—The Cameroon Coalition for the ICC organized a press conference to commemorate the Court's 10th anniversary. The chair of the Coalition, Roland Abeng, addressed the media on the right to justice, and highlighted the role of civil society in raising national awareness and mobilizing global support for the ICC and international justice.

**Côte d'Ivoire**—In Côte d'Ivoire, the national coalition organized a seminar entitled "Victims Rights before the ICC— The case of Ivory Coast," which informed victims of their rights before the ICC and declared the urgent need for all stakeholders to work together ensuring effective victims' participation. Those in attendance included representatives from the Coalition and its members, the ICC Registry and the UN operation in Côte d'Ivoire.

**DRC**—In the DRC, Coalition members, together with the Club of Friends of Congo and the Protestant University in Congo, jointly organized a conference entitled "10 years of the ICC: Review and Outlook." The conference evaluated the work of the Court and made recommendations for advancement.

**Uganda**—In Uganda, Coalition members co-organized a public dialogue with Avocats sans Frontières and the ICC field office in Kampala, entitled "Ten Years of the ICC: Assessing Challenges and Impact in Uganda." Participants discussed the progress and achievements of the ICC in the last decade, and provided recommendations to improve the future work of the Court. ✪

## JUSTICE, TRUTH AND PEACE MECHANISMS IN COLOMBIA

IN 2006, THE Office of the Prosecutor (OTP) of the International Criminal Court (ICC) opened a preliminary examination in Colombia with the purpose of monitoring measures taken at the national level to investigate and prosecute crimes that could fall under the Court's jurisdiction and determining whether to move forward with its own formal investigation. Six years later, the OTP continues to consider Colombia as a preliminary examination. In this time, the country has implemented a series of mechanisms related to justice, truth and peace. Civil society has closely followed these developments.

### Justice and Peace Law

Adopted in July 2005, Colombia's Justice and Peace Law (JPL) establishes an ad hoc summary criminal and administrative procedure which seeks to achieve peace through the demobilization of paramilitaries and illegally organized armed groups and shed light on international crimes. The JPL provides for reduced penalties of between five to eight years for demobilized beneficiaries of the law, but does not apply to members of the armed forces or other security forces.

The JPL has led to an increased number of demobilized individuals. However, despite arguments that the law would help shed light on crimes committed during the armed conflict, to date few proceedings have been initiated and only 13 convictions have been delivered, leading many to question the JPL's effectiveness and stress the need for more prosecutions.

### Law on Victims

Meanwhile, Colombia's "Law on Victims" was adopted in June 2011, with the purpose of formally recognizing thousands of victims of the Colombian armed conflict and establishing a reparations mechanism that includes symbolic reparations as well as land restitution for internally displaced individuals. The law's adoption has been a key step forward for victims, but their full participation during judicial and administrative proceedings must still be guaranteed and measures must be taken to ensure the safe return of internally displaced persons.

## LIMA HOSTS INTERNATIONAL SEMINAR FOR ICC 10TH ANNIVERSARY

ON 17-18 SEPTEMBER 2012, an international seminar commemorating the ICC's 10th anniversary was held in Lima, Peru. Organized by the Peruvian ministry of foreign affairs, the Catholic University of Peru, the International Committee of the Red Cross and the Coalition for the ICC, the seminar brought together a diverse group of speakers, including ICC officials, government representatives from Peru and abroad, members of congress, representatives of the armed forces and civil society. Participants discussed the role of Latin America in promoting and supporting the Court, the status of Rome Statute implementation and the crime of aggression in the region, as well as the impact of the Lubanga case. ✦



Dr. Salomon Lerner, president of the Peruvian Truth and Reconciliation Commission (2001-2003) and former president of the Catholic University of Peru, gives his opening remarks at the seminar on the ICC commemorating the Court's 10th anniversary. Credit: IDEHPUCP

### Legal Framework for Peace

Then, in June 2012, the Colombian congress approved a constitutional amendment entitled "Legal Framework for Peace," which allows for the adoption of transitional justice mechanisms. The amendment would allow judicial authorities to drop criminal prosecutions and suspend prison sentences for members of both organized illegal armed groups and armed forces responsible for perpetrating human rights violations. Thus, investigations and prosecutions would be limited to those bearing the greatest responsibility for war crimes and crimes against humanity.

Although the promotion of transitional justice has been welcomed by some sectors of civil society, other actors have suggested that prioritizing and selecting certain cases for prosecution violates previous rulings of Colombia's constitutional court that obligate the government to investigate and prosecute all international crimes, fostering impunity in the longer-term.

### "False Positive" Cases and Reform of Military Justice

Civil society has highlighted—including in two 2012 reports by Coalition members Avocats sans Frontières-Canada and the Interna-

tional Federation for Human Rights—the need to continue with investigations and prosecutions of cases involving "false positives," the army practice of executing innocent civilians and claiming that they were members of paramilitary groups or guerrillas in order to obtain benefits or fulfill quotas. To date, most of the accused and convicted for this crime have been middle-ranking officers and not those bearing the greatest responsibility. In the current debate on the reform of military justice in Colombia—which seeks to extend military jurisdiction to war crimes—civil society has warned that such reforms run counter to the case law of Colombia's constitutional court, as well as against that of the Inter-American Court of Human Rights.

On top of this complex scenario, constant monitoring will be necessary on the impact of the newly-initiated formal peace negotiations process with the Revolutionary Armed Forces of Colombia (FARC) on these disparate justice mechanisms.

As the ICC prosecutor continues to examine the Colombia situation in order to determine whether a formal ICC investigation is warranted, many civil society organizations insist on the need for greater transparency regarding actions taken by the OTP to date. ✦

## ICC 10TH ANNIVERSARY COMMEMORATED IN ASIA-PACIFIC

AS THE WORLD commemorates the 10th anniversary of the entry into force of the Rome Statute (RS) of the International Criminal Court (ICC), a number of events were held across the Asia-Pacific region to highlight the significance of the Court and encourage more countries to ratify the Statute.

In Sydney, Australia, stakeholders from across the region and the world participated in events from 12-16 February, most notably an international conference—“Justice for All? The ICC Conference: 10 Year Review of the ICC.” The conference focused on the need to strengthen support for the ICC and the RS in the Asia-Pacific region, as well as the work of the Court in advancing gender justice. An important panel discussed the underrepresentation of Asia-Pacific countries at the ICC, identifying the need to build knowledge and capacity on international justice and the absence of big powers—China, India and Indonesia—at the Court as key challenges to increasing membership in the region. A capacity-building workshop on gender justice, co-organized by the Women’s Institute for Gender Justice, also took place.

In Cambodia, the Cambodian Human Rights and Development Association organized a workshop on “Celebrating ICC’s 10 Years in the Fight Against Impunity and Prevention of Mass Crimes in the Future.” Workshop participants discussed how Cambodia should move forward with its RS-implementation efforts, taking into account lessons learned from the ICC’s first 10 years and from Cambodia’s hybrid tribunal prosecuting Khmer Rouge-era crimes.

The Philippine Coalition for the ICC organized a number of events in partnership with various agencies of the government, including flag-raising ceremonies, a roundtable discussion entitled “Towards a Philippine Program of Action on Effecting International Humanitarian Law,” and a forum on the presentation of the study on the ICC and international humanitarian law. The Philippine Coalition also launched its ICC 10th anniversary poster.

The Indonesian Coalition for the ICC and the National Human Rights Commission, with



Participants at the forum on “The ICC and the Lubanga Conviction: Taking Stock of Gender Justice”, organized by the Philippine Coalition for the ICC in celebration of International Justice Day on 17 July 2012. Credit: PCICC

the support from the European Commission and the Coalition, organized a national seminar on the ICC on 17 July 2012. Attended by representatives of the government and parliament, diplomats, victims’ groups and media, the seminar aimed to reaffirm Indonesia’s commitment to accede to the RS. Accession has been included in Indonesia’s National Action Plan on Human Rights since 2004. Since accession did not occur as targeted in 2008, it was included again in the 2011-2014 National Action Plan, with accession targeted for 2013. ✪

## BURMA’S TRANSITION TO DEMOCRACY: THE SEARCH FOR JUSTICE CONTINUES

THE NATIONAL LEAGUE for Democracy (NLD)—led by Daw Aung San Suu Kyi—won 43 of the 44 seats contested during Burma’s national election in April 2012, making it the main opposition party in the Burmese parliament, which remains dominated by the military and its political allies. This development was largely praised by the international community as a step towards the transition to democracy, convincing Burma’s western partners to encourage further reforms by lifting sanctions.

Burma languished for decades under a repressive junta, inciting people—especially ethnic groups in the north—to rebel. While the military junta claimed Burma’s 2010 election would pave the way for civilian government, it was condemned around the world as a move to entrench and legitimize military rule. However, due to local and international pressure, the regime eventually freed hundreds of political prisoners, invited the NLD into mainstream politics and signed tentative peace agreements with some rebel groups.

Despite these peace agreements, fighting with northern ethnic

groups continues. The UN Human Rights Council’s March 2012 resolution on Burma expressed “continued grave concerns” over violations of international humanitarian and human rights law and called on the government to investigate violations, bring perpetrators to justice and put an end to impunity.

At the 19th session of the UN Human Rights Council, the International Federation for Human Rights, Forum-Asia, Alternative ASEAN Network on Burma and Forum for Democracy in Burma called on the Burmese government to address the ongoing detention of political prisoners and harassment of activists, attacks against civilians and serious crimes in ethnic areas, repressive laws, and accountability for past and present human rights abuses.

In May 2009, NGOs launched an international campaign for the establishment of a commission of inquiry into crimes against humanity and war crimes in Burma. The campaign, along with a campaign for the release of the remaining political prisoners and for the halt of the ongoing war in the north, remains ongoing. ✪

## CENTRAL ASIA ALL TOO OFTEN OVERLOOKED IN THE QUEST FOR UNIVERSALITY OF THE ROME STATUTE

THE SUB-REGION OF Central Asia consists of five republics: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. With Tajikistan the sole party to the Rome Statute (RS), the region is often forgotten in the quest for universality. Yet much more can and should be done. Since 1999 and 2000 respectively, Kyrgyzstan and Uzbekistan are both signatories to the Statute, but Kazakhstan and Turkmenistan have not taken even that step.

Cognizant of the need for universal ratification in order to end impunity for the worst crimes worldwide, in 2012 the Coalition launched a new initiative focusing on Central Asia, with the aim of increasing understanding and knowledge of the ICC among key actors.

In April, Kazakhstan was the focus of the Coalition's Universal Ratification Campaign, followed by a mission to the country in May—the first by the Coalition since 2004. The mission aimed to build the capacity of local civil society organizations and to increase awareness among legal professionals, NGOs and government representatives of the importance of the ICC in the fight against impunity. During the mission, in collaboration with the Norwegian Helsinki Committee, the Coali-



An awareness-raising training session in Kazakhstan for civil society representatives from the Central Asian region. Credit: CICC

tion's Europe program officer led an awareness-raising training session for civil society representatives from throughout the region. Participants were introduced to the RS system and the functioning of the ICC. Discussions focused on country-specific needs as well as possible regional approaches, and identified priority actions to promote ratification and implementation and wider understanding of the Court. The training concluded with the issuance of a joint statement, whereby participants committed to press government authorities to take all the necessary steps to ratify or accede to the RS and to fully align national legislation with the Statute's obligations, as well as to ratify the Agreement on Privileges and Immunities of the ICC (APIC).

The statement also encouraged authorities to participate in ICC-related events and meetings of the Assembly of States Parties.

The Coalition's Central Asia campaign has already begun building on the momentum created from these activities, engaging with officials and relevant international and regional organizations in the region, such as the European Union (EU), the Organization for Security and Cooperation in Europe and the Council of Europe, to address obstacles to RS ratification. In particular, the Coalition is calling on the EU to undertake concrete initiatives to foster ratification and implementation in the sub-region as part of its efforts to implement the 2011 EU Decision and Action Plan on the ICC as well as the ICC clause in "The EU and Central Asia: Strategy for a New Partnership."<sup>1</sup> ✦

1 "The EU and Central Asia: Strategy for a New Partnership": "(...) In promoting the consolidation of peace and international justice, the EU and its Member States are determined to share, with the Central Asian States their experience in the adoption of the necessary legal adjustments required to accede to the Rome Statute of the International Criminal Court, and in combating international crime in accordance with international law. The EU and Member States will aim to: (...) • and provide technical assistance and establish close cooperation aimed at making the legislative and constitutional amendments required for accession to and implementation of the Rome Statute."

### ACHIEVING UNIVERSALITY OF THE ROME STATUTE THROUGH THE UN HUMAN RIGHTS COUNCIL'S UNIVERSAL PERIODIC REVIEW

THE UNIVERSAL PERIODIC Review (UPR) was established by the UN General Assembly in 2006 as a mechanism of the newly established Human Rights Council to assess the human rights records of all UN member states. During the first UPR cycle, participating states parties to the RS issued more than 100 recommendations to over 60 states in relation to the ICC, mainly on ratification of the Statute. These recommendations generated discussions on international justice both at the national level and in other UN fora, promoting concrete steps to make the Court universally accepted.

In order to strengthen this practice during the second UPR cycle, the Coalition—with the participation of its global membership, in particular Amnesty International and Parliamentarians for Global Action—launched a new initiative in advance of the 13th UPR session of 21 May to 4 June 2012. The Coalition sent letters to ICC states parties encouraging them to make specific recommendations to other states coming under review, in particular on ratification of the RS and the APIC, as well as their implementation into national legislation. During the session, more than 50 recommendations related to the ICC were made to the 11 states under review that were not party to the RS or the APIC, or which need to fully implement the Statute into national legislation. Recommendations were also made regarding cooperation with the Court and ratification of the Kampala amendments. The Coalition is monitoring state implementation of new and past UPR commitments on the ICC. The initiative—which also serves to encourage ICC states parties to reaffirm their commitment to the fight against impunity—will continue in advance of future UPR sessions. ✦

## CIVIL SOCIETY QUESTIONS OTP DECISION ON PRELIMINARY EXAMINATION IN PALESTINE



A Palestinian child in Gaza city during the cease fire after the 2008-2009 Gaza conflict. Credit: Andreas H. Lunde/Flickr

THREE YEARS IN the making, the decision of the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) in April 2012 not to proceed with its preliminary examination in Palestine has provoked strong reactions from Coalition members.

In its announcement, the OTP declared that it did not have the authority to determine whether Palestine “qualifies as a state for the purposes of acceding to the Rome Statute (RS),” and could not therefore make a decision on whether to open an investigation into alleged crimes. The OTP concluded that it is for the relevant bodies of the United Nations (UN) or the Assembly of State Parties (ASP) to make a legal determination whether Palestine qualifies as a state.

Many have challenged this analysis, with the Palestinian Council of Human Rights Organizations stating that the examination was “incomplete and contentious both from a legal and procedural point of view,” adding that as Palestine is now a member of UNESCO, it “is within the ‘Vienna formula’ and as such, can become a signatory of other treaties open to ‘all States’, something that has been confirmed by the Opinion of the UN Legal Counsel of February 1974.”

Meanwhile, the Palestinian Center for Human Rights (PCHR) expressed the belief that the prosecutor failed to address the issue in an appropriate manner, and called for Palestine to deposit an instrument of accession with the UN secretary general and for the referral of the situation to the Court. “Our question is: is there a court for Gaza? No matter what the obstacles are, we want to believe that one day we will find justice through the ICC,” said PCHR Director Raji Sourani.

Concern has been expressed that placing the matter before a political body such as the UN will inevitably delay justice for victims of grave crimes in both Israel and Palestine. Others are of the belief that the RS specifies that the legal determination of Palestine’s status as state or otherwise should be carried out by the judges of an ICC

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## CIVIL SOCIETY URGES MOROCCO AND EGYPT TO JOIN THE ICC

IN MAY 2012, ASP President Tiina Intelmann visited Cairo, Egypt as part of her effort to promote an active dialogue with states parties and non-states parties to the RS alike. President Intelmann attended a civil society consultative meeting facilitated by the Coalition and the Arab Center for the Independence of the Judiciary and Legal Profession (ACIJLP). Participants discussed the necessary steps for Egypt to join the ICC and current impediments to the process. The meeting was attended by various civil society organizations.

In advance of the visit, the ACIJLP released a statement calling on the Egyptian People’s Assembly to join the Court during its democratic transition. As part of its May Universal Ratification Campaign, the Coalition called on Egypt to ratify the RS and accede to the Agreement on the Privileges and Immunities of the ICC.

The new ASP president also visited Rabat, Morocco, in May 2012 where she met with several government and parliament officials and took part in the 5th session of the Working Group on Universality in the Middle East and the South Mediterranean, co-organized with the Moroccan parliament and Parliamentarians for Global Action. President Intelmann commended Morocco for making clear its commitment to the rule of law. Justice reforms in Morocco are slowly bringing national legislation in line with the RS, and the new constitution affirms the primacy of international law.

The Coalition and *Le Forum Des Initiatives de Développement et Consolidation de la Primauté du Droit* organized a consultative meeting with civil society on the role of the ICC in the rule of law and the fight against impunity in Morocco. Participants—including over 50 Moroccan civil society representatives—produced several recommendations, including organizing multi-stakeholder national workshops on the ICC and continuing dialogue with key national authorities.

The Coalition and the newly-established Moroccan Coalition for the ICC have cemented close ties with the current Moroccan government, creating a favorable environment for ICC-related work. ✦

pre-trial chamber. In this respect, Amnesty International called on the prosecutor “to follow the procedures established by the RS by passing the matter to the judges,” describing the decision as “dangerous.”

The International Federation for Human Rights also expressed regret at the decision, calling it “a deception to the victims in Palestine who feel once again that justice ignores them, as tribunals in Israel refuse to effectively render justice for these crimes,” as well as puzzlement at the length of time it took the OTP to reach this conclusion and the decision not to submit the issue to ICC judges.

The OTP examination to determine whether there is a reasonable basis to proceed with an investigation was triggered in 2009 by a Pal-

estinian declaration accepting the exercise of ICC jurisdiction. The OTP initially responded by giving Palestine and other interested parties the opportunity to be heard on the fulfillment of the statutory requirements for opening an investigation, including on the issue of whether Palestine qualifies as a state for the purposes of the RS. Consequently, expectations were raised that the Court would act, both locally and globally.

Coalition members have expressed concern that a lack of communication and therefore understanding around the announcement of the OTP’s decision threatens to undermine the Court’s credibility in the region and is fuelling arguments of double standards. It is clear that the ICC must work actively with

constituents throughout the Middle East and North Africa to address these perceptions and bring clarity to the Palestine situation.

The OTP update also noted that it could consider future allegations of crimes committed in Palestine, should competent UN organs or the ASP resolve the statehood issue, or should the UN Security Council refer the situation to the Court. It now falls on the Palestinian government and others to take up the issue at the UN and ASP, with potential political ramifications. Civil society groups, as well as a group of prominent academics, have asked the president of the ASP to consider putting the issue of Palestinian statehood on the agenda for the Assembly’s 11th annual session in November 2012. ✦

## LATEST RATIFICATIONS BY REGION

SINCE LATE 2011, two states, Guatemala and Vanuatu, ratified the Rome Statute (RS) and joined the ICC. Also in the past year, efforts to promote ratification of the Agreement on Privileges and Immunities of the ICC (APIC) have proven fruitful through the recent ratifications of Brazil, Bosnia & Herzegovina and Switzerland. Meanwhile, Liechtenstein and Samoa ratified the Kampala amendments to the RS, including the amendment on the crime of aggression, while San Marino ratified the amendment on Article 8 of the Statute, extending the use of certain weapons in non-international conflicts as war crimes. The Coalition continues to work actively with its members worldwide to engage in advocacy efforts with governments and parliaments, in addition to outreach to the media to ensure universal ratification of the RS.

### AFRICA

#### Rome Statute

Ratifications/Accessions: 32  
Most Recent: Cape Verde (10 October 2011)

#### APIC

Ratifications/Accessions: 12  
Most Recent: Gabon (20 September 2010)

### AMERICAS

#### Rome Statute

Ratifications/Accessions: 28  
Most Recent: Guatemala (2 April 2012)

#### APIC

Ratifications/Accessions: 17  
Most Recent: Brazil (12 December 2011)

### MIDDLE EAST/ NORTH AFRICA

#### Rome Statute

Ratifications/  
Accessions: 2  
Most Recent:  
Tunisia  
(24 June 2011)

#### APIC

Ratifications/  
Accessions: 1  
Most Recent:  
Tunisia  
(29 June 2011)

### ASIA/PACIFIC

#### Rome Statute

Ratifications/Accessions: 17  
Most Recent: Vanuatu (2 September 2011)

#### APIC

Ratifications/Accessions: 2  
Most Recent: Republic of Korea  
(18 October 2006)

### EUROPE

#### Rome Statute

Ratifications/Accessions: 42  
Most Recent: Republic of Moldova  
(12 October 2010)

#### APIC

Ratifications/Accessions: 40  
Most Recent: Switzerland (25 September 2012)

### UPCOMING UNIVERSAL RATIFICATION CAMPAIGN TARGETS\*

**November:** UAE, Nicaragua, El Salvador • **December:** Oman • **January:** Togo, Thailand • **February:** Bahrain, Rwanda  
**March:** Algeria, Malaysia • **April:** Cameroon, Ukraine • **May:** Pacific countries (Tonga, Tuvalu, Palau, Micronesia, Papua New Guinea and Kiribati), Turkey • **June:** Mauritania, El Salvador

\*Countries of focus may change due to unforeseen developments whereby such public advocacy efforts may be less advisable.

# REGIONAL HIGHLIGHTS

## AFRICA

**Malawi**—On 14 June 2012, Malawian President Joyce Banda forfeited hosting rights to the 19th AU summit after refusing to allow International Criminal Court (ICC) suspect Sudanese President Omar Al-Bashir to attend. Despite criticism from many African capitals, her decision was widely hailed by civil society and the diplomatic community and supported by Botswana, South Africa and Zambia.

**Côte d'Ivoire**—On 23 May 2012, ICC Registrar Silvana Arbia announced that the ICC would be opening a field office in Côte d'Ivoire. The office will facilitate cooperation between national authorities and other key stakeholders and help the ICC to fully execute its mandate independently and impartially in Côte d'Ivoire.

## AMERICAS

**Uruguay**—On 26 July 2012, the Uruguayan house of representatives and ministry of foreign affairs, with the support of Parliamentarians for Global Action, held a seminar on the 10th anniversary of the ICC which brought together members of parliament, scholars and representatives of civil society, as well as the general public. Speakers addressed developments in the Rome Statute (RS) system over the past decade, as well as future challenges, noting the need to proceed with the ratification and implementation of the Kampala amendments.

**Guatemala**—Following Guatemala's accession to the RS in April 2012, on 29-30 October, the Ministry of Foreign Affairs of Guatemala and the Guatemalan Coalition for the ICC joined efforts and hosted a workshop on implementation of the RS, where participants looked at different experiences in the region in order to draw examples that could be relevant to the Guatemalan internal process.



From 29 May to 1 June, the 17th bi-annual roundtable meetings took place between the ICC and civil society, a unique and important forum for engagement on issues of mutual interest, providing an opportunity for NGOs, including those based in Africa, to interact with all organs of the Court to understand its decision-making process and for the Court to take note of the views of civil society. Credit: CICC

## ASIA/PACIFIC

**Indonesia**—During the 13th session of the Universal Periodic Review, Indonesia accepted 12 recommendations, including a recommendation to ratify the RS.

**Thailand**—On 15 March 2012, in its report to the UN Human Rights Council, Thailand rejected recommendations regarding accession to the RS. ➔



On 17 July 2012, Kurdocide Watch organized a demonstration and press conference before the Kurdistan parliament in celebration of International Justice Day. On behalf of 132 political parties and civil society organizations, as well as members of the parliaments of Kurdistan and Iraq, Kurdocide Watch called on Iraq to accede to the Rome Statute and join the ICC, asking several key Iraqi and Kurdish officials, including Iraq's president and minister of foreign affairs, to urge and pressure the Iraqi government to join the ICC. Credit: Kurdocide Watch

## ASIA/PACIFIC (continued)

**Philippines**—On 1 March 2012, under the initiative of the University of the Philippines' Institute of International Legal Studies and in consultation with the Coalition and the Philippine Coalition for the ICC, the Technical Expert Group for the Domestic Implementation of the RS of the ICC was convened with experts from the government and academia. The expert group is expected to create draft laws and other documents needed for submission to the relevant agencies of the government that will deliberate on and approve an ICC implementation law.

## EUROPE

**Bosnia and Herzegovina**—On 24 January 2012, Bosnia and Herzegovina signed the Agreement on Privileges and Immunities of the ICC.

**Luxembourg**—In February 2012, Luxembourg adopted a law on cooperation with the ICC and necessary amendments to the criminal code to fully implement the RS.

**Liechtenstein**—In March 2012, Liechtenstein's parliament approved the Kampala amendments to the RS, including the crime of aggression.

## MIDDLE EAST/NORTH AFRICA

**Libya**—On 2 July 2012, four ICC staff members detained in Libya since 7 June 2012 while on an official mission to visit ICC suspect Saif Al-Islam Gaddafi were released. The ICC, the Coalition Secretariat, Coalition members and the UN Security Council had issued numerous statements calling for the release of the staff. On 5 September 2012, former Libyan intelligence chief and ICC suspect Abdullah Al-Senussi was extradited from Mauritania to Libya.

**Jordan**—On 11-12 July 2012, the Friedrich Ebert Foundation and the Coalition organized a conference on "The ICC and the Arab World: Achievements, Challenges, and Prospects." The event brought together Arab and international civil society, as well as academic and government experts to analyze the emerging jurisprudence of the ICC and ways in which its practice could be relevant to the Middle East/North Africa region.



## FATOU BENSOU DA SWORN IN AS NEW ICC PROSECUTOR



Ms. Fatou Bensouda taking her solemn oath as ICC Prosecutor. Credit: ICC-CPI/AP/Bas Czerwinski

ON 15 JUNE 2012, Ms. Fatou Bensouda took office as the new prosecutor of the International Criminal Court (ICC) at a swearing-in ceremony at the seat of the Court in The Hague, attended by ICC judges, Assembly of States Parties (ASP) President Ambassador Tiina Intelmann, diplomats and other distinguished guests, including Coalition for the ICC member organizations.

As civil society from around the world welcomed Bensouda's inauguration, the Coalition called on the new prosecutor to build on the gains of the ICC's first 10 years and consolidate the Court's position as the world's foremost instrument in the fight against impunity for grave crimes.

"Having spent more than 10 years working as a prosecutor for the International Criminal Tribunal for Rwanda and the ICC, Fatou Bensouda is extremely qualified to lead the Office of the Prosecutor (OTP)," said Coalition Convenor William R. Pace. "With Bensouda, the Court has for the next term an experi-

enced, intelligent and capable prosecutor that will reinforce its growing position as a major force in global peace and security affairs."

At a reception hosted by Switzerland and the Coalition immediately after the swearing-in ceremony, speeches were made by Swiss Ambassador and ASP Vice President Markus Böhlin, Prosecutor Bensouda and Pace, who stated "that the challenges facing Bensouda and the ICC in its second decade are as great, if not greater than those of the Court's first decade.

One of those challenges is to restore the strong and high-level political support of governments, especially for the independence of the Court and prosecutor."

From 2004, Bensouda, a national of The Gambia, served as deputy to her predecessor chief prosecutor, Luis Moreno-Ocampo, during which time she was in charge of the prosecution division of the OTP. She was elected by consensus to the position of prosecutor at the annual meeting of the ASP in New York in December 2011.

The Coalition also welcomed the new prosecutor's stated intentions to work for victims, to prioritize the prosecution of grave crimes against women and children, and to build on the unique re-

lationship between the ICC and civil society. In a May 2012 interview with the Coalition, Bensouda guaranteed that "the primacy given to the gender-related crimes will stand and will even be furthered. We will in particular continue to strengthen our cooperation with local gender groups in situation countries that provide sometimes the only form of support available for gender crimes victims, who often are excluded and shunned from their communities." In August 2012, Bensouda announced the appointment of Brigid Inder, a long-time expert and activist on gender justice and women's rights and executive director of the Women's Initiatives for Gender Justice—a member of the Coali-



ICC Prosecutor Bensouda with Ms. Souhayr Belhassen, president of the International Federation for Human Rights at the Switzerland and Coalition reception for the new ICC prosecutor, The Hague, 15 June 2012. Credit: CICC

tion's steering committee—as a special gender advisor to the OTP.

Prosecutor Bensouda's full interview is available on the Coalition website: [www.coalitionfortheicc.org/documents/Fatou\\_Bensouda\\_Full\\_Interview\\_eng.pdf](http://www.coalitionfortheicc.org/documents/Fatou_Bensouda_Full_Interview_eng.pdf) ✪