

## In Rome, 120 Countries Committed to Ending Impunity Will Promises Be Kept?

Ten years ago in Rome, diplomats from 160 countries and representatives from some 200 non-governmental organizations (NGOs) came together for five weeks of difficult and delicate negotiations to say yes—to the Rome Statute, the founding treaty of the International Criminal Court (ICC), and to the resolve that “never again” would the world sit idle as entire populations lay decimated by under-terred génocidaires.

“In retrospect, we had a window of opportunity to establish this Court between the end of the Cold War and September 11th. We also had this tremendous emotion: guilt, pain, horror, disgust generated by the genocides in Rwanda and Yugoslavia and other places and the sense that the international community had failed to deal with these effectively,” reflects Convenor of the American NGO Coalition for the ICC (AMICC) and Rome Conference participant John Washburn. “We also had an established body of international law that had only to be customized. This fact helped make the ICC a reality along with the favorable time period and above all, this emotion that pushed people to transcend themselves as representatives of governments. In many cases, governments transcended their addiction to narrow national interests. As a result, the negotiation process for such a complicated treaty took place at warp speed.”

On 17 July 1998, the Statute was adopted with 120 countries in support, seven opposed (including China, Iraq, Israel, Qatar and the United States) and 21 states abstaining.

The suspense leading up to the historic vote was at times dramatic. For more than one month, the negotiations proceeded slowly, with agreement on some 90 of 128 articles in the Statute. Most of the major issues remained unresolved, including the composition of core crimes, the role of the UN Security Council, the Court’s jurisdiction and the independence of the prosecutor.

Mere hours before the 17 July deadline, then-conference chair and current ICC President Philippe Kirsch daringly issued a compromise “take it or leave it” package addressing all the outstanding issues. In a last-minute attempt to undermine the adoption of the Statute, the United States

and Indian governments proposed treaty-wrecking amendments. Both efforts were strongly voted down. In what was one of the most emotional moments in the history of international law, the Rome Statute was adopted a few minutes before midnight with delegates erupting into joyful applause and tears.

“Looking back ten years later,” says Convenor of the Coalition for the International Criminal Court (CICC) William Pace, “the achievement of the governments and NGOs in Rome seems to me to be an even greater miracle now than it was then. This was momentous lawmaking.”

### Civil Society Sets the Tone in Rome

The participation of CICC NGOs—by far the largest and arguably the best organized delegation at the Conference—was unprecedented. For Maria Solis Garcia, conference participant and a Guatemalan women’s rights advocate who is currently director of Asociación La Cuerda, the “CICC was a truly global space where everybody united energies and forces to dream, think and work together to fight impunity,” even though the NGOs converging in Rome often held contrasting views.

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## INSIDE: 10th Anniversary Photo Essay



# The MONITOR

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## Note from the Convenor

Dear Readers,

In this special edition of *The Monitor*, we mark the tenth anniversary of the adoption of the Rome Statute of the International Criminal Court (ICC) on 17 July 1998. The treaty was hailed immediately as one of the greatest advances in international law. The 60 state ratifications needed for the Rome Statute to enter into force—expected to take 20 to 30 years to acquire—were in place by 1 July 2002. Within another year, 18 judges and a prosecutor had been elected and the new ICC was setting itself up on the outskirts of The Hague.

The Rome Statute and the ICC are universally acknowledged to be the unique achievement of a historic partnership between small- and middle-power democracies and global civil society working together in negotiations convened by the UN General Assembly. In spite of a multiyear “war” against the Rome Statute by the world’s most powerful government, the partnership forged by the ICC, democracies and civil society has prevailed.

With four active situations and cases before the Court, with the first trials beginning, with grave crimes still being committed, the need for this partnership has only *increased*. It may take another 10 years before we can claim victory against impunity. Anniversaries are opportunities to honor the past. July 17, 2008 is an anniversary deserving honor.

Sincerely,



**William R. Pace**  
Convenor of the Coalition for the ICC

## About Us

The Coalition for the International Criminal Court (CICC) advocates for a fair, effective and independent ICC. The Coalition enters its thirteenth year in 2008 and has proven to be a dynamic civil society network and campaign with more than 2,500 member organizations to date and an ever-expanding membership. The CICC has worked closely with its members, like-minded governments, international and regional organizations, the United Nations system and the media to help establish the Court and push for universal ratification and implementation of its founding treaty, the Rome Statute, along with widespread awareness of and support for international justice.

*The Monitor* is the Coalition’s flagship publication. It is distributed worldwide in English, French and Spanish.

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Current major funding for the CICC is provided by the European Commission, the Ford Foundation, the John D. and Catherine T. MacArthur Foundation, and the governments of Finland and The Netherlands. CICC receives important additional funding from the Foundation Open Society Institute (Zug) and from the governments of Ireland, Liechtenstein, Norway, Sweden and Switzerland.



Your interview with Beatrice Le Fraper Du Hellen brings to the fore an unresolved matter. The absence of a cooperation agreement between the ICC and the African Union (AU) is sidelining justice for the many victims in Africa. The game playing by the AU to avoid concluding an agreement is nothing more than a slap in the face to the many African victims who want justice now. From Darfur to the DRC to northern Uganda, victims are yearning for an answer; is the AU's political expedience more important than justice denied?

Here in Africa, we think not. African countries are one of the largest geographical blocks to have ratified the Rome Statute. One hopes the new leadership at the African Union will realize this and sign the cooperation agreement in acknowledgment of the good faith Africans already have in this Court.

**Dismas Nkunda**

Chair Darfur Consortium and co-director,  
International Refugee Rights Initiative  
Kampala, Uganda

There is growing awareness in Asia of the ICC and its importance to international justice. Japan's ratification of the Rome Statute and the fact that we now have two ICC judges from Asia is heartening and will help lessen Asian suspicions that the ICC comes with a Western-dominated agenda.

To raise awareness among Malaysian lawyers, the International Bar Association together with the Malaysian Bar, which is the principal actor in the national ICC coalition, held a one day seminar on the Court in early April. We invited a number of speakers including the ICC Principal Counsel for Victims, the Principal Defender in the Defense Office of the Extraordinary Chambers in the Courts of Cambodia as well as the first Malaysian lawyer to be appointed to the List of Defence Counsel at the ICC.

We hope more Malaysian lawyers take a greater interest in the Court—and the Coalition—as a result.

**Shanmuga Kanesalingam**

Advocate and solicitor,  
Kuala Lumpur, Malaysia

The *Monitor* plays an essential role in educating readers about the ICC and the NGOs that support this new institution's work.

Fundación Federalista is interested in reading more articles with practical tips and guidelines for effective implementation of the Rome Statute. There is a need for more case studies on how complementarity works in different legal systems.

We congratulate the CICC for its participation in the recent Organization of American States (OAS) meeting, but urge your members to get more involved. The OAS is indispensable to furthering national efforts to domesticate the Rome Statute.

**Rommel Santos**

President Fundación Federalista  
Dominican Republic

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## Is Uganda Ready for National Trials? by Rose Nakayi

There has been tremendous controversy over whether or not those responsible for the blood-letting in northern Uganda should face justice at home or abroad. What has yet to gain traction, however, is the idea that fair and effective national trials may be the most plausible option for all those seeking justice in Uganda.

In 2005, the International Criminal Court (ICC) issued arrest warrants for the top brass of the Lord's Resistance Army (LRA) for war crimes and crimes against humanity. Since then, the involvement of the ICC in northern Uganda has pushed the rebels to come to the negotiating table, but they have refused to take a seat until the ICC warrants are dropped.

The possibility of national trials offers a glimmer of hope for resolving this impasse. The Agreement on Accountability and Reconciliation and its Annexure, signed on 19 February 2008, provide explicitly for national trials, which are permissible under Article 17 of the Rome

Statute. Trials in Uganda instead of The Hague would of course be more accessible to the victims who have endured more than 20 years of war. In addition, a successful investigation and prosecution by Ugandan authorities will make clear to both Ugandans and the international community that the government is capable of mustering a homegrown solution to impunity, which could be a greater deterrent to the commission of future atrocities than any international investigation. If Sierra Leone can have a hybrid Court, and Rwanda the Gachacha mode of reconciliation, why can Uganda not address impunity in its own way through a Special Division of the High Court?

It is now imperative to address questions of how prepared Uganda is to run national trials for grave crimes like those committed by the LRA, their top commanders and the Ugandan Peoples Defence Forces (UPDF). National trials must be credible, impartial and independent; they must adhere to international fair trial guarantees in principle and practice; and penalties must be appropriate and reflective of the gravity of the crimes committed. If Uganda meets the above standards, national trials may be a solution for dealing with all perpetrators, not only those who have been named by the ICC.

A close examination of the criminal justice system of Uganda today, however, highlights some glaring loopholes in the country's judicial capacity. Although Uganda's judicial officers may require specialized training in prosecuting war crimes or crimes against humanity, they also need robust legislation that adequately covers the nature of crimes committed in the North.

Uganda has not incorporated genocide, war crimes or crimes against humanity into its national laws; therefore, it might be difficult to find domestic legislation covering the grave crimes committed. Since the 2006 ICC Bill was shelved by parliament, there has been a lacuna in national laws for war crimes and crimes against humanity. While some of the norms in the Rome Statute and other international human rights instruments to which Uganda is a party form part of the customary international law that binds Uganda, in practice the courts

have not taken it upon themselves to directly enforce such norms in the absence of enabling legislation. This casts doubt on the ability of Uganda to deal with the trial of LRA leaders.

Among the other potential drawbacks to domestic trials are Uganda's lack of witness and victim protection programs, a history of sporadic approaches to investigations and prosecutions in the country, and the likelihood of politically motivated prosecutions or the withdrawal of cases for political reasons. In anticipation of these problems, the annexure to the peace agreement includes some possible solutions. For example, the Special Division of the High Court is required to include a registry dedicated to facilitating the protection of witnesses and victims (Clause 7 Annex) along with a special unit to carry out investigations and prosecutions, under the control of the director of public prosecutions. These are potentially good safeguards against the problems of the past. In addition, opting for a Special Division of the High Court instead of an independent court was intentional and may be more efficient because an independent judicial institution requires parliamentary involvement. Instead, creation of a Special Division is a purely administrative matter for the High Court.

At the moment, it is unclear how soon the Special Division of the High Court will be established, or how the ICC warrants will be handled. All the same, a majority of Ugandans see national war crimes trials as an opportunity for the country to prove itself to the world. Ultimately, under the Rome Statute, the ICC has power to reinstate a case if it is not satisfied that justice has been served, which is one aspect of the Court's complementarity principle. Either way, the Rome Statute will be stronger for the effort, as it targets impunity by holding international trials and encouraging national proceedings.

Closely watching how Uganda handles the post-Juba period—particularly in terms of meeting international judicial standards for grave crimes—is now key. ✦

*Rose Nakayi is the Kampala-based project coordinator of the Ugandan Coalition for the ICC (UCICC).*



Teenager Ayaa Prossy is one of hundreds of girls who have abandoned their villages for life in Gulu and its surrounding areas out of fear of being abducted by Lords Resistance Army (LRA) rebels. Over the last 20 years, the LRA has abducted over 20,000 children whom they have turned into armed rebels and sex slaves. Hundreds of teenage girls have been forcefully raped and turned into wives of the rebels scattered in their bases in northern Uganda, Sudan, and Eastern Congo. © 2007 Gilbert Awekofua, Courtesy of Photoshare

# The Struggle for Peace and Justice in Uganda and Beyond

by Nick Grono

Since 2003, the Coalition for the International Criminal Court has organized a yearly lecture series on international criminal law, in collaboration with two academic institutions, the TMC Asser Institute and the Grotius Centre for International Legal Studies. Here is an excerpt from a 12 March 2008 lecture delivered by Nick Grono, who is the deputy president of the Brussels-based International Crisis Group.

...Both peace and justice are of fundamental importance. But when it comes to ending conflicts they can't always be reconciled in full, at least in the short term.

Where the tension is most apparent is usually during peace talks...The reason for this is simple, if distasteful: the parties don't want their hard-won peace to result in their being tried and imprisoned for atrocities they may have committed during the conflict.

...Many will say justice is an end in itself. But what does that mean? Some will say it's a moral imperative. But so is the alleviation of human suffering. Others will say, there can be no peace without justice. But what if there can be?

...[In northern Uganda], the ICC's prosecutions have played a direct role in spurring the current peace initiative. The issuing of warrants against the leaders of the Lord's Resistance Army (LRA) helped alter the LRA's calculations and created an incentive for the indicted commanders to negotiate. The ICC's intervention also complicated Khartoum's continued support of the LRA, helping sever the LRA's supply lines and uproot their secure safe havens. And the ICC's case focused international attention on the long overlooked crisis in northern Uganda and added renewed pressure on efforts to end the conflict. Finally, the ICC's attempt to hold the LRA leadership criminally liable for its atrocities in northern Uganda has embedded accountability and victims' interests in the structure and vocabulary of the peace process. The parties to the talks have accepted, in principle, that at least some form of robust accountability is inevitable—although we should remain very skeptical of the LRA's commitment to this principle. Since this presentation,

the peace talks appear to have collapsed, but it remains unclear if this is a temporary hiatus, or the end of the peace talks.

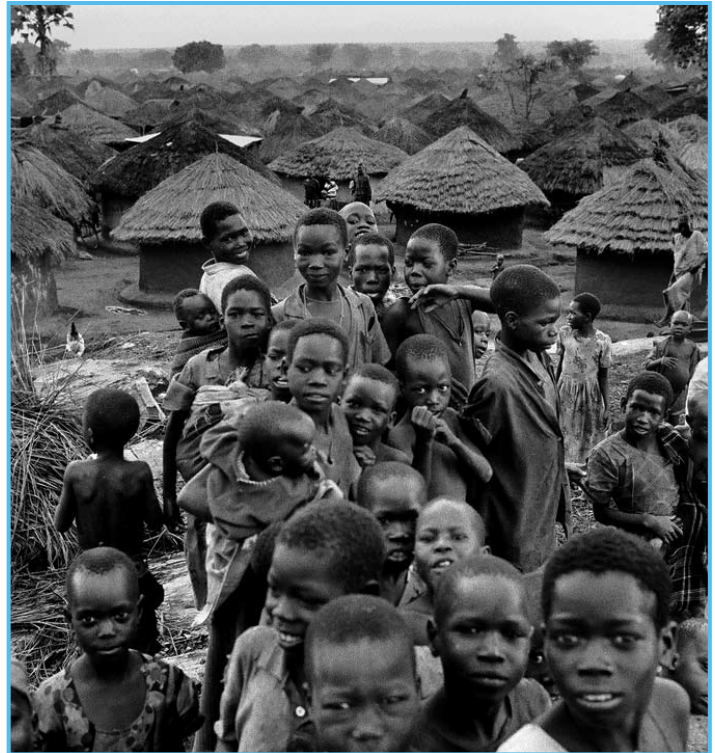
...Many contemporary peace initiatives fail to ensure a domestic institutional imperative in favor of pursuing accountability....However, in those cases in which the ICC has jurisdiction, it is not bound by amnesties granted for genocide, crimes against humanity or war crimes. And if it decides to prosecute, then domestic attempts to avoid accountability by weak transitional justice mechanisms are unlikely to be successful. Even in cases where the ICC doesn't have jurisdiction, the widespread ratification of the Rome Statute is likely to strengthen the emerging international norm that amnesties are not applicable for atrocity crimes.

Hence, the entry of the ICC onto the world stage, and the growing willingness of states to prosecute under the principle of universal jurisdiction, may significantly change this dynamic. Now there is an international imperative in favor of accountability that may generate a domestic one. This may—but it's a big "may"—be what we have been seeing over the last year in northern Uganda.

...[But] many local Ugandan representatives have strongly argued for preferring reconciliation over prosecutions, particularly ICC prosecutions....So if the international community is to insist on holding perpetrators accountable, it will often have to do so in the face of opposition from a range of local actors.

It may also have to do so in the face of capitals who want a swift end to the conflict, and believe that a peace deal—with or without appropriate accountability mechanisms—is the best way to do so.

...So on what grounds can or should the international community insist on justice



Children at an internally displaced persons (IDP) camp in northern Uganda. © 2006 Alessandro Vincenzi, Courtesy of Photoshare

in the face of such opposition and at the risk of prolonging the conflict in question?

In situations where this difficult choice has to be made, it should only be entertained when the benefits of justice over the long term are likely to outweigh the short-term costs of prolonging an ongoing conflict. The international community must make the case that the potential to prevent future atrocity crimes by the deterrence and institutionalization of human rights norms is so important that it should take precedence over the suffering and atrocities that may result if an insistence on prosecution prevents the resolution of a current conflict.

...The advent of the ICC as a permanent tribunal, with the power to initiate its own prosecution together with the growing use of universal jurisdiction, increases the odds of prosecution and the Court's potential deterrent impact. In the past, most perpetrators were safe in the knowledge that they could outlast any international outrage at their actions. Absent a permanent court to try them, their greatest risk of prosecution came from being overthrown and put on trial by their

➔ CONTINUED ON P. 6

## Struggle for Peace and Justice in Uganda (Continued from page 5)

usurpers. That in turn encouraged brutal measures to ensure that such a fate did not befall them. But such an approach will not work against a permanent tribunal or vigilant foreign courts. They can outlast any dictator, unless he dies in office.

So the ICC and universal jurisdiction have the potential to give deterrence a credibility and validity it has not had before....[T]his will only happen if the

Court can successfully pursue those in power most responsible for atrocities. That in turn will require stronger international support for the ICC than we have seen to date....

...And the Court itself—and especially the prosecutor—will have to do more. ...If in some five years' time, we get to the position that no senior sitting government official has been indicted and con-

victed by the ICC, will it be of deterrent impact, or simply a nuisance value? The prosecutor will have to commence investigations on his own authority into the conduct of government officials, and go after those at the highest level of government....People generally don't remember the ICTY or SCSL prosecutions of rebels or paramilitaries. It's the Milosevic and Taylor prosecutions that have the biggest impact. ✦

## CENTRAL AFRICAN REPUBLIC

### Adapting Outreach Strategies to Realities on the Ground by Oriane Maillet



ICC officials meet with Central African civilians during a visit to CAR in February 2008. Credit: CAR Coalition for the ICC

Following the opening of the ICC's fourth investigation in the Central African Republic (CAR) on 22 May 2007 and the inauguration of its field office less than five months later, the Court has now focused on adopting an outreach strategy in the country. The Court has begun to ask itself how to enable communities affected by the investigation to follow and understand the Court's activities around a conflict in which the ICC prosecutor maintains that allegations of sexual crimes greatly exceed the number of alleged killings.

For the first time since its inception, the Court's outreach department has attempted to develop its strategies in partnership with civil society during a three-day workshop in Bangui. "The

idea was that workshop participants devise their own strategies based on their expert, on-the-ground assessment of the needs and mentality of the local population," explains Marie-Edith Douzima, coordinator of the Central African Republic's Coalition for the International Criminal Court.

Participants included lawyers, human rights organizations, representatives of various religious denominations, unions, women's and victims' organizations. They discussed a variety of awareness-raising methods such as radio, debates and plays, and how best to adapt outreach efforts to the targeted population groups. "There is no doubt that the methods used for an audience of lawyers or students will be different from those used for illiterate

women or artists or journalists," underlined Douzima. "We have also identified potential difficulties, particularly those related to sociocultural norms, high levels of illiteracy and the lack of previous information about the Court."

Although Douzima and her colleagues view the workshop as a step in the right direction, they are eager to see how the Court follows up and deepens its collaboration with the new Bangui field office. For Douzima and others, the time has come for the Court to meet the high expectations of the CAR population, and in particular those of the victims, whose concerns were palpable during the prosecutor's visit to Bangui. "Many people asked us when the trial would begin and some even believed that the prosecutor had come to open a trial immediately," says Douzima. "The victims, in particular, have not hesitated to tell their story to the prosecutor and to expose the suffering they experienced during the conflict."

One of the primary tasks to which the Court and the CAR Coalition will have to commit is the sensitization of victims, especially in light of the prosecutor's visit during which he explained their right to participate in the proceedings before the ICC. "We hope that the ICC will put an end to the culture of impunity in the Central African Republic," concludes Douzima. "But for the work of the Court to be truly effective, it must be understood by the population, and at every level." ✦

*Oriane Maillet is the Coalition Secretariat's communications officer in The Hague.*

While Darfur teeters on the brink of disaster, a stalled peace process and an under-equipped UN peacekeeping force face strategically placed roadblocks from the government of Sudan. The same regime that carried out a strategy of divide-and-destroy in southern Sudan for more than 20 years, leaving 2 million dead, continues this tactic in Darfur, bringing the death toll there from 200,000 to 400,000, and displacing more than 2 million civilians.

Khartoum's refusal to comply with the demands of the international community can only be reversed if the world imposes a cost for its behavior. At this point, the Sudanese regime has operated with impunity, reaping only benefits from its genocidal policies. After almost five years of destruction in Darfur, and on the heels of the war with southern Sudan, Khartoum has been rewarded with oil money from China, weapons deliveries from Russia and a ticket of immunity for its crimes.

## The United States should lead the UN Security Council to support the Court and impose targeted sanctions on regime officials for obstructing the hybrid force... The ICC has the capacity to change the way we do business with Khartoum...

Experts and advocates across the globe are calling for a recipe made up of the three P's of crisis response: peace, protection and punishment. To this end, there has been much talk of creating a lasting peace agreement (though little action) and the deployment of UNAMID—the joint AU-UN hybrid force. The missing ingredient, however, is accountability. Without credible punishment, the government of Sudan will continue to operate at this tempo until there is a cost for its obstruction.

Thanks to the recent establishment of two essential pillars, the International Criminal Court and the doctrine of the "Responsibility to Protect," the foundations are in place to bring real penalties against this brutal regime, but it is up to the United States and the inter-

national community to back up their words with actions.

The Responsibility to Protect doctrine holds that states have the primary responsibility to protect civilians from mass atrocities, and when they fail, the responsibility falls to the international community. The doctrine emphasizes taking peaceful measures, with collective use of force under Chapter VII of the UN Charter employed only as a last resort. In parallel, the ICC's principle of complementarity also reconfirms that states are responsible for prosecuting those responsible for mass atrocities committed within their borders. Only when a state is unable or unwilling to do this will the situation fall under the jurisdiction of the ICC. Taken together, these two initiatives offer a framework to advance how the world responds to genocide and crimes against humanity.

At this time, the ICC has named only two suspects in its Darfur investigation, Ahmed Harun and Ali Kushayb, and Sudan has made no move to execute the warrants for their arrests. In fact, Harun has been put in charge of monitoring and overseeing the deployment of the AU-UN protection force.

Meanwhile, the UN Security Council's Sanctions Committee on Sudan has placed just four officials on its sanctions list as part of its targeted sanctions regime against people linked to atrocities in Darfur.

These empty threats only encourage Khartoum to maintain its divisive and destructive tactics in Darfur and its stonewalling of the AU-UN peacekeeping force. If there is any hope of protecting people in Darfur, it will be through a concerted multilateral effort to impartially impose a consequence on those most responsible for the violence and for obstructing efforts to protect civilians.

What must be done to bring accountability to the worst offenders in Sudan? The United States should lead the UN Security Council to support the Court and impose targeted sanctions on regime officials for obstructing the hybrid force. In fact, the United States will hold the presidency of the UN Security Council throughout June 2008, at which time ICC Prosecutor Luis Moreno-Ocampo is



Although the UN Security Council referred the situation in Darfur to the Court in 2005, it has done little to boost the Court's authority in the face of Sudanese defiance. Credit: Jerry Fowler/US Holocaust Memorial Museum



Despite the one-year anniversary of the ICC warrants for Harun and Kushayb on 27 April 2008, both suspects remain at large. Credit: Jerry Fowler/US Holocaust Memorial Museum

expected to deliver his seventh report to the Council on Darfur. Such multilateral efforts will make a difference, just as they have in the past. The European Union should ban the use of euros for all transactions involving the Sudanese oil sector, just as the United States has done with dollar transactions. Furthermore, the United States and others could intensify intelligence-gathering and cooperation with the ICC, and help the prosecutor with the second wave of investigations he announced in December.

The ICC has the capacity to change the way we do business with Khartoum and other genocidal regimes. It is only with significantly increased political will—generated by the growing global anti-genocide movement—that it can help bring an end to the carnage in Darfur, and set an example for ending genocide and crimes against humanity wherever they occur. ✦

*John Prendergast is the co-chair and Lisa Rogoff is the field manager of the ENOUGH Project.*

# Opening of Lubanga Trial Generates Mixed Feelings on the Ground

by Désiré-Israël Kazadi



A man kneels down beside a human skull left behind from the crimes in the DRC. Credit: LIONEL HEALING/AFP/Getty Images

The ICC trial against Thomas Lubanga Dyilo—the Court’s first—is scheduled to begin on 23 June 2008 in The Hague. In the Democratic Republic of Congo (DRC), there is keen anticipation of this trial, but also disappointment and concern about the delays in the proceedings and the impact on the ground.

When the Court first issued its arrest warrant for Lubanga, who is accused of enlisting, conscripting and using child soldiers in Ituri, organizations such as the Paris-based International Federation for Human Rights (FIDH) and its partners in the Congo who are fighting against impunity immediately acknowledged this first arrest warrant as an “important step forward” toward accountability for the grave crimes committed.

Among the local population, a number of opinion polls have pointed to a hopefulness regarding the trial, particularly among those directly affected by the hostilities. In one survey conducted in Kinshasa, for example, respondents were fairly confident that Lubanga would serve a sentence of life in prison because of “the extent of the crimes committed.” “I anticipate a sentence of life imprisonment to be handed down in the Thomas Lubanga trial in relation to the established facts of the case and his al-

leged crimes which will serve as a clear deterrent for others who might commit similarly macabre acts,” said Kinshasha-based lawyer Bualankay Anicha.

However, delays in the trial’s opening have resulted in a heightened skepticism about the Court’s effectiveness in this still conflict-ridden zone. These frustrations have been echoed by ICC Trial Division Judge Adrian Fulford of the United Kingdom who said, “[it] is a fool’s errand to continue striving for March 31 [the original start date for the trial],” adding that 9 June or 16 June was a more likely scenario, although even these dates were “aspirational.” His prediction came true as the trial date was moved to late June.

The delay was caused in part by the possibility of in situ hearings. “We were very pleased when we heard that the Court was considering in situ hearings,” says Decartes Mponge Malasi, the South-Kivu focal point for the DRC National Coalition. “We saw in situ trials as a way to bring the victims closer to their executioners. Sometimes the victims see Lubanga from afar, locked up in a prison with a TV, in good conditions. The idea of in situ trials is very good, if only for a single hearing.” In the end, however, trials in the DRC were rejected because of security considerations. Nevertheless, the participation of victims in this trial

presents landmark opportunities for advancing justice. “This trial is still very important especially now that victims can participate,” says Malasi. “This afternoon I visited a formal status hearing on the Lubanga case in The Hague and I saw victims’ legal representatives participating in a meaningful way.”

But for those who wish to see the ICC broaden the scope of its investigations to include those who are part of the country’s political institutions, the credibility of this new, permanent “court of last resort” has come into question. The “other Lubangas” are still deeply embedded within the political apparatus says journalist Jean-Réné Bompolonga in reference to the human face of the Court that has been “severely tested.” While the long-awaited surrender of Lubanga to the Court on 17 March 2006 was encouraging, the perception persists that other high-level Congolese perpetrators of international crimes are shielded from justice by their official status, says human rights activist Nsapu Kazadi, in reference to the possible application of Article 27 (1) of the Rome Statute, under which official status in no way exempts political leaders from criminal responsibility: “This Statute shall apply equally to all persons without any distinction based on official capacity.”

This view is shared by the African Association for Human Rights and its president, Amigo Ngonde Funsu who welcomed the confirmation of charges hearing against Thomas Lubanga in a joint press release with partner FIDH—but also called the charges against the former leader of the Union of Congolese Patriots “insufficient.” He claims that Lubanga is guilty of many other crimes that constitute war crimes under the Rome Statute. His organization plans to follow the trial closely because it will provide “an idea of how the fight against impunity is played out in practice.” For Jerome Bonso, president of the National League for Free and Fair Elections, “Lubanga must answer for his acts and the law must be applied without delay.” ✦

*Désiré-Israël Kazadi is a Kinshasa-based journalist with the daily Le Phare and director of the media working group at the DRC National Coalition for the ICC.*

# Guaranteeing Defense Rights Before the International Criminal Court: A legal and administrative challenge

by Lorraine Smith

With three suspects before the International Criminal Court (ICC) for the first time since the entry into force of the Rome Statute in 2002, the Court now has to practically and critically assess defense issues and rights. The Court must now demonstrate the extent to which there is institutional as well as judicial flexibility and will to practically implement the provisions of Article 67 of the Rome Statute without compromising the rights of other parties and participants.

The modalities of victims' participation in ICC proceedings are a matter for the discretion of the Chamber and have been the subject of much debate. In a landmark ruling of 18 January 2008, Trial Chamber I set general guidelines regarding the participation of victims in the trial. These included criteria to be applied to applications, modalities of participation, common legal representation, and protective and special measures for victims as well as the dual status of victims and witnesses. Among other things, the decision states that in order to participate, victims do not need to bring evidence of harm suffered as a result of the charges confirmed against Thomas Dyilo Lubanga, but merely establish a link to the evidence against Lubanga or establish that they have been affected by an issue raised during the trial. The primary concern of the defense regarding this decision is a practical one: while recognizing that victims also have rights to participate under the Statute, the number of victims potentially eligible to participate could create significant delay, thus affecting the fair and expeditious conduct of the proceedings.

Also of fundamental importance is the issue of disclosure. In the case of the Lubanga trial, the lead defense counsel complained in February 2008 that the prosecution had not served even half of its witness statements to the defense. The prosecution has insisted that its inability to disclose relevant information fully to the defense is due in large measure to the challenge of protecting witnesses during the ongoing conflict in the Ituri region of the Democratic Republic of Congo (DRC).



Judges and Court staff at the first appearance of Mathieu Ngudjolo on 11 February 2008 at the seat of the ICC in The Hague. Credit: ICC-CPI/Remco Okhuizen.

The practical approach taken by the Trial Chamber in designating a cutoff point of three months prior to the trial date for full disclosure must be applauded. The decision simultaneously recognizes that while there is a challenge in ensuring that witnesses are sufficiently protected prior to full disclosure, the prosecution and the relevant organs must proactively expedite this process so as to prevent further compromise to the defendant's right to have adequate time to prepare the defense case in advance of trial and to hold the trial without delay.

While the judiciary grapples with its interpretation of the balance of rights, some concerns at the institutional level could potentially threaten to undermine these rights. For example, as translations are provided on request and not necessarily prioritized, counsel has no guarantee that they will receive documents in time to meet statutory deadlines for filings. The Chamber's ruling that the onus is on the defense to organize its team in such a way that it is able to operate in both working languages of the Court, creates a burden particularly for new defense counsel. Instead, the Court's administrative mechanism should be organized to ensure the timely and efficient translation of important decisions and filings.

What role do the states parties play in critical budgetary decisions that impact the defense? At the Sixth Session of the Assembly of States Parties, delegates

**Ensuring defence rights does not mean the erosion of victims' rights. Both sets of rights represent the pillars upon which the International Criminal Court is built and sincere advocates of human rights and justice recognise that failure to safeguard any of these rights would undermine the very credibility of this hallowed institution.**

unanimously agreed that there should be no increase in the budgetary allocation for the legal aid program of the Court and that, if necessary, funds should be taken from the Court's contingency fund to support the recommended changes made by the registrar. It remains to be seen whether this will suffice.

Ensuring defense rights does not mean eroding victims' rights. Both sets of rights represent the pillars upon which the International Criminal Court is built, and sincere advocates of human rights and justice recognize that failure to safeguard any of these rights would undermine the very credibility of this hallowed institution. The price of respecting the rights of the defense might be high, but can we afford not to pay it? ✦

*Lorraine Smith is program manager for the International Bar Association's ICC Monitoring and Outreach Programme.*



A camp for internally displaced persons in the Ituri region of the Democratic Republic of Congo. Credit: Wendy MacNaughton, Courtesy of Photoshare

**M**athieu Ngudjolo, alleged former leader of the Nationalist Integrationist Front (FNI) and Colonel in the Congolese army, was surrendered to the International Criminal Court (ICC) by Congolese authorities on 7 February, becoming the third person in custody at the ICC Detention Centre, after Thomas Lubanga Dyilo and Germain Katanga. Almost three months later, the Court unsealed a fourth arrest warrant in the Congo for Bosco Ntaganda who is allegedly a current commander of the Mouvement Révolutionnaire du Congo. He is charged with the enlistment, conscription and use of child soldiers under the age of 15 from July 2002 through 2003 in Ituri. Many in the Congo see this as a welcome development, but apprehending Ntaganda is far from guaranteed.

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**Many international crimes were committed in Ituri and to halt the further prosecution of those crimes means that scores of other perpetrators will escape justice as thousands of victims are denied it.**

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What is significant about the Ngudjolo arrest is that it represents the Court's first detention of an active military officer. At the time he was apprehended, Ngudjolo was part of the country's demobilization process. As a former warlord, he was integrated into the national army and became a colonel who remained free from internal prosecution due to the 2003 amnesty law exempting him from crimes

committed in Ituri. This amnesty, however, excluded crimes against humanity and war crimes.

This third arrest, which met with widespread approval in DRC particularly amongst victims, is also significant because it involved the close cooperation of Congolese authorities, the United Nations and Belgium. On 10 March 2008, Pre-Trial Chamber I issued a decision joining the cases against Germain Katanga and Mathieu Ngudjolo Chui for their alleged co-responsibility for crimes committed during and in the aftermath of the 24 February 2003 joint attack on the village of Bogoro, Ituri, by the Patriotic Resistance Force in Ituri (FRPI) and the National Integrationist Front (FNI). Many believe this decision will further serve the interests of the victims and improve the overall administration of the cases. According to Rule 136 of the Rome Statute's Rules of Procedure, the Court is compelled to join the cases because the charges against the two accused are identical.

At the time of Ngudjolo's surrender, ICC Deputy Prosecutor Fatou Bensouda announced to the media that: "With the arrest and transfer of Mathieu Ngudjolo to the Court, the Prosecution has completed a first phase of its DRC investigation, focusing on the horrific crimes committed by leaders of armed groups active in Ituri since July 2002. The Office of the Prosecutor is now moving on to a third investigation in the DRC, with other applications for arrest warrants to follow in the coming months and years." Indeed, the Court has announced that possible options for the third investigation are the actions of armed groups behind ongoing atrocities in the Kivu provinces as well as individuals who may have "played a role in supporting and backing DRC armed groups," according to a statement made by the Office of the Prosecutor following the transfer of the suspect to The Hague.

And yet, the two cases regarding crimes in Ituri that are now before the Court (Lubanga and Katanga/Ngudjolo) are not sufficiently representative of the atrocities suffered by the local population both in terms of the scale and the type of crimes committed. Many international crimes were committed in Ituri and to halt the further prosecution of those crimes means that scores of other perpetrators will es-

cape justice as thousands of victims are denied it. It is important to recall that the DRC government has yet to adopt the law on the implementation of the Rome Statute into its national legislation to ensure the effective prosecution of such crimes at the national level. Therefore, this situation has the potential to not only weaken the peace process, but also drastically reduce the prospects for reconciliation and forgiveness in Ituri.

"There is unfinished business in Ituri, which is causing tension on the ground," said Mariana Goetz, REDRESS' ICC program adviser in a 13 February 2008 press statement referring to concerns that the prosecutor is shifting his focus to other crimes without investigating all crimes committed in Ituri. The recent fighting in Ituri is certainly one indication of this tension. Further, Ngudjolo and Katanga's Lendu community has expressed its frustration at what it sees as unfair treatment by the Court. Lubanga, for example, is only facing charges of child soldier recruitment while Mathieu Ngudjolo and Germain Katanga are charged with a list of offences, including murder, sexual slavery, inhuman or cruel treatment, attacks against civilians and pillaging.

In order to continue the work of the ICC in Ituri, it is crucial that the Congolese authorities pass into law the long-awaited ICC implementing legislation not only to reinforce the judicial system but also to make sure that all alleged perpetrators of the most serious crimes contained in the Rome Statute do not evade justice.

Finally, if the ICC prosecutor confirms the opening of a third investigation in the Kivu regions (North and South Kivu), the recent signature of the Goma agreement during the peace conference on the Kivus last January could facilitate the work of the Court with the full support of the government and civil society. It is up to the government to make sure that this agreement, which provides amnesty for crimes—excluding war crimes and crimes against humanity—committed in the Kivu regions, is effectively implemented, thus ensuring that those responsible for the most serious crimes remain accountable. ✕

*Christian Hemedi is coordinator of the DRC National Coalition for the ICC.*

# The Tenth Anniversary of the Rome Statute

**The Rome Treaty Conference**  
**MONITOR**  
 Special Issue of the NGO Coalition  
 for an International Criminal Court  
 Issue 26 - July 18, 1998

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**We Won!**

Some Comments from William R. Pace, Convener of the NGO Coalition for an ICC, On the Occasion of the Completion of the Conference of Plenipotentiaries on the Establishment of an International Criminal Court

On behalf of the Coalition for an International Criminal Court, which brings together hundreds of non-governmental organizations representing civil society from all corners of the world, may I congratulate the delegations present for this historic and seminal achievement. We wish to recognize particularly the role of Philippe Kirsch and the members of the Bureau, of Giovanni Conso and Cherif Bassiouni, of the chairs of the working groups, of Hans Correll and Roy Lee as well as the secretariat staff and, of course, the interpreters and translators.

Never before have non-governmental organizations participated in such a dynamic and thorough fashion in the treaty-making process and, for this reason alone, the Conference is a landmark. We hope that our comments, interventions and expertise have been appreciated. We know that they have been effective because your Statute, or should I say our Statute, bears so many markers of NGO influence.

Our concerns, from the beginning, have been that the Court be fair, effective, strong, independent and credible. Much of the program that we set out as a bottom line can be found in the Statute: an independent prosecutor, able to initiate investigation and prosecution should states fail to act; a Court whose action cannot be blocked indefinitely and arbitrarily by individual members of the Security Council; a Statute enshrining international norms with respect to the human rights of the accused and the condemned; a text that presents a special and appropriate focus on gender crimes.

We are not trained in diplomacy and, despite our best efforts, sometimes speak with a bluntness that is uncharacteristic in such gatherings. You will understand, for example,

our disappointment with some of the made. Of particular concern is the something that will allow certain crimes of the Court even when they are a party. We expect States parties to plugged with effective domestic prosecutions, in the exercise of that is recognized by customary law existing international legal obligations tradite those suspected of serious violence. Even a good Statute does not e You may be assured of the active it of the Coalition as this process can and ratification and - hopefully in tl operation of the Court. As it has de will hold States to account and ins into force promptly.

The success of this Conference tion to put an end to impunity for and, thereby, to prevent such crime tieth century has been the bloodiest new International Criminal Court, t next millennium, signal a break wh were overlooked and forgotten in l eignty, and the beginning of an era community as a whole ensures the Declaration of Human Rights, to a of life is enshrined and actively pers one may live in freedom from fear.

William J

The Coalition produced the *Monitor* as an insert in the daily *Terra Viva* publication that was distributed to Rome Conference participants. These daily reports facilitated the input of civil society on some of the key issues under negotiation. The Rome Conference highlighted the successful partnership between civil society, government officials and international organizations in what Kofi Annan later called a "new diplomacy."

**THE NUMBERS**  
 NGO Coalition Special Report on Country Positions  
**The Key Issues**

On this page and page 4 is a summary of country positions on the key issues of definitions of crimes, state consent, and trigger mechanisms. The numbers are based upon the observations of the CICC teams monitoring the Committee of the Whole deliberations on Wednesday and Thursday evening the Bureau's Discussion Paper on Part 2. They may contain inaccuracies and are necessarily simplifications of the more elaborate statements of delegations. We apologize for any possible misrepresentations and welcome comments and corrections by the distinguished delegates. The Coalition has also issued a special report with detailed breakdowns of country positions. Updates of this report will be issued as the negotiations progress. For more information on specific issues or countries, contact the Team Secretariat at 570-50703.

<b>Threshold for War Crimes</b>	<b>States Required for Jurisdiction</b>
<b>76%</b> support Option 2	<b>79%</b> support the Korean Proposal
13 states supported option 1	
72 states supported or were willing to accept option 2	
10 states supported option 3	
<b>Sections C and D: Internal Armed Conflict</b>	<b>The Prosecutor</b>
<b>75%</b> support Option 1	<b>76%</b> support <i>proprio motu</i> powers
73 states indicated that these sections should be included	61 states supported <i>proprio motu</i> powers (Option 1)
16 states were opposed to inclusion of C and D	19 states rejected <i>proprio motu</i> powers (Option 2)
8 states were opposed to the inclusion of D	<b>Role of Security Council</b>
<b>Acceptance of Jurisdiction</b>	<b>35%</b> favor Option 1
<b>73%</b> support automatic jurisdiction	<b>46%</b> favor Option 2
74 states chose automatic jurisdiction for all core crimes	25 states favored Option 1
27 favored an opt-in regime	33 states favored Option 2
	13 states favored Option 3

(Continued from page 1)

The Coalition and its members produced daily reports about the conference along with position papers on contentious issues. Meanwhile, candlelit marches and a "lie-down" for justice mobilized public support for the Court.

Within the Coalition, 12 NGO issue teams worked around the clock to understand and influence government delegates. At times, NGO participants stood outside closed-door meetings to lobby exiting diplomats and press them for accounts that would inform daily CICC strategy sessions. Richard Dicker, director of the International Justice Program at Human Rights Watch, says "NGOs surprised the government delegations by the significance of our substantive contributions, our strategic acuity and ultimately the influence we had on the conference."

Civil society had an important impact on the Statute's robust provisions on gender crimes and its support for the unprecedented participation of victims in the proceedings. Solis Garcia calls the Rome Statute, with its landmark recognition of sexual violence as a crime against humanity for the first time under international law, "a victory for gender justice and the elimination of all kinds of violence against women."



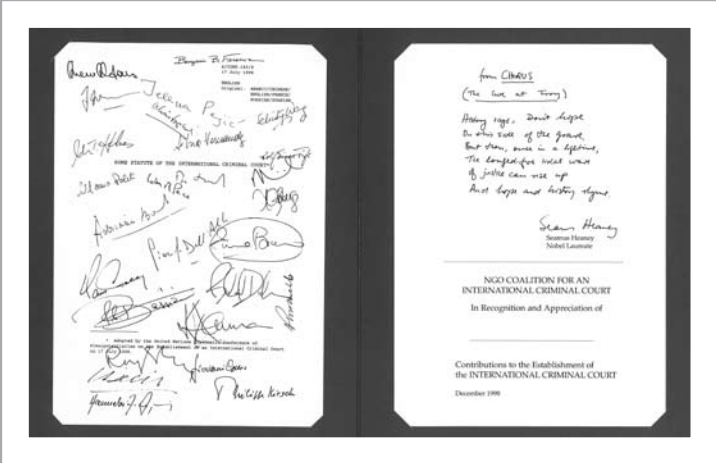
Activists held signs in support of the Court outside the Rome headquarters of the UN's Food and Agriculture Organization, where delegates deliberated on the text of the Rome Statute. Alan Baker, chief counsel to the Israeli delegation to the Rome Conference, said "In all my years of international work, I've never seen the NGOs play a more powerful role. They were in on nearly every meeting. They were in on everything." Credit: CICC

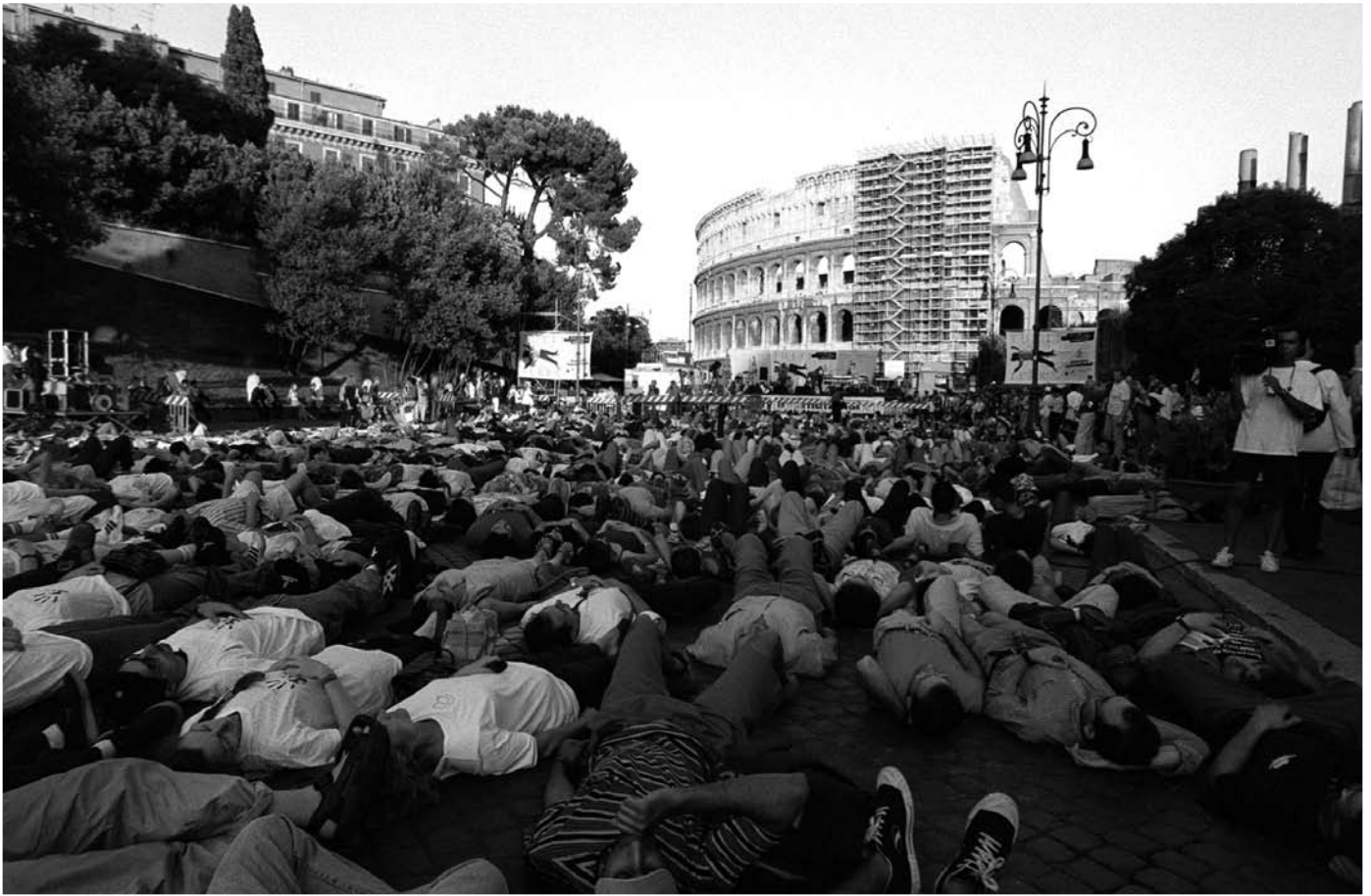


Pictured from left to right are Hans Corell, representative of the UN Secretary-General; current ICC President Philippe Kirsch who was then a member of the Canadian delegation and Chair of the Conference's Committee on the Whole; M. Cherif Bassiouni, Chair of the Conference Drafting Committee; Giovanni Conso, Conference Chair; and Roy Lee, Conference Executive Secretary and Director of the UN Codification Division. "The principle concern of states was and remains what they consider to be their sovereignty. That is why the ICC is not a supra-national institution, but one which is complementary to national legal systems," recalls Bassiouni who is now Distinguished Research Professor of Law at DePaul University.

Signatures on a CICC commemorative panel marking the adoption of the Rome Statute is opposite a poem by Nobel Laureate Seamus Heaney who writes:

*History says, Don't hope  
On this side of the grave,  
But then, once in a lifetime,  
The longed-for tidal wave  
Of justice can rise up  
And hope and history rhyme.*





During the Conference, Amnesty International held a lie-down ("tutti giù" in Italian) with protestors blocking streets around Rome's Coliseum. Filippo Monteforte/ANSA

### **The Road Ahead: Reflecting on a Decade and Preparing for the Future**

To mark the upcoming 10-year anniversary of the adoption of the Rome Statute on 17 July 2008, the Coalition will be hosting and participating in high-level advocacy events around that time in New York, The Hague and South Africa with government delegates, UN officials and Court officials in attendance. At each of these events, there will be a preview of the highly anticipated ICC documentary *The Reckoning* by Skylight Pictures (see [www.skylightpictures.com](http://www.skylightpictures.com) for more).

In addition, at noon in their respective time zones, Coalition members around the world will read aloud a tenth anniversary message to highlight the growing global consensus that impunity must end. CICC member events range from a music concert in Bahrain to a judicial colloquium with ICC Judge Navanetham Pillay in Nigeria.

As part of its broader commemoration activities, the Coalition is urging states to join the Court over the course of the 2008 anniversary year. The focus is on those states known to be close to ratification, including the Czech Republic, Indonesia, Moldova, Nepal, Suriname and Yemen. Setting the example is Madagascar, which had been targeted and ratified on 14 March 2008.





Then-UN Secretary-General Kofi Annan and Member of the European Parliament Emma Bonino, who was the European Commission delegate to the Conference, celebrate the adoption of the Rome Statute on the Piazza del Campidoglio in Rome on 18 July 1998. At the opening of the historic conference, Annan said: "We have an opportunity to create an institution that can save lives and serve as a bulwark against evil. Let us rise to the challenge. Let us give succeeding generations this gift of hope. They will not forgive us if we fail." Credit: No Peace Without Justice



NGO participants applaud as the Statute is officially adopted on 17 July 1998. CREDIT: CICC



The Coalition held regular press briefings during the Conference. Pictured from left to right are Marino Busdachin of the No Peace Without Justice delegation; Pierre Sane of Amnesty International; CICC Convenor William Pace; Jelena Pejic of the Lawyer's Committee for Human Rights (now Human Rights First); and Gustavo Gallon of the Colombian Commission of Jurists. Credit: CICC

The Coalition is also encouraging all states to issue strong public statements in support of the Rome Statute on the anniversary date. Furthermore, the CICC is pushing states parties to this year ratify the Agreement on Privileges and Immunities of the Court and finalize national implementation of the Statute.

Meanwhile, there is an ever-present need to overcome threats to the Court's viability, including in 2010 when the Rome Statute Review Conference is scheduled. "More work is needed to make sure that this treaty and institution survives and prospers," says Pace. Adds Conference participant David Donat Cattin, director of the International Law and Human Rights Program of Parliamentarians for Global Action: "Two-thirds of the world is still not covered by the ICC automatic jurisdiction: China, India, Russia and the United States have still not ratified the Statute. These major powers and all who were in Rome—either for or against us—must now join this Court. This may take years and political change, but this must be the hope that drives us all." ✦

## Exit Interview: Former ICC Registrar Bruno Cathala Reflects on his Legacy



In eastern Chad, Cathala meets with refugees from the conflict in Darfur. Credit: ICC-CPI

**A**s the Court's first employee in 2002, former ICC Registrar Bruno Cathala was involved in setting up the machinery of the Court. On 9 April 2008, after the end of his five-year term as registrar, Cathala returned to the French Ministry of Justice as president of the Tribunal de Grande Instance d'Evry.

**The Coalition for the International Criminal Court (CICC):** Could you describe your first two years at the Court as first interim and then permanent registrar?

**My successor will have to continue decentralizing the Court...to facilitate information exchange and the participation of victims while managing expectations and ensuring the equality of arms within the judicial dialogue. In short, my successor must continue working on the quality of justice, both in the field and in the courtroom.**

**Bruno Cathala (BC):** It was something of a tsunami. It was necessary to manage both the short and the long term simultaneously because the former laid the foundation for the latter. Our experience regarding justice and the lessons we took from the ad hoc tribunals helped us create the ICC, but everything was basically new. Initially, we were all working on the floor atop crates with three laptop computers lent to us by the host state. At the same time, all of our actions were being scrutinized by states, NGOs, the media and the public in general.

**CICC: Looking back, how would you characterize your tenure?**

**BC:** From day one we developed the idea of the quality of justice as a central element in our work, and a way to ensure that trials are open, fair and accessible. This is manifest in the strategic plan and informs a number of matters including access to justice, outreach to affected communities, the field offices and the

design of the courtrooms. I am also very proud of the work we have begun on "equality of arms" (the fair treatment of both the defense and prosecution), the multiculturalism of this institution, the promotion of multilingualism, the "one-court principle" (Court organs are independent but form part of the same institution and share a common mission), and the execution of arrest warrants.

**CICC: What were some of the challenges you faced and what major challenges will your successor face?**

**BC:** My successor will have to continue decentralizing the Court: to give more power and autonomy to the field offices and encourage their feedback. Another challenge is to facilitate information exchange and the participation of victims while managing expectations and ensuring the equality of arms within the judicial dialogue. We must also revive profound reflection on concepts such as peace, reconciliation and transitional

justice while involving practitioners, civil society and states. It is time to clarify theoretical assumptions in order to avoid serious misunderstandings between civil society, states and the Court. There remains much to be done for my successor, particularly in terms of cooperation. Sometimes states promote their own short-term interests and often have difficulty understanding judicial time, which is different from political or media time. Together, we have to create an appropriate dialogue between the Court and different stakeholders, and we must also find the right format for cooperation bearing in mind the Court's independence. We cannot compare the functioning of the ICC to other international organizations. Finally, internal management issues can also be a challenge. With employees of such diverse nationalities, cultures and professions, the construction of a common working culture has been a challenge that persists to this day. In short, my successor must continue working on the quality of justice, both in the field and in the courtroom.

**CICC: How did you address criticism about the Court's outreach to affected communities during your tenure?**

BC: We were criticized at the outset because we focused initially on the creation of our institution and we discussed concepts before acting. But from the beginning we knew that the legitimacy of justice depends on the confidence it inspires in the people. People must see, understand and appropriate this justice. This requires the Court to be on the ground and to engage in a discussion. There was a substantial leap in our on-the-ground activities two years ago, but there were funds set aside for outreach from the outset. There is today much to improve upon, but that will not be easy in the current budgetary framework and with the reluctance of states to pay more. This work is at times difficult, especially because we are working in conflict zones. One of the challenges is to ensure the safety of our personnel and disseminate information at the same time. This is the case in Darfur, which we cannot visit. We have had to accept that our only outreach can occur through radio, in refugee camps and to the Darfuri diaspora.

**CICC: What is your opinion on the possibility of holding in situ hearings?**

BC: I'm in favor of the idea of holding in

situ hearings to bring people closer to justice, and to make the point that the ICC delivers justice that is also Congolese, Ugandan, Sudanese and Central African. The Registry has the ability to support holding a trial in situ. But the decision remains with the judges who, in the interests of justice, will weigh the advantages against the drawbacks for the people, while taking into account the security imperatives and the wishes of the host state. Let us not forget that the ICC was created in The Hague in an effort to avoid reopening the gaping wounds within a country or rekindling political tensions.

The Charles Taylor trial has shown us that a trial outside the affected country can be the best option.

**CICC: How would you assess the Court's relationship with civil society?**

BC: I learned to work with the Coalition even though as a man of the state, recognizing the legitimacy of NGOs as representatives of civil society was not natural for me. For their part, the NGOs learned to work with the Court through an institutionalized and transparent debate. There is room for improvement, but we have both truly moved beyond our initial suspicions to now collaborate on a shared vision of justice.

**CICC: What challenges does the Court face in terms of recruitment and how have you addressed them?**

BC: As soon as I arrived, I emphasized the importance of competence. The Court is doing pretty well when it comes to gender balance. My goal was to help make the Court more of a multicultural institution but one without positions that are earmarked for nationality. We therefore put in place a transparent process and used multicultural recruitment panels. These initiatives sometimes slowed us down and yielded criticism by states parties but should help better assess people from different backgrounds and cultures.

**CICC: What is your vision for the ICC in the next decade?**

BC: I believe the ICC is a fundamentally democratic project that will help ensure that the forces of globalization pass through legal channels more so than through economic, political and military channels. The ICC is built on the principle that long-term values—the deepest values of all humanity—prevail



Bruno Cathala talks with ICC Prosecutor Luis Moreno-Ocampo during a farewell reception hosted by the Coalition in mid-March. Credit: CICC

over short-term values. The birth of this permanent Court has not yet provoked the cultural revolution that must take place in the next 10, 20, 30 years. "The Court effect," however, does exist. And so, maybe not today, but in five or 10 years, Kushayb and Harun will be in the courtroom. And it may not be today, but states will increasingly align themselves with this Court because global public opinion will eventually favor international justice. ✦

## ICC WELCOMES NEW REGISTRAR



Registrar Silvana Arbia during her inauguration ceremony. Credit: ICC-CPI/Jerry Lampen

On 17 April 2008, the ICC officially swore in new Registrar Silvana Arbia of Italy for a five-year term. Arbia has wide-ranging experience in both national and international judicial systems. She has served as the Chief of Prosecutions at the International Criminal Tribunal for Rwanda, and also participated in the drafting of the Rome Statute as a member of the Italian delegation to the 1998 Diplomatic Conference in Rome.

Arbia holds a degree in Law from Padova University, Italy, and was a professional judge in Italy. She has written extensively about human rights and children's rights.

# KEY CHALLENGES IN DEFINING THE CRIME OF AGGRESSION

**A**t the Resumed Session of the Sixth Assembly of State Parties from 2 to 6 June 2008, discussions regarding the crime of aggression will take center stage. With two years before the first Review Conference of the Rome Statute, the stakes could not be higher. Will states agree on a definition of the fourth crime under its jurisdiction by 2010? What is required to move the discussion forward? Here, we have provided statements by Coalition members reflecting on the work that remains to be done.

## Brigitte Chelebian, *Justice Without Frontiers*

Justice Without Frontiers (JWF) and many Arab nongovernmental organizations (NGOs) believe that in order to ensure the independence and impartiality of the ICC and to avoid the politicization of the Court's work, the Security Council should not be given legislative powers in matters concerning the jurisdiction of the Court, with a particular reference to the crime of aggression. The Security Council has often been characterized by bias and the adoption of political decisions that serve its interests. The Security Council has in the past failed to punish the perpetrators of crimes of aggression in a number of states where the thousands of victims included children and the elderly, such as in Lebanon, Palestine and Iraq. This failure has exacerbated the lack of accountability for those crimes, whose perpetrators act on the basis that they have protection—perhaps even international protection—from being held accountable for committing these crimes. Therefore, many Arab NGOs insist that the ICC have the independent and final decision in determining jurisdiction over the crime

of aggression as well as the prosecution of criminals. We also insist that the resolutions of the Security Council should not be binding on the Court in order to prevent this Court from becoming beholden to the Security Council.

Many people, especially those who are victims of crimes of aggression, war crimes, crimes against humanity or genocide, consider the ICC an independent international judicial and nonpolitical system, a safeguard against impunity, and a guarantee of the people's fundamental rights. We believe that the Special Working Group on the Crime of Aggression (SWGCA) has an important and critical role, and is supposed to be neutral and far from any special interests in defining this crime. This definition will contribute to justice for the victims, the protection of people in the future, and the guarantee of the persistence and strengthening of the international confidence in the International Criminal Court as an independent judicial system. A victim is a victim at all times and in all places, while the interests of states may change over time. ✦

## Jutta F. Bertram-Nothnagel, *Union Internationale des Avocats*

At the beginning of the resumed sixth session, the SWGCA has approximately eleven formal working days left to accomplish its mandate. The time available is greater than originally anticipated but remains tight enough to caution against approaches that might jeopardize the foundation already achieved.

Leaving here much of the detail of the definition aside, the crime of aggression means the planning, preparation, initiation or execution of a state act of aggression and can only be committed by someone in a leadership position. The conduct and leadership clauses within the definition have already been worked out. In the context of the general principles under the Statute, the relationship of joint leadership and joint conduct was still discussed at the sixth session of the ASP, but the topic will most likely be brought to conclusion at the resumed session.

The principle of legality has been repeatedly reaffirmed: There is consensus that all elements of the crime, including the element of the state act, must be clearly defined and that the

definition cannot be dependent on retroactive post-crime determinations. One form of susceptibility to retroactive modification has been avoided by separating the definition of the crime from the jurisdictional conditions. It will be essential to continue to steer the definition of the act of aggression away from the peril of retroactivity. States have looked at several options in this respect and are bound to move toward a reassuring solution at the resumed sixth session.

While more meetings will be required for the debate, if a prior determination by the Security Council (or by another UN organ) of an act of aggression should be a condition for the exercise of the Court's jurisdiction, agreement has been achieved that any such prior determination cannot be prejudicial for the Court's own determination. Due process demands that the Court must be able to examine the evidence in line with the rights of the accused and the definition under the Statute. The Security Council is not bound by the definition under the Statute and the Council's procedures are not geared towards due process for individuals. Autonomy in the decision-making of the two institutions does not preclude cooperation nor do

discrepancies necessarily conflict with the need for harmony in the international security system. Rather, the independence of the Court and the independence of the Security Council are institution-specific, mandate-driven and complementary.

In its quest to devise the conditions for the Court's exercise of jurisdiction over the crime of aggression, the SWGCA searches for a provision that could fit with divergent interpretations of the UN Charter and strengthen both peace and justice in the international security system. Specifically, the SWGCA has debated whether the elements of the crime, notably the leadership requirement and the state act, pose particular challenges and demand further safeguards against politicization. While states have accepted that the three trigger mechanisms under the Statute will remain available, several options are

on the table as possible additional jurisdictional conditions, one of them an enlarged role for the Pre-Trial Chamber. And again, the independence and interdependence of the Court and the Security Council under the Statute are pondered for their proper delineation. Importantly, many delegates have emphasized equality before the law as an imperative for the jurisdictional conditions. This precept may play a unifying role: Equality before the law is undermined by politicized prosecutions as much as by politicized exemptions from prosecution.

The commitment of states to a successful outcome has been palpable. Failure of the negotiations risks sending a message that this crime does not need to be taken seriously. It would be a fatal message indeed. ✦

## Amnesty International

*The following are key points from an Amnesty International statement in the Coalition's team paper on aggression for the Sixth ASP. To view the full text, see [http://www.iccnw.org/documents/Amnesty\\_Int\\_Concerns\\_6\\_Session\\_ASP.pdf](http://www.iccnw.org/documents/Amnesty_Int_Concerns_6_Session_ASP.pdf)*

- The same procedures for referring crimes to the Court should be available for the crime of aggression.
- The provisions governing the right to a fair trial must be applied to the crime of aggression.
- The principles of criminal responsibility and defenses applicable to this crime must be consistent with international law.

...The United Nations Security Council or other bodies must not be allowed to infringe the independence and impartiality of the Court....In particular:

- The Security Council or other body must not pre-empt the judicial determinations of the Court on any aspect of the crime.
- The Security Council must not be given any additional powers to preclude the Court from acting.
- The issue must not overshadow other important work to be undertaken by the Assembly and the Review Conference. ✦

## CHECKLIST: Approaching the Court's First Review Conference

**DATE:** The First Review Conference of the Rome Statute of the International Criminal Court (ICC) will be held in the first half of 2010. Once a venue has been chosen, a date will be fixed based on related logistical considerations. The Secretary-General of the United Nations is expected to issue invitations to the conference in July 2009. The conference will be open to those participating in the Assembly of States Parties (ASP) to the Rome Statute and on the same conditions.

**VENUE:** The ASP Bureau is considering three options for the Review Conference venue: New York, The Hague or a third venue. On 8 June 2007, the government of Uganda made a bid to host the conference. At its Sixth Resumed Session to be held in New York from 2 to 6 June 2008, the ASP will consider venue proposals.

**FOCAL POINT:** Rolf Einar Fife of Norway was appointed the ASP focal point on the Review Conference by the Third Session of the ASP on 10 September 2004, with a mandate to act as a point of reference for delegations with thoughts and input on the upcoming conference.

**WORKING GROUP:** On 1 December 2006, the Fifth Session of the ASP requested that the ASP Bureau begin preparing for the

Review Conference, focusing on the rules of procedure and various practical matters. Sabelo Sivuyile Maqungo of South Africa was appointed facilitator of the Review Conference Working Group in New York.

**RULES OF PROCEDURES:** The draft Rules of Procedure of the Review Conference were endorsed by the ASP at its sixth session in New York on 14 December 2007.

**AGENDA:** At the Resumed Seventh Session of the ASP to be held in New York from 19 to 23 January 2009, the Special Working Group on the Crime of Aggression will conclude its work (approximately 12 months in advance of the Review Conference). In 2009, the Eighth Session of the ASP will consider proposals for amendments to be taken up at the Review Conference.

**CIVIL SOCIETY INVOLVEMENT:** The Coalition's Review Conference Team will continue to help lay the groundwork for a successful conference through NGO meetings, research and briefings. The team will also produce additional position papers, which have so far been constructively integrated in the process. For more on the Team's work, contact Oswaldo Zavala Giler at [Zavala@iccnw.org](mailto:Zavala@iccnw.org). ✦



A young Sudanese boy, displaced by an attack against his village, sleeps next to what remains of his family's possessions after reaching the relative safety of Kalma camp in South Darfur. Armed men killed his father two days earlier, leaving the young boy and his mother to face an uncertain future in a fractured land. Credit: Doug Mercado, Courtesy of Photoshare

**O**n 18 January 2008, Trial Chamber I issued an important decision that set general guidelines regarding the participation of victims in the trial of Thomas Lubanga. These guidelines include criteria to be applied to applications; modalities of participation; common legal representation; protective and special measures for victims; and the dual status of victims and witnesses. Among other things, the decision maintains that in order to participate, victims do not need to bring evidence of harm suffered as a result of the charges confirmed against Lubanga, but merely establish a link to the evidence against him or establish that they have been affected by an issue raised during the trial. A decision regarding an appeal is pending from the ICC Appeals Chamber. What follows are comments from CICC members about this important ruling:

**Carla Ferstman, director, Redress**

The 18 January decision affirms that victim participation is a right owed to victims, not a privilege bestowed upon them. This is a fundamental starting point, and will hopefully continue to

guide the Court in its approach to victims now and into the future. The ICC is forging new ground in the area of victim participation, with many concepts untried and untested. It is essential that the modalities for victim participation are practical and efficient, and hopefully this decision, and the further consideration of some of its elements on appeal, will lead to a process that is meaningful to victims, practical and fair.

**Mariana Pena, Hague representative, Fédération Internationale des Droits de l'Homme (FIDH)**

It is a well-balanced decision, which applies the principles of the Rome Statute in a fair and objective manner. It is innovative in that—contrary to some previous ICC rulings and the arguments put forward by the prosecution and the defense—it truly recognizes the importance of victim participation in criminal proceedings as a major achievement of the Rome Statute and is successful in adapting legal principles to the reality of victims in the field. FIDH welcomes, in particular, the findings with regard

to the protection of victims, which take into consideration the potential risks that applicant victims might be exposed to, an aspect which several NGOs had been raising awareness about for a long time. The conclusions on the modalities of participation raise the issue of whether previous decisions had imposed unjustified limitations on the rights of victims. Fears have been expressed that the decision is “too open” or “too broad,” but it should be borne in mind that the Chamber carefully explains that it favors case-by-case analyses. Such a cautious approach is commendable.

**Géraldine Mattioli, advocacy director, International Justice Program of Human Rights Watch**

Victims' participation is a novel feature of ICC proceedings and a milestone for international justice. While delineating the modalities of victims' participation is a complex task, if properly handled it has the potential to diminish the gap that has traditionally existed between victims and international justice processes. Trial Chamber I's decision of 18 January 2008 in the Lubanga case raises questions about the practical implications of an expanded but imprecise definition of victims eligible to participate in cases. First, it is unclear in what manner victims unrelated to the charges would be able to participate meaningfully without compromising the defendants' fair trial rights. Further, while it may seem that this broader definition is more inclusive of victims, the practical challenges in its application may ultimately make it unmanageable. For instance, it may be more difficult for those in the field working with victims in the application process to explain and identify who will qualify for participation in the Lubanga case until it becomes clear what evidence will be introduced during the trial. Processing victims' applications in a timely manner at this late stage may not be possible. Indeed, our research in the Democratic Republic of Congo revealed that victims are already frustrated and disappointed with the long delays in dealing with their applications. In order to allow victims' meaningful participation in cases, it is essential that the Office of the Prosecutor includes a set of charges that are representative of the range of crimes allegedly committed by the accused—unlike in the Lubanga case. ❖

# ICC Judicial Elections in 2009 Offer Rare Opportunity to Secure a Decade of Highly-Qualified Judges

In March 2009, six ICC judges will end their terms including Judge Philippe Kirsch, the first president of the Court. From 19 to 23 January 2009, during the first resumed seventh session, six new judges will thus be elected by the Assembly of States Parties (ASP) at United Nations Headquarters in New York. Only one judge, Fumiko Saiga of Japan, will be eligible for re-election since she filled a judicial vacancy term of less than three years. The newly elected judges will arrive at the Court at a crucial time in history, where pretrial chambers are setting important procedural landmarks, trial chambers are dealing with the first trials and appeals chambers are establishing jurisprudence for the future. States can only provide the Court with the quality judges it needs if there is a large pool of qualified candidates from which to choose. Past elections have shown that civil society can contribute significantly by identifying qualified candidates and by monitoring

the nomination process at the national level. Candidates may be nominated from 21 July to 13 October 2008.

## Nomination and Election

The ASP will elect those judges who obtain the highest number of votes with a two-thirds majority of states present. Delegates will be voting from a pool of candidates nominated by individual states parties. Candidates shall have established competence in criminal law and procedure (list A candidates) or in relevant areas of international law (list B candidates). States parties must also take into account the representation of the principal legal systems of the world, equitable geographical representation, a fair representation of female and male judges and judges with legal expertise on specific issues including, but not limited to, violence against children or women.

To nominate and elect judges, states parties are required to vote for a minimum number of can-

didates from each of three groups, determined by area of legal expertise, region and gender. Given the judges remaining on the bench, the adjusted minimum voting requirements for the 2009 election will be as follows: one for list A and one for list B; for regional groups, one for Asian States and one for Latin American and Caribbean States; and none for gender.

## Background

The first bench of 18 judges was elected in February 2003 at the first resumed session of the ASP. In accordance with the Rome Statute, the president of the ASP drew lots to select six judges for a term of three years, six judges for a term of six years and six judges for a term of nine years to allow for staggering termination dates. The second bench of judges was elected in January 2006. In November and December 2007, three judges were elected to replace those who had resigned prior to the end of their terms. ✖

## UNICC

### Key Developments at the United Nations by Wasana Punyasena

The period from December 2007 into early 2008 marked important developments for the International Criminal Court at the United Nations. Below are some of the key updates:

#### ICC Prosecutor Briefs UN Security Council During Assembly of States Parties Session

On 5 December 2007, in front of a packed Security Council chamber, ICC Prosecutor Luis Moreno-Ocampo gave his six-month update on the situation in Darfur. Focusing on the consistent lack of cooperation by the government of Sudan, the prosecutor asked the Council to send a strong and unanimous message to the Sudanese Government to execute the outstanding ICC arrest warrants for Ahmad Harun and Ali Kushayb. Unlike in the past, reactions from the 15 Security Council members to the report were heard in open session. Despite strong efforts to produce a Security Council presidential statement in support of the prosecutor's report, the Council failed to find consensus for adoption.

#### 62nd Session of UN General Assembly

The closing of the formal session of the 62nd Session of the General Assembly in December 2007 showed renewed commitment for the ICC in a number of resolutions including: safety and security of humanitarian personnel and protection of UN personnel; elimination of rape and other forms of sexual violence; rights of the child; torture and other cruel, inhuman or degrading treatment or punishment; and protection of and assistance to internally displaced persons.

#### UN Security Council Debate on Children and Armed Conflict

On 12 February 2008, the Security Council convened an open debate to discuss the Secretary-General's latest report on children and armed conflict. Special Representative of the Secretary-General for Children and Armed Conflict, Radhika Coomaraswamy, stressed the "[i]mportant precedents [that] have... been set to end impunity for crimes against children. We look forward to the trial proceedings by the

International Criminal Court for militia leader Thomas Lubanga, who is facing charges of having recruited child soldiers in the northeastern Ituri region of the Democratic Republic of the Congo; similar indictments are in place for two other Ituri militia leaders...all of that sends an important message that such crimes against children will not be tolerated and that those who engage in such practices will be brought to justice." In addition to Coomaraswamy, 28 states made explicit reference to the ICC.

#### Coming Up: ICC Prosecutor's Next Briefing to Security Council

In early June 2008, ICC Prosecutor Luis Moreno-Ocampo is expected to report to the Security Council on the situation in Darfur as required under Security Council resolution 1593, which obligates the prosecutor to report to the Council every six months about his progress in the investigation. ✖

*Wasana Punyasena is a legal officer with the Coalition Secretariat.*

## Five Questions for Rose Nakayi

**R**ose Nakayi joined the Uganda Coalition for the ICC (UCICC) as coordinator in February 2008. Previously, Nakayi was a law lecturer at Makerere University in Kampala and a legal advocate in Uganda.



Rose Nakayi at the CICC offices in The Hague. Credit: CICC

**CICC: What drives your interest in international justice?**

Rose Nakayi (RN): The desire to see justice served. Not justice as written in books, but justice as felt by all people. Justice should not be seen as a cloistered virtue, but rather as a tree, under whose spreading branches whoever seeks shelter should find it—whether poor, rich or marginalized.

**CICC: How does your position relate to broader human rights advocacy?**

RN: We are primarily concerned with ICC-related issues, but within the larger human rights discourse because it is grave rights violations that prompt the Court to intervene. As coordinator, my role is to support the struggle for human rights, democracy and the rule of law.

**CICC: How will you work with the more than 200 members of the UCICC?**

RN: I hope to respect the views of every member of our “big family.” We have a feedback system through which we communicate the latest ICC developments to our members, and in turn receive their input. There is an annual meeting of all members and quarterly meetings of the Steering Committee. Moving forward, we hope to identify focal point agencies or persons in every region of Uganda. These will be our mouthpieces on the ground.

**CICC: What role do NGOs have in restoring peace and justice to Uganda?**

RN: NGOs play an instrumental role. They are neutral players who bring injustices to light without bias. Some NGOs have been a bridge between the international community and the grassroots. NGO outreach has been crucial to alleviating the suffering of those affected by conflict.

**CICC: What was your impression of the recent ICC/NGO dialogue in The Hague?**

RN: I realized that we are not alone in the struggle for peace and the fight against impunity in Uganda. There are a number of NGOs passionately working for the same cause, and this gives me hope—and ideas. ✦

## Madagascar Becomes 106th State to Join ICC

Madagascar deposited its instrument of ratification to the Rome Statute on 14 March 2008, becoming the 106th state party, and the 30th African state to join the International Criminal Court (ICC).

This island nation’s ratification is the culmination of a decade-long process that began with the country’s signing of the Statute on 18 July 1998, one day after the Statute’s historic adoption (see cover story). The ratification process was delayed by a number of legal and constitutional hurdles including the Constitutional Court’s initial ruling that ratification of the Statute would be an unconstitutional act requiring a subsequent April 2007 referendum amending the constitution to allow for ratification.



Madagascar became the latest country to ratify the Rome Statute of the ICC on 14 March 2008. Pictured is Ambassador Zina Andrianarivelo-Razafy, the permanent representative of Madagascar to the UN (left), and UN Treaty Head Annebeth Rosenboom (right) at the ratification deposit ceremony in New York. Credit: CICC

Civil society organizations in Madagascar played a significant role in campaigning for the ratification of the Rome Statute and the adoption of the constitutional referendum allowing ratification. Civil society was also instrumental in broadly publicizing the referendum once it had been adopted in order to put further pressure on the government to finalize the ratification process.

“Madagascar’s ratification is not only in step with the growing international support for the Court, it is consistent with the African Union’s stated priority that its member states ratify the Rome Statute,” said Francis Dako, Francophone Africa coordinator for the CICC. Many have commended the government in joining the international justice system and expressed their hope that Madagascar’s ratification will encourage other Indian Ocean countries and southern African states to follow suit. ✦

## Indonesia's Promise to Ratify in 2008—Fact or Fiction? By Mugiyanto

In May of 2004, President Megawati Sukarnoputri of Indonesia issued a presidential decree establishing a National Human Rights Action Plan (RANHAM) for 2004 through 2008. Chief among its concrete objectives was the ratification of the Rome Statute this year.

To ensure that the government meets this looming deadline, human rights NGOs in Indonesia such as Elsam and IKOHI have been leading efforts ranging from awareness-raising campaigns to lobbying. These efforts have intensified since 2007 and are gaining the attention of our news media outlets, which now include more ICC-related media coverage than ever. As a result, public awareness of ICC ratification issues is on the rise.

The CICC Asia Strategy Meeting held in Jakarta in May 2007 coupled with the public seminar on International Justice Day (17 July 2007) improved perceptions of the Court and clarified questions relating to its mandate and jurisdiction. The reasons Indonesia should become a party to the Rome Statute were broadly addressed in these fora. Today, similar awareness-raising seminars are also

being conducted for the military.

To bring all interested groups and government offices under one umbrella, an informal network was formed and several strategy meetings have already taken place. By bringing together committed actors, the hope is that we will build enough momentum to make ICC ratification in 2008 unstoppable.

Despite these recent gains, there are still some critical questions that need to be addressed as soon as possible. To date, it remains to be seen whether it will be the Parliament or the appropriate government ministry who will draft the ratification bill itself. For budgetary reasons, all indicators point to parliament. However, to ensure that Indonesia stays on track for ICC accession in 2008, there is an urgent need to make the decision about who will draft the ratification bill so that there is sufficient time to coordinate the involvement of the various actors in the process.

Meanwhile, the ostensible lack of initiative by either the government or the parliament is worrisome. Indonesian Member of Parliament Nursyahbani Katjasungkana (also an active member of Parliamentarians for

Global Action) has voiced concern regarding Indonesia's prospects for joining the Court this year. She says greater public and international pressure for Indonesia's immediate accession is essential for avoiding further delays in the process.

But while there is frustration, there is also hope. From 27 to 30 April, ICC Prosecutor Luis Moreno-Ocampo visited Indonesia. In the midst of this visit, the Ministry of Foreign Affairs arranged an Experts Group Meeting in Jakarta on the implications of ICC ratification. The prosecutor also met with several officials from the Ministry of Foreign Affairs. For Indonesian civil society, this helped remind the government that joining the Court has long been on the country's 2008 "to do" list. During the visit, Elsam, IKOHI, Imparsial, FRR, PSHK and HRWG participated in an informal meeting with Prosecutor Moreno-Ocampo and assured him that there is popular will and support for Indonesia to join the ICC in this 10th anniversary year. ✦

*Mugiyanto is the chairperson of the Indonesian Association of Families of the Disappeared (acronym in Indonesian is IKOHI)*

## "Women Strategizing Justice": Philippine Coalition Book Launch By Rebecca Lozada

As part of International Women's Day celebrations in the Philippines, the Philippine Coalition for the International Criminal Court (PCICC) published a resource book on gender justice that it launched on 10 March 2008 in Quezon City. *Women Strategizing Justice* chronicles the struggles of Filipino women in their fight against sexual violence.

"Philippine women have fought hard against gender injustice. It is up to us to see that legal mechanisms like the Rome Statute of the International Criminal Court move this struggle forward," said PCICC co-chair Loretta Ann P. Rosales. "The gender provisions laid out in the Statute are an encouraging example of the impact of the women's rights movement on international treaties. For so long, we worked to mainstream gender into international instruments, and finally we see progress."

Those presiding over the launch ceremony included Senior Superintendent Lina Sarmien-

to, the head of the Philippine National Police Human Rights Affairs Office, Monina Geaga of the feminist group Sarilaya and Junice Melgar of the Likhaan Center for Reproductive Health. Speakers discussed domestic and workplace violence affecting women as well as the situation on the island of Mindanao where the incidence of gender-based violence is particularly high.

Finnish Ambassador to the Philippines Riitta Resch, whose embassy helped finance the publication, praised the coalition for taking the initiative and said her country would continue to support efforts that may lead to a Philippine ratification of the Rome Statute.

As part of its broader mandate, PCICC has also worked to integrate international humanitarian legal norms into domestic legislation. This work entails discussions with lawmakers and the monitoring of five bills on international humanitarian law that are currently before the country's legislature. Of



The Philippine Coalition celebrates International Women's Day with a theatrical book launch. Credit: CICC

these bills, one pertains to the exercise of universal jurisdiction. ✦

*Rebecca Lozada is the Coalition Secretariat's Asia program associate.*

## EU Strengthens Support for ICC by Luisa Mascia

Promoting respect for human rights and justice for serious crimes under international law is fully in line with the objectives of the European Union (EU) and in accordance with its Common Position on the ICC. In *The European Union and the ICC*, a brochure that was launched at the Sixth Assembly of States Parties in New York in December 2007, the EU commits itself to ensuring the Court's "effective functioning" and to advancing "universal support for the Court by promoting the widest possible participation in the Statute."

On 1 January 2008, Slovenia took over from Portugal the presidency of the EU and with it, a number of challenges and commitments related to the ICC. As a first step, the new presidency has identified several countries in different regions in which it will intensify efforts aimed at achieving ratification and implementation of the Rome Statute. These so-called "EU demarches" complement the efforts of the CICC and its members to further the universality of the Court. As such, the EU should ensure a coherent and consistent approach to the demarches across rotating presidencies to maximize their impact in the short and long term.

Further, the EU Council Working Group on Public International Law (COJUR) held its first biannual ICC-focused meeting under the Slovenian presidency on 29 February, during which EU officials and

NGOs informally exchanged views on ICC ratification and implementation, the situation in Uganda and the review conference, among other issues. The Coalition and its members value this opportunity to regularly exchange views with the EU and its member states.

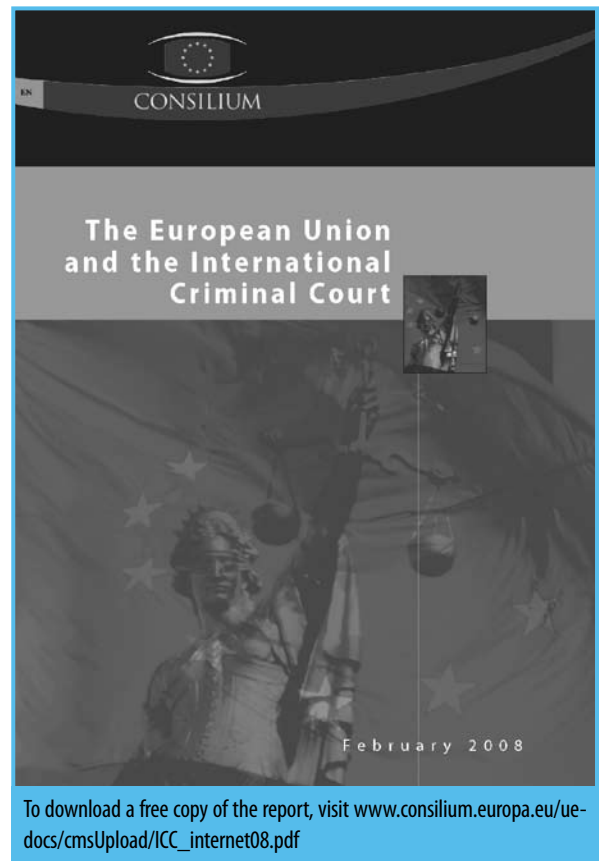
To mark the one-year anniversary of the referral of the situation in Darfur, Sudan to the ICC, the presidency on behalf of the EU issued a declaration on 31 March 2008: "The EU expresses its profound dismay with the Government of Sudan's continued failure to comply with its obligations under UNSC Resolution 1593 including its refusal to arrest and surrender these men to the ICC for prosecution, much less allow the ICC to question them." Once again, the EU called upon the Sudanese authorities to unconditionally cooperate with the Court, indicating that the EU will "support appropriate further measures against those who bear responsibility for Sudan's failure to cooperate with the ICC."

However, the ICC prosecutor recently challenged EU public support for the Court by indicating that "public diplomatic support for arrests is still not forthcoming; the use of EU mechanisms whether of a political nature or of an economic nature have not been triggered. ...We know they can do more." Three years ago, the EU was instrumental in securing the historic referral of the

Darfur crimes to the ICC. Since then, the Sudanese government has openly defied the Court, leaving the EU and its member states hard-pressed to convince Khartoum that justice ranks high on their bilateral agenda.

For its part, the European Commission, has reaffirmed its contribution to NGO-led justice initiatives. At the end of November 2007, the commission issued new calls for proposals in support of global civil society campaigns designed to ensure the effective functioning of the ICC, under the European Initiative for Democracy and Human Rights (EIDHR). The EIDHR funding program will continue to be instrumental in ensuring that the system of the Rome Statute will work effectively and that the principles to which states—including EU member states—committed to in Rome in 1998 are upheld, so that impunity is no longer tolerated for the gravest abuses of human rights. ✦

*Luisa Mascia is the Coalition Secretariat's Brussels-based European regional coordinator.*



To download a free copy of the report, visit [www.consilium.europa.eu/ue-docs/cmsUpload/ICC\\_internet08.pdf](http://www.consilium.europa.eu/ue-docs/cmsUpload/ICC_internet08.pdf)

### Turkish Coalition for the ICC Going Strong after Three Years by Ozlem Altiparmak

Although the Turkish government recently decided to shelve its plans to ratify the Rome Statute for an indefinite period, Turkish civil society remains more committed than ever to Turkey's imminent accession to the Court. The country's national ICC coalition which celebrates its third anniversary this year launched its own website ([www.ucmk.org.tr](http://www.ucmk.org.tr)) in 2007. The Turkish Coalition for the ICC also released its first newsletter last year and organized conferences at the Universities of Ankara and Istanbul along with information sessions for NGOs in four cities. In 2008, the coalition will host an ICC roundtable for Turkish parliamentarians, sponsor a traveling photo exhibition called "From Nuremberg to The Hague: The Road to the ICC" and propose a victims' aid model for the country. ✦

*Ozlem Altiparmak is coordinator of the Turkish Coalition for the ICC*

## El Salvador's Continued Resistance to Joining the ICC by Wilfredo Medrano

Central American media outlets are widely reporting opposition from the governments of El Salvador, Guatemala and Nicaragua to the possible inclusion of an ICC clause in the European Union-Central America Association Agreement (EU-CAAA), currently under negotiation. President Antonio Saca of El Salvador, in particular, has claimed that constitutional provisions prevent his country from acceding to the Rome Statute, citing as obstacles the irrelevance of official capacity (Art. 27 of the Statute), life imprisonment (Art. 77), extradition and the principle of *ne bis in idem* (the principle that no one should be tried twice for the same offense). Costa Rica and Honduras shared some of El Salvador's concerns until their courts passed favorable rulings enabling each country to become states parties to the Statute. Similarly, Guatemala's constitutional court has issued a favorable judgment for ratification, although the country has not yet finalized its ratification. The precedent for ratification in the region makes clear that the obstacles cited are political—not legal or constitutional—considerations. However, these political issues are causing the EU-proposed ICC clause to be a real sticking point in negotiations. In the regionwide conference organized by the Consultative Committee of the Central American Integration System, the CICC Secretariat and its members highlighted the need for the EU to continue advocating for the inclusion of robust ICC language in the agreement, as well as called on Central American states to demonstrate to the international community their commitment to the rule of law and the defense of human rights by ratifying the Statute.

Since 2002, the Salvadorian Coalition has been undertaking outreach activities and organizing capacity-building workshops for multiple audiences to counteract pervasive misinformation regarding the Rome Statute, particularly in relation to the Court's non-retroactive jurisdiction. In conjunction with our coalition, Francesca Varda, CICC coordinator for Latin America and the Caribbean, and Norwin Solano, a lawyer at the Centro Nicaraguense de Derechos Humanos, conducted a mission to San Salvador in late April 2008 to build on media interest and the momen-

tum sparked by civil society engagement, and in particular to understand the question of whether a constitutional amendment is needed. While their neighbors' constitutional courts were able to give a favorable opinion in advance of ratification, the Salvadorian system is different in that the constitutional review would have to follow accession, opening the Statute up to challenge and legal limbo. In meetings with high-level government officials, parliamentarians and NGOs it became clear that key stakeholders nationally are convinced accession would require a constitutional amendment.

Upcoming parliamentary elections early in 2009 could make 2008 a pivotal year for international justice in El Salvador since its domestic laws require that two consecutive legislative assemblies approve an amendment to the constitution. If no action is taken by the current legislative assembly, the constitutional reform process will be delayed significantly as efforts to pass the amendment could only begin with the 2009 legislative assembly. Given the three-year terms of the legislative assemblies, the completion of the amendment process would then be extended to 2012, when the



During a radio interview, Norwin Solano (left), a lawyer with the Centro Nicaraguense de Derechos Humanos, and Wilfredo Medrano (right) of the El Salvador Coalition for the ICC, highlight the urgency of ensuring that both Nicaragua and El Salvador become states parties to the Rome Statute. Credit: CICC

subsequent legislative assembly takes effect, representing an unacceptable delay in bringing El Salvador into the Court. The El Salvador Coalition therefore calls on the government and the parliament to ensure that a constitutional reform agreement is passed before the end of the current term, setting up the required process so that the 2009 legislative assembly can promptly ratify the amendment. ✦

*Wilfredo Medrano is the president of the El Salvador Coalition for the ICC*

### Andean Region Hosts Implementation Events By Salvador Herencia

Lima hosted the Andean Commission of Jurists' (CAJ) course on the ICC and International Criminal Law from 5 to 7 March 2008. Participants discussed existing legal and constitutional concerns regarding ratification and implementation of the Rome Statute in the Andean Region, which includes Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela.

Some 26 public officials of the Andean Region participated in this course, which covered issues ranging from ICC general principles and common challenges in incorporating international crimes into national law, to the analysis of judicial cooperation mechanisms and implementation case studies in Bolivia, Peru and Uruguay.

Participants agreed that similar discussions designed to further capacity building and understanding among various government actors are needed. They also noted that constitutional and legislative reforms in the Andean region should ensure the adequate implementation of international criminal law so that states have at their disposal legal instruments that can assist them in the fight against impunity and grave human rights violations.

In late March, CAJ organized a subsequent roundtable in Bogotá with key government and academic experts. Participants discussed a forthcoming ratification and implementation manual compiling examples of how countries with constitutional questions ratified the Rome Statute, either through interpretative approaches or constitutional amendments, as well as how they incorporated ICC crimes and ICC cooperation provisions into national criminal codes and criminal procedural codes. The manual is intended to serve as a comparative tool for countries moving forward with ratification and implementation processes.

For more information, visit: [www.observatoriodpi.org](http://www.observatoriodpi.org) ✦

*Salvador Herencia is legal adviser to the Andean Commission of Jurists.*

## Arab Civil Society Joins Forces to Call for Increased Arab Presence at the ICC

by Noha Aboueldahab

Representatives from nine Arab countries converged in Cairo from 29 to 31 March 2008 to discuss how to advance international justice in the Arab world as part of the Coalition's second Regional Strategy Meeting for the Middle East and North Africa (MENA). The meeting covered a range of issues, including obstacles to ratification, building a pro-ICC consensus nationally and the role of regional organizations in the ICC campaign, all with an eye toward encouraging more states to join the International Criminal Court (ICC), in which MENA states remain the most underrepresented.

Regional participants shared their experiences with activities that have resulted in productive dialogue between civil society and governments regarding the ICC as well as increased media coverage of national campaigns. For instance, the Moroccan Coalition for the ICC's regular meetings with Moroccan parliamentarians have kept ratification on the political agenda. As a result of the coalition's meetings with the Ministry of Justice, parliament is currently considering the inclusion of the Rome Statute crimes in Morocco's criminal code. The Lebanese coalition has succeeded in stirring dialogue on the ICC

among Lebanese parliamentarians, lawyers, judges and the media through various activities including workshops, seminars and exhibitions. Bahrain is hosting the region's first human rights film festival as well as a concert to mark the tenth anniversary of the adoption of the Rome Statute this year. Similar activities are taking place in other MENA states, with a view to increasing and sustaining pressure to join the ICC.

In addition to attending the regional strategy meeting, participants met with key Egyptian and Arab League officials. During a lively discussion at Arab League headquarters in Cairo, Mahmoud Rached, director of the League's Human Rights Department and a staunch supporter of the ICC, stressed the critical need to engage the Arab League and the Arab Inter-Parliamentary Union in particular: "The League of Arab States is a very important channel," he said. "We have confidence from the people, from states and from NGOs, and we are in a good position to facilitate dialogue between these actors." This level of interest in the Court is new for the organization and something that supporters of the ICC in the Arab world are well poised to take advantage of.

In another new development, participants agreed that the pending definition of the crime of aggression—cited time and again by Arab governmental officials as an obstacle to ratification of the Rome Statute—is not the sole and primary concern for Arab governments. Cherif Atlam, Cairo-based MENA regional coordinator at the ICRC, pointed out that the Court's jurisdiction over crimes against humanity is also a politi-



(Left): Hisham El Bastaweey, deputy director of the Egyptian Court of Appeals, stressed that the independence of the judiciary in Arab states is key to increased ratifications in the region. Pictured on the right is Kamal Mashreqi, coordinator of the Jordanian Coalition for the ICC. Credit: CICC

cally controversial issue for Arab governments considering joining the Court.

Hisham El Bastaweey, deputy director of the Egyptian Court of Appeals, also played down the significance given to the crime of aggression as an impediment to Arab ratifications and instead stressed that "the only hope for Arab countries to accede to the ICC is to support the independence of the judiciary in the region."

By the close of the meeting, participants had drafted a joint statement in support of the Court, proving that the political diversity of the Arab region does not prevent the adoption of a strong common position on the ICC. The detailed statement, issued during a press conference at the regional meeting, calls on Arab states to join the ICC immediately, end bilateral immunity agreements, cooperate with the Court with specific reference to Sudan and protect the independence of the judiciary. Notably, the statement also calls for increased freedom of expression and speech for Arab civil society activists—the lack of which has made ICC advocacy in the region all the more complex. ✦

*Noha Aboueldahab is the Coalition Secretariat's outreach liaison for the Middle East, North Africa and Europe.*

In November 2007, the Coalition launched its Arabic site ([www.iccnw.org/ar](http://www.iccnw.org/ar)) which includes key documents for Arabic speakers.

# REGIONAL HIGHLIGHTS

## Africa

**Burundi**—The Burundi League for Human Rights (Ligue ITEKA) officially launched the Burundi NGO coalition for the ICC on 27 March 2008.

**Democratic Republic of Congo(DRC)**—The Lubumbashi focal point for the DRC National Coalition organized a training workshop for journalists from 28 to 29 March 2008 to raise awareness of the role of South Kivu media in reporting on the rights of victims, witnesses and defendants in the upcoming ICC trials.

**Sierra Leone**—Network Movement for Democracy and Human Rights hosted consultative meetings in Freetown from 26 to 27 March 2008 for civil society groups across the country seeking to strengthen the Sierra Leone Coalition for the ICC and advance efforts to implement the Rome Statute into domestic law.

## Asia/Pacific

**India**—The Indian Coalition organized the 2nd National Consultation on the ICC and India in New Delhi on 25 April 2008 featuring eight panels on ICC-related issues and the release of a report on the seven-year strong Indian Coalition's activities.

**Thailand**—The Human Rights Program of Mahidol University, in partnership with the University of Hawaii, organized a seminar from 11 to 24 May 2008 in Bangkok on regional efforts toward transitional justice and peacebuilding, with the ICC as one key theme.

## Europe

Paris welcomed the traveling Darfur/Darfur exhibit of digitally-projected images from eight internationally renowned photographers in February 2008. Sudanese Member of Parliament and human rights advocate Salih Mahmoud Osman presided over the inaugural ceremony and CICC members FIDH and Human Rights Watch co-sponsored the event. Credit: Paolo Pellegrin/Magnum for Darfur/Darfur

**Paris, Geneva, Brussels**—The International Federation for Human Rights (FIDH) brought six Congolese advocates to Europe for three weeks of meetings with representatives from regional and international organizations. Advocates discussed strategies for investigating and prosecuting sexual crimes as well as the special needs of victims of those crimes in meetings with the ICC Office of the Prosecutor and Registry.



Coalition members across four continents celebrated the Rome Statute's robust protections for women's rights on International Women's Day (8 March). In the Central African Republic (pictured), women marched through the streets; in the Democratic Republic of Congo, the Association of Christian Mothers for the Assistance of the Vulnerable produced a theatre piece on impunity; in Abidjan, the Côte d'Ivoire Association of Female Jurists organized debates on women's rights and visited detained female prisoners; and FIDH brought prominent women's rights defenders from the Middle East, North Africa and the Gulf to meet with Arab League representatives in Cairo from 5 to 6 March 2008. In New York, the Faith and Ethics Network for the ICC co-sponsored a panel discussion exploring partnerships with faith-based communities to support justice and reconciliation for gender-based crimes. Credit: Anthony Morland, IRIN (Integrated Regional Information Network) Nairobi.

## Latin America/Caribbean

**Brazil**—CICC LAC members wrote to the government in February urging prompt and effective adoption of ICC implementing legislation.

**Peru**—The Democracy and Human Rights Institute of the Catholic University of Peru will organize in June 2008 a seminar on the Review Conference as well as on the status of the country's ICC implementation process.

## Middle East/North Africa

**Sudan**—On 30 January 2008, the Olof Palme Prize for human rights was awarded to Mossaad Mohamed Ali Mossaad, Nyala Coordinator at the Amel Center for Treatment and Rehabilitation of Victims in Darfur, which provides free legal assistance to Darfuri victims.

**Yemen**—Ali Abu Haliqa, a member of Yemen's parliament and chairman of its constitutional and legal committee, declared in March 2008 that the committee is currently considering the inclusion of a specific recommendation for Yemen's ratification of the Rome Statute in its next report to parliament.

## New U.S. Legislation a Strong Step Toward Accountability for Genocide

by Golzar Kheiltash



On 5 February 2007, Senator Durbin met with Don Cheadle before the Senate hearing on "Genocide and the Rule of Law" where the actor and activist testified. Credit: [www.wdcpix.com](http://www.wdcpix.com)

The last seven years of U.S. policy toward the International Criminal Court (ICC) have presented unique frustrations and challenges for international justice advocates. Yet increased congressional activity has resulted in U.S. legislation that carries positive implications for genocide prosecutions—as well as for the ICC—which might inspire cautious optimism in 2008.

### A New Congressional Subcommittee: Closing the Genocide Impunity Gap

The Senate Judiciary Committee's Subcommittee on Human Rights and the Law ("Subcommittee"), the first committee of its kind, was created in January 2007 as part of the newly elected 110th Congress. From conscription of child soldiers in armed conflict to the crisis in Darfur, the Subcommittee held hearings on several widely recognized international justice issues throughout 2007, each highlighting the need for U.S. efforts to help close the impunity gap for the world's worst crimes. Appropriately, the Subcommittee kick-

started its very first hearing with the topic of "Genocide and the Rule of Law" in February 2007. In his opening remarks, the Subcommittee's chairman, Senator Dick Durbin (D-IL), underscored the singular importance of more robust U.S. laws to prosecute genocide:

"The legal prohibition against genocide is obviously an unfulfilled promise...we must explore legal options for preventing genocide, or, in the worst case scenario, stopping an ongoing genocide, like the one in Darfur."

The hearing explored key issues including the status of the ICC's Darfur investigation and the possibility of "criminal and civil liability under U.S. law for people who commit genocide anywhere in the world."

Following the hearing, Senator Durbin introduced the Genocide Accountability Act (GAA) on 15 March 2007. Congress passed the Act last December and President George W. Bush signed it into law the same month. Critically, the GAA closes key jurisdictional loopholes in the existing Genocide Convention Implementation Act of 1987 by empowering U.S. courts to prosecute suspected perpetrators of genocide committed anywhere, so long as they are physically present in the United States.

### Implications for the ICC

The text of the GAA itself does not mention the ICC. Yet both its legislative history and its object and purpose aim to renew U.S. commitment to justice, accountability and respect for the rule of law in the context of the crime of genocide—all principles consistent with the letter and spirit of the Rome Statute.

The GAA also provides an opportunity for greater harmonization between U.S. domestic law and the Rome Statute: the Statute's principle of complementarity has always placed the primary responsibility on states to prosecute genocide, thereby enabling the ICC to serve as a true court of last resort. The GAA is a positive legal development that can benefit the United States and the Court.

Lastly, the GAA's passage implicitly promotes the principle of universal jurisdiction. By enabling U.S. courts to prosecute an internationally condemned crime, Congress is sending a clear message to alleged perpetrators worldwide that the United States is no longer a safe haven for impunity. Here the United States joins a number of other countries including Australia, Belgium, Germany, Senegal and the United Kingdom, that have also equipped their national legal systems with rigorous laws to investigate and prosecute suspected perpetrators of genocide.

The creation of a new congressional subcommittee and the resulting Genocide Accountability Act are important steps in the right direction. Moving forward, Congress must build stronger moral and political will in both houses and across party lines to advance core international justice norms and the institutions that foster them. War crimes, crimes against humanity and genocide know no borders, and a much firmer and more consistent commitment from all three branches of the U.S. government is necessary before the United States can become a genuine ally in the fight against impunity. In the meantime, ICC advocates can draw on the GAA as greater ammunition against perpetrators of genocide. ✦

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