Some global leaders think they should be immune from international prosecution.

We don’t.

Interview with Navi Pillay

“Africa has benefited most from the ICC”
A TIME FOR CAUTIOUS OPTIMISM

Readers may notice some changes in this 46th edition of our flagship publication. While insightful analysis of pressing issues facing the ICC and Rome Statute (RS) system of international justice remain at its core, we hope The Monitor has become more accessible to a wider audience through a more visual and engaging style.

This year, the RS system again faces significant challenges. Amendments to the Statute have been proposed that would give immunity to sitting heads of state and other senior government officials. The Coalition remains steadfast in its support for the key RS principle of equality for all before the law.

Even so, this is a time for optimism. We believe that the RS system will be strengthened under the leadership of Senegalese Justice Minister Sidiki Kaba in his role as the next president of the Assembly of States Parties (ASP). A longtime supporter of the fight against impunity, Kaba will become the first African to head the Assembly at a time when a new relationship with the continent is urgently needed.

2015 will mark the 20th anniversary of the Coalition for the ICC. It is remarkable that so much has been achieved in the past two decades, which began with an idea dismissed by most: a permanent international criminal court. Throughout the year, we will commemorate the hard-fought successes in the fight against impunity while continuing to work to ensure the existence of a fair, effective and independent ICC that serves the interests of victims the world over.

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

WHO ARE WE?

The Coalition for the International Criminal Court is a global network of civil society organizations in 150 countries working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide. For more information, visit coalitionfortheicc.org.

OUR STAFF

Yazen Abed, Middle East and North Africa (MENA) fellow; Virginie Amato, Europe senior advocacy and programme officer; Agustina Bidart, Spanish communications officer; Brianna Burt, development fellow; Matthew Cannock, legal officer; Clément Capo-Chichi, Africa regional coordinator; Radha Darji, finance and administration associate; Amielle Del Rosario, Asia-Pacific regional coordinator; Robert Giordano, finance director; Claire Giraudet, communications and program assistant; Leila Hanafi, MENA regional coordinator; Lesley Hsu, program associate; Stephen Lamony, senior adviser - AU, UN and Africa situations; Spencer Lanning, IT manager; Saskia Knight, development associate; Niall Matthews, head of communications; Kirsten Meersschaert DUCHENS, The Hague head of office/Europe regional coordinator; Dugal Monk, Asia-Pacific fellow; Fabiana Núñez del Prado, Americas fellow; William R. Pace, convenor; Jelena Pia-Comella, deputy executive director; Danny Rees, director of development; Michelle Reyes Milk, Americas regional coordinator; Fartuna Said, finance associate; Alexandra Sajben, regional program liaison; Hugo Strikker, administration and finance officer; Peony Trinh, design manager; Dan Verderosa, communications officer; Alix Vuillemin Grendel, legal officer.

STEERING COMMITTEE

The Coalition’s Steering Committee is comprised of a core group of member organizations which provide policy and program coherence for the Coalition’s efforts and activities:

Adaleh Center for Human Rights Studies
Amnesty International
Asian Forum for Human Rights and Development
Asociación Pro Derechos Humanos
Civil Resource Development and Documentation Centre
Comisión Andina de Juristas
Fédération Internationale des Droits de l’Homme
Georgian Young Lawyers’ Association
Human Rights Network
Human Rights Watch
Justice Without Frontiers
No Peace Without Justice
Parliamentarians for Global Action
The Redress Trust
Women’s Initiatives for Gender Justice
World Federalist Movement-Institute for Global Policy
COMMUNITY LEADER AN IMPORTANT PARTNER IN FIGHT FOR GLOBAL JUSTICE

The Coalition works in partnership with many individuals and institutions from around the globe in its mission of advancing international justice. One such partner is Mr. Wayne Bullaughey, a member of the board of the Unitarian Congregation of West Chester, Pennsylvania. According to Mr. Bullaughey, “[t]he ICC serves an essential purpose of providing justice for victims of the gravest of crimes independent of any one country. It is important that we take a strong stand against injustice.” Other valued partners include the European Commission, Humanity United, Open Society Foundations and the Sigrid Rausing Trust, as well as the governments of Australia, Austria, Finland, Ireland, Liechtenstein, Luxembourg, the Netherlands, New Zealand, Norway, Sweden and Switzerland. This financial support is essential to the Coalition’s effort to secure a future in which justice is accessible to all. For more information please contact development@coalitionfortheicc.org.
NO IMMUNITY for heads of state or high-ranking officials is fundamental to the object and purpose of the Rome Statute (RS) of the International Criminal Court (ICC): to bring to justice those most responsible for war crimes, crimes against humanity and genocide. Now, troubling attempts are being made to undermine this crucial principle of international criminal law. Civil society is urging governments to prevent what could be a disastrous backwards slide towards impunity.

Erosion of head of state immunity

Until the Second World War, heads of state were seen as immune from international criminal prosecution as they were said to embody the inviolable sovereign state. Since then, the law and practice of several international criminal tribunals has codified the understanding that grave crimes are committed by individuals, and dispelled the notion that personal responsibility can be avoided by claiming protection offered by the abstract idea of acting as the state.

It was the scale and planning behind the German atrocities of 1939-45 that led the Allies to prosecute the Nazi leadership at the war’s conclusion. The trials in Nuremberg set in motion the international justice movement we know today. However, it was not until the end of the Cold War that the idea gained further traction. In the 1990s, the conflicts in Yugoslavia, Rwanda and Sierra Leone prompted the United Nations (UN) to set up separate, temporary tribunals to prosecute those most responsible—including leaders such as Slobodan Milosevic and Charles Taylor. These efforts further solidified the principle of irrelevance of official capacity for serious crimes under international law.

Rome Statute definitively rejects immunity

When the RS establishing the permanent ICC was adopted in 1998, its Article 27 unequivocally read: “this Statute shall apply equally to all persons without any distinction based on official capacity.” This was a definitive rejection by the international community of the paradox that legal responsibility should be the least where power is the greatest.

In 2011, an ICC pre-trial chamber said that “the principle in international law is that immunity of either former or sitting heads of state can not be invoked to oppose a prosecution by an international court.” The judges noted that immunity for heads of state before international courts had been rejected time and again, emphasizing that initiating international prosecutions against heads of state has gained widespread recognition as accepted practice.

Past and present leaders such as the late Muammar Gaddafi, Omar Al-Bashir, Laurent Gbagbo and Uhuru Kenyatta have all come under scrutiny at the ICC in its short history to date.

Meanwhile, a seminal 2002 International Court of Justice decision specifically rejected the concept of immunity for heads of state, sitting or otherwise, before international courts.
The Coalition for the ICC remains a staunch defender of the Rome Statute, which has at its core the principle of equality of individuals, which applies without distinction, regardless of gender, age, race, color, language, religion, origin, wealth, birth or other status. The cornerstones of equality before the law and individuality go not only to the heart of international criminal responsibility, but also to the very nature of the redress which can be gained at the ICC.

At the national level, many of the ICC’s 122 member states have excluded immunities for heads of states or government officials for international crimes in their own domestic laws.

However, having seen that they no longer have a free hand to act with impunity, it appears some leaders are now trying to rewrite history to their own advantage.

Kenya proposals threaten to undermine Rome Statute

In March 2014, the Kenyan government formally submitted to the UN Treaty Office a set of amendments to the RS—including to Article 27 to exempt heads of state or other senior government officials from criminal responsibility while in office.

Kenya, on behalf of the African Union (AU), is proposing that a third paragraph be added to Article 27 reading that “serv-ing Heads of State, their deputies and anybody acting or is entitled to act as such may be exempt from prosecution during their current term of office…”

Such language would completely negate the earlier two paragraphs of Ar-

“The investigation and prosecution of grave breaches of human rights is a limit to the principle of head of state immunity. An interpretation allowing senior government officials to be exempted from the jurisdiction of a tribunal constitutes—at the individual level—a breach of the right to judicial protection and due process. This prevents both the judicial determination of facts and of criminal responsibility. On a social dimension, immunity for such crimes would mean impunity for individuals who, sooner or later, must publicly confront the illegal nature of their acts.”

—Enrique Bemales Ballesteros, executive director, Andean Commission of Jurists
article 27. In particular it is impossible to see how the proposed amendment to allow immunity for serving heads of state and their deputies can be reconciled with Article 27(1), which definitively states that official capacity “shall in no case exempt a person from criminal responsibility under this Statute.”

The Coalition continues to strongly oppose any proposal which will fundamentally undermine the integrity of the Rome Statute and the ICC, including amendments which would confer immunity upon government and high-ranking officials. Such immunities would hold the real possibility that those who wield the most power and influence over a state's apparatus and population could commit crimes with impunity, while providing an incentive for those committing the gravest crimes to entrench their power in order to avoid future accountability.

All ICC member states must also now stand up and defend the integrity of the RS as the Assembly of States Parties faces one of its most serious political challenges to date.

**Immunities at the African Court?**

In July 2014, the AU approved an expansion of the jurisdiction of the African Court of Justice and Human Rights to include war crimes, crimes against humanity and genocide, along with a range of transnational crimes which are important to the African continent. Unfortunately, the measure stipulates that heads of state and senior government officials would be immune from prosecution while they are in office.

In May, the Coalition joined 40 other civil society organizations in calling on African attorney generals and justice ministers to reject the proposed expansion, which would require 15 ratifications by AU member states to enter into force. If it does, it would be a hugely retrogressive development in customary international law, attempting to negate over 60 years of precedents to the contrary.

Ultimately, however, if the new jurisdiction does come into effect, it will have no effect on the ICC’s ability to try heads of state. The African Court might not be able to prosecute a sitting president, but the ICC certainly can if it has jurisdiction.

**Consigning immunities to history**

The idea of immunities for heads of state and senior government officials needs to remain consigned to the history books—where it was definitively sent with the adoption of the RS. Civil society stands ready to defend the integrity of the RS and continue the fight against impunity for all those responsible for grave crimes, no matter their rank or station.
The ICC prosecutor has begun to take action against suspects believed to be tampering with witnesses involved in cases before the Court—an issue vital to the integrity of judicial proceedings.

In late 2013, the Office of the Prosecutor (OTP) brought two cases against a number of suspects for offenses against the administration of justice under Article 70 of the Rome Statute. Although not core ICC crimes, offenses such as interfering with witnesses can have a great impact on the reliability of evidence submitted at trial and the ability of the judges to make an impartial judgment based on sound evidence.

In the situation of the Central African Republic, a case was instigated jointly against former vice president of the Democratic Republic of Congo (DRC), Jean-Pierre Bemba (who is facing a separate trial for crimes against humanity and war crimes), and his associates, including his former lead counsel Aimé Kilolo Musamba, former case manager Jean-Jacques Mangenda Kabongo and Congolese nationals Fidèle Babala Wandu and Narcisse Arido.

The prosecutor alleges that since early 2012, a criminal scheme took place in which certain defense witnesses were given money and instructions to provide evidence and testimony to the Court that they knew to be false or forged. The scheme was allegedly orchestrated by Bemba and carried out by Kilolo and Mangenda, with the assistance of Babala and Arido. In November 2014 judges partially confirmed the charges against the five and sent the case to trial.

In a second case, the prosecutor instigated proceedings against Walter Barasa, a former “intermediary” assisting the OTP in its investigations in Kenya. Barasa is suspected of corruptly influencing or attempting to corruptly influence three OTP witnesses in the trial of Kenyan Deputy President William Ruto and broadcaster Joshua Sang by offering bribes, with a view to having them recant their statements or withdraw as witnesses. He is challenging the decision to extradite him to The Hague in the Kenyan courts.

Allegations of witness intimidation and interference have been ever-present in the Court’s two Kenya cases. The Barasa case is the first to outline in clear terms alleged witness interference. It is unclear whether the OTP will bring other cases in the Kenya situation, but the OTP strategy for 2012-15 outlines that it will “continue to investigate and where necessary prosecute offenses against the administration of justice.”

The OTP has begun taking steps it believes are necessary to preserve the integrity of judicial proceedings before the Court, and to bring to justice those who jeopardize it. The Bemba case has highlighted the potential influence that high-ranking and powerful suspects could have on the fair trial process, even—as is alleged—from a prison complex in The Hague.

Prosecuting those who pervert the course of justice sends a strong message that the Court will do its utmost to bring to justice those who frustrate the criminal process.
CALLS FOR JUSTICE ON ALL SIDES IN CÔTE D’IVOIRE

CIVIL SOCIETY in Côte d’Ivoire is hoping that a shift away from sequenced cases—prosecuting one side before the other—in the ICC investigation into the country’s 2010-11 post-election violence will stem accusations of one-sided justice.

The three cases brought to date in the Côte d’Ivoire situation involve former president Laurent Gbagbo, a youth minister in his government, Charles Blé Goudé, and former first lady Simone Gbagbo.

Prosecutors believe that these three were involved in creating and executing a “common plan” to hold on to power by encouraging attacks on supporters of Gbagbo’s rival during the 2010 elections, current President Alassane Ouattara.

“While the cases against Laurent Gbagbo and Charles Blé Goudé are certainly welcome, providing further evidence of the ICC’s ability to hold to account heads of state and senior government officials, the Court’s investigation continues to be vulnerable to accusations of victim’s justice,” said Ali Ouattara, president of the Côte d’Ivoire Coalition for the ICC. “No case has yet been brought against any high-ranking officials or supporters of President Ouattara, who have also been implicated by Ivorian and international inquiries as having committed crimes during the post-election violence.”

Laurent Gbagbo is currently in ICC custody and is set to face trial in 2015, with crimes against humanity charges against him having been confirmed in June 2014.

Blé Goudé was transferred to the Court from Ghana in early 2014, and is awaiting a decision on whether his case will move to trial following a confirmation of charges hearing in October 2014.

The prosecution holds that Blé Goudé had been part of Gbagbo’s inner circle and used his influence over the Young Patriots militia to commit crimes against humanity, including murder, rape and other forms of sexual violence, persecution and other inhuman acts.

Simone Gbagbo meanwhile is facing trial in Côte d’Ivoire, with an ICC arrest warrant for her remaining outstanding. She is challenging the admissibility of the case before the ICC.

“In order to implement its mandate with fairness and ensure that post-conflict justice is done in Côte d’Ivoire, the ICC should commit to prosecute all those responsible for committing atrocities,” said Clément Capo-Chichi, the Coalition’s regional coordinator for Africa. “Victims’ need for justice in the country is such that the Court needs to better communicate on the status of investigations and prosecutions.”

ICC Prosecutor Fatou Bensouda has continually stressed her office’s impartiality and that it continues to investigate individuals on both sides responsible for crimes during the post-election violence.

She has further underlined that sequenced and focused investigations are giving way to a new strategic approach that involves in-depth, open-ended investigations.

Côte d’Ivoire civil society is hoping that this new approach will lead to those most responsible on both sides of the post-election violence being brought to justice.
WITH THE turbulent events of the past year, civil society is calling on Ukraine’s new government to build on its efforts to end impunity for grave crimes by becoming a full member of the ICC.

Two pro-Western parties—the People’s Front and the Poroshenko bloc—won the majority of seats in the country’s October 2014 parliamentary elections. The International Federation for Human Rights (FIDH) and the Center for Civil Liberties in Ukraine have urged the new parliament to enact judicial reforms and ensure accountability for mass human rights violations by extending ICC jurisdiction in Ukraine and ratifying the Rome Statute (RS).

“The events in Ukraine over the year should make clear to the new government that by joining the ICC it can reaffirm its commitment to the rule of law and to ending impunity,” said Kirsten Meersschaert Duchens, Europe regional coordinator at the Coalition for the ICC. “Full ICC membership is the only sure way to ensure justice for victims of grave crimes.”

Ukraine signed the RS in 2000 but has yet to ratify it. In 2001, the RS was found to be incompatible with the country’s constitution. However, in April this year, Ukraine formally accepted ICC jurisdiction over alleged crimes committed during the “Maidan” protests in Kiev from November 2013 to February 2014, a move welcomed by civil society.

Article 12(3) of the RS allows non-member states such as Ukraine to accept the Court’s jurisdiction.

The ICC prosecutor subsequently opened a preliminary examination to establish whether to initiate a full investigation.

The formal declaration came on the heels of a February 2014 parliamentary resolution recognizing ICC jurisdiction to investigate and prosecute alleged crimes committed in Kiev during the anti-government protests.

Since then, civil society and others, including Assembly of States Parties (ASP) President Tiina Intelmann, have been keeping the pressure on Ukraine to ratify the RS. In July 2014, Ukraine was again the focus of the Coalition’s Campaign for Global Justice, calling on the government to take the necessary steps to become a full ICC member. In September 2014, Parliamentarians for Global Action organized a visit of Ukrainian parliamentarians to the ICC in The Hague, and the following month President Intelmann met with government officials in Kiev.

“The next step for Ukraine to take is to ensure its full engagement with the ICC as a cornerstone of the international justice system—by undertaking the necessary constitutional reforms to allow for prompt ratification of the RS,” said Roman Romanov of the International Renaissance Foundation in Ukraine.

Ukraine needs to now build on the momentum of the parliamentary vote by amending its constitution as soon as possible to allow for compatibility with the RS and membership in this essential justice mechanism.
Kenyan President Uhuru Kenyatta became the first sitting president to appear before the Court when he attended a status conference on cooperation between the Kenyan government and ICC prosecutors.

Judges summoned eight reluctant witnesses to testify in the trial of Kenyan Deputy President William Ruto and broadcaster Joshua Sang.

Congolese militia leader Germain Katanga was sentenced to 12 years imprisonment after being convicted of crimes against humanity and war crimes.

THE ICC’S YEAR

ICC PRELIMINARY EXAMINATIONS

How do they work?

Phase 1: Initial assessment

After receiving a communication regarding alleged crimes, the prosecutor conducts an initial assessment to analyse and verify the seriousness of information received, filter out information on crimes that are outside the jurisdiction of the Court and identify those that appear to fall within its jurisdiction.

Phase 2: Jurisdiction

This is the formal opening of the preliminary examination. Having received information, the OTP has to decide if it has jurisdiction over the alleged crime. Several questions must be answered:

• When were the alleged crimes committed? The ICC generally only has jurisdiction over crimes once a state ratifies the Rome Statute.
• Were ICC crimes committed? The ICC only has jurisdiction over war crimes, crimes against humanity and genocide.
• Where were the crimes committed and by whom? The ICC only has jurisdiction over alleged crimes if:
  - They are committed on the territory of a state which has joined the ICC (territorial jurisdiction), or;
  - If the person committing the alleged crime was a national of a state which has joined the ICC (personal jurisdiction).

Which situations? Currently Honduras, Ukraine and Iraq.
Three cases were sent to trial—those against former DRC militia leader Bosco Ntaganda, against former Côte d’Ivoire president Laurent Gbagbo and against former Congolese vice president Jean-Pierre Bemba and four of his associates.

Five individuals involved in the case against former Congolese vice president Jean-Pierre Bemba—a defense witness, two of Bemba’s defense team, a Congolese MP and Bemba himself—are suspected of presenting false or forged evidence and bribing witnesses in the trial.

Following a preliminary examination, the ICC prosecutor opened a second investigation in the Central African Republic with respect to crimes allegedly committed since 2012, bringing the total number of ICC investigations to nine.

Preliminary examinations are carried out by the ICC Office of the Prosecutor to determine whether there is a reasonable basis to proceed with a full investigation into alleged grave crimes committed by individuals in a given situation.

In four phases, the prosecutor assesses whether the situation meets the criteria of jurisdiction and admissibility set out in the Rome Statute.

Phase 3: Admissibility

Are the potential cases ‘admissible’ before the Court? The ICC will only step in if the state in question is not investigating or prosecuting those suspected of having committed international crimes. These investigations and prosecutions also have to be genuine.

The OTP will look for any investigative efforts made into those most responsible for the most serious crimes under the Court’s jurisdiction.

Finally, the prosecutor must also look at whether the case is of sufficient gravity to justify further action by the Court. The gravity test is both “quantitative and qualitative” and includes an assessment of the scale, nature and manner of commission of the crimes, as well as their impact.

Which situations? Currently Afghanistan, Colombia, Georgia, Guinea and Nigeria.

Phase 4: Interests of justice

Would an investigation be in the interests of justice? If all of the phases above give reason for the prosecutor to open an investigation, the final phase—interests of justice—provides a ‘countervailing consideration’ for the prosecutor not to proceed to an investigation. The prosecutor will look particularly at the interests of the victims and if they would be better served in not opening an investigation.
NO KOREA INVESTIGATION FOR TIME BEING SAYS ICC PROSECUTOR

This map shows the sites from which North Korean forces allegedly shelled Yeonpyeong. © Wikimedia Commons

TWO ALLEGED attacks by North Korea on South Korean military targets in the Yellow Sea in 2010 do not meet the threshold for a full ICC investigation, the ICC prosecutor announced in June this year.

The Office of the Prosecutor (OTP) opened a preliminary examination into the two incidents after a complaint lodged by South Korea following the sinking of its warship, the Cheonan, and the shelling of Yeonpyeong Island, which houses military installations and a small civilian population.

The OTP concluded that the alleged attack of the Cheonan “was directed at a lawful military target and would not otherwise meet the definition of the war crime” as defined in the Rome Statute (RS).

Regarding the shelling of Yeonpyeong Island, the OTP found that the available information does “not provide a reasonable basis to believe that the attack was intentionally directed against civilian objects or that the civilian impact was expected to be clearly excessive in relation to the anticipated military advantage.”

While North Korea is not party to the RS, South Korea is and the ICC may prosecute offenses committed on the territory—or aircraft and vessels—of a state party regardless of the nationality of the perpetrators.

“Following an independent, impartial and objective process, the OTP has outlined the legal and factual reasons in the decision to conclude the preliminary examination in the Republic of Korea,” said Amielle Del Rosario, the Coalition’s Asia-Pacific coordinator. “We should bear in mind that at the preliminary stage, the OTP does not enjoy investigative powers and cannot invoke state cooperation. Rather it considers information from multiple sources, undertakes field missions and consults relevant stakeholders—including civil society. It should be noted however that the government of North Korea provided no information to the OTP in relation to this preliminary examination.”

“The OTP can re-open the preliminary examination should new evidence or information come to light, as was the case with the preliminary examination in Iraq, which was concluded in 2006 and re-opened in May 2014,” Del Rosario added.

UN GENERAL ASSEMBLY COMMITTEE CALLS FOR ICC REFERRAL

In late 2014, the third committee of the UN General Assembly overwhelmingly adopted a resolution in support of a referral of the situation in North Korea by the UN Security Council to the ICC prosecutor for investigation. Earlier in the year, a UN Commission of Inquiry concluded that a wide array of crimes against humanity, arising from “policies established at the highest level of state,” have been committed and continue to take place in the country. The Commission’s report included a recommendation for an ICC referral.
ALLEGED UK CRIMES IN IRAQ UNDER MICROSCOPE

THE ICC prosecutor this year opened a preliminary examination into war crimes allegedly committed by the British military in Iraq in 2003-08. Two organizations—the European Center for Constitutional and Human Rights and Public Interest Lawyers—have provided the Court with evidence of alleged systematic detainee abuse by United Kingdom (UK) armed forces in the country.

Iraq has not joined the ICC or accepted its jurisdiction. However, as the UK is a state party to the Rome Statute, the Court has jurisdiction over war crimes, crimes against humanity and genocide committed both on its territory and by its citizens.

In 2006, the then prosecutor, Luis Moreno-Ocampo, decided not to open a full investigation into the situation in Iraq after a preliminary examination found that the alleged crimes were not serious or widespread enough to meet the Rome Statute’s gravity threshold. He noted, however, that the matter could be revisited if new evidence came to light. The new preliminary examination will look at whether the new information provided meets the Rome Statute criteria to justify further action.

As ICC state parties have primary responsibility to try alleged perpetrators, the prosecutor will also be looking for any investigations or prosecutions in the UK or elsewhere in relation to the alleged crimes. A crucially important aspect of the preliminary examination is to encourage the UK to genuinely investigate—and possibly prosecute—suspected perpetrators.

“Until justice is done and seen to be done in all outstanding detainee abuse cases, the ICC most certainly has grounds to pursue allegations of systematic detainee abuse by UK troops in Iraq,” said Carla Ferstman, director of Coalition Steering Committee member REDRESS. “The ICC has jurisdiction if a country is unable or unwilling to investigate or prosecute. To date, the UK has failed to mount credible prosecutions which reflect the extent and gravity of the abuse allegations.”
DESPITE A growing number of prosecutions at the ICC and the launch a new UN campaign, the brutal crime of using of children as soldiers continues in armed conflicts around the world. Governments need to take urgent steps to bring perpetrators to justice.

Hundreds of thousands of children—some as young as eight—are forced to serve as frontline combatants. In early 2014, the UN reported that over 6,000 children might be involved in the conflict in the Central African Republic, with recruitment continuing as the conflict persists. In Nigeria, children have been forcible recruited, maimed, killed, raped and forced into marriage. Boko Haram has not only kidnapped hundreds of girls, such as the widely reported abduction of the Chibok schoolgirls in April 2014, but is also said to be using children as young as 12 in hostilities. The UN Independent International Commission of Inquiry on Syria reported in August 2014 that government forces, rebels and other groups such as the Islamic State in Iraq and Syria have all recruited, trained and used children to participate actively in hostilities.

This practice exacerbates the already devastating toll armed conflict takes on children, forcing them to commit unimaginable acts of violence and robbing them of their innocence and their future, along with that of their communities.

 Earlier this year, the UN secretary general’s special representative for children and armed conflict, Leila Zerrougui, and UNICEF launched the “Children, Not Soldiers” Campaign, aimed at ending the recruitment and use of child soldiers by government forces by the end of 2016. The plan was backed by UN Security Council Resolution 2143 (2014).

Meanwhile, more than 140 states have ratified the Optional Protocol on the Involvement of Children in Armed Conflict to the Convention on the Rights of the Child, agreeing to assume responsibility for the prohibition of the recruitment of children under 18 into armed groups and government forces and their direct participation in hostilities.

Ending impunity for these crimes is an important step the international community can take to end these horrific human rights violations. Under the Rome Statute, 122 states have to date agreed to investigate and prosecute individuals accused of genocide, crimes against humanity and war crimes, including the enlistment and conscription of child soldiers under the age of 15, as well as using them to participate actively in hostilities, with the ICC only intervening as a last resort.

The use of child soldiers has been among the charges in the ICC’s first trials. In March 2012, in its first trial and verdict, ICC judges found Congolese warlord Thomas Lubanga guilty of enlisting and conscripting children under the age of 15 and using them in hostilities in the Democratic Republic of Congo (DRC) in 2002-03.
He was later sentenced to 14 years of imprisonment. Similar charges have been brought against another Congolese rebel leader set to face ICC trial, Bosco Ntaganda.

However, the second ICC trial saw DRC warlord Germain Katanga found guilty of one count of crimes against humanity and four counts of war crimes, but acquitted of the charges related to the use of child soldiers. Although the ICC judges found that there were children within Katanga’s militia and among the combatants, they concluded that the evidence presented did not prove the accused’s responsibility for this crime.

ICC Prosecutor Fatou Bensouda has made crimes against children a top priority. To work alongside the Office of the Prosecutor’s (OTP) Gender and Children Unit, the prosecutor appointed Diane Marie Amann as a special advisor on children in and affected by armed conflicts, with a mandate to support and advise on OTP policies and training or awareness regarding children. In 2015, Bensouda will develop a policy to prioritize crimes against children by paying special attention to them in all stages of the OTP’s inquiries.

While the international prosecution of using child soldiers is bringing hope to the most vulnerable in conflict zones worldwide, states—bearing the primary responsibility to protect children—need to do much more to end this brutal practice.
THE INTERNATIONAL community is slowly waking up to the importance of prosecuting perpetrators to bring about an end to the continuing global scourge of wartime sexual violence. Yet much work remains to be done.

Sexual and gender-based violence (SGBV) is a widespread weapon of war—seen in conflicts in the Central African Republic, the Democratic Republic of Congo, Mali, Darfur and Syria, to name but a few. It is used to terrorize, to degrade, to punish communities and to ethnically “cleanse.” Women and girls are predominantly the victims, but men and boys are also targeted and suffer. Survivors are often marginalized and stigmatized, with little hope of seeing their attackers brought to justice.

Adopted in 1998, the Rome Statute was one of the first international treaties to extensively address conflict-related SGBV as crimes against humanity, war crimes and, in some instances, genocide. Unfortunately, there have been few other developments of note—until recently. Encouragingly, the past two years have seen much more visibility for SGBV on the international justice, peace and security agendas.

In June 2013, the UN Security Council unanimously adopted Resolution 2106, which recognizes the centrality of ending impunity for the prevention of SGBV in conflict and encourages states to strengthen accountability at the national level. A few months earlier, the UN General Assembly adopted the landmark Arms Trade Treaty, making it illegal to export weapons to countries or parts of the world where there might be a risk that the weapons will make women, men and children vulnerable to sexual violence. The same year, the G8 recognized that rape and sexual violence in armed conflict are grave breaches of the Geneva Convention and should be considered war crimes.

In 2014 the Security Council held an open debate on sexual violence in armed conflict focused on the imple-
mentation and consolidation of Resolution 2106. While stressing the primary national responsibility of countries to protect citizens against sexual violence and to provide justice, many countries also iterated their support for the ICC as a tool for the Security Council to ensure accountability for SGBV. They also stressed that any amnesties offered as part of peace deals should not apply to such crimes.

Meanwhile, in London last June, the United Kingdom hosted the Global Summit to End Sexual Violence in Conflict, as part of its wider Preventing Sexual Violence in Conflict Initiative that has rallied international focus on the issue. An impressive array of victims and survivors, 129 governments, 79 ministers, over 1,700 experts, faith leaders, youth organizations and representatives of civil society and international tribunals and organizations, along with a few Nobel laureates, took part. With significant national and international media interest, the summit brought the scourge of wartime rape into the public eye in a way not seen before.

The summit saw the launch of an International Protocol on Documenting and Investigating Violence in Conflict, which sets out international standards on how to collect the strongest possible information and evidence while protecting witnesses in order to increase convictions and deter future perpetrators.

Many Coalition members were also present, with Amnesty International issuing a series of recommendations urging world leaders to seize the opportunity and take legitimate action to end sexual violence, Colombian NGO COALICO holding a panel on sexual violence against children in Colombia, and No Peace Without Justice (NPWJ) calling for concrete action to end such crimes. NPWJ also served as a judge on the Ending Sexual Violence Hackathon, which saw the development of innovative approaches to using technology as a tool to promote ending SGBV in conflict, among many others.

From the beginning of her term in office, ICC Prosecutor Fatou Bensouda has been proactive in addressing the gender-justice gap and made the investigation and prosecution of sexual and gender-based crimes a priority. Bensouda made use of the London summit to publicize her office’s newly launched Policy Paper on Sexual and Gender-Based Crimes, the first ever such document for an international court or tribunal, produced by her special gender advisor, Brigid Inder.

While there are encouraging signs that conflict-related SGBV is finally getting the attention it so badly deserves, civil society will continue its efforts to ensure that the eradication of sexual violence in conflict remains at the top of the international agenda. Commitments made at the UN and at the London Summit this year need to turn into action and accountability. States need to provide greater support to stakeholders in addressing the root causes of gendered violence, strengthen efforts for redress for victim-survivors and ensure that women and gender perspectives are always part of prevention and peace processes.

"In a year, will we have seen more prosecutions for sexual violence in conflict? Will survivors be consulted on their needs? Will every soldier in national armies be trained on gender and sexual violence issues? Will survivors who come forward receive the necessary medical and psycho-social support? Civil society will be watching and waiting, and calling states to account for the promises made at the London summit."

—Stephanie Barbour, head of office, Amnesty International Centre for International Justice
What are your biggest achievements and disappointments from your term in office as UN high commissioner for human rights?

**THIS IS** a big question. Let’s start with the achievements. As high commissioner I addressed all types of discrimination and violations around the world without bias, working for the rights of all peoples. This included the right to development at the behest of many developing countries. We pushed for the recognition of the rights to food, water, health, and urged an end to poverty.

I am proud that we achieved a huge increase in awareness of human rights issues, particularly through social media. We are now able to reach out to and hear from civil societies all over the world—a crucial partner for our work.

We also managed to get some previously neglected rights on the UN agenda, such as those of the lesbian, gay, bisexual and transgender community—which we addressed under the right to freedom from violence and discrimination—and caste-based discrimination in India, Nepal and among indigenous communities. Yet much work remains to be done there.

The establishment of commissions of inquiry were also successful in documenting gross human rights violations. For example, Justice Michael Kirby’s inquiry into North Korea shone a light onto a situation that had been ignored for 60 years.

In terms of disappointments, one of the biggest is surely the failure of international community to take collective action to prevent human rights violations. I tried in vain five times to get UN Security Council to refer Syria to ICC for investigation.

It is also shocking that even though human rights is one of the UN’s three pillars, it remains so poorly funded, receiving only around 3% of the overall UN budget. And this at the moment when there is so much demand for assistance from governments and global civil society. We have seen time and again that the way to prevent conflict, and to prevent serious crimes, is to address the early warnings—which are human rights issues.

How much and in what way has the international justice movement changed the human rights landscape over the past 20 years?

Twenty years ago, there simply was no permanent international criminal justice system. Very serious crimes would be committed, particularly by those in positions of authority, with no accountability. Instead, perpetrators were given shelter by other countries. From that situation it is almost miraculous that we have the ICC, a great achievement on the part of the international community.

The demand for justice is really there. While most governments prefer the route of amnesty, all victims want justice and accountability. We now know that conflicts can re-erupt because justice was not addressed. I can’t tell you how many hundreds of people have told me how long they had waited for justice. The ICC is now known by people the world over—and they want investigations in their own countries. But we must remember that local populations need to be consulted on the type of justice they want.
Having recently stepped down as UN high commissioner for human rights, Navi Pillay has spent the past six years urging governments to live up to their human rights obligations—the latest position in a career that has seen her serve as a judge in South Africa’s high court, the international tribunal for Rwanda and the ICC in The Hague.

In this interview, Pillay argues that Africa has benefited greatly from ICC interventions, that no one should be immune from prosecution for the grave crimes that continue to blight the world, and that all UN member states need to ratify the Rome Statute.

The early ad hoc tribunals made international justice a reality by fleshing out the crimes and jurisdiction. As a judge at the Rwanda tribunal, I am very satisfied to have made contribution to turning this idea into a reality. It is wonderful that the ICC has now set a new precedent for states by spelling out the rights for victims to participate in proceedings and to receive reparations—something I contributed to first hand during my time as an ICC appeals judge.

We see growing problems with many armed rebel movements, against whom governments often seem too powerless to act. There are also huge expectations on the UN Security Council, yet it has no enforcement mechanisms and quite a limited area of action.

I am also very concerned with statements being made in the African Union (AU) that African states are being targeted by the ICC. Africa is the one continent benefitting most from the existence of the ICC. It is because African governments were unable to investigate and prosecute grave crimes that they invited the ICC to intervene. Seven out of nine of the ICC’s investigations followed invitations from African governments. The two that weren’t—Libya and Darfur—were referred by the UN Security Council. The ICC is rendering assistance to Africa in its time of need. If the ICC was not there, there would be no focus on these crimes.

These developments threaten to undermine the fight against impunity and integrity of the RS that 122 states—including most African states—have subscribed to. Nevertheless, I am encouraged by statements by many African governments, including many AU members, reiterating their commitment to ending impunity. We need to hear more of these voices.

How can the UN system better serve the interests of justice?

Put simply, UN member states must all ratify the RS—this is vital for the credibility of the ICC and international justice. Many states signed the RS, but fewer have ratified it and there remain many gaps, such as in Asia. The three big powers—United States, Russia and China—must also eventually become members.

All states must back the principles of no impunity for serious crimes and that no one is beyond the rule law. These are already part of the UN framework, so they should be part of the delivery as well. If the UN does not support the ICC fully, it’s failing in its own mission to prevent conflict and save lives.

What do you see as the biggest challenges for human rights and international justice in the next 20 years?

Many people have asked me if human rights are still relevant in the face of the failure to deal with conflict in places such as Syria, the Central African Republic, South Sudan and Ukraine. In Syria alone, the latest fatality count stands at 192,000.

Despite all of this, they are relevant. Apart from six or seven countries, the world is complying with the international framework for the respect, promotion and protection of human rights.

As for the adoption of AU resolutions to protect the immunity of sitting heads of state, they are in contravention to international law, the RS and many national constitutions.
ALL YOU NEED TO KNOW ABOUT ELECTING ICC JUDGES

The Coalition’s campaign on ICC elections promotes the nomination and election of the most highly qualified officials through a fair, merit-based and transparent process.
NO TO ACCOUNTABILITY VETO

THE FAILED attempt to bring international justice to Syria has bolstered calls to reform the veto power of permanent members of the UN Security Council when dealing with mass atrocities.

Under the Rome Statute, the Security Council has the power to refer situations for investigation by the ICC prosecutor, irrespective of if they are members of the Court. To date, the Security Council has referred only Darfur (Sudan) in 2005 and Libya in 2011 to the Court, despite well-documented mass human rights violations in many places around the world.

The five permanent members of the Security Council—China, France, Russia, the United Kingdom and the United States—can each veto any resolution that comes before them. A power often used to protect their interests, along with those of their allies.

For over three years, the world has watched as the situation in Syria has descended into chaos and humanitarian catastrophe. There is well-documented evidence that war crimes and crimes against humanity continue to be committed with impunity in the country. In May 2014, despite the support of over 60 UN member states and hundreds of civil society groups, Russia and China vetoed a resolution to refer widespread atrocities in Syria to the ICC—the first time a referral resolution had failed.

This political selectivity towards accountability on the part of Security Council members results in uneven access to justice for victims of grave crimes worldwide, and undermines the credibility of both the Council and ICC. Encouragingly, two initiatives to address this problem have emerged. The first is the Accountability, Coherence and Transparency (ACT) Initiative, through which 23 states are looking at...
reforming the Security Council’s wider working methods. The idea of inviting permanent members to refrain from the use of the veto in certain situations relating to ICC crimes is being discussed as part of ACT, although no agreement has been reached. ACT builds on earlier efforts by a group of five “small” states: Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland. The second initiative—led by France—aims to establish a code of conduct that would similarly see permanent Council members refrain from using their veto to block action addressing mass atrocities. Convincing powerful Council members with entrenched political interests to abstain from using their veto power is an uphill battle. Yet, the recent attempt to refer Syria to the ICC has demonstrated that there is definite and growing momentum towards international accountability for grave crimes. To achieve this in situations where the ICC does not have jurisdiction requires an urgent de-politicization of the decision-making process in the Security Council.

The question now is how long veto-wielding permanent members can continue to hold out in the face of mounting public pressure for justice.
FAILED SYRIA-ICC REFERRAL OFFERS UNEVEN JUSTICE

In May 2014, the Coalition wrote to all UN member states expressing concern at several provisions in the ultimately unsuccessful resolution to refer Syria to the ICC that would have undermined the prosecutor’s ability to investigate impartially.

The first provision exempted the citizens of non-ICC members from the Court’s jurisdiction in Syria. The Coalition stressed that this provision undermines equality of the law, and the ICC along with it. Also criticized was the failure to address funding for any investigation resulting from the referral, which would have left ICC states parties to foot the bill. Finally, the letter faulted the omission of a specific obligation for all UN member states to cooperate with the Court, a crucial element in successful ICC investigations and prosecutions.

Each of these three provisions has also been included in the Security Council’s referrals of Darfur (2005) and Libya (2011) to the Court. Future resolutions need to exclude these obstacles to even, impartial justice.

LATIN AMERICAN SUPPORT FOR ICC AT UN SECURITY COUNCIL

LONG-TIME FORERUNNERS in the fight against impunity, Latin American states are increasingly using the UN Security Council to advance international justice.

Following the veto of the draft UN Security Council resolution referring Syria to the ICC this year, Chile and Costa Rica joined several others in calling on permanent Council members to refrain from using their veto on matters involving war crimes, crimes against humanity and genocide.

Argentina also spoke strongly in defense of the integrity of the Rome Statute (RS) after the Syria vote. It stressed that, while in favor of the referral, it had strong concerns about provisions that could undermine the RS and entrench a system of uneven, selective justice.

Argentina previously voiced concern about such provisions during a June 2013 briefing by the ICC prosecutor.

Guatemala also used its membership on the Security Council to promote international justice. In October 2012, while holding the Council’s presidency, it organized an open debate on the rule of law and on peace and justice, with a special focus on the role of the ICC. This was the first time the Council addressed international accountability for grave crimes in such a manner. Meanwhile, an interactive dialogue between the Council and the ICC prosecutor in May 2013—requested by Guatemala—underlined the need for stronger cooperation between the two.

When it held the presidency in October 2014, one of several open debates organized by Argentina focused on the Council’s working methods and the relationship between the Council and Court. In August 2013, Argentina also held a high-level open debate on cooperation between the UN and regional and sub-regional organizations in the maintenance of international peace and security. Participants stressed that such bodies have a major role to play in advancing justice by cooperating with international accountability mechanisms, tribunals and courts such as the ICC.

With the Security Council’s record on justice and accountability in need of improvement, strong voices of ICC states parties such as Argentina, Chile, Costa Rica and Guatemala are much needed. More should now follow their lead.
ACCOUNTABILITY KEY FOR NEW UN HUMAN RIGHTS CHIEF

UNANIMOUSLY CONFIRMED as the new UN human rights chief, Jordan’s Prince Zeid Ra’ad Zeid Al-Hussein has a strong track record on accountability for grave crimes.

With his experience as an avid advocate in the fight against impunity and a chief architect of the ICC, Prince Zeid’s selection as UN high commissioner for human rights can only bolster the advance of international justice. The 50-year-old Jordanian UN representative takes over from outgoing high commissioner Navi Pillay, whose support for international justice and the ICC during her time in office has been laudable. Prince Zeid is also a member of the Coalition’s own Advisory Board—a global leadership group that supports international justice and provides strategic guidance to the Coalition.

A key figure in the establishment of the ICC

From the entry into force of the Rome Statute (RS) in 2002 until 2005, Prince Zeid served as the first president of the Assembly of States Parties (ASP)—the Court’s oversight body that considers and votes on amendments to the Statute, elects officials, and decides the ICC’s budget, among other functions.

Prince Zeid’s leadership, along with the Coalition’s campaign for universal ratification of the RS, contributed to the significant growth of the Court’s membership during its early years. His tenure as ASP president also saw the ICC begin its first judicial proceedings.

With his experience as an avid advocate in the fight against impunity and a chief architect of the ICC, Prince Zeid’s selection as UN high commissioner for human rights can only bolster the advance of international justice.

Prince Zeid has continued to play an important role in the RS system. He served as chairman of the Working Group on the Crime of Aggression at the Review Conference of the Rome Statute in Kampala, Uganda in 2010. The Working Group’s preparatory work enabled the adoption of the crime of aggression by states parties at the conference.

Under his leadership, the Office of the High Commissioner for Human Rights will undoubtedly be well placed to continue playing a lead role in strengthening respect for human rights.
ART AS AN AGENT OF CHANGE

IN AN EFFORT to harness the transformative power of art, the Coalition has launched an Arts Initiative to enrich the global dialogue on international justice.

As the Coalition’s first artist-in-residence and coordinator of the Arts Initiative, Brooklyn-based Bradley McCallum will bring together the arts community to present innovative works related to the ICC and fight against impunity.

The Initiative was launched in March with a special viewing of The Enclave, a multimedia installation on the conflict in the Democratic Republic of Congo by award-winning Irish artist Richard Mosse. Shot with discontinued infrared film, The Enclave is a haunting elegy on a vividly beautiful land touched by unspeakable tragedy.

McCallum is currently producing a collective portrait comprised of photographs, witness testimony and paintings entitled, “Weights and Measures: Portraits of Justice.” He is also curating an exhibition, “Post Conflict,” that includes works by internationally renowned artists such as Ai Weiwei, Jenny Holzer, Richard Mosse, Pieter Hugo and Alfredo Jaar.

"In my work in eastern Congo I was particularly struck by the inherent problems of representing this cancerous cycle of war in which 5.4 million people have died since 1998, yet which perennially fails to make headline news, probably because of its profound complexity. I wanted to engage with the problems this overlooked humanitarian disaster has had in being documented and communicated, to literally cast the conflict in a new light, to find new and perhaps more effective ways of raising awareness about the conflict situation. So, the project is about perception itself, using a kind of surveillance film that can register an invisible spectrum of light to reveal an opaque and in some respects unseen humanitarian tragedy."

—Richard Mosse
Civil society continuing to demand justice

Even in the face of growing intimidation and threats to their independence, local civil society groups in several Africa states are continuing their work to advance accountability for grave crimes and bring justice to victims of countless atrocities.

African civil society has come out strongly against calls for Kenya and other African ICC states parties to leave the Court. They are instead urging increased engagement and cooperation from the ICC’s biggest regional group of 34 states parties to develop the RS system into a truly global accountability mechanism.

“Kenyan civil society has remained steadfast and has maintained a brave anti-impunity campaign at home and abroad through robust, evidence-based advocacy for justice for victims,” said Njionjo Mue, program advisor at Kenyans for Peace with Truth and Justice.

“It has also led African civil society’s efforts to push back against the AU’s anti-ICC agenda.”

Many NGOs are also taking action to press governments into living up to their obligation under the RS to investigate and prosecute grave crimes at the national level. In February 2014, the visit of Sudanese President Omar Al-Bashir to the Democratic Republic of Congo (DRC) for a regional summit prompted widespread outrage. Ninety Congolese civil society organizations were among those calling on the DRC authorities to live up to their RS obligations to arrest ICC suspects such as Al-Bashir. The Sudanese president was reported to have left the summit early, as he had done when visiting Nigeria in 2013 after the Nigerian Coalition for the ICC applied to the high court for a warrant for his arrest. Meanwhile, the Kenyan section of the International Commission of Jurists joined with Physicians for Human Rights and the Coalition on Violence against Women to support eight victims of sexual violence during Kenya’s post-election violence in petitioning the government for justice.

HABRÉ CASE A MILESTONE FOR AFRICAN JUSTICE

141 African human rights groups have welcomed the establishment of a special court by Senegal and the African Union to try former Chadian president Hissène Habré for alleged crimes against humanity and war crimes.

“Kaba is a long-time supporter of the fight against impunity and his clear vision of the role of international justice in providing redress for victims and promoting peace would provide a steady hand at the Assembly’s helm over the next four years,” said Emma Bonino, founder of No Peace Without Justice.

Civil society continues to tirelessly fight against impunity to support all those who desire justice. It is now looking to the incoming ASP President to harness all that is good about the Africa-ICC relationship so that attention can return to the real matter at hand: holding perpetrators of grave crimes accountable and providing justice to victims wherever they may be.

High hopes for Sidiki Kaba

In October this year, Minister Sidiki Kaba, a long-time supporter of the fight against impunity, was endorsed as the consensus candidate for the influential position of ASP president, with the backing of 34 African ICC member states—a development welcomed by the Coalition as a potential turning point in the ICC-Africa debate.

“FIDH welcomes the endorsement of Sidiki Kaba, its honorary president, for the position of president of the ASP. His well-known commitment for an effective ICC and for the protection of the integrity of the Rome Statute will serve him to achieve the vast challenges he will face,” said Karim Lahidji, president of the International Federation for Human Rights. “Kaba’s presidency should contribute to preserving the central role of victims in ICC proceedings. As the first African president of the ASP, Sidiki Kaba will play a crucial part in addressing the relations between Africa and the ICC.”

“Kaba is a long-time supporter of the fight against impunity and his clear vision of the role of international justice in providing redress for victims and promoting peace would provide a steady hand at the Assembly’s helm over the next four years,” said Emma Bonino, founder of No Peace Without Justice.
NEGOTIATORS FOR the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) have taken the welcome step of including victims in talks that could end the country’s decades-long conflict—a move that makes the inclusion of strong, victim-centric accountability measures more likely to be part of any eventual peace deal.

The negotiations, which started in October 2012, and are being held in La Habana, Cuba, cover six agenda items: (1) Land reform and agrarian policy; (2) Political participation; (3) Disarmament of the rebels and end of the conflict; (4) Drug trafficking; (5) Rights of victims; (6) Implementation of the peace accords. As of October 2014, accords have been reached on the issues related to land reform, political participation and drug trafficking.

Five victims’ delegations are travelling to Havana, Cuba to participate in the negotiations. A series of regional fora for victims’ participation established at the behest of the negotiators, along with number of “peace roundtables” (Mesas Regionales de Paz) organized by the Colombian parliament, have been held throughout Colombia. Several thousand concrete proposals resulting from these consultations have been presented to the parties.

Recognizing the importance of victims’ contributions to the peace process, negotiators have ensured that the voices of victims are heard regarding the issues most important to them. These include the recognition of the right to truth, the right to justice and reparations for the almost six million victims of the conflict.

Victims principles set

Victims’ participation has been guided by a series of principles enshrined in a joint declaration adopted by the negotiating parties in June 2014. The declaration establishes that discussions on victims’ issues should result in the recognition of victims and the acknowledgment of their rights. It also provides for the recognition of the responsibility of perpetrators of crimes, the elucidation of the truth, guarantees of non-repetition, rights of participation of victims and the right to reparations, among others.

So who are the victims?

The victims participating in the peace talks include women, children, victims of sexual violence, human rights defenders, victims of enforced disappearance and forcible transfer, and union leaders, to name but a few. The crimes suffered by these victims were allegedly committed by several different parties to the 50-year conflict.

However, while investigations and prosecutions of members of illegal armed groups have moved forward, several victims groups have called on the government to do more to investigate crimes allegedly committed by government forces and government-aligned paramilitary groups.

Addressing Justice

Among the most decisive issues to be discussed during the peace talks is justice and accountability. Different proposals and views have been offered, including alternative sanctions (non-traditional sentences) and the prioritization of the gravest cases. A final agreement is yet to be reached.

That agreement must ultimately satisfy the diverse expectations from victims while sowing the seeds for reconciliation. It must also ensure that there is no impunity for the most heinous crimes of the conflict. The inclusion of victims in these discussions can only help to meet those requirements.

“This taking into account the current peace negotiations between the Colombian government and the guerrillas, the Colombian Commission of Jurists calls on the Colombian authorities to genuinely support the system of international justice enshrined in the Rome Statute, to take a firm stand in the fight against impunity, and to oppose any measures that stand in the way of justice.”

—Gustavo Gallon, director of the Colombian Commission of Jurists
ARE ASEAN PRINCIPLES REALLY INCOMPATIBLE WITH THE ROME STATUTE?

SOUTHEAST ASIAN states often justify not joining the ICC by invoking the principles of non-interference and state sovereignty. But upon closer inspection, this argument is exposed as a means of masking a reluctance to ensure accountability for war crimes, crimes against humanity and genocide.

Pointing to the region’s long history with colonialism and foreign interventions, many members of the Association of Southeast Asian States (ASEAN) consider non-interference in domestic affairs as the basis of interstate relations. With its power to initiate investigations—albeit only when a government is unable or unwilling to do so—the ICC is perceived as undermining that principle by infringing on sovereignty and meddling in what are seen as purely internal affairs. In part because of such thinking, only two of ASEAN’s 10 member states—Cambodia and the Philippines—are ICC members.

Yet absolute sovereignty is in fact a dated concept that does not reflect reality in a region where ASEAN members are required to submit to the World Trade Organization’s dispute resolution mechanism and in some cases to the International Court of Justice—both of which involve concessions of state sovereignty.

ASEAN member states are also obliged by international humanitarian law to prohibit and prevent most ICC crimes. Meanwhile, the principles of the Rome Statute (RS) overlap with international human rights norms already accepted by states in the region. That ASEAN states are already bound by many RS principles is reflected in the official ASEAN position that the ICC is “a positive development in the fight against impunity for crimes against humanity, war crimes and genocide.” The non-interference argument then becomes untenable: its proponents broadly agree with the substance of the treaty, but are simply unwilling to put it into practice.

With well-developed legal systems and ample opportunity to cooperate with the Court, ASEAN states are unlikely to be judged incapable of investigating and prosecuting ICC crimes. States pushing the non-interference line are more likely to be concerned about being deemed unwilling to prosecute and therefore subject to ICC jurisdiction.

When ASEAN states say they oppose ICC membership because it would infringe upon core principles such as non-interference, they are really saying that they are unwilling to ensure that all perpetrators of war crimes, crimes against humanity and genocide are held accountable. The people of Southeast Asia deserve better. They deserve justice.

“In 2011, Malaysia announced its intention of acceding to the RS. There has been little movement since. Our members have been lobbying for accession since 2006, holding public forums and seminars, providing information to policymakers and publicly urging action. The ICC Presidency has bolstered these efforts through several visits with key officials. Officials have responded by extending timelines and invoking arguments pertaining to sovereignty and legal compatibility. But these are truly non-issues. The principle of complementarity so often invoked as an infringement of sovereignty is in fact the reverse—it ensures that the ICC is a court of last resort. As for legal issues involving compatibility with Shariah law and the position of the constitutional supreme head of state, the accession of numerous constitutional monarchies and predominantly Muslim countries to the RS demonstrates that these issues can easily be overcome with political will.”

—Evelyn Balais-Serrano, FORUM-ASIA executive director and former Coalition Asia-Pacific regional coordinator
EU A KEY PLAYER IN ICC SYSTEM

Dr. Christian Behrmann, EU focal point on the ICC for the European External Action Service (EEAS), describes the EU’s role in the global fight against impunity.

What does the EU do to promote the universality of the Rome Statute?

THE EU is committed to making the ICC universal and promoting a better understanding of its mandate. We make every effort to advance this process with third states. This happens in particular during human rights dialogues with some 40 countries, but also through démarches campaigns worldwide, dedicated local or regional seminars, the inclusion of an ICC clause in agreements with third countries—including under the Neighborhood Policy (ENP)—and financial support to civil society. This is also an objective during EU accession negotiations as ratification of the Rome Statute (RS) and adherence to its values are part of the acquis communautaire to be fulfilled before joining the EU.

The EU has been a strong supporter of ending impunity outside its borders. Does it have a policy within the EU?

The ICC remains complementary to national systems. In the Council Common Position on the ICC, EU member states expressed their determination to work together to combat certain crimes. The Council then adopted a 2002 decision setting up a “European network of contact points in respect to persons responsible for genocide, crimes against humanity and war crimes”—otherwise known as the EU Genocide Network. This is intended to make cooperation more efficient between member states which have designated contact points within the police and justice systems, and exchange information on investigations. The investigation and prosecution of these crimes continues to be the responsibility of national authorities.

What can the EU and its member states do to improve cooperation with the ICC?

Full cooperation with the ICC is essential for its effective functioning. The EU was the first regional organization to sign an agreement on cooperation and assistance with the ICC in 2006. The EU and its member states consistently encourage full cooperation of states with the ICC, including the prompt execution of arrest warrants. The EU response to non-cooperation focuses on impending instances of non-cooperation, on persisting or repeated cases of non-cooperation, and when to avoid non-essential contacts with individuals subject to arrest warrants.

“The EU’s support for the ICC is critical and is outlined in a number of adopted policies. Yet there is room for improvement when it comes to implementation, especially when things get difficult or politically uncomfortable. The EU should be more proactive and forceful in pressing for full cooperation with the ICC in situations where the Court’s arrest warrants are ignored or investigations jeopardized, such as Sudan, Libya and Kenya. The EU also needs to be consistent and principled in promoting universality of the ICC—be it with Kiribati, Iraq, Ukraine or Palestine and Israel.

Incoming EU high representative, Federica Mogherini, should make justice for international crimes a key priority by working with EU states to press for accountability, and by appointing a special representative on international justice and humanitarian law, as recommended by the European Parliament.”

—Géraldine Mattioli-Zeltner, advocacy director of Human Rights Watch’s International Justice Program

Read the full interview on the Coalition’s #GlobalJustice blog.
SEARCH FOR JUSTICE CONTINUES IN TURBULENT MIDDLE EAST

IN A REGION with only two ICC member states, civil society must navigate complex regional and international politics in order to bring justice and accountability to conflict-ridden countries like Syria, Iraq and Palestine.

The Arab Spring has awoken a newfound support for justice and human rights among the peoples of the Middle East and North Africa (MENA). At the same time, the violent conflicts that have arisen from the political and societal upheaval in the region have created an urgent need for accountability that has many calling for the ICC to get involved.

Civil society around the world and at least 58 states have called for the UN Security Council to authorize an ICC investigation into well-documented war crimes and crimes against humanity in the Syria conflict. But despite that support, a resolution referring the situation to the Court could not escape the politics of the Security Council and was vetoed by Russia and China in May this year.

To Syria’s east, atrocities allegedly committed by the Islamic State in Iraq and Syria (ISIS) have also drawn calls for an ICC investigation. The Coalition, Parliamentarians for Global Action (PGA) and the new UN human rights chief, Prince Zeid Ra’ad Zeid al-Hussein, have urged the Iraqi government to ratify the Rome Statute (RS).

“Such atrocities cannot go unpunished, and Iraq should ratify the RS of the ICC,” said PGA President Ross Roberts. But with an international campaign against ISIS and a fledgling government trying to hold the country together, the country’s prospects for joining the ICC could be a far way off.

Elsewhere in the region, there were loud calls for Palestine to join the ICC after over 2,000 were killed in the most recent Gaza conflict. But despite intimations that it would do so, the Palestinian Authority has thus proven reluctant, with speculation that influential countries are using political pressure to stop such a move.

“ICC states parties have blatantly discouraged or intentionally refrained from encouraging and urging Palestine to ratify the RS,” said Shawan Jabarin, general director of Al Haq. “In light of political interests, linked with the ongoing Israeli and Palestinian peace negotiations, states and regional bodies have set aside the right of victims to seek and receive remedy and, in so doing, have failed to address a prevalent lack of accountability for crimes.”

The Arab Spring may have reinvigorated a desire to end impunity in the MENA region, but the events of the past year have shown that politics all too often get in the way. Nevertheless, civil society remains committed to ensuring that all MENA countries join the ICC in order to end impunity in the region and beyond. The world’s major powers must now stop obstructing the path to justice.

“The failure to refer the Syrian conflict to the ICC is very disappointing. By not taking action to hold perpetrators accountable for mass atrocities, the UN Security Council is sending the wrong signal to all players in Syria—especially to the Assad regime—that they can continue to commit war crimes and crimes against humanity with impunity. The result will be the spread of more impunity and a continuous circle of violence.”

“The Syrian Commission for Transitional Justice is committed to conducting comprehensive research on future transitional justice and reconciliation initiatives in Syria and establishing rule of law in the post-Assad transitional period. As transitional justice experiences across the world have taught us, reconciliation is closely linked to political transition. Its success depends mainly on the will and vision of all actors and political forces on the ground. Unfortunately, Syria has practically no history of political participation, leaving the country with few options when considering where to turn to design and implement post-conflict reconciliation programs.”

—Radwan Ziadeh, president of the Syrian Commission for Transitional Justice

Wounded civilians arrive at a hospital in Aleppo during the Syrian civil war. © Wikimedia Commons
WITH ALMOST two thirds of the world’s nations now members of the Rome Statute (RS) system, the Coalition this year revamped and expanded its long-running Universal Ratification Campaign, which has been successful in spurring many governments to accept the Court’s jurisdiction.

While retaining RS ratification as a central component, the new Campaign for Global Justice also encompasses encouraging implementation of the Statute, complementarity (national prosecutions of international crimes) and urging states and others to cooperate with the Court. These are crucially important issues for the sustainable and effective functioning of the RS system.

The new-look Campaign envisages a greater number of activities at the local, national and regional levels by our global membership. Members of the public are also asked to take direct action in support of the Campaign by signing online petitions and directly targeting policymakers on social media.

So far this year the Campaign has urged ratification and full implementation of the RS in the Bahamas, Armenia, Azerbaijan, Egypt, Haiti, Ukraine, Turkey, El Salvador and Vietnam. Take action now to support our efforts. "

---

LAUNCH OF #GLOBALJUSTICE BLOG

2014 also saw the launch of the Coalition’s new blog, #GlobalJustice, which provides experts and non-experts alike with the latest news and civil society perspectives on the ICC and international justice. Email subscribers get weekly round-ups of ICC related news and a monthly Coalition Bulletin. Sign up now to stay up to date.

---

LATEST RATIFICATIONS/ACCESSIONS* 

<table>
<thead>
<tr>
<th>AFRICA</th>
<th>AMERICAS</th>
<th>ASIA-PACIFIC</th>
<th>EUROPE</th>
<th>MIDDLE EAST &amp; NORTH AFRICA</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senegal 25 September 2014</td>
<td>Brazil 12 December 2011</td>
<td>Republic of Korea 18 October 2006</td>
<td>Switzerland 25 September 2012</td>
<td>Tunisia 29 June 2011</td>
<td>73</td>
</tr>
<tr>
<td>Botswana 4 June 2013</td>
<td>Uruguay 26 September 2013</td>
<td>Samoa 25 September 2012</td>
<td>San Marino 14 November 2014</td>
<td>—</td>
<td>19</td>
</tr>
<tr>
<td>Mauritius 5 September 2013</td>
<td>Uruguay 26 September 2013</td>
<td>Samoa 25 September 2012</td>
<td>Latvia/Poland/Spain 25 September 2014</td>
<td>—</td>
<td>21</td>
</tr>
</tbody>
</table>

*AS OF 19 NOVEMBER 2014
#GLOBALJUSTICE NEWS
AND CIVIL SOCIETY VIEWS

COALITION FOR THE ICC

BENIN • BELGIUM • MOROCCO • PERU • THAILAND • THE NETHERLANDS • USA