

PARLIAMENTARIANS for Global Action (PGA)



Presentation by

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*Former Minister of Foreign Affairs, International Trade and Cooperation
Former Attorney General and Minister of Justice
of the Republic of MAURITIUS*

Panel Discussion:

Universality and Effectiveness of the Rome Statute system -
Mainstreaming the Rule of Law in Development Cooperation and using
the “ICC process” as a catalyst for Law Reforms

6th Consultative Assembly of Parliamentarians for the
International Criminal Court (ICC) and the Rule of Law

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Parliament of Uganda, Kampala

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Chairperson,

Distinguished Honourable Members of Parliament,

Excellencies,

Distinguished guests,

Ladies and Gentlemen,

I would like first of all to thank and congratulate the Parliamentarians for Global Action (PGA) for organising this 6th Consultative Assembly and for all the facilities put at our disposal for this purpose.

May I also seize this opportunity to thank the Parliament, Government and People of Uganda for their warm hospitality. It is significant that this first Assembly held in Africa precedes the Review Conference convened here in Uganda by the U.N Secretary General under Article 123 of the Rome Statute of the ICC.

Recently, at the Conference on Implementing Legislation of the Rome Statute in African Indian Ocean Countries held in Comoros in February last, I reminded participants that the Constitutive Act of the African Union(AU)

provides that the Organisation shall function consistently with the “condemnation and rejection of impunity”, and the AU has a right to intervene in a member state in the event of war crimes, genocide and crimes against humanity. This is a remarkable and probably unique provision in the founding document of an intergovernmental organisation. Africa has been leading the ratification process. Africa is the most represented region in the Rome statute (23%). African judges constitute 25% of the bench. 50% of requests for assistance from ICC goes to Africa. African countries have surrendered 75% of the suspects. Africa is perceived as the most affected region. This is confirmed by the statistics regarding victims and accused. But, the majority of African states and the African people generally are on the side of the victims.

We should therefore resolve to propagate the awareness of the importance to protect the integrity and purpose of the Rome Statute across Africa and other continents with the aim of making it truly universal and effective. I believe that the early fear or suggestion that the ICC is a frivolous court, that it is a creation of western powers or that it is a tool designed to target africans is dissipating slowly but surely. The performance of the ICC in certain cases is projecting an image of a serious and functional court.

On the other hand, as we are moving from the former strategy of wars against criminals or appeasing the criminals, this new strategy of global justice is becoming gradually more acceptable. The growing inclination of national courts to apply international law points to the emergence of a new judiciary governed by a new ethos more inclined towards international norm advancement and the maintenance of co-operative international arrangements than the traditional ethos of conflict resolution and peace brokerage. The globalisation and liberalisation process in the main areas of

cooperation (economic, trade, culture, etc.) tend to support and accelerate this trend. However, the difficulties in the case of the ICC still lie in addressing politically charged conflicts. Problem of effectiveness also arises in the enforcement of its judicial orders and judgments. The concept of national sovereignty and constitutional impediments seem to stand in the way of the ratification of the Rome statute by many States. But those who have expressed concerns about co-ordination problems and the effectiveness and legitimacy of its adjudication seem to have a point.

Regarding universality, we should here express our deep appreciation for the vigorous and unrelentless efforts of the PGA, especially through its Parliamentary Campaign for the Effectiveness and Universality of the Rome Statute system, to ensure the attainment and realisation of the objectives of the Rome Statute and the ICC. This has contributed much to reach the present level of ratification and accession. In fact the PGA has been instrumental in accompanying many states, including Mauritius, towards ratification. The new Attorney General of Mauritius will be announcing at the Review Conference that a comprehensive ICC implementing legislation will be introduced shortly in the newly elected Parliament. Accession by Mauritius to the agreement on Privileges and immunities will follow immediately.

However, we should emphasise that universality should not be measured by the number of states parties to the statute. What is more important is the universality of the fight against impunity, which is implemented when states, through their national systems, fulfil their obligations to investigate, prosecute, adjudicate and enforce the decisions and judgments at national level. We cannot leave the ICC on its own to handle all the world's cases. We should insist on the obligation of national judiciaries and other national institutions to fight impunity just as we are insisting for compliance by the political power at the level of all international organisations including

the bodies of the United Nations. We can achieve this by mainstreaming the rule of law in our development cooperation and using the "ICC process" as a catalyst for law reforms. To do this I suggest that we adopt a national strategy based on seven clear policies or components. I therefore suggest that Member States ensure that :

(1) they cooperate efficiently with the ICC in all the phases of its process,

(2) they incorporate all the Rome Statute offences or crimes into their municipal substantive law,

(3) they adapt their procedural law or system to attain the first two objectives,

(4) they mainstream the ICC system in their parliamentary agenda and programme of action designed by government to promote human rights, justice, the rule of law, sustainable development and bilateral or multilateral cooperation,

(5) they afford adequate representation to all components of the society(minorities and majorities) at all levels, including Parliament, national institutions or agencies ,action plans etc.

(6) they provide knowledge of and access to justice to one and all at the national level and within the ICC system e.g through education and awareness programs, legal aid etc.

(7) they create special government agencies, including within the executive ,to implement and execute action plans or programs to attain the above 6 objectives

Fortunately, apart from being members of the UN and adhering to the Universal Declaration of Human Rights all Member States belong to some regional organisation which has adopted a charter on Human and People's

Right or some other relevant human rights instruments whereby the member states undertake to promote and protect human and people's rights, respect for the sanctity of life, gender justice, good governance and the rule of law. Almost all countries condemn and reject unconstitutional changes of governments which have often created situations of genocides, war crimes or crimes against human rights.

Peer pressure within regional organisations or regional parliaments, like the peer-review mechanism that exists under the AU, can ensure respect for the rule of law and human rights and condemnation and rejection of impunity. Besides, most international, regional or sub-regional economic or trade organisations or communities as well as the relevant multilateral or regional treaties or agreements have accepted the Rule of Law, Human Rights and good governance as conditionalities for cooperation and sustainable development.

The problem arises where we are confronted with armed conflicts, civil strife, grave human rights abuses or violations as well as with the breakdown and failure of the rule of law within the national framework. It is in such situations that the Rome statute system or the ICC system can act as an instrument to contribute to peace, justice, security and stability by promoting the Rule of Law as an essential condition for cooperation.

In fact, the Rome Statute integrates sovereign states within an international system of law and justice in order to control or manage violence, conflicts and international crimes. The vital deterrent effect, real and potential, that the ICC has by virtue of its jurisdiction and its very existence, the respect for complementarity, its judicial independence and the principle of equality of all before the law, (especially, that there should be no double standards in its

application including in the selection of situations and cases) and transparency by affording as much clarity and predictability as possible have made the ICC system more acceptable and have led the political actors to adjust to the legal framework and to put up with the judicial mandate.

The ICC system will no doubt gain further adherence and effectiveness where its implementation becomes the basis for or to trigger developments or interstate cooperation as well as aid or support to sustainable development in different or related fields, especially in post conflicts reconciliation or reconstructions, reparations for victims, truth and justice commissions, etc. Earlier, the Head of the European Union (EU) delegation referred to the conditions and actions in regard to its cooperation with other partners. In fact, in the Economic Partnership Agreements (EPA) existing between the EU and the African, Carribeans and Pacific (ACP) group of countries compliance with principles of rule of law, human rights , and good governance is essential . Similarly, at the level of the AU, the Pan African Parliament and the other Regional Economic Communities Parliaments e.g the SADC Parliament in my region , and the relevant political councils or bodies are ensuring that these principles are embodied in all economic, trade or other cooperation agreements or instruments. We know that Africa is ambitiously working towards the establishment of the United States of Africa and that common markets or economic unions are being set up in the sub-regions Like SADC and COMESA. Which country can offer the best business facilitation or less political or legal risks for investment, trade or other development cooperation if it is not the country where the Rule of Law prevails ?

The Review Conference next week will no doubt enable the international community to come up with strong recommendations in this regard, especially with relevant reforms or review of the Rome Statute system. We

should insist on the specific obligation of states to cooperate with the ICC. It is also important to fulfil the rights of victims to protection, participation and reparation in any and all proceedings before the ICC and before the complimentary jurisdictions of states, now and in future.

The last century has witnessed the worst of violence, atrocities, human tragedies and crimes against humanity. Hundreds of millions of civilians, mostly women and children, have been raped and butchered. Other millions of human beings have been deprived of their basic human rights, their property and their dignity. These anonymous unsung martyrs have been forgotten without reparation, while the butchers or criminals were not amenable to Justice. Instead, most of those criminals have thrived on their crimes. We do not want this to be repeated this century. Certainly not to our children! We therefore heralded this century with the coming into operation of the ICC.

The Lord Bishop this morning invited us to pray with him to make the ICC an international institution of Justice. I remember that the Lord did tell us : *"Aide toi et le Ciel t'aidera "* or *" Charity begins at Home "*

Therefore Parliamentarians, political actors , NGOs and other leaders we have to act . The time is now, starting with the Review Conference !