

**6th CONSULTATIVE ASSEMBLY OF PARLIAMENTARIANS
FOR THE INTERNATIONAL CRIMINAL COURT (ICC) AND**

THE RULE OF LAW

27-28 MAY 2010

**PARLIAMENT OF UGANDA
KAMPALA**

**UNIVERSALITY AND EFFECTIVENESS OF THE ROME STATUTE
SYSTEM – MAINSTREAMING THE RULE OF LAW IN
DEVELOPMENT COOPERATION AND USING THE ‘ICC’ AS
CATALYST FOR LAW REFORM**

*By Hon. M. KULA SEGARAN
MEMBER OF PARLIAMENT MALAYSIA*

DISTINGUISHED GUESTS

LADIES AND GENTLEMEN

Allow me to thank the organizing committee for giving me this opportunity to speak on this important topic on behalf of my country. It is indeed a privilege and an honour for me to have been invited to address this august audience.

LADIES AND GENTLEMEN

Undoubtedly, we cannot continue to deny that we are living in the most exciting and challenging of times globally. People all over the world are fighting for justice, freedom and for the protection of their rights. Our aspiration for justice and human rights is becoming more pronounced now than ever before.

Violations of human rights are no longer confined to the domestic jurisdiction of any one country. It does not contain and confine itself within the boundary of one nation, but instead has become a trans-border and transnational issue.

In this context, the role of the ICC cannot be overlooked or brushed aside any longer.

Countries are no longer free to deal with their citizens as they please. The State needs to be accountable towards the international community regarding its human rights record as there is international auditing of national human rights situations.

What then is the role of the ICC? The ICC itself is based on the notion that it is imperative that there is some kind of system of global justice in place. The emergence of the ICC is the watershed development in the field of international justice.

How far is the ICC heading towards universal ratification then? Let me at least give you the current picture in the Asian region. Since its adoption in 1998, 111 countries from all regions of the world have become Parties. Although the quick pace of ratifications is encouraging, the pace of ratifications has been uneven across regions. There are pronounced regional disparities.

I regret to state with a heavy heart that progress towards universal ratification has been slowest in Asia. Africa ladies and gentlemen, as you all know is the most strongly represented region. Western Europe and Latin America and the Caribbean are also well-represented.

In Asia, **Japan** ratified the Rome Statute on 17 July 2007 – a symbolic step for an Asian country.

South Korea had actively engaged in drafting the Rome Statute of the ICC and had supported the ICC since its inauguration. S.Korea had also been taking part in the preparation for the Review Conference of the Statute. In turn, the ICC Rome Statute has had positive effects on S.Korea. The Statute facilitated the introduction of the crimes within the Courts jurisdiction into the S.Korean penal system. The Statute also provides a legal tool that would contribute to regional and global stability.

S.Korea has enacted a new law to implement the ICC Rome Statute: “*Act on the Punishment of Crimes within the Jurisdiction of the ICC*” on December 21, 2007. The Act criminalizes the crimes within the ICC jurisdiction, namely genocide, crimes against humanity and war

crimes, which were not codified into the S.Korean penal system. The Act also provides a legal basis for extradition and mutual legal assistance in criminal matters between S.Korea and the ICC. In addition, the S.Korean criminal court can exercise universal jurisdiction on the above mentioned crimes committed by foreigners even outside the territory of S.Korea.

South Korea's ratification of the Rome Statute has had multiple effects on the State as well as the ICC. Domestically, it has provided a chance for the State to supplement its penal system.

S.Korea can now make clear that the crimes within the ICC jurisdiction would be punished, which helps S.Korea deter latent perpetrators and put an end to impunity. As a member of the international community, S.Korea is required to do its part in making the world safer and more peaceful. Accepting the Rome Statute, was the right choice for S.Korea to meet such a demand.

Bangladesh joined the ICC as the 111th State Party in April 2010. Dhaka made history by putting its region on the map of countries committed to justice. Bangladesh had actively taken part in drafting the ICC and signed it in 1999. It has become the first country in the South Asian sub-region to join the ICC.

The ratification by Bangladesh is an important step in the path to end impunity in a region vastly under-represented at the Court. Bangladesh's decision to ratify the ICC culminates the campaign against genocide, war crimes and crimes against humanity waged by the people of Bangladesh since 1971. It has demonstrated its commitment to international justice and no impunity for international crimes.

In **Nepal**, the peace process can be hastened if Nepal ratifies the ICC. Nepal has the highest number of reported cases of Enforced and Involuntary Disappearances.

Perpetrators of gross human rights violations can be brought to justice. Nepal's accession to the Rome Statute would give credibility to the peace process and deepen its commitment to justice and the rule of law. (Nepal had signed a non-surrender agreement with the United States).

In 2009, the **Burma** Lawyers' Council (BLC) attended a Meeting of the Assembly of State Parties to the International Criminal Court in the Hague to discuss the Burmese Military Government's alleged crimes against humanity, war crimes and other human rights abuses.

It would be rather difficult to put across the issue of the Burmese junta's crimes (the conscription of child soldiers and the systematic rape of ethnic women) against humanity to the ICC if Burma does not ratify the ICC.

In **Malaysia**, the government is working towards the possibility of ratification in the near future. Many discussions and dialogues with relevant parties have been held. On 30th and 31st March 2010, a two-day '*Round – Table Meeting of Legal Experts on the Forthcoming Review Conference of the International Criminal Court*' jointly organized by the Asian-African Legal Consultative Organization (AALCO), the Government of Malaysia and the Government of Japan was held in Putrajaya, Malaysia.

Fourteen Member States of the Asian-African Legal Consultative Organization (AALCO) participated in the Round Table Meeting. Amongst them were Brunei Darussalam, People's Republic of China, India, Indonesia, Islamic Republic of Iran, Japan, Kenya, Republic of Korea, Malaysia, Qatar, Singapore, Sultanate of Oman, Tanzania, and Thailand.

What can the other Asian countries do?

Asian nations have to realize and understand that the ICC itself is a competent institution that is free from political clout, pressure and consideration. The ICC's method of creation is unprecedented in the sense that it was created by an international treaty by States themselves, ensuring that the Court broadly reflected the aspirations and objectives of the international community. ^[1]

We have to know that the aim of the ICC is to bring perpetrators of gross human rights violations or those who have committed a crime against humanity to be brought to justice and held accountable for their crimes.

Ratification and participation by more Asian countries would enhance effectiveness of the ICC. As the Assembly of State Parties (ASP) to the Rome Statute stated in 2006 *'Universality of the Rome Statute of the International Criminal Court is imperative if we are to end impunity for the perpetrators of the most serious crimes of international concern, contribute to the prevention of such crimes, and guarantee lasting respect for and enforcement of international justice.'*

Asian countries have to wake up to the fact that the supremacy of the laws need to be maintained as the culture of impunity is antithetical to the rule of law. They have to insist that the law must be allowed to take its course under any circumstances and without any interference. They must work for zero tolerance towards impunity.

As the Council of European Union pointed out *'The ICC for the purpose of preventing and curbing the commission of the serious crimes falling within its jurisdiction is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and rule of law as well as contributing for the preservation of peace and the strengthening of international security, in accordance with the purpose and principles of the Charter of the United Nations'*.^[21] ASEAN too should adopt this statement to ensure more ASEAN states ratify the ICC.

LADIES AND GENTLEMEN,

Quite unfortunately, there is a misconception among some Asian countries that the Court constitutes a threat to their sovereignty. It has to be understood that the ICC does not have a universal jurisdiction. The notion of complimentary need to be understood clearly and correctly - the Court does not have an automatic jurisdiction.

Perhaps again, some Asian countries' reticence towards the ICC is due to a lack of understanding of the Court and its role. It is suggested that there is a need for continued efforts to promote ratification in the Asian region by 'cultivating awareness and

understanding of the ICC's function' and to support the ICC by encouraging the implementation of domestic legislation consistent with the Rome Statute.

As there is an absence of the definition of 'terrorism' some countries might be hesitant to sign/accede to the Rome Statute. Perhaps this can be ironed out at this Conference.

A country's ratification not only demonstrates its own commitment to human rights, but sends an important message about the crucial need to fight impunity to those countries on whose territory the commission of crimes within the ICC's jurisdiction is perhaps more likely to take place.

Secondly, given that the ICC has jurisdiction over individuals ('natural persons') under the terms of Article 25 of the Rome Statute, the fact that the government complies with international human rights standards does not exclude the possibility that individual state or non-state actors commit such crimes. In fact, three of the four situations currently pending before the ICC to date have been referred to it by the respective governments themselves, involving crimes allegedly committed on their territories, *inter alia*, by non-state actors. ^[3]

LADIES AND GENTLEMEN,

As Kofi Annan, the former Secretary-General of the United Nations stated at the opening of the Preparatory Commission for the International Criminal Court, New York in February 1999, *'The best chance humankind has ever had to end the 'culture of impunity' is within our grasp. We must not let it fall.'*

Malaysia cannot fail in its duty to stand with the rest of the world in ending impunity, upholding the rule of law and realizing international justice. Each new ratification of the Rome Statute leaves one less safe haven for perpetrators of mass atrocities. This is what is called for.

Asian countries must stand in the forefront of this endeavour to transform the 'culture of impunity' into a 'culture of responsibility'. On this note, I urge more Asian countries to take steps to ratify and accede to the ICC.