



**PARLIAMENTARIANS FOR GLOBAL ACTION
ACTION MONDIALE DES PARLEMENTAIRES**

**International Parliamentary Conference on Justice and Peace in
the Democratic Republic of Congo, the Great Lakes Region and
Central Africa**

Thursday, 10 to Saturday, 12 December 2009

Palais du Peuple, Seat of the Parliament of the DRC, Kinshasa, DRC

Terms of Reference

1. General Context

After more than a decade of conflicts that caused heavy casualties and serious violations of human rights, the time is now for the Great Lakes region and Central Africa to address the challenge of sustainable development. But this can be successfully done only in an environment where the Rule of Law and justice for the effective protection of human rights of all individuals and vulnerable populations are guaranteed. Strengthening domestic and international justice is a precondition for a Rule of Law and state-apparatus that protect the rights of all “citizens”.

The Democratic Republic of Congo (DRC), which shares borders with most of the states in these two regions of Africa, is the hub for this stability. But the armed conflicts which it has faced over the past decade (with the major involvement of its neighbors) and these conflicts’ implications on the humanitarian, security and human rights situation constitute a major obstacle. The remedy lies, on the one hand, in the prompt and equalitarian delivery of justice to fight against impunity of *all* perpetrators of international crimes and in the rehabilitation of victims and, on the other hand, in the establishment of mechanisms promoting peace and reconciliation. With this in mind, the Congolese state, to overcome the difficulties facing its judicial and law-enforcement system, had pledged to cooperate with the International Criminal Court (ICC), whose limited capacity in prosecuting few alleged perpetrators of the most serious crimes must be complemented by DRC’s national efforts to effectively reform its judiciary and security systems including, but not limited to, via the incorporation into national laws of the principles and rules of the Rome Statute of the ICC.

To contribute to this effort, which is so important to the future of the DRC, as well of the Great Lakes and Central African regions, the National PGA Group of the Democratic Republic of Congo has co-organized, with the International Law and Human Rights Programme of PGA in collaboration with the International Center for Transitional Justice (ICTJ), Lawyers Without Borders (AsF), the Konrad Adenauer Foundation and some local NGOs, including the League for Peace and Human Rights (LIPADHO) and National Coalition for the International Criminal Court (CN-CPI), an information seminar for parliamentarians on national implementing legislation of the Rome Statute of the ICC under the theme "*Integration of the Rome Statute in the Congolese legal arsenal and its impact in the fight against impunity*". The main purpose of this seminar, which took place from March 27-28, 2009, was to identify effective strategies to achieve the inclusion of the March 2008 Bill to implement the ICC in the domestic legal order in the agenda of parliament, starting with its consideration in the relevant Committee.

Over 80 stakeholders actively participated, mainly Congolese Members of Parliament (Deputies and Senators), members of PGA from African and EU countries, university professors, lawyers, judges, journalists, human rights activists, including LIPADHO and CN-CPI. This workshop was made possible through funding from the European Commission, the governments of Belgium, the Netherlands and Switzerland, donors of PGA. It also received the support of the Swedish Technical Cooperation, donor of ICTJ and USAID, donor of ASF.

Following the *momentum* generated by this event, the draft implementing legislation of the Rome Statute has been included in the calendar of the March 2009-session of the National Assembly, mainly thanks to the mobilization of the multi-party group of PGA. Unfortunately, for procedural reasons, the bill was not discussed in plenary and is now an agenda-item of the calendar of the current parliamentary session, which started on September 15, 2009.

One controversial issue which remains pending, however, is linked to the fate of the death penalty in Congolese criminal law. In the DRC, murder, treason, espionage and crimes against the state are "capital" offenses. However, the last executions took place on January 7, 2003. In December 2005, the Congolese Parliament adopted a new Constitution, which no longer mentions the death penalty. The Constitution states, at its Articles 16 and 61, that human life is sacred. But in fact, the death penalty is still not yet fully abolished in the DRC, as it appears as an applicable penalty in the Code of Criminal Procedure.

The ratification of the Statute of Rome of the ICC by the DRC as well as the vote of a law implementing the Rome Statute by its Parliament have profound and pragmatic implications on the debate regarding the death penalty insofar as it becomes politically unbearable that the serious ordinary offenses envisaged by the Congolese Penal Code are punished with the death penalty while the most serious international crimes (and the persons bearing the greatest responsibility for their commission) will be punished with the maximum penalty of life-imprisonment before the ICC in The Hague. This may lead to the

conclusion that the national criminal justice is more severe than international criminal justice, thus creating an inequality of treatment that the general public may not be able to fully understand, as the principle of equality of all individuals before the law is an essential component for an acceptable notion of justice under the “Rule of Law”.

The Rwandan experience is exemplary in this regard: When creating the International Criminal Tribunal for Rwanda (ICTR), the Security Council had excluded the death penalty from its Statute. Thus, to obtain the transfer of judicial proceedings and the repatriation of citizens suspected of genocide from the ICTR to Kigali, Rwanda was obliged to insure that the death penalty, then envisaged by the Rwandan penal code, was not carried out for these people. It is in this context that the discussion on the death penalty in Rwanda has evolved to reach its final abolition on July 25, 2007, resulting in an “equalization” and humanization of the Rwandan justice system vis-a-vis the prevailing standard of international criminal justice.

It is time for the DRC to undertake this historic step to implement the Rome Statute of the ICC and equip itself with a strong arsenal of laws against impunity, and this legislation could also represent a definitive step towards abolishing the death penalty, even if the Rome Statute itself leaves to each State Party the sovereign decision to legislate on penalties for international crimes that are adjudicated before domestic Courts. PGA members are committed to finding an appropriate solution to this legislative challenge, without causing any prejudice to the progressive development of the law in the DRC.

To promote a constructive and animated debate on these important issues, PGA is organizing on December 10-12, 2009, in the *Palais du Peuple*, seat of the Parliament of the DRC, with the support of the National Assembly, an *International Parliamentary Conference on Justice and Peace in the Democratic Republic of Congo, the Great Lakes and Central African regions*.

2. Conference Objectives

The main objective of the *International Parliamentary Conference on Justice and Peace in the Democratic Republic of Congo, the Great Lakes and Central African regions* is to provide legislators from the Great Lakes and Central Africa regions with a parliamentary forum for discussion on the impact of justice on durable peace, which entails effective efforts towards reconstruction and sustainable human and economic development in post-conflict recovery processes. The aim is to promote parliamentary initiatives against impunity to consolidate peace, security and stability in these regions, starting with each national level in which legislators may make a difference.

While an analysis of the draft legislation aimed at implementing the Rome Statute in National Laws will be part of the agenda of the conference to give further *impetus* to the relevant national decision-making processes, a central topic of the conference will be **the relationship between justice and peace in a post-conflict scenario**. The conference should serve as a starting point to a new phase in the process of stabilization of the DRC

and other countries in the region in which measures such as transparency, fight against corruption, good governance, reconciliation and the fight against impunity for international crimes will have to go hand-in-hand with specific laws and programs designed to offer effective reparations to victims of atrocities. As evidenced by the experience of other countries, reconciliation in societies marked by conflict can be ended only by a process of verification of individual criminal responsibility and truth-telling in the long term, as well as reparation of the harm suffered by the victims.

Thus, special emphasis will be given on combating violence against the civilian population, a phenomenon which blights the entire Great Lakes and Central African regions. Rape is used as a weapon of war and is the leitmotiv of hostilities for various armed groups, militias and “regular” military forces. Unfortunately, the DDR programmes (Disarmament, Demobilization and Reintegration) concentrate almost all available financial resources for the benefit of the militia fighters and military commanders, a category including many persons who have allegedly committed crimes against humanity and war crimes. Conversely, very few resources from national budgets and from the international community of donors are invested for the benefit of victims who survived the atrocities and suffered appalling acts committed by armed combatants eligible to benefit from multi-millionaire DDR programmes. This emergency must be urgently addressed within the stabilization-processes in the short- and long- term, so to provide victims, including survivors of sexual crimes and enslavement of children, with efficient mechanisms of redress, such as psycho-social assistance and rehabilitation, to which they are entitled under international law. It is for States to make available to victims legal remedies, access to justice, access to reparations (including restitution, compensation and/or rehabilitation, which includes guarantees of non-repetition of atrocities), administrative and budgetary programs to effectively implement decisions on reparations, and strategies for the eradication of the culture of violence, whether or not contained in formal legislation.

An important part of the Conference will be devoted to encourage Congolese legislators for sufficient awareness and political good-will for victims' rights in general and the need to reintegrate women and children, victims of sexual and gender-based crimes in particular. Parliament should pass laws for the recognition and respect for victims' rights as stated in the body of international human rights law and international criminal law, starting with the Rome Statute of the ICC (i.e., articles 68 and 75).

PGA is committed to use this opportunity to introduce African and international participants to the fight against the illicit traffic of weapons, which fuels the activities of groups and individuals perpetrating international crimes. A PGA Members from the DRC will, therefore, make a presentation to mobilize the global PGA network, and in particular its most active members in the *PGA Campaign for the ICC*, to promote the effective enforcement of international instruments combating the illegal proliferation of Small Arms and Light Weapons (SALW) and the negotiation of new universal instrument, currently named “Arms’ Trade Treaty” (ATT).

3. Expected Results

In general terms, the conference should be used to identify the obstacles and progress made of post-conflict recovery efforts in the DRC and the African Great Lakes Region and to assist Parliamentarians in addressing, in cooperation with local, national and international actors, weaknesses of the national legal system and gaps in the fight against impunity.

Concrete results could include, but not be limited to:

- An Action Plan identifying practical steps for follow-up of a parliamentary resolution adopted at the conference: e.g. a coordinated multi-partisan action of PGA Members to ensure the adoption of comprehensive and effective National implementing legislation of the Rome Statute of the ICC as early as possible
- Public statements to support the execution of arrest warrants of the ICC and to improve cooperation with the ICC
- A platform (or inter-parliamentary framework) to advance the fight against impunity in the Great Lakes and Central African regions
- The identification, planning and implementation of programs and other effective mechanisms to provide reparations to victims of atrocities, in particular women and children

These results should lead to improved awareness among Parliamentarians from countries in conflict and/or post-conflict situations concerning initiatives promoting justice in post-conflict recovery and the interdependence between justice and sustainable/durable peace.

4. Participants

The international conference will be attended by about 100 Congolese parliamentarians, members of the National Assembly and Provincial Assemblies (Bandundu, Katanga, Maniema, North Kivu and Province Orientale) and members of parliaments from the Great Lakes and the Central Africa (Burundi, Congo, Kenya, Chad, Uganda) and Europe (Belgium, Switzerland).

Speakers and participants will include the above-mentioned MPs, representatives of the Congolese government, representatives of the International Criminal Court (led by its President), experts from various international organizations and governments (the European Union, UNDP, IOM, UN, and the US Department of State) and various Non-Governmental Organizations (Congolese and international).

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This event is part of the *PGA Campaign for the Universality and Effectiveness of the Rome Statute of the ICC* and it receives the support of the European Commission (European Instrument for Democracy and Human Rights), the Governments of Belgium, the Netherlands and Switzerland, as well as the Municipality of The Hague.