



PARLIAMENT OF MALAYSIA



Parliamentarians for Global Action  
Parlamentarios para la Acción Global  
Action Mondiale des Parlementaires  
برلمانيون من أجل التحرك العالمي

**PGA PARLIAMENTARY SOUTH-EAST ASIA SUB-REGIONAL SEMINAR ON THE  
INTERNATIONAL RULE OF LAW AND THE PROTECTION OF CIVILIANS**

**Hosted by the Parliament of Malaysia**

Date: July 30, 2015 9:30 – 17:30

Venue: *Le Meridien Hotel, Kuala Lumpur, Malaysia*

*Room Clarke II, Level 6*

In cooperation with the Coalition for the International Criminal Court (CICC)

**I. DRAFT PROGRAMME**

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**9:30-10:15 Opening Session:**

Welcoming Remarks by the Host and the Co-Chairs:

**Hon. YB Datuk Ronald Kiandee, MP (Malaysia)**, *Deputy Speaker of the House of Representatives, Parliament of Malaysia*

**Hon. Kulasegaran, MP (Malaysia)**, *Secretary, PGA Malaysia National Group*

**Hon. Azis Syamsuddin, MP (Indonesia)**, *Chairperson of Committee III (Legal Affairs, Human Rights and Security), Leading Member of PGA in Indonesia*

Keynote addresses:

**H.E. Justice Raul Cano Pangalangan (Philippines)**, *Judge of the International Criminal Court*

**Group Picture with all participants followed by a Coffee Break**

**10:15-10:30 COFFEE BREAK**

**PANEL I**

**10:30-12:00 The ICC in the South-East Asia and Pacific Region – The Rome Statute as a safeguard against future mass atrocities that may destabilize entire countries and regions**

Chair: **Hon. Kasthuri Patto, MP (Malaysia)**, *Secretary of the Women's Caucus of the Malaysian Parliament*

**Dr. HJ. Nurhayati Ali Assegaf, MP MSi (Indonesia)**, *Chairperson of Committee on Interparliamentary Cooperation, Member of Commission I (Security and Defense) and Chairperson of IPU Women, Member of PGA*

**Hon. Ahmed Mahloof, MP (Maldives)**, *Spokesperson of Progressive Party of Maldives (PPM), Member of PGA*

**Ms. Amielle Del Rosario (Thailand/Philippines)**, *CICC Asia-Pacific Regional Coordinator*

**Mr. Bhatara Ibnu Reza (Indonesia)** *Expert Member and Spokesperson of the Indonesian Civil Society Coalition for the ICC*

*Question and Answer session for MPs with the Speakers, moderated by the Chair*

### **LUNCH for all participants (12:00-13:30)**

#### **PANEL II**

#### **13:30–15:00    Indonesia and the process towards accession to the Rome Statute - identification of obstacles**

Chair:            **Hon. Azis Syamsuddin, MP (Indonesia)**, *Chairperson, Committee on Legal Affairs, Human Rights and Security, Leading Member of PGA in Indonesia*

Speakers:      **Hon. Ir. H. Muchammad Romahurmuziy, MP (Indonesia)**, *Chairperson, Central Board of United Development Party (DPP) Partai Persatuan Pembangunan*

**Mrs. Dwi Ria Latifa, MP (Indonesia)**, *PDI – P (Indonesian Democratic Party – Struggle)*

**Senator Prof. DR Ir Hj Darmayanti Lubis, MP (Indonesia)**, *Regional Representative Council (Senate), North Sumatra*

**Senator Fahira Idris, MP (Indonesia)**, *Deputy Chairwoman of Committee III (Education and Religion), Regional Representative Council (Senate)*

**Ms. Roichatul Aswidah**, *Deputy Chairwoman, National Human Rights Commission of Indonesia (KOMNAS HAM)*

**Professor Dr. Harkristuti Harkrisnowo**, *Acting Executive Director of the HRRC, Former Director General of Human Rights, Ministry of Law and Human Rights*

*Open discussion among participating MPs*

#### **15:00-15:15    COFFEE BREAK**

#### **PANEL III**

#### **15:15-16:30    Malaysia's progress in upholding the principles enshrined in the Rome Statute – identification of obstacles towards accession to the ICC System**

Chair:            **Hon. Shamsul Iskandar Mohd Akin, MP (Malaysia)**

Speakers: **Hon. Lim Kit Siang, MP (Malaysia)**

**H.E. Datuk Noor Faridah Arrifin**, *former Ambassador of Malaysia to the Kingdom of the Netherlands*

**Prof. Dr. Abdul Ghafur Hamid**, *Professor of Law, Ahmad Ibrahim Kylliyah fo Laws, International Islamic Univeristy Malaysia*

**Datuk Dr. Khaw Lake Tee**, *Vice-Chairman, Human Rights Commission of Malaysia*

**Mr. Shanmuga Kanesalingam**, *Malaysian Bar Association*

*Open discussion among all participants*

## PANEL IV

### **16:30-17:30 Closing Session – Summary of Proceedings and Way Forward**

Co-Chairs: **Hon. Azis Syamsuddin, MP (Indonesia)**, *Chairperson, Committee on Legal Affairs, Human Rights and Security, Leading Member of PGA in Indonesia*

**Hon. Kulasegaran, MP (Malaysia)**, *Member PGA*

*Final Comments by Participants*

*Summary by the Rapporteur: Dr. David Donat Cattin (Ph.D. Law), Secretary-General of PGA*

### **Closing Remarks:**

**His Excellency Luc Vandebron, Ambassador & Head of Delegation of the European Union to Malaysia**

### **17:30-18:00 Press Conference**

### **18:00-20:00 Evening Reception hosted by His Excellency Luc Vandebron, Ambassador & Head of Delegation of the European Union to Malaysia**

## **II. OBJECTIVES OF THE SEMINAR**

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The protection of civilians is an obligation under International Law, more specifically International Humanitarian Law (IHL) during armed conflict and human rights law during peace-time. Historically, individuals protected by International Law were combatants not civilians. The 1949 Geneva Conventions created the first comprehensive set of rules protecting non-combatants in international armed conflicts, with the Fourth Geneva Convention specifically focusing on the protection of civilians in time of war.

The Rome Statute of the International Criminal Court (ICC) has the benefit that it not only protects civilian population during armed conflict but also, through the notion of crimes against humanity, from crimes committed in a widespread or systematic manner during peace-time. Moreover, civilian populations are protected from attacks by other nation-states through the deterrent effect stemming from the prohibition of the crime of aggression (cf. Art. 5, Rome Statute, and Art. 8 bis, Kampala Amendments to the Rome Statute).

The universality of the Rome Statute is, and remains, a *condicio sine qua non* to it achieving lasting effectiveness and global deterrence against the repetition of the most serious crimes of international concern, genocide, crimes against humanity, war crimes and the crime of aggression, which shall not be left unpunished. The Asia-Pacific region remains under-represented in the Rome Statute system, which encouraged PGA in cooperation with the CICC to organize this Seminar with a particular focus on Malaysia and Indonesia, who both play leading roles in securing stability and peace in the region and in the promotion of the fight against impunity, democracy and good governance under the Rule of Law.

Against this background, the goals of this ***Seminar on the ICC***, to be held on 30 July 2015, are:

1. *Review current ratification and implementation processes of the Rome Statute in the South-East Asia and Pacific region, including in particular in Indonesia and Malaysia, with the purpose to identify the most effective means to moving these respective processes forward*
2. *Sensitization of the newly elected Members of Indonesian Parliament and selected members of the Malaysian Parliament on the Rome Statute ratification and implementation*
3. *Identifying, addressing and overcoming existing fears and potential obstacles towards accession and effective implementation of the Rome Statute, as well as concerns that may lead to the postponement of the ICC Dossier, through*
  - *Information and sharing of experience towards ratification and implementation of the Rome Statute by PGA Members from Europe and, if possible, Africa (elected legislators)*
  - *Highlights on the principled notion that joining the “ICC club” of Law-abiding nations is an imperative that cannot be underestimated or postponed by the Democratic leadership of Indonesia for the benefit of all peoples and individuals living in the region under International Law*
  - *Discussion on how ratifying the Rome Statute and can help to sustain peace and stability in the region*
4. *Increase the level of general knowledge, understanding and support for the work of the ICC and the impact of the “Rome Statute system” on international relations and the domestic and international Rule of Law*

### **III. FORMAT OF EVENT AND WORKING METHODOLOGY**

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The Seminar follows a format of closed-door political, legal and strategic Round-Table consultations among a selected group of Parliamentarians whereby MPs from States Parties, experts, ICC officials and Civil Society are invited to provide specific input and to participate in inter-active dialogue. The discussions shall take place in English.

Indonesian and Malaysian Parliamentarians shall be invited by PGA, with cooperation from the relevant Chair(s) of Committee(s) I and III, as appropriate.

A dialogue with key stakeholders and civil society outside Parliament may be added to this program, as well as a dinner reception for all participants.

### **IV. EXPECTED RESULTS**

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The Parliamentary Expert & Peer Exchange Seminar on the International Criminal Court (ICC), will seek to reach the following results:

1. Enhanced cross-party support of the process towards ratification of the Rome Statute in the region

2. Increase awareness and understanding about the domestic implications of ratification and effective implementation of the Rome Statute
3. Overall increase of the level of knowledge on the work of the ICC
4. Fair understanding of the opportunities and threats relating to the ICC Dossier
5. Shared, cross-party, building blocks for a strategy towards future implementation of the Rome Statute into domestic legislation

## **V. BACKGROUND INFORMATION**

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The International Criminal Court (ICC) is the first permanent international criminal jurisdiction, mandated under its founding treaty, the Rome Statute, to investigate and adjudicate the most serious violations of human rights and international humanitarian law constituting crimes against humanity, genocide and war crimes. The Statute entered into force on 1 July 2002 and is not retroactive.

### The ICC and Indonesia:

Should Indonesia decide to accede to the Statute at the earliest opportunity, Indonesia will be bound to cooperate with the Court only in the most unlikely scenario of the commission of the most serious crimes committed after the date of completion of the accession process by Indonesia. Thus, the ICC should not be confused with other mechanisms aimed at bringing to justice alleged perpetrators of gross human rights crimes of the past. A primary goal of the ICC is to contribute to the prevention of the most serious international crimes. The ICC is “Court of last resort” that is complementary to national criminal jurisdictions and intervenes only when States are unable or unwilling to investigate and prosecute.

Parliamentarians for Global Action has worked on the Indonesia accession process to the Rome Statute since 2004. The involvement of Parliamentarians in PGA’s global, regional events and nationals has had the aim of creating a network in support of the ICC and for political multi-partisan mobilization in order to complete the steps for accession:

1. the President instructs cabinet to prepare the accession bill,
2. Cabinet approves the bill and transmits it to Parliament, and
3. Parliament considers and approves the accession to the Rome Statute.

As result from the work of PGA, in 2007 Indonesian Foreign Minister Wirayuda expressed his commitment to ratify the Rome Statute at the first PGA meeting in the Parliament of Indonesia (Commission I, Foreign Affairs & Defence). He also refused to sign a Bilateral Non-Surrender Agreement pursued at that time by the United States. In order to promote and follow-on to this public commitment, PGA Parliamentarians in Indonesia hosted another Round-Table Discussion on ICC Ratification and Implementation in the Parliament of Indonesia in 2009 (in Commission III, Legislation, Justice and Human Rights).

In May 2013, PGA organized a high-level field mission to Jakarta through which key stakeholders from parliament government and civil-society reaffirmed their support to ICC accession while the PGA delegation was able to meet with the only government agency undecided on this issue (Ministry of Defence). These projects, held in 2007, 2009 and 2013, which attracted participation from the most relevant committees achieved the objective of creating a multi-partisan support in Parliament for ICC accession. International actors welcomed the decision of Indonesia to maintain the policy-goal of ICC Accession as a priority in the National Human Rights Plan 2010-2014.

Underpinning these notable developments is the unwavering support of international and local civil society organizations, particularly the *Indonesian National Coalition for the ICC*. Comprised of a variety of dedicated experts and legal advocates, its members have conducted trainings, provided legal support to lawmakers, translated and published documents on the Rome Statute to raise awareness and increase understanding of its

relevance in the Indonesian context. The Indonesian National Coalition believes that the principles enshrined within the Rome Statute should remain a priority for Indonesia's current administration, particularly in light of its current foreign policy goals which emphasize the importance of protecting its citizens within its borders and abroad. To this end, the CICC and the Indonesian National Coalition organized a roundtable in Jakarta this past March 2015, to develop strategies and ways to support Indonesia in its important progress towards joining the ICC amid the changing political landscape in the South-East Asia region. Indonesia has adopted a mostly progressive stance towards the ICC since its inception and civil society applauds its brave and progressive stance on human rights and accountability; this would not be possible without the collaborative relationship between civil society and Indonesian parliamentarians, and the laudable commitment of the latter to represent the calls of their constituents to join the Rome Statute system. Indonesia's profile as a strong, secure, and sovereign nation within the ASEAN region will undoubtedly continue to grow and there is no better time than at this juncture for civil society and parliamentarians to, together, support and encourage Indonesia move forward with its ICC accession process. Indonesia would become a leader not among ASEAN states, but also - as the biggest states party yet-, among the world's largest states.

#### The ICC and Malaysia:

Malaysia participated in the July 1998 Rome Conference that adopted the ICC Statute with 120 votes in favor but has yet to accede to the Rome Statute. A delegation of Malaysia attended the 2010 Review Conference. Until before May 2010, when states parties held the first Review Conference of the Rome Statute in Kampala, Uganda, Malaysia's main decision-makers did not express a position on the International Criminal Court. A breakthrough in the process was achieved by Parliamentarians from both opposition and government parties in the context of the "Sixth Session of the Consultative Assembly of Parliamentarians for the ICC and the Rule of Law (CAP ICC)", organized by Parliamentarians for Global Action (PGA) and the Parliament of Uganda in May 2010. In preparation for this meeting, a set of parliamentary questions prepared by PGA were used by PGA members to request their governments to reconsider their position on the ICC and to be involved in the Review Conference. These questions posed to the governments triggered a re-evaluation of the disposition towards the Court and led to the announcement by the Malaysian Minister of Law and Parliamentary Affairs, Mr. Nazri, to announce his full support for the ratification of the Rome Statute.

In March 2011, PGA held the *II Asia-Pacific Consultations on ICC Ratification and Implementation in the Parliament of Malaysia* with the participation of the President of the ICC, Judge Song. These consultations also supported the subsequent ratification processes in the Philippines, the Maldives and Vanuatu, and advanced the process in a number of Pacific Islands.

Following the Seminar, in April 2011 the Cabinet decided to ratify the Rome Statute. However, the formal deposit of the accession is subject to the completion of implementing legislation (and possibly of its adoption by Parliament). The drafting of this legislation remains in the jurisdiction of the Attorney General. In July 2011, the revised Commonwealth Model Law to Implement the Rome Statute was adopted by Law and Justice Ministers of the Commonwealth in Sydney, including Malaysia.

As a current non-permanent holder of a UN Security Council seat and this year's chair of ASEAN, and its current undertaking of a transformation program, Vision 2020, that would position Malaysia as a progressive and developed state, civil society and parliamentarians alike are presented with the unique opportunity to ensure that Malaysia takes earnest steps with the roles that it seeks to play in these organizations and bodies, as a nation that respects peace, stability, and international accountability. Malaysia's primary goal as this year's ASEAN chair of establishing a people-centered ASEAN and its aim to facilitate trust and cooperation on security matters can only be bolstered by joining the ICC. These actions clearly show that Malaysia already embodies the principles of the Rome Statute. The CICC and its local members, particularly Malaysian Bar Council recognizes and appreciates Malaysia's championing of peacemaking and peacekeeping mechanisms, which demonstrates its concern over the devastation caused by armed conflicts and its consequences on civilian populations and neighboring states; consisting of legal practitioners and international law experts, local civil society stands ready to support its government towards accession, as it did in 2011. Accession would be a show of solidarity with

signatory states in the region, and a testament of its ability to balance the regional interests along with the concerns of its own citizens, who have called for Malaysia's membership since the ICC's establishment more than a decade ago.

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*THE PGA ICC CAMPAIGN RECEIVES THE SUPPORT OF*

***THE EUROPEAN UNION***

*EUROPEAN INSTRUMENT FOR DEMOCRACY AND HUMAN RIGHTS*



*THE GOVERNMENTS OF  
SWITZERLAND  
LIECHTENSTEIN  
ESTONIA  
THE NETHERLANDS*

*AND*



*PGA RECEIVES CORE SUPPORT FROM THE GOVERNMENTS OF*

***SWEDEN  
DENMARK***

*THIS EVENT WAS ORGANIZED IN PARTNERSHIP WITH THE COALITION FOR THE ICC*



*The event received in-kind support from the Parliament of Malaysia*

*On-line access to PGA ICC Campaign:*

<http://www.pgaction.org/programmes/ilhr/overview.html> - <https://www.facebook.com/pgaction>  
<http://twitter.com/#!/PGAAction> - <http://www.flickr.com/photos/pgaction/collecti>