

UNIVERSALITY OF THE ROME STATUTE WITHIN THE BROADER HUMAN RIGHTS AGENDA:

THE ROLE OF PARLIAMENTARIANS

CONCEPT NOTE FOR A SIDE EVENT TO THE 15TH SESSION OF THE ICC-ASP

CR 8, United Nations || New York City || Wednesday, December 6, 2017 || 1:15-2:45 PM

Problem Statement

In the aftermath of World War II, the world addressed the mass atrocities that had been committed through the proliferation of international human rights and humanitarian law with creating the first international tribunal Nuremberg. The development of these norms and the conception of international justice were intended to deter human rights abuses, particularly international crimes which constitute the most serious violations of human rights. While important legal agreements have come to fruition to prohibit these abuses, their further criminalization is imperative for effective enforcement of these agreements. Individual criminal responsibility for the gravest violations of human rights is further developed and applied through the International Criminal Court (ICC). However, impunity for these crimes remains the norm, given that not all states have ratified and implemented the Rome Statute, the founding treaty for the ICC.

In order for the ICC to address international crimes, it needs to possess jurisdiction. Accordingly, if a state has not consented to ICC jurisdiction, the ICC cannot use the principle of territoriality to exert jurisdiction over Statute crimes on the state's territory, nor can the ICC use the principle of nationality to exert jurisdiction over the crimes of the state's nationals. While other pathways to assuming jurisdiction exist—referral of the situation to the ICC by the UN Security Council - there are several situations where a lack of political will prevents the ICC to be seized of the situation. Furthermore, even if a state ratifies the Statute, unless it is properly implemented in its domestic legal system, impunity can persist. The lack of domestic implementation of the Statute can have deleterious effects on the Statute system, which relies on the principle of complementarity, according to which states have the primary obligation to exercise jurisdiction. To address human rights abuses at the national level, the Statute must be implemented effectively in the domestic legal framework, in order to comply with the principle *nullum crimen sine lege*. Domestic law must further integrate the cooperation obligations of the state towards the ICC, so that the ICC can effectively carry out its mandate and conduct proceedings for grave human rights violations. Furthermore, the successful investigation and prosecution of international crimes at the national level depends not only on the existence of legislation, but also on effective cooperation of states with the ICC. As the Court does not have its own law enforcement structures, it relies entirely on states to provide assistance and execute ICC decisions, including arrest warrants. Therefore, without universal ratification and implementation of the Rome Statute, human rights remain unenforceable, leaving a fertile ground for the prevailing impunity gaps.

Questions for Discussion

- To address impunity for human rights abuses, is it imperative that true universality of the Rome Statute system is established to ensure individual accountability for Statute crimes?
- Should it be a priority that states which are not party to the Statute, such as Ukraine and Malaysia, join the Court? Can temporal jurisdiction be sufficient? What would accession represent? Are there benefits besides closing the gaps of impunity in ICC jurisdiction?
- Parliamentarians have an important role to play in the formulation and passage of ratifying and implementing legislation, which constitutes a crucial component of national legal framework to uphold human rights, either at domestic or ICC level. What are some of the challenges parliamentarians face? What advice would you give other parliamentarians working to pass ratifying and implementing legislation?

For more information on PGA's work on the ICC and this event, please contact Ms. Leyla Nikjou at leyla.nikjou@pgaction.org