

ASIA-PACIFIC PARLIAMENTARY CONSULTATION ON THE UNIVERSALITY OF THE ROME
STATUTE OF THE INTERNATIONAL CRIMINAL COURT (ICC)

Working Group of the Consultative Assembly of Parliamentarians for the ICC on the Rule of Law

Hosted by the Parliament of Malaysia

9-10 March 2011

Kuala Lumpur, Malaysia

***Kuala-Lumpur Action Plan to Promote the Universality
of the Rome Statute of the ICC in the Asia-Pacific***

*We, Parliamentarians and Members of Parliamentarians for Global Action (PGA), gathered in Kuala-Lumpur, in the Parliament of Malaysia on the occasion of the 2nd Asia-Pacific Parliamentary Consultation on the Universality of the Rome Statute of the International Criminal Court (ICC), agree on the following **result-oriented actions** that may be undertaken by Members of Parliament and other concerned stakeholders in order to achieve universal acceptance of the Rome Statute in countries of the Asia-Pacific, which are currently under-represented in the “ICC system”.*

1. Ensure that there is sustained “political will” in support of the fight against impunity for the most serious crimes of international concern and the accession to, or ratification of, the Rome Statute and its full implementation, including by briefing relevant Parliament Committees, asking pertinent Parliamentary questions and outreach to media sources and other relevant stakeholders.
2. Ensure that accession to, or ratification of, the Rome Statute is seen as a tool to strengthen the national legal system, the Rule of Law and the independence of the judiciary.
3. Ensure the widest possible dissemination of the principles and rules of law contained in the Rome Statute for the prevention and punishment of genocide, crimes against humanity, war crimes and the crime of aggression.
4. Ensure that technical assistance on ICC matters offered by competent entities (including the Commonwealth Secretariat, the European Union and its Member States, other States Parties to the Rome Statute and PGA) is made available and utilized by concerned MPs and relevant Government officials.

*In order to achieve the above-listed results and in furtherance of the “Kampala Plan of Action” adopted by the 6th Consultative Assembly of Parliamentarians for the International Criminal Law (ICC) and the Rule of Law organized by PGA on 27-28 May 2010, the following **country-specific actions** could be pursued without delay:*

- **In the Maldives and the Philippines:**
Parliamentarians shall take swift, bipartisan action to adopt or approve the ICC Ratification Bill transmitted by the Executive, so to ensure membership in the Rome Statute system as early as possible.
Parliament shall also show bipartisan support for accession to the Rome Statute and readiness to start to work on the relevant implementing legislation.
- **In Malaysia:**
Parliamentarians shall continue their bipartisan support for Malaysia’s accession to the Rome Statute and encourage the Government to conclude the ongoing process of consideration of the Rome Statute’s Accession with a positive determination as early as possible.

Parliamentarians shall also show a readiness to start to work on the relevant implementing legislation.

- **In Indonesia, Kiribati, Nepal and Vanuatu:**

Parliamentarians shall encourage their Governments to proceed with prioritizing consideration of the Rome Statute's Accession with the view of taking a positive determination as early as possible. Parliament shall promote this process and show a readiness to deliberate on accession, if so required, and take action on implementing legislation.

- **In Bangladesh,** a State Party to the Rome Statute since 2010:

Parliamentarians shall encourage the Government to prioritize the drafting of legislation to fully cooperate with the ICC and modernize the definitions of international crimes and general principles of international criminal law in the national penal law.

Parliamentarians shall foster bipartisan support for Bangladesh's efforts to put an end to impunity for international crimes and show a readiness to work on the relevant implementing legislation.

Done in Kuala-Lumpur, this 9th and 10th day of March 2011.

[ANNEX

***Kampala Plan of Action for the Effectiveness and Universality of the Rome Statute system**
adopted by the
6th Consultative Assembly of Parliamentarians for the International Criminal Law (ICC)
and the Rule of Law*

The Parliament of Uganda, Kampala
27-28 May 2010
(Updated on 10 March 2011)

We, Parliamentarians and Members of Parliamentarians for Global Action (PGA), gathered in Kampala, Uganda on the occasion of the 6th Consultative Assembly of Parliamentarians on the International Criminal Court and the Rule of Law:

Recognizing that, the peoples of the world continue to be confronted with serious violations of human rights and international humanitarian law in different regions of the world, as well as with the breakdown and failure of the Rule of Law within several national frameworks;

Recognizing further the overarching imperative of the need to protect people from such violations of basic human rights norms, to seek justice and reparations for the victims and to put an end to impunity as essential prerequisites for the establishment of lasting peace and the resolution of the root causes of conflicts;

Recalling, in this regard, that Parliamentarians for Global Action is an *action-driven* and *results-oriented* group of approximately 1,300 Parliamentarians from 130 countries representing all regions of the world;

Acknowledging the vital role that should be played by us, Parliamentarians, in different ways, to increase the universality and effectiveness of the ICC, to seek to consolidate international justice and the establishment, or re-establishment, and strengthening of the Rule of Law;

Observing that impunity for perpetrators of atrocities only serves to increase the likelihood of the commission of new, equally horrific crimes and may indeed lead to the re-escalation of violence resulting in the recurrence of internal or international armed conflicts;

Recognising that victims have the right to access to justice, know the truth and have it publicly acknowledged, participate in proceedings, obtain appropriate reparations, be treated with dignity and respect, and receive guarantees from relevant authorities and parties of non-repetition of these atrocities;

Recognising also the vital deterrent effect that the International Criminal Court has, by virtue of its jurisdiction and very existence, on war crimes, crimes against humanity and genocide;

Noting the growing prominence and entrenchment of the International Criminal Court in global affairs;

Applauding the fact that 114 States have, to date, ratified, or acceded to, the Rome Statute;

Welcoming, in this regard, the announcement made by the Minister in the Prime Minister Office (Law and Parliamentary Affairs) of Malaysia regarding the imminent commencement of the Rome Statute ratification process in Malaysia (self-executive decision of the Cabinet, with no requirement of parliamentary assent);

Urging other States, which are not yet parties to the Rome Statute, to ratify or accede to it as early as possible, including States from under-represented regions within the ICC system - Asia, the Middle East and North Africa, and the Commonwealth of Independent States (CIS);

Reaffirming that States Parties to the Rome Statute have a duty to cooperate efficiently with the Court and, in particular, to implement legislation to enable their respective national judicial systems to try perpetrators of war crimes, crimes against humanity and genocide;

Noting that, to date, only approximately a half of State Parties to the Rome Statute have introduced comprehensive domestic legislation in order to give effect to, and implement, the Rome Statute of the ICC;

Recalling that all States – including those that are not yet Parties to the Rome Statute – have a duty to prosecute or extradite suspected perpetrators of international crimes and protect the rights of victims, so that the principle of ‘no impunity’ is given full and complete effect in each judicial system;

Underscoring that the principle of equality of all before the law is the foundation of the Rome Statute system, and that there should be no double standard in the application of the law, including in respect of the selection of situations and cases, and that for so long as the universality of the Rome Statute is not yet fully achieved, the UN Security Council has a special responsibility to allow the exercise of the Court’s jurisdiction in situations falling outside the automatic competence of the ICC, which is limited to crimes committed in the territories, or by nationals of, States Parties to the Statute;

Recognizing that the gender justice principles incorporated in the Rome Statute must be utilized not only in the implementation of substantive and procedural norms relating to international crimes, but should also inspire the modification of other laws, as appropriate, in order to ensure the highest possible level of protection for victims;

Underscoring the importance of the first Review Conference of the Rome Statute of the ICC (Kampala, Uganda, 31 May-11 June 2010), and its main agenda items, namely, the stock-taking of international criminal justice as well as certain amendments to the Rome Statute, particularly in respect of the crime of aggression;

Expressing sincere appreciation to the Organizing Committee of the Parliament of Uganda and Parliamentarians for Global Action (PGA) for the successful organization of the 6th *Consultative Assembly of Parliamentarians for the ICC and the Rule of Law* in the Parliament of Uganda, in Kampala, on 27 and 28 May 2010, just prior to the inter-governmental Review Conference of the Rome Statute, and *Calling* for the preparations of a 7th session of the *Consultative Assembly* in 2012 in a suitable parliamentary venue to be determined by PGA and a National or regional Parliament interested in hosting this session;

We, therefore, hereby resolve and agree to advance the following objectives, individually and collectively, using all legislative and advocacy means at our disposal, and as follows:

1. Achieve a greater universality of the Rome Statute through the ratifications by countries that are not yet party thereto
2. Achieve the full implementation of the Rome Statute of the ICC in the national legal orders of State Parties, taking into account best practices and existing highly regarded legislation already in place in certain countries.

3. Promote national efforts to investigate and prosecute international crimes under the Rule of Law, given that legislation *per se* may not be sufficient to empower the judiciary and the law enforcement sector to effectively counter impunity and detect the suspected authors of the most serious crimes: In this respect, Legislators may take appropriate action in delicate areas such as, but not limited to

- strengthening the independence and capacity of the judiciary,
- creating protection-programmes for victims and witnesses,
- establishing reparation programmes for victims,
- ensuring that the conditions of detention of suspects and convicted persons are in line with international human rights standards.

4. Enhance cooperation with the ICC, given that legislation *per se* may not be sufficient to secure effective and unconditioned cooperation under the Rome Statute.

5. Enhance political and diplomatic support for the fight against impunity in general and the ICC in particular, with specific reference to reinforcing the role of States and the Assembly of States Parties, hence supporting and respecting the independent judicial institutions engaged in the fight against impunity as well as mainstreaming the fight against impunity in bilateral and multilateral relations, including in the area of international development cooperation and aid.

6. Improve the dissemination of the Rome Statute at the national and local levels (a) through the inclusion of the Rome Statute in schools, university, military and public service curricula, and of the principles of the rule of law in civic education programmes; and, (b) when appropriate, through the use of national or trans-national public media to disseminate developments at the ICC and correct misinformation about the Rome Statute, as well as to generate improved awareness of the importance of the gender related provisions of the Rome Statute itself.

7. Strengthen the reparatory or restorative element of the Rome Statute system of international and domestic criminal justice, including via the ICC Trust Fund for Victims, but especially through the elaboration and adoption of appropriate frameworks at the national level, starting with

- (a) law-reforms designed to ensure domestic implementation of the rights of victims as defined under international law, and
- (b) appropriate financial allocations in the national budget for the benefit of victims.

8. Call upon the United Nations Security Council to refer to the ICC the gravest situations that do not fall under the automatic jurisdiction of the ICC (e.g. crimes against humanity, acts of genocide and patterns of war crimes allegedly committed in the territories of non States Parties to the Rome Statute);

In the context of the upcoming Review Conference on the Rome Statute of the ICC, convened by the United Nations Secretary General here in Kampala from 31 May to 11 June 2010:

9. Include in the Rome Statute the definition of the Crime of Aggression, which is one of the 4 core crimes under international law, as recognized in article 5 of the Statute being one of the “most serious crimes of concern to the international community as a whole”.

10. Include in the Rome Statute conditions for the exercise of the Court’s jurisdiction on the crime of aggression, provided that such procedural mechanisms will not undermine, directly or indirectly, the independence of the Court as a judicial institution and its deterrent effect.

11. Achieve an agreement to delete Article 124 (“transitional provision”) from the Rome Statute, as its retention would only serve to undermine the jurisdiction of the Court over war crimes, and taking into account that article 124 was intended to be temporary in nature.

12. Reaffirm unconditionally the primary obligation of States to end impunity and bring to justice the perpetrators of Rome Statute crimes, thus giving effect to the principle of complementarity, which is a fundamental pillar of the Rome Statute system.

DONE in Kampala, this 28th Day of May, 2010]