



**Towards Stability and the Rule of Law: Why African States, including Uganda,
should ratify the Kampala Amendments to the Rome Statute**

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**Workshop for African ICC States Parties on the Ratification and Implementation of the Kampala
Amendments to the Rome Statute of the ICC¹**

Gaborone International Convention Centre, Botswana, 15 April 2013

Your Excellencies,

It is an honour to have been invited to address this important Seminar. I commend the efforts of the Government of Liechtenstein and the Global Institute for the Prevention of Aggression in facilitating continued discussions on the International Criminal Court system in our continent. I also appreciate the leadership of Botswana in ensuring that the African voices in favor of the fight against impunity are heard. Above all, I commend the Botswana nation for becoming the first African one in ratifying the Kampala Amendments.

I am a Member of the Ugandan Parliament. I belong to the government block in Parliament, but my statement today is not on behalf of government. Instead, my views on this issue, represent those of a group of parliamentarians from all political parties, who have come together to work on the fight against impunity under the umbrella of PGA, Parliamentarians for Global Action. However, I have consulted with my government in order to be able to report to you on the Ugandan vision.

In fact, it is a pleasure to speak to you today, also because the topic that brings us together has the name of our capital city, Kampala. As I will explain, the Review Conference has contributed greatly to the issues that I believe in and that have been working on. And this places on me a special responsibility in seeing a successful outcome from our deliberations: A commitment from all of us to put all our efforts to see the Kampala Amendments being ratified by our respective nations, and to promote that other African countries also do follow suit.

The Review Conference, which was mandated by the Rome Statute to be convened 7 years after the entry into force of the Statute, had three main objectives:

- 1) To define procedures to grant jurisdiction to the Court over the crime of aggression as well as to define the crime itself,
- 2) To consider important amendments to Article 8 on the prohibition of using certain weapons during non-international armed conflicts,
- 3) To undertake a stocktaking exercise on the progress achieved so far by the entry into force of the Rome Statute, and the challenges ahead of 2010.

¹ Message transmitted in writing by Honourable Tashobya to all the participants of the Workshop held in Gaborone.

Concerning the crime of aggression, the states parties needed to complete the task left unfinished at the Rome Conference. The crime of aggression was included by the 1998 in the Diplomatic Conference in Article 5 of the Rome Statute, a provision that constitutes the catalogue of the most serious international crimes that shock the consciousness of the world. Article 5 reflects obligations on individuals that exist not only since 1945, but as indicated by the Nuremberg Tribunal, since the 1928, when a non-aggression treaty was signed in Europe (Kellogg-Briand Pact), reaffirmed by the Allied Powers in 1943 with the Moscow Declaration and stipulated in 1945 in the London Charter that established the International Military Tribunal in Nuremberg. We must remember, that in 1946, the UN General Assembly unanimously declared the Statute, containing the criminal prohibition of crimes against peace, as part of customary international law.

Although in Europe and elsewhere, the holocaust gives the most common images to represent the consequences of crimes against peace or the crime of aggression, we in Africa understand very vividly the consequence of the use of force in inter-national relations. The greed of Europeans and Africans equally for land and minerals in acts that are described in the new Article 8 bis of the Amended Rome Statute have brought misery to our people.

In fact, while most analysts recognize that the recent and ongoing armed conflicts in Africa are of an internal nature, we must not forget that in many cases these conflicts have been fueled through intervention and support to irregular armed groups by other nations!

For this reason a comprehensive approach to ending conflict is necessary in Africa, and addressing inter-state conflict is fundamental to succeed in security, stability, peace and development efforts.

As we have seen with the ICC arrest warrants against the Lord's Resistance Army which had a partial but positive impact in reducing the recruitment of children by other armed groups, I firmly believe that individual responsibility for the crime of aggression is a powerful tool to prevent future conflicts.

Therefore, the inclusion of the crime of aggression in the 1998 version of the Rome Statute, that we have all ratified, was a success for African states over those powerful nations who continue to resist the prevalence of law over power-politics in their international relations.

For the importance that my government attaches to the end of inter-state conflict, we, as a nation, made a bid to host the Review Conference in Uganda. That bid was not easily won. The States Parties rightly imposed on us a number of important conditions to ensure that Uganda was in fact a "model" of ICC state party.

Uganda was requested by the Assembly of States Parties to take all the steps necessary to habilitate our domestic courts to prosecute international crimes and to cooperate with the Court. This pre-condition in fact was very useful for me personally. Since 2007, I had been working in my position as Chairperson of the Legal and Parliamentary Affairs Committee and as a member of Parliamentarians for Global Action for in the ratification of the Agreement of Privileges and Immunities of the Court (APIC) and, above all, to advance the discussion and adoption of the ICC Act. The bid and the deadline of May 2010 to meet our obligations gave an impetus to our work. Partly, thanks to the Review Conference bid, Uganda is one of the few states in the continent with comprehensive implementing legislation. Ugandan courts can prosecute genocide, crimes against humanity and war crimes committed after June 2010. And, as mandated by the Rome Statute, our judicial system has the capacity to cooperate with the ICC on any of its investigations.

On this note, I urge the state parties here present, and our hosts to urgently consider incorporating the Rome Statute crimes in your criminal codes and in ensuring the you do not become a safe haven for criminals due to lack of internal mechanisms of cooperation with the ICC.

The holding of the Review Conference in Uganda also allowed me to host 80 parliamentarians from around the world in my Parliament, at the Sixth Session of the Consultative Assembly of Parliamentarians from the ICC and the Rule of Law that was organized by Parliamentarians for Global Action. Our Plan of Action from this session,² was very clear in that we strongly called states parties to ensure successful negotiations on the crime of aggression.

I commend Ambassador Wenaweser, who led the negotiations on aggression since 2003, and who chaired the Review Conference, for realizing the vision of the Parliamentarians who met in the Ugandan Parliament days before the commencement of the Review Conference.

In fact, our conviction on the historic importance of this achievement has orientated our efforts to achieve the first 30 ratifications in states parties. Our 2012 Plan of Action, adopted in the Italian Parliament last December, outlines the steps that parliamentarians must undertake to meet the 2017 deadline. And last week, thanks to the work of the Convenor of our ICC Campaign, Honourable Felipe Micheleni from Uruguay, we are celebrating the ratification of the Amendments by the Chamber of Deputies, promising that the first ratification from a Latin American State to take place before next June.

We so firmly believe in the historic nature of this achievement, and in the promise that it offers us, that a number of members of our network have nominated the Kampala Review Conference³ for the Nobel Peace Prize. In the view of thousands of parliamentarians, what you, African States Parties, achieved for humanity in Kampala merits such a recognition.

Yet, despite this enthusiasm, 3 years since our celebration at the Munyonyo Resort in Kampala, until today there had not been a single ratification from the African continent. This situation inspires me to briefly draw concretely 3 reasons why we must put our heart and minds into ensuring the ratification of by all African nations, of the Kampala Amendment:

1. The adoption of the Kampala Amendments on the Crime of Aggression vindicates the tragic history of aggression in Africa. We owe it to our past to support through concrete measures the end to the use of force in international relations.
2. But we owe it to our present and to our future also. Without an end to conflict, we will never achieve stability, and without stability we will not achieve our development goals. We must outright reject any type of armed conflict in our continent. The Kampala Amendments are one powerful instrument to do so.
3. The adoption of the Kampala Amendments, contrary to what was expected by a number of entities, has not created contention among states parties. Instead, has allowed us to continue the discussion on African support to the ICC. In that regard, I welcome the side-event organized by Human Rights Watch on African Perceptions on the ICC that will take place today during the lunch time. Under the light of the crime of aggression, I believe no African nation committed to international peace can deny that the ICC is indispensable.

² PGA's Kampala Plan of Action, <http://www.pgaction.org/activity/2010/cap-icc-vi.html>

³ The nomination submitted by Hon. Kennedy Graham, New Zealand, was for the Nobel Peace Prize 2013 for Mr. Benjamin Ferencz, a former Nuremberg Prosecutor and Peace Activist who has devoted his life to end aggression and for the 2010 Kampala Review Conference that adopted Resolution 6 amending the 1998 Rome Statute. See, Rome Plan of Action for the Effectiveness and Universality of the Rome Statute of the ICC, 2012, <http://www.pgaction.org/activity/2012/cap-icc-vii.html>

Now, I must add a caveat. The Kampala Amendments are the minimum common denominator. Contrary to the other crimes in the Rome Statute, genocide, crimes against humanity and war crimes, on the basis of the Kampala Amendments, the ICC is restricted in that fully excludes nationals or territories of states NOT parties, even if the crimes committed are linked to a state party of the ICC.

The limitation over Article 12, and the preventative effect of the Court was a result of the geopolitical reality: There was simply not enough consensus to find a different arrangement. And this element was the stumbling block of the negotiations.

But this limitation should NOT be an excuse for states parties not to ratify the Kampala Amendments.

In fact, the solution to this situation lies in us. This provision imposes on us a stronger obligation to promote the universality of the Rome Statute in the African continent. Given that the ICC can act only within the confine of States Parties of the Rome Statute means that if we truly want to stabilize Africa, we should also promote the universal ratification of the Rome Statute. The African States that have not yet ratified the Rome Statute should do their best efforts to ratify the 2010 version of the Statute.

Your Excellencies,

On my part, I commit, to work with all political parties in the Ugandan Parliament to ensure our government ratifies the Kampala Amendments, as an expression of the need to contribute to the stabilization of our beloved continent and of the world.

Your Excellencies,

We face many challenges in Africa. The Stocktaking exercise in Kampala rightly recognized so. We need to ensure that all our efforts are meaningful to the victims of the Rome Statute, and that the Rome Statute truly is a preventative tool. We are simply not doing enough, and we can see it in the situation in Central African Republic, a state under the jurisdiction of the Court, with the required legislation to prosecute international crimes and that is once again under the threat of massive atrocities due to the coup d'état it suffered, and the instability brought by the LRA. We need to intensify our work on such effective prevention, in benefit of Africa and all regions of the world.

In Uganda also, we face the challenge of addressing the crimes committed in the past, and in dealing with the reintegration of former child soldiers in the community, and in ensuring accountability for those most responsible, in domestic courts. We will be discussing these issues in a panel with Open Society Justice Initiative tomorrow at lunch time. Compared to these challenges related to complementarity, the ratification of the Kampala Amendment is a simple task. We must undertake that simple task now. African Nations committed to the stability of Africa must move ahead in the ratification of both amendments to the Rome Statute. And use such discussion as a platform to address the need for implementation of the Rome Statute, and peace-building efforts. I hope your Excellencies, that you agree with this vision.

Thank you for your attention.

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