



Parliamentarians for Global Action

Asian Parliamentarians' Consultation on the Universality of the International Criminal Court (ICC)

AN ACTION PLAN FOR THE WORKING GROUP OF THE CONSULTATIVE ASSEMBLY OF PARLIAMENTARIANS FOR THE ICC AND THE RULE OF LAW ON THE UNIVERSALITY OF THE ROME STATUTE IN ASIA

Recognising the fundamental and innovative mandate of the International Criminal Court (ICC), established by the Rome Statute of 17 July 1998 and entered into force on 1 July 2002, which is the first permanent jurisdiction of international criminal justice aimed at:

- putting an end to the impunity for the most serious crimes of international concern through the prevention and repression of genocide, crimes against humanity and war crimes,
- providing justice for victims of these international atrocities, and
- promoting “the peace, security and well-being of the world”, as stated in the Preamble of the Rome Statute;

Affirming the central role of Parliamentarians as legislators and policy-makers in promoting the national ratification or accession to the Rome Statute and its effective and comprehensive implementation into domestic legal orders, as well as in contributing to increase the awareness and understanding among the general public of the mandate of the ICC and to protect the integrity of the Statute, which is the foundation of a new system of international criminal justice that shall attain universal participation and is based on the principle of complementarity;

Re-affirming that the ICC is:

- a complementary Court to National jurisdictions that reinforces the sovereignty of law-abiding nations and operates as a *Court of last resort* that intervenes only when States are unable or unwilling to bring to justice those bearing the greatest responsibility for the gravest crimes,
- a non retroactive Court – as it may exercise jurisdiction only over acts committed after 1 July 2002, date of the Statute’s entry into force, or after the date of the relevant State’s ratification of the Statute – and
- an independent Court that will apply its statutory notion of crimes against humanity, which is different from the notion of human rights’ violations as it is limited to selected inhumane acts harming the physical integrity and human dignity of the individual in the framework of “a widespread or systematic attack directed against any civilian population”, as stated in article 7 of the Rome Statute;

Welcoming the convening of the IV *Consultative Assembly of Parliamentarians for the ICC and the Rule of Law*, to be held in Tokyo, Japan, on 4-5 December 2006 as part of the Parliamentarians for Global Action (PGA) *28th Annual Forum on Human Security*;

Emphasizing the need to maximize the impact of the *Consultative Assembly* and its *preparatory and follow-up meetings* in order to generate awareness, understanding and support for the ICC as a global institution that requires more participation and representation from the Asian-Pacific continent:

NOW THEREFORE, We, the Legislators attending the “Asian Parliamentarians’ Consultation on the Universality of the International Criminal Court” held in the Congress of the Republic of the Philippines (Senate and House of Representatives) in Manila on 15-16 August 2006, agree to the following result-oriented actions and initiatives concerning our region and certain other selected countries represented at the Consultation:

1. **TO ESTABLISH PROCEDURES FOR EFFECTIVE COMMUNICATION AND CONSULTATION AMONG CONCERNED PARLIAMENTARIANS AND OTHER ACTORS IN THE ASIA-PACIFIC REGION IN ORDER TO ADVANCE THE ICC PROCESSES IN NATIONAL SYSTEMS**, as well as to guarantee wide participation in the PGA’s IV *Consultative Assembly of Parliamentarians for the ICC and the Rule of Law* (part of the 28th Annual Forum on Human Security, Tokyo, Japan) and in the initiatives of the organized civil society coordinated by the Coalition for the ICC (CICC), Asia and the Pacific, wherever appropriate.
2. **TO THIS EFFECT, FORMALISE THE STRUCTURE AND FUNCTIONING OF THE WORKING GROUP ON THE UNIVERSALITY OF THE ICC IN ASIA**, within the framework of the *Consultative Assembly of Parliamentarians for the ICC and the Rule of Law*, which was established in Wellington, New Zealand (III *Consultative Assembly*, December 2004) and met informally in Manila (IPU session, June 2005) and Dublin (PGA 27th Annual Forum, November 2005).
3. **TO DEVELOP AND INCREASE THE DIALOGUE WITH PARLIAMENTARIANS OF OTHER REGIONS AND COUNTRIES, INCLUDING MEMBERS OF THE UNITED STATES CONGRESS**, in order to address the external factors and concerns having an impact on the ICC processes at National level.
4. **TO LAUNCH APPROPRIATE ACTIONS IN NATIONAL PARLIAMENTS AND IN RESPECT OF NATIONAL DECISION-MAKING INSTITUTIONS TO FACILITATE THE RATIFICATION/ACCESSION AND EFFECTIVE IMPLEMENTATION OF THE ROME STATUTE OF THE ICC BY COUNTRIES IN THE ASIAN-PACIFIC REGION**. Such actions may include, *inter alia*:
 - a. Parliamentary Resolutions requesting the Executive to transmit the Rome Statute to Parliament for consideration and approval, for example, Resolution 171 (2006) adopted by the Senate of the Republic of the Philippines on 15 August 2006;
 - b. Parliamentary Motions urging the Government to Ratify the Rome Statute and undertake all the necessary preparations for an ICC Ratification or Accession Bill to be tabled before Parliament as soon as possible, for example, the Motion unanimously adopted by the House of Representatives of Nepal on 25 July 2006;
 - c. Questions addressed to the Minister of Foreign Affairs and/or the Minister of Justice/Legal Affairs/Human Rights during Parliament’s question time concerning the status of the ICC process, for example, the one tabled in the Malaysian Parliament in October 2005;
 - d. The creation of “study-groups” and/or “support groups” for ICC accession and implementation within the framework of political parties or on the basis of multi-party membership, for example, the experience of Parliamentarians in Japan, who activated a multi-partisan study-group of PGA Japan on the ICC in 2002 and two political parties’ support groups on the ICC in 2006;
 - e. Parliamentary statements and/or legislative initiatives aimed at giving concrete effects to the legislative and political commitments against impunity made by the Government as in the case of Indonesia, in which a National Human Rights Plan (2004-09) has been adopted with the engagement to accede to the Rome Statute of the ICC in the year 2008;
 - f. Any other initiative in conjunction with civil society (e.g. *the Coalition for the ICC, Asia and the Pacific- and its Members*), the judiciary and the legal community (e.g. *National Bar Associations*), the defense and security community (e.g. legal advisors of the Armed Forces and the Security Forces) and with any other partner that may play a positive role in familiarizing the Governmental structure with the functioning of the ICC (e.g. *the International Committee of the Red Cross*, which supports the work of International Humanitarian Law Commissions at national level).

5. TO MONITOR THE STATUS AND THE PROGRESS OF THE ICC PROCESS ON THE BASIS OF THE RELEVANT REQUIREMENTS FOR THE RATIFICATION AND IMPLEMENTATION OF TREATIES UNDER EACH NATIONAL SYSTEM, INCLUDING – BUT NOT LIMITED TO – IN THE FOLLOWING COUNTRIES, THE STATUS OF WHICH IS SUMARILY DESCRIBED AS FOLLOWS:

a. CAMBODIA

- i.** STATUS: Cambodia acceded to the Rome Statute on 11 April 2002, thus becoming a State Party. The current legislation of Cambodia complies with the complementarity principle as the core crimes and the general principles of international criminal law are contained in Cambodian national legislation.
- ii.** ACTION shall be taken to enact National implementing legislation to cooperate fully with the Court in accordance with article 86 of the Rome Statute and ratify the Agreement on Privileges and Immunities of the Court.

b. INDONESIA

- i.** STATUS: Indonesia is not a signatory and a party to the Rome Statute. Since 2001, the crimes contained in the Rome Statute have been incorporated in the national Human Rights Law. The National Human Rights Plan 2004-09 include the accession to the Statute in 2008.
- ii.** ACTION shall be taken to permit the fulfillment of the Indonesia engagement to accede in 2008 or, if possible, before that deadline, and to draft legislation on cooperation with the ICC.

c. JAPAN

- i.** STATUS: Japan is not a signatory and a party to the Rome Statute. The Ministry of Foreign Affairs is coordinating the preparation of comprehensive legislation to implement the Rome Statute into national law, which is a precondition for Japan's accession to the Statute. In addition, the Executive proposed to ICC States Parties to consider the application of a "ceiling" to the prospective assessed contributions of Japan to the ICC budget, in line with the relevant practice of the United Nations. Japan is a member of the informal group of States of the "Friends of the ICC".
- ii.** ACTION shall be taken to expedite the process of Japanese accession to the Rome Statute, including the need for Parliament to consider the legislative package relating to the ICC and the status of the negotiations between Japan and ICC States Parties.

d. MALAYSIA

- i.** STATUS: Malaysia is not a signatory and a party to the Rome Statute. The Government has undergone a study of the Statute and has supported on various occasions the integrity and the effective functioning of the ICC.
- ii.** ACTION shall be taken to verify the commitment of Malaysia to join the new system of international criminal justice and to draft the relevant legislation to be transmitted to Parliament.

e. NEPAL

- i.** STATUS: Nepal is not a signatory and a party to the Rome Statute. On 25 July 2006, the House of Representatives adopted with a unanimous vote of the legislators belonging to the 7 parties in Parliament a motion directing the Government to ratify the Rome Statute. Under Nepalese law, this motion is compulsory for the Executive.
- ii.** ACTION shall be taken to facilitate the implementation of the motion adopted on 25 July 2006 so that Nepal may become a State Party to the Rome Statute at the earliest opportunity while, at the same time, initiatives may be launched to initiate the decision-making and legislative processes to fully implement the Rome Statute into the domestic legal order.

f. NEW ZEALAND

- i.** STATUS: New Zealand signed the Rome Statute on 7 October 2000 and ratified it on 7 September 2002. New Zealand adopted a comprehensive legislation to implement the Rome Statute into national law, thus complying with the obligations to cooperate and

to give effect to the complementarity principle. New Zealand is also a party to the Agreement on Privileges and Immunities of the Court.

- ii. ACTION may be taken to increase the assistance of New Zealand to Pacific Islands Countries and other States that are not yet Parties to the ICC Statute.

g. PAKISTAN

- i. STATUS: Pakistan is not a signatory and a party to the Rome Statute. The Government has undergone a study of the Statute. Parliamentarians expressed their interest and support for the ICC in various fora.
- ii. ACTION shall be taken to verify the commitment of Pakistan to join the new system of international criminal justice, draft the relevant legislation to be transmitted to Parliament and consider a concrete time-line for the ICC process.

h. THE PHILIPPINES

- i. STATUS: The Philippines signed the Rome Statute on 28 December 2000, but has not yet ratified. Since 2001, numerous parliamentary and judicial initiatives have been undertaken to bring about ratification. There is strong political will on a multi-partisan basis to join the ICC system in both the Senate and the House of Representatives.
- ii. ACTION shall be taken to permit the fulfillment of the Philippines engagement to ratify the Statute, which requires the approval of the Senate, and to draft the necessary implementing legislation to be tabled to Parliament. In the absence of the former, Parliamentarians may consider to table a Private Members Bill on implementation.

i. VIETNAM

- i. STATUS: Vietnam is not a signatory and a party to the Rome Statute. The Government has undergone a study of the Statute and has hosted consultations on the latter.
- ii. ACTION may be taken to verify the commitment of Vietnam to join the new system of international criminal justice, draft the relevant legislation to be transmitted to Parliament and consider a concrete time-line for the ICC process.

DONE AT MANILA, 16 AUGUST 2006

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For further information on the "Consultative Assembly of Parliamentarians for the ICC and the Rule of Law" and its Working Groups, including the one on the universality of the Rome Statute of the ICC in Asia, please contact:

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