

ASIA-PACIFIC UPDATE

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TOGETHER FOR JUSTICE

ISSUE 6

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ICC STARTS PROBE OF ALLEGED NORTH KOREA WAR CRIMES

THE FIRST ICC PROBE to be conducted on alleged war crimes in the East Asia region unfolds with the preliminary examination initiated by ICC Prosecutor Luis Moreno-Ocampo on December 6, 2010, into North Korea's military assaults on the territory of the Republic of Korea. The results of the preliminary examination will determine whether the Prosecutor can formally open an investigation and consequently present cases before the ICC.

The move came following communications to the Office of the Prosecutor (OTP) alleging said crimes in the context of the shelling of Yeonpyeong Island on November 23, 2010, resulting in fatalities and injuries among South Korean marines and civilians. Two civilians and two marines were reportedly killed, and 29 homes destroyed.

In his statement to media, the Prosecutor cited incidents that may possibly constitute war crimes and could thus fall under the jurisdiction of the ICC. These include not only the attack on Yeonpyeong, but also an earlier incident in March 2010 when a North Korean submarine allegedly torpedoed the *Cheonan*, a warship of the Republic of Korea, killing 46 persons.

The government of the Republic of Korea ratified the Rome Statute in 2002, making it a member of the ICC. The Court has thus held jurisdiction over crimes under the Rome Statute committed within its territory since February 1, 2003, when the Statute entered into force in the state. The Rome Statute currently provides for the Court's jurisdiction over the crime of genocide, crimes against humanity, and war crimes.

Next steps

In accordance with Article 15 of the Rome Statute, the Prosecutor is analyzing the information he has received to determine whether there is a reasonable basis to proceed with an investigation. In his determination, the Prosecutor must consider three factors: (1) jurisdiction, whether



ICC Prosecutor Luis Moreno-Ocampo.
Credit: ICC-CPI

there is reasonable basis to believe that a crime within the *jurisdiction* of the Court has been or is being committed; (2) *admissibility* before the Court, in light of the requirements relating to gravity and complementarity with national proceedings; (3) whether or not there are substantial reasons to believe that an investigation would not serve the interests of justice. Where the requirements are satisfied, the Prosecutor may submit to a Pre-Trial Chamber of the Court a request for authorization to initiate an investigation. Where the requirements are not satisfied, Prosecutor Moreno-Ocampo must inform so to those who provided the information. However, this does not preclude the OTP from considering further information regarding the same situation in light of new facts or evidence.

Republic of Korea's Foreign Minister Kim Sung-hwan promised his government's cooperation and support during a meeting with ICC President, Judge Song Sang-hyun last December 23, 2010 in Seoul.

Republic of Korea now counts among several other countries currently under preliminary ex-

LETTER FROM THE REGIONAL COORDINATOR, EVELYN BALAIS-SERRANO

THIS ISSUE OF THE *Asia-Pacific Update* covers campaign activities in the region during International Justice Day on July 17 and some reflections on the outcomes and impact of the Review Conference.

While we are saddened by the tensions building up in the Korean Peninsula, the recent tragedy in Cambodia, the disasters that struck Pakistan, China and Indonesia, the fragile situations in Nepal, Thailand, Sri Lanka and Afghanistan and the continuing conflicts in some parts of the Philippines, India and China, we are overjoyed with developments in the region. These include the release of long-time prisoner, Burma's Daw Aung San Suu Kyi (considered a major achievement of the peoples of Asia, with the support of the international community); the prospect of the adoption of an ASEAN Human Rights Charter under the Indonesian presidency of the ASEAN in 2011; and possible ratifications of the Rome Statue from the region in 2011. For example, we are excited about the prospect of having the Phil-

ippines as the 115th state party to the ICC treaty. All relevant agencies have endorsed the ratification and the Office of the President is working on transmitting the ICC portfolio to the Senate for concurrence – the last step in the process.

With the ICC President's scheduled visit to the region in March, we are hoping more states will take cognizance of the importance of the ICC and the critical role they can play in working together for international justice through the ICC.

The outcomes of the Review Conference and the continuing developments in the cases before the ICC pose more serious challenges ahead in making the ICC truly the Court that we envision it to be. For example, while the definition of the crime of aggression has already been adopted, it will require tremendous efforts and the highest level of political will to activate the jurisdiction of the Court for this crime and make it work.

We welcome the support to the ICC campaign of the community of social workers from In-



Evelyn Balais-Serrano, during an ethical social responsibility seminar in August 2010.

dia and the Philippines, with whom I had the privilege of discussing the ICC in their national conferences held in Bangalore, India and Lapu-Lapu City, Philippines in August and November 2010 respectively. The profession continues to explore further its involvement in the field of international justice. With joint efforts by governments and civil society in Asia, much can be done to move forward towards achieving peace and justice in the region, thus contributing to global peace and justice.

ICC STARTS PROBE

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amination by the OTP. These include Afghanistan, Georgia, Guinea, Cote d'Ivoire, Colombia, Honduras, and Nigeria. More information on this can be found on the CICC website at:

CICC Questions & Answers, preliminary examinations by the ICC Prosecutor: http://www.iccnw.org/documents/CICC_Factsheet_PrelimExamQA.pdf

Relevant Sources:

- http://www.huffingtonpost.com/2010/12/06/international-criminal-co_1_n_792504.html
- http://www.nytimes.com/2010/12/07/world/asia/07briefs-Korea.html?_r=1&ref=international_criminal_court
- "FM Kim promises S. Korea's support for ICC's preliminary probe into N. Korean attacks." *Yonhap News Agency*, December 23, 2010.

THE HISTORY OF THE KOREAN WAR

FROM 1910 -1945, Korea was under Japanese rule. After Japan surrendered in defeat to Allied forces during World War II, Korea was left to the disposition of the victors, primarily the US and the former Soviet Union. The UN Forces led by the US, occupying the southern part was joined by other countries that included the UK, Australia, Belgium, Canada, Colombia, Ethiopia, France, Greece, Luxembourg, Netherlands, New Zealand, Philippines, South Africa, Thailand and Turkey. The USSR and China took over the northern part.

Though meant to be temporary, the division of Korea eventually became well-entrenched, aided by Cold War tensions. Separate states were set up in 1948: the Democratic People's Republic of Korea in the north and the Republic of Korea in the south.

When the US and USSR exited in 1949, they also left the military forces they had built and strengthened on each side of the divide. The Cold War conflict hence continued in Korea as a "proxy war" between North and South. Spo-

radic clashes led to a major outbreak on June 25, 1950 when the North invaded the South, signaling the start of the Korean War. The US, wary of Communism spreading, supported the Republic of Korea in the war. As the conflict escalated, China too began to prepare for war, in defense of North Korea.

A stalemate ensued in 1951. On July 27, 1953, both sides agreed on an armistice, but not before the US, led by then-president Dwight D. Eisenhower, had heavily bombed North Korea and threatened the use of nuclear weapons.

The same line dividing the North and South that was established prior to the Korean War (near the 38th parallel) has since remained in place. The Demilitarized Zone, an area about 240 km long and 4 km wide, prevents any interaction among those who were once all a unified people: Koreans.

Relevant Source:

<http://www.heraldsun.com.au/news/world/tensions-between-north-and-south-korea-born-in-the-cold-war/story-e6frf7lf-1225960044291>

PHILIPPINE CICC DEMANDS APOLOGY WITH REPARATIONS FOR WWII ATROCITY CRIMES AGAINST WOMEN



The Malaya Lolos (Free Grandmothers) picket the Japanese Embassy in Manila; PCICC National Coordinator Becky Lozada reads the statement calling for an apology and reparations for the sexual slavery of Filipino women during World War II. Credit: PCICC

AS PART OF ITS EFFORTS to raise awareness on issues related to International Justice and accountability for gross violations of human rights, the Philippine Coalition for the ICC (PCICC) organized a public action on December 1, 2010, in front of the Japanese Embassy in Manila, which was facilitated by Amnesty International (AI) - Pilipinas. Some 50 PCICC members and friends, including nine members of the group Malaya Lolos (Free Grandmothers)

who count comfort women (sexual slaves during WWII) among their members joined the action to press for a “genuine apology” from the Japanese government, an apology which should include redress to the victims, for the sexual slavery of thousands of Filipino women during the Second World War. The public action was part of activities in support of the UN-initiated “16 Days of Activism to End Violence Against

Women,” and a build-up to the celebration of International Human Rights Day.

Dr. Aurora Parong, co-chair of the PCICC and section director of AI-Pilipinas called on the Japanese and Philippine governments to acknowledge a link between continuing violation of human rights and ignoring the calls for justice for the comfort women. She stated that the Japanese government must genuinely apologize for the sexual slavery of women during the war and undertake actions to compensate and provide redress to the victims.

“Justice is elusive for the Lolos who were victims of rape and military sexual slavery during World War II. [Philippine] President Aquino must support the Lolos in their quest for justice,” she added. Corazon de la Cruz-Requizo, a representative of the women’s organization, Kaisa Ka (Unity of Women-Philippines), pledged Kaisa Ka’s continuing support for victims of crimes against humanity committed during the war, especially in their fight for legal reparations.

PCICC national coordinator, Rebecca Lozada, noted that Japan has since progressed in international law matters under its post-war Peace Constitution as evidenced in part by its ratification of the Rome Statute of the ICC in 2007. “While those criminally responsible for the offenses against comfort women cannot be brought to the ICC because the Court only has jurisdiction over crimes

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FROM SEEKING APOLOGY TO CLAIMING STATE ACCOUNTABILITY

WHILE A NUMBER OF Japanese public officials have expressed apologies, the Japanese government has never officially admitted legal responsibility for the use of *jagun ianfu* or “comfort women” by its imperial army during World War II, and as a consequence, has not taken steps towards compensatory and reparative action as a matter of state responsibility. Actual numbers may never be known but it is estimated that up to 300,000 women across Asia were used for sexual slavery.

Statements by Japanese officials have yet to materialize into concrete actions as judicial remedies and responses to the comfort women’s claims. For example, in 2001 Prime

Minister Junichiro Koizumi stated: “As Prime Minister of Japan, I thus extend anew my most sincere apologies and remorse to all the women who underwent immeasurable and painful experiences and suffered incurable physical and psychological wounds as comfort women. We must not evade the weight of the past, nor should we evade our responsibilities for the future. I believe that our country, painfully aware of its moral responsibilities, with feelings of apology and remorse, should face up squarely to its past history and accurately convey it to future generations.” Other top Japanese officials recognized the gravity and impact of the crimes committed, but have not gone beyond expressions of personal remorse.

While the abovementioned statements are an important step in recognizing the wrongful acts committed against comfort women during the Second World War, the Lolos believe that only with redress to the thousands of victims of the aforementioned acts can apologies from the Japanese government be truly meaningful and sincere.

Relevant Sources:

- <http://news.bbc.co.uk/2/hi/asia-pacific/1061599.stm>
- <http://www.mofa.go.jp/policy/women/fund/pmlletter.html>

UN WORKING GROUP COMMENDS MALDIVES FOR MOVES TO RATIFY STATUTE

WHEN MALDIVES BECAME a member of the UN Human Rights Council in April 2010, the President of the Human Rights Commission of the Maldives Ahmed Saleem (HRCM) welcomed the development as a step toward joining the ICC, and was reported in the *Minivan News* as saying that the HRCM could not fully exercise its functions because Maldives is not a member of the ICC. Furthermore, Minister of Foreign Affairs Dr Ahmed Shaheed said Maldives sought this candidature because of its “positive experience with the international human rights system,” and the recognition “through first-hand experience, [of the Council’s] value and its capacity to bring about change.”

The UN Human Rights Council Working Group on the Universal Periodic Review held its 9th session from 1-12 November 2010, during which it reviewed the Maldives’ August 2010 National Report. Several delegations “commended Maldives for the self-critical approach taken in its national report and presentation, and noted the broad consultation process with stakeholders.” Furthermore, delegates noted with appreciation Maldives’ recent transition to democracy and its efforts with regard to judicial reform.

In its National Report during the UPR, Maldives expressed that it would “shortly become party to the Rome Statute of the International

Criminal Court.” The new Constitution promulgated in 2008 calls for parliamentary approval of international human rights treaties as a prerequisite for the state’s ratification. Accordingly, President Mohamed Nasheed sent the ICC accession dossier to parliament as provided under Article 93(a) of the Maldives Constitution: “Treaties entered into by the executive in the name of the state with foreign states and international organizations shall be approved by the People’s Majlis and shall come into force only in accordance with the decision of the People’s Majlis.” (The People’s Majlis is Maldives’ unicameral legislature.)

On 5 October 2010, Members of Parliament had lengthy deliberations on the issue. With 61 in favor and 4 against, Parliament eventually decided to send the ICC accession bill to the Committee on National Security for further study.

Taking these recent advancements into consideration, states reiterated calls for Maldives’ accession to the Rome Statute, the founding treaty of the International Criminal Court (ICC). In particular, the United Kingdom of Great Britain and Northern Ireland applauded Maldives’ commitment to accede to the Rome Statute, and further recommended that Maldives ensure its Penal Code is fully consistent with international human rights. Similarly, Ecuador, Slovenia and Austria recommended that Maldives accede to the Rome



President Mohamed Nasheed.
Credit: Dhiveni Observer

Statute. Maldives is expected to examine and respond to the recommendations of the Working Group by the 16th session of the Human Rights Council, in March 2011.

Relevant Sources:

- <http://minivannews.com/society/how-the-seat>
- http://lib.chr.org/HRBodi es/UPR/Documents/session9/MV/_HRC_WG.6_9_L.5_Maldives.pdf
- Maldives National Report, in accordance with paragraph 15(a) of the annex to Human Rights Council Resolution 5/1
- <http://www.miadhu.com/2010/08/local-news/maldives-to-join>

PHILIPPINE CICC DEMANDS APOLOGY CONTINUED FROM PAGE 3

committed since the Statute came into force in 2002, Japan should, on its own initiative, apologize and provide reparations to the victims as demanded by international law,” Lozada stressed.

At the close of the rally, the President of the Malaya Lolos, Isabelita Vinuya, along with PCICC and Kaisa Ka representatives, approached Embassy security and handed over the position paper released for the action since Japanese Ambassador to the Philippines Makoto Katsura did not meet with the group, as earlier requested. In thanking all those who participated in the action, Lola Isabelita expressed: “There were many of us when we started Malaya Lolos but our numbers are dwindling because of sickness and death of our aging members. We hope we will see some justice before it is too late.”

The Malaya Lolos was established in 1996 to provide a vehicle for the victim-survivors to tell their stories and demand accountability from those responsible for the sexual slavery committed against them during the war, among other crimes. Most of its members demand justice for the horrific events of November 23, 1944. “On that day, Japanese soldiers raided and burned the village of Mapaniqui, in Candaba, Pampanga province in the Philippines. They rounded-up and summarily executed the men, but not before torturing them in front of the women. Some 200 women and girls as young as eight were then brought to a nearby province where they were repeatedly raped,” recalled Lozada.

PCICC strongly believes that actions such as the one carried out on December 10th represent an

important opportunity to raise awareness and demand accountability for past human rights violations, and by consequence play a significant role in the prevention of future atrocities. “As we work on achieving justice today, civil society is committed to guaranteeing that victims of heinous crimes committed in the past can someday also find justice and accountability,” stated Rebecca Lozada.

While Japan ratified the Rome Statute in July 2007, The Philippines remains a signatory to the Statute and has yet to ratify it. PCICC continues to advocate for ratification, working closely with key government officials of the new administration, as well as other members of civil society, academia and other actors in the region.

INSTITUTIONAL CHALLENGES TO CRIMINALIZING AGGRESSIVE WAR

By Professor Raul C. Pangalangan, University of the Philippines

IN ROME IN 1998, we adopted a compromise formula that affirmed the criminalization of aggressive war in principle but prevented its punishment in practice. That was the compromise that the Kampala amendments of 2010 were supposed to overcome. The results were mixed. Kampala adopted a similar time-lag clause that was at the heart of the 1998 compromise in Rome, but it set forth a principled framework to reconcile the ICC's jurisdiction over aggression with entrenched Article VII powers of the Security Council under the UN Charter.

Criminalizing aggressive war poses fundamental challenges to the nature of legal responsibility and the adjudication of what might be deemed fundamentally political issues. It entails two structural shifts in international law. The first is from state responsibility to individual criminal responsibility. By punishing aggressive war, we face a crime hitherto ascribed solely to states and then insist, as Jackson did at Nuremberg, that “crimes against international law are committed by men, not by abstract entities.”

The second is the shift from the political to the judicial ascertainment of aggression. Up until the Kampala revisions, we had thus far empowered the UN Security Council alone, an entity subject to the vote and veto of non-elected members, to make what was essentially a political decision. To de-link the ICC power to punish aggression will empower a second entity to make that determination and to do so on purportedly non-political terms. This will fundamentally redesign the architecture of the post-WWII international legal order.

The Rome Statute was designed to be a “self-contained regime” to punish “the most serious crimes of concern to the international community as a whole.” The crime of aggression was included but – in a delicately negotiated compromise – and was no sooner frozen and held in abeyance. Aggression couldn't be punished until its substance and procedure were laid out as amendments to the Statute at a Review Conference to be convened seven years after the Statute shall have entered into force.

The 2010 Kampala amendments follow the 1998 Rome formula. The threshold political compromise in 1998 – the seven-year stay in the enforcement of ICC powers of aggression – is replicated in the Kampala amendments, that



Prof. Raul Pangalangan, representative of the PCICC to the Review Conference, also a member of the Drafting Committee of the Rome Conference. Credit : PCICC

won't be effective until after January 1, 2017, and only after two-thirds of the States Parties vote to activate it. In other words, what we have is the exact 1998 formula of normative affirmation and procedural evasion.

Yet the Kampala amendments are clear strides forward. One, the definition of crime of aggression, while tracking the authoritative language of the UN Charter and UN General Assembly resolutions, contains coded language to allow enough elbow room for humanitarian intervention. The words “political or military action ... which, by its character, gravity and scale, constitutes a manifest violation” of the UN Charter are intended to exclude the use of force to, e.g., stop genocide.

Two, the Kampala amendments preserve the Court's independence from the UN Security Council, hitherto the sole international body

entitled to determine whether an act of aggression has been committed. The Court may exercise jurisdiction over aggression through any of the usual “trigger mechanisms”, e.g., referral by a State Party, by the UN Security Council or by the Prosecutor acting *motu proprio*. That is why it is important that Kampala categorically affirmed the fundamental principle that the “determination of an act of aggression by an organ outside the Court [is subject] to the Court's own findings.”

That principle is most difficult to apply when the Prosecutor investigates independently of the UN Security Council. The Kampala formula preserves the Prosecutor's independence. His duty is to notify the Security Council and observe a 6-month stay pending its action, but he may eventually proceed without such action provided he is authorized by the ICC's own Pre-Trial Division.

Three, the Kampala amendments contain rather cryptic language saying that they do not “creat[e] the right or obligation to exercise domestic jurisdiction with respect to an act of aggression committed by another State” (Annex III, *supra*). This effectively waives requirement of complementarity, and carefully avoids giving a basis to universal criminal jurisdiction over aggression.

Notice that, vis-à-vis the other crimes, complementarity is an incentive for sovereign states to accept the ICC but, vis-à-vis the crime of aggression, it is a disincentive. This is the best proof that aggressive war is the aberration compared to the other crimes punishable by the ICC.



Opening of the Review Conference of the Rome Statute held in Kampala, Uganda from May 31-June 11, 2010 Credit: ICC-CPI

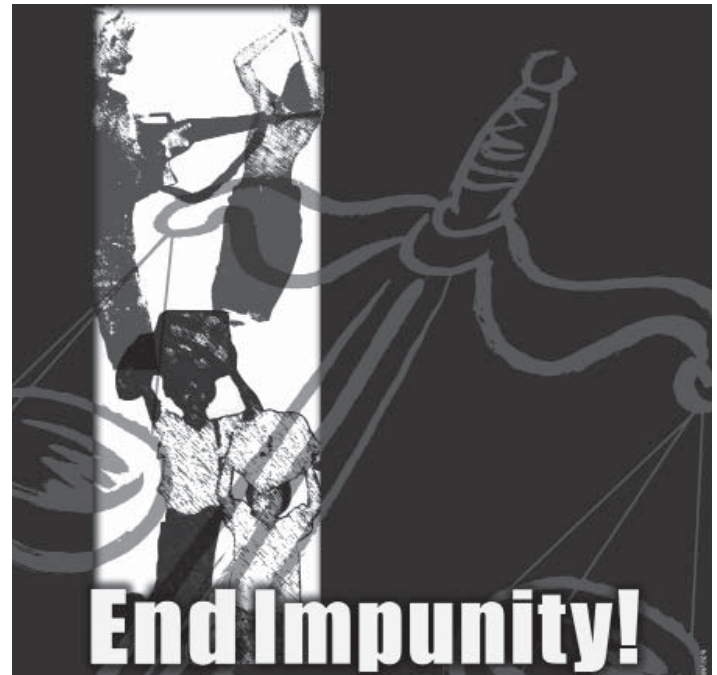
INTERNATIONAL JUSTICE DAY: COUNTRIES REASSERT CALLS FOR ICC ACCESSION

MEMBER ORGANIZATIONS OF THE *Coalition for the International Criminal Court in Nepal, Bangladesh, Malaysia and the Philippines* joined the world in pressing for an end to impunity and atrocity crimes, as they marked the 12th anniversary of the adoption of the Rome Statute, the founding treaty establishing the ICC.

Also commemorated as International Justice Day (IJD), the 17th of July annually reminds all states of the urgency to ensure continued support for the Rome Statute's international justice system. It also reaffirms solidarity with victims of crimes against humanity, genocide and war crimes.

One hundred twenty nations voted to adopt the Rome Statute in 1998. Efforts thus far have already resulted in 114 nations joining the Court. The establishment, work and case law of the ad-hoc tribunals, the specialized and mixed tribunals, and, most recently, the ICC, have provided for thousands of victims an opportunity to seek and bring to justice perpetrators of grave crimes.

IJD 2010 marked increased and deeper commitments on the part of ICC states parties, especially as pronounced at the first Review Conference of the ICC Rome Statute held from May 31-June 11 2010 in Kampala, Uganda. At the Conference, states parties agreed, among others, on a definition of the Crime of Aggression and rules of procedures for adjudicating that crime.



Bangladesh

Concern over extrajudicial executions and custodial torture by law enforcement, secret killings and involuntary disappearances highlighted discussions in a meeting organized by the Bangladesh human rights group Odhikar to mark the International Day of Justice.

Participants of the meeting reflected on continuing and escalating human rights violations in Bangladesh, alarmed at the apparent premeditation and increasingly systematic character. They discussed whether these crimes could be considered crimes against humanity that would fall under the jurisdiction of the ICC.

The 2010 commemoration of IJD also marks 12 years since Bangladesh signed the Rome Statute in 1999 (it must be recalled that Bangladesh was the first country in the South Asian region to do so). For more than 10 years, Odhikar served as the focal point

of the campaign for ratification in Bangladesh. Finally, on March 22, 2010, the Cabinet ratified the Rome Statute, making Bangladesh the 111th state party. Lauding this decision by the government, ICC President Sang-Hyun Song welcomed Bangladesh to "the growing commitment of states to end impunity for war crimes, crimes against humanity and genocide."

The developments in Bangladesh also heightened the urgency of IJD's message, which Odhikar Director ASM Nasiruddin Elan underscored as a reminder of the urgency for all states committed to justice to ensure continuing support for the ICC.

The meeting was presided by Mustain Zahir, a member of the editorial board of the fortnightly magazine *Chinta*. Participants included Sumaiya Islam, director of Bangladesh Avibashi Nari Shromik Association (Bangladesh Female Migrant Workers Association); Sultana Razia of the Daily

Star's Law Desk; Rezaur Rahman from Law Life; Human rights defenders Advocate Nazrul Islam; Advocate Asaduzzman and Jahangir Kabir; and Sazzad Hussain and Taskina Fahmina, Odhikar program coordinators.

Zahir stated that despite much discussion on war crimes, there remains little clarity on Bangladesh's definition of war crimes and crimes against humanity. Moreover, the government has not acted on an election pledge addressing demands of the Bangladesh people to try the Pakistani troops, auxiliary forces and collaborators involved in the 1971 Bangladesh liberation war for the alleged commission of war crimes.

Accounts of the atrocities committed range from killings of unarmed civilians, torture, enforced disappearances and systematic rape. An estimated three million people died, a third of the country's population was displaced, some 200,000

women were raped and countless others injured.

Sultana Razia said that under the legal system of Bangladesh, there are currently no existing provisions on the protection of victims and witnesses, nor for claiming reparations.

She stressed the importance of reforming the judicial system so as to implement the Rome Statute, thus ensuring the existence of legislation on victim and witness protection, as well as victims' reparations. "Since Bangladesh already ratified the Rome Statute, the existing laws now need to incorporate international standards as the ones contemplated within the Statute," Razia added.

Relevant Source:

<http://www.icc-cpi.int/Menu/ASP/Press+Releases/Press+Releases+2010/Bangladesh+ratiifies+the+Rome+Statute+of+the+International+Criminal+Court.htm>



Street action: civil society in Nepal continues to actively call for ratification of the Rome Statute of the ICC.
Credit: Bimal C. Sharma/INSEC

Nepal

The Human Rights and Democratic Forum (FOHRID) called on the government of Nepal to reaffirm its commitment to end the culture of impunity and take the necessary steps to accede to the ICC Rome Statute.

“[W]e urge the Prime Minister and Ministers to coordinate among ministries, to hold discussions within the Council of Ministers, and to forward the process for accession to the Rome Statute,” the organization said in its IJD statement.

IJD 2010 in Nepal also marked the fourth year since the House of Representatives (HoR) unanimously adopted a directive on accession to the Rome Statute of ICC. However, Nepal has yet to accede to the treaty.

FOHRID Secretary-General Raj Kumar Siwakoti called attention to the commitments made by eight political parties, the Legislature-Parliament and the Government to provide “guarantees to good governance, ending impunity, establishing democratic norms and values, and governance, based on principles of the rule of law.” These commitments have been formalized through measures unanimously endorsed by the HoR after

its restoration, which include the Comprehensive Peace Accord - 2006, Interim Constitution - 2007, and the Common Minimum Programme of the Interim Government - 2007. Kumar Siwakoti also stressed that immediate implementation would represent a clear manifestation of the government’s political dedication to such measures, and that Nepal’s involvement in the ICC would boost the effective realization of their aims.

FOHRID also recalled “the eagerness and positive commitments demonstrated by the government, political parties and the then-HoR and present Legislature-Parliament towards the ICC,” and appealed for prioritizing and speeding up the accession process. It specifically requested the Speaker and Members of the Legislature-Parliament “to exert more intensive pressure on the executive to accede to the Rome Statute of the ICC.”

Philippines

A roundtable discussion on the first Review Conference of the Rome Statute and on the Crime of Aggression amendments adopted at the Conference highlighted the Philippines’ commemoration of International Justice Day. The Philippine Coalition on the ICC (PCICC)

co-sponsored the event held on July 27, 2010, with the Institute of International Legal Studies of the College of Law of the University of the Philippines. Members of the official Philippine delegation to Kampala – Ambassador Generoso Calonge and undersecretary Severo Catura of the Presidential Human Rights Committee – spoke on the declaration they made at the Review Conference regarding The Philippines’ support for the ICC.

Former dean of the University of the Philippines College of Law Dr. Raul Pangalangan and director of the Institute of Legal Studies Prof. Harry Roque discussed the amendments to the crime of aggression. Rebecca E. Lozada of the PCICC gave an overview of the issues raised and agreements made at the Review Conference.

Malaysia

On International Justice Day 2010, in commemoration of the adoption of the Rome Statute on 17 July 1998, the Malaysian Bar Council, which counts a membership of around 12,000 legal practitioners and aims “to uphold the rule of law and the cause of justice,” urged its government to move toward accession to the Statute and membership in the International Criminal Court (ICC).

“The Malaysian Bar urges the government to immediately accede to the Rome Statute, and to thereby affirm our confidence in the Rome Statute through our very own membership of the ICC. One of the ways to combat war crimes, crimes against humanity, genocide and crimes of aggression, and to seek justice for their victims, is to make

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Panelists at a roundtable discussion on the first Review Conference of the Rome Statute and the crime of aggression held in the Philippines.
Credit: PCICC

INTERNATIONAL JUSTICE DAY CONTINUED FROM PAGE 7

it difficult for the perpetrators to hide from justice,” it said in a statement released on July 17 and signed by its president, Ragnunath Kesavan.

On June 7, 2010, the Dewan Rakyat (Lower House) unanimously supported a motion that the Israeli attack on the humanitarian aid-carrying vessel bound for Gaza be referred to the ICC, thus recognizing the important role that the ICC plays in investigating and prosecuting grave crimes. Also included in the special 15-point motion tabled by Prime Minister Datuk Seri Najib Tun Razak is a proposal addressed to Turkey to “consider action under the Rome Statute of the International Criminal Court (ICC).”

If this were the case, however, issues of jurisdiction would need to be closely analyzed, given that neither Israel nor Turkey are states parties to the Rome Statute.

Two days after International Justice Day, the same motion was brought before the Dewan Negara, the Upper House of the Malaysian Parliament by Deputy Prime Minister Muhyiddin Yassin. The move was welcomed by the Malaysia Bar Council, which expressed that “acceding to the Rome Statute will send a clear signal to the international community that Malaysia shares their commitment to put an end to the culture of impunity assumed by countries that sponsor or support such activities.”

At the 6th Consultative Assembly of Parliamentarians for the International Criminal Court and the Rule of Law in Kampala, a meeting held in May 2010 prior to the first Review Conference of the Rome Statute of the ICC, Minister of Law and Parliamentary Affairs of Malaysia Mohamed Nazri Bin Abdul Aziz stated that the ICC accession bill would be taken up by the Malaysian Federal Cabinet when he returned to his country.

According to Andrew Khoo, Chair of the Human Rights Committee of the Malaysian Bar Council, the Bar Council wrote a letter to Minister Nazri and Attorney-General Tan Sri Abdul Gani Patial dated 14 July 2010 seeking clarification of Nazri’s statement. In July 2010, Khoo expressed in Malaysiakini, an online news source, that “it has been some time since [Nazri] returned from Kampala, but there has been no news yet. Is this another instance of the government saying one thing overseas, yet doing something totally different at home? We shall have to wait and see.” Indeed, there has been no outcome to Nazri’s proclamation.

In an effort to sustain the momentum from the Review Conference and in the context of the CICC January 2011 Universal Ratification Campaign (a monthly campaign launched to encourage countries to join the Rome Statute system), the Coalition urged the Malaysian government to prioritize its accession of the Rome Statute in order to demonstrate its commitment to international justice and the rule of law. As a state party, Malaysia would strengthen the voice at the ICC of the currently under-represented Asian region and could participate in the upcoming election process for officials (to be held in December 2011), particularly through the nomination of a judge or prosecutor and other Court personnel.

Relevant Sources:

- <http://thestar.com.my/news/story.asp?file=/2010/6/7/nation/20100607121340&sec=nation>
- http://www.malaysianbar.org.my/human_rights/international_criminal_court_sign_up_and_be_counted.html



Prime Minister Datuk Seri Najib Tun Razak.
Credit: Malaysian government/
Wikimedia Commons

MALAYSIA: IN PURSUIT OF RATIFICATION

IN RELATED DEVELOPMENTS, media reported that Malaysia’s Ministry of Foreign Affairs is “studying the in-depth implications” of acceding to the Rome Statute, taking into consideration Malaysia’s sovereignty and interests.

Deputy Foreign Affairs Minister A. Kohilan Pillay, in response to a question raised by Senator Ahmad Hussin in the Dewan Negara on what could be gained from joining the Court stressed that Malaysia already recognized the severity of crimes against humanity and that those responsible must be held accountable.

The *Sun2Surf* electronic companion to *The Sun* newspaper also reported Kohilan pointing out that “Malaysia can improve its image in the international front and [that] Malaysians who are interested can have the opportunity to gain more experience serving in international courts.” Kohilan added that accession will, in effect, globally affirm Malaysia’s recognition of international laws as well as its position against granting immunity to individuals alleged to have committed crimes against humanity, among other grave crimes contained in the Statute.

“This also shows that Malaysia is serious in its effort to counter any form of violence in the global level and to increase unity with the international community to fight international crimes,” he was quoted as saying.

The Coalition for the International Criminal Court (CICC) focused its January 2011 Universal Ratification Campaign on Malaysia, sending a letter to The Hon. Dato’ Sri Mohd Najib bin Tun Abdul Razak, Prime Minister of Malaysia, and reaching out to the media and local members of civil society so as to engage them in this Campaign.

Relevant Source:

- <http://www.sun2surf.com/article.cfm?id=49689>

INDONESIA: INITIAL AGREEMENTS REACHED ON REGISTERING RATIFICATION PROCESS IN HOUSE OF REPRESENTATIVES

INDONESIA INITIATED ITS process of accession to the Rome Statute in 1998, when the government expressed its intent to accede to the statute following its adoption on July 17, 1998 at the Rome Diplomatic Conference, where negotiations unfolded to establish a permanent international criminal court. The latest news on the process, shared by Agung Yudhawirana of the Indonesian Civil Society Network for the ICC in an undated report prepared for the Kampala Review Conference, was that the Executive, the Ministry of Law and Human Rights and Ministry of Foreign Affairs had reached an agreement to register the ratification process in the House of People's Representatives, thereby advancing Indonesia's accession process.

Through its strong advocacy efforts, civil society has played a significant role in this process. Recently, after the Kampala Review Conference, the Indonesian Civil Society Network for the ICC organized a roundtable discussion to share its experience in participating in the historic event and to plan strategies to increase advocacy for Indonesia's accession to the Rome Statute.

The activity brought together civil society advocates, academia, and government officials from the Ministry of Law and Human Rights, the Ministry of Foreign Affairs, and Parliament. On 20 July 2010, the national coalition launched the book *Jalan Panjang Menuju Ratifikasi ICC di Indonesia*, a work chronicling its experiences in campaigning for Indonesia's accession to the ICC.

While the 2004-2009 National Plan of Action on Human Rights (RANHAM) mandated through Presidential Decree No. 20, 2004, that Indonesia would accede to the Rome Statute of the ICC by 2008, the mandate was not met. However, the

government's moves are in line with priorities set in Indonesia's 2010-2015 RANHAM. This current action plan once again includes accession to the Rome Statute and focuses on strengthening local and provincial human rights mechanisms.

In addition, the EU-Indonesia Cooperation and Partnership Agreement (CPA) signed in 2009 includes the strengthening of human rights promotion and protection in the country as a key component. Following this action, Indonesia and the EU jointly engaged in a human rights dialogue in June 2009 where Indonesia's accession to the Rome Statute was discussed. The agenda also included a range of other human rights issues: rights of women, rights of the child, rights of prisoners, the death penalty, international cooperation in the human rights community, and engagement in the ASEAN Inter-governmental Commission on Human Rights.

The process towards ICC accession, however, has not advanced as speedily as previously hoped. In 2008, at a meeting organized by the Parliamentarians for Global Action, Prof. Harkristuti Harkrisnowo, Director General for Human Rights at the Department of Law and Human Rights, expressed that Indonesia's accession to the Rome Statute of the ICC was anticipated in 2009. While she stated that the "Government has been engaged in an inclusive process of consultations, sensitization and legal drafting," she also recognized that it had already missed the 2008 deadline set by the 2004-2009 RANHAM.

The Academic Paper and RUU, required for Indonesia's accession, have to-date not been completed. This has stalled the process of accession. Upon completion, the documents will need further feedback from government bodies and the public.



Members of the Indonesian Civil Society Network for the ICC continue to push for ratification of the Rome Statute.
Credit: Indonesian Civil Society Network for the ICC

Other questions related to ICC's jurisdiction can be clarified through public education. In this regard, Yudhawirana observed that, with little understanding of the ICC's non-retroactive principle, there is concern that the ICC accession will lead to the prosecution of TNI officials over past human rights abuses. There must also be clarity on the principle of "complementarity," or that the ICC can only prosecute individuals when countries themselves are unable or unwilling to do so.

To overcome barriers and advance the process of accession, the Indonesian Civil Society Network for the ICC advocates, among others, wide dissemination of information on ICC accession, support for the preparation of the Academic Paper and the ICC Accession Bill,

and participation of academia and the legal profession in the process. It also stresses engaging military institutions, for them to better understand the Rome Statute's scope and principles.

With these gaps addressed, Indonesia's accession may finally come within sight, which would further contribute to the universal participation of states in the ICC. As Indonesia stated in 1999 to the 6th Committee of the UN General Assembly, "universal participation should be the cornerstone of the International Criminal Court."

Relevant Source:

http://www.pgaction.org/uploadedfiles/PGA%20comminuque%20ICC%20Meeting%20DPR%2017%20Feb%2009%20_2_.pdf

URGENCY OF NEPAL'S ACCESSION TO ICC'S FOUNDING TREATY STRESSED IN MULTI-STAKEHOLDER INTERACTION PROGRAM

IT WAS MORE THAN FOUR years ago, in July 2006, when the then-House of Representatives issued a directive to the government to accede to the Rome Statute of the ICC. In February 2009, the matter was again tabled in the Cabinet. The issue has not moved forward since.

To address the scant progress made thus far toward Nepali accession to the Statute, the Human Rights and Democratic Forum (FOHRID) and the Informal Sector Service Center (INSEC) jointly organized a forum on the "Importance of Accession to the Rome Statute of the ICC by Nepal," which was held on August 31, 2010, in Kathmandu.

The program stressed that lack of awareness about the ICC and impunity among the public, government officials and political parties constitutes obstacles to Nepal's accession to the Rome Statute. It thus aimed "to sensitize stakeholders through direct interaction with the international community" and create pressure in this regard at the national level.

The well-attended event brought together civil society organizations, human rights advocates and leaders, the Commissioner of the Nepal Human Rights Commission, the Secretary of Office of the Prime Minister and Council of Ministers, the Attorney General of Nepal, Ambassadors of the European Union and Bangladesh, and representatives of the German Embassy, OHCHR, SAARC Secretariat, Amnesty International and the International Court of Justice. Representatives from the state's law enforcement agencies including the judiciary, security agencies and the law reform commission were also present to give their insights on Nepal's accession to the Rome Statute.

Observations, issues and recommendations raised during the program included the following:

- There is a situation of impunity in Nepal. More than 13,000 people were killed and many fell victim to enforced disappearances during the armed conflict from 1996-2006. No one has been held responsible for these acts or accountable to the families of the victims.
- Nepal needs to make more progress towards ICC accession, considering that it is already a state party to several international human rights instruments and that there are no disagreements about acceding among the different stakeholders.
- Several obstacles hindering Nepal's efforts to accede to the Rome Statute must be addressed. These include achieving greater consensus on



Panelists at the Interaction Program on the importance of Nepal's accession to the ICC. Credit: FOHRID, INSEC

the benefits and implications of accession. (See related story on the status of Bilateral Immunity Agreements under the Obama administration.)

- At the national level, accession to the ICC's treaty would give a much needed boost to the

establishment of a new criminal justice system for Nepal. Implementing the Rome Statute into domestic legislation would allow Nepal to bring its national laws fully in line with international law.

SHARED SENTIMENTS*

Hon. Gauri Pradhan, Commissioner/Spokesperson, National Human Rights Commission of Nepal

"Nepali civil societies as well as the international friends are working tirelessly for the ICC accession campaign. The Supreme Court has made a historic judgment showing a strong commitment for accession to the Rome Statute, the founding treaty of the ICC. The parliament has passed a resolution directing the government to become a state party to the ICC. NHRC can make recommendations to the government about the need to accede to the ICC treaty. Now, there is a positive environment and a very unique opportunity

to accede to the Rome Statute of the ICC. Accession to the ICC treaty will improve the justice system.

...[W]e need to continue our campaign collectively. We have made so many national commitments which should help us accede to the Rome Statute. NHRC is exerting pressure on the government to accede to the ICC treaty..."

Dr. Trilochan Uprety, Secretary, Office of the Prime Minister and Council of Ministers

"...There is no controversy that the ICC Statute should be acceded by Nepal. The task forces have also

pointed out this need from time to time. The government and the political parties have expressed their commitments, but the process continues to be stalled. Let's do our homework on what we must do in our justice system to ensure compatibility with the ICC Statute and pave the way towards accession...We may require additional resources, training and infrastructure for domestication of Rome Statute. We can request our human rights and civil society organizations for law reform and knowledge transfer that is required after the accession. [This] can clear up doubts of political leaders about the retroactive effects [of accession]..."

IN LIGHT OF THE DEMISE OF THE US BIA CAMPAIGN, NEPAL ADVOCATES CALL FOR ROME STATUTE ACCESSION

THE BILATERAL IMMUNITY Agreements (BIA) campaign pursued under the Bush administration impacted Nepal's prospects for accession to the Rome Statute as well as led the government to sign a BIA in December 2002. Faced with a new US administration that has implemented a policy characterized by constructive engagement with the ICC eight years later, Nepal has a unique opportunity to join this new system of international justice. Local groups are also calling on the government to rescind the BIA.

In a statement released last November 29 in the context of a meeting organized in Lalitpur, Nepal by the Citizen's Task Force to Combat Impunity, CICC Convenor William R. Pace stated "...the Obama administration is no longer pursuing ratification of BIAs." He noted that the omnibus appropriation bill for

Fiscal Year 2009 did not include the "Netthercutt provision" allowing for cuts in Economic Support Funding to countries refusing to enter into BIAs.

Pace added that the Bush administration had already repealed in 2008 prohibitions in the American Service Members Protection Act (ASPA) related to the provision of US military aid to ICC parties. "Therefore, with the repeal of the ASPA prohibition and the non-renewal of the Nethercutt provision, no anti-ICC sanctions for countries who refuse to shield US nationals are still in effect," he said.

With an existent US-Nepal BIA, however, civil society advocates have been keen to stress that this will constrain full respect for the ICC treaty. At a FOHRID-INSEC-sponsored activity in Kathmandu on 31 August 2010, the Attorney General of Nepal, Prof. Dr. Bharat

Bahadur Karki had noted that under the BIA agreement, none of the signatory parties to the BIA can transfer the alleged perpetrator to a third country for the purpose of surrender to the ICC. "It can be a big obstacle for Nepal to implement the Rome Statute," he said. "If we put reservations for cooperation with the ICC, how is it possible to ratify and implement it effectively? It is a big question before us. We cannot effectively implement the ICC when there is already a law against it..." In the program sponsored by the Citizen's Task Force to Combat Impunity, human rights activists called to "reject" the US Bilateral Immunity Agreements, noting that these go against the treaty itself and enjoined the government to take steps to become a party to the statute as soon as possible. Among those who participated in the discussion on Article 98 (2) of

With an existent US-Nepal BIA, however, civil society advocates have been keen to stress that this will constrain full respect for the ICC treaty.

the Rome Statute and the jurisdiction of the ICC was the Chair of the National Human Rights Commission Kedar Nath Upadhyay.

Relevant Sources:

- FOHRID. "Brief report of Interaction program on Importance of Accession to the Rome Statute of ICC by Nepal. 31 August 2010
- <http://vodpod.com/watch/5016627-bias-with-america-should-be-rejected-rights-activists>

Dr. Bharat Bahadur Karki, Attorney General of Nepal

"...I support the ICC as an important institution for Nepal to promote peace, rule of law and human rights...Nepal must accede to the Rome Statute of the ICC for its existence and safe future. Accession to the ICC treaty has a multiplier benefit for Nepal; we can address serious international and national crimes through this instrument."

H.E. Dr. Alexander Spachis, Ambassador, Delegation of the European Union in Nepal

"...The principles of the statute are fully in line with the principles and objectives of the Union. It has legal value...The EU is concerned with the delay in ratifying the Rome Statute by Nepal. Its ratification to the ICC could express its ongoing support for justice

and human rights. The EU is in favor of universal ratification of the ICC. ...We shall help advance lobbying for this cause."

Anthony Cardon, Head of Coordination and Reporting Unit, OHCHR-Nepal

"Being a state party to the ICC helps to avoid possibilities of future violence and violation of human rights. Every year, we celebrate international day against disappearance to reiterate our commitments for justice to victims. Such programs help us to create awareness and sensitize people to discourage crimes. This court [ICC] does not replace the jurisdiction of the national court; rather it is just a complementary mechanism. Only if the national judicial system is unwilling or unsuccessful to solve any case related to human rights violations, then the ICC [can help]."

Henning Hansen, Charge d' affaires, German Embassy

"The Rome Statute is a comprehensive instrument to deal with the serious crimes of international concern. The Federal Republic of Germany is a strong supporter of the ICC. The ICC does not replace national courts but it complements national jurisdiction. No doubt, there are good characteristics of the court that can help us guarantee justice for the victims of serious violation of human rights. For a long time, efforts have been made to ensure ratification of the ICC by Nepal. It is now the responsibility of Nepal government to ratify it. Germany is committed to work in line of EU to support the ratification process."

*Some insights shared by participants in the FOHRID-INSEC Interaction Program, "Importance of Accession to the Rome Statute of ICC by Nepal."

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Together for Justice: Civil society
in 150 countries advocating for a fair,
effective and independent ICC.

The Coalition for the International Criminal Court includes 2,500 civil society organizations in 150 different countries working in partnership to strengthen international cooperation with the International Criminal Court; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.

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UPCOMING EVENTS 2011

ACT NOW!!▶

Second Asia-Pacific Consultation on the Universality of the Rome Statute

March 9-10, 2011

Kuala Lumpur, Malaysia

Organized by Parliamentarians for
Global Action and its local PGA
Organizing Committee.

CICC Asia-Pacific Regional Meeting

April 11-12, 2011

Quezon City, Philippines

International Workshop on the ICC and the ASEAN

April 28-29, 2011 (tentative dates)

Phnom Penh, Cambodia

Organized by CICC-Asia, ADHOC
and the Cambodian Ministry of
Justice.

For details, please contact
serrano@coalitionfortheicc.org

Universal Ratification Campaign in Asia

January, February and May

The Coalition's Universal Ratification Campaign (URC) focuses on Malaysia, the Philippines and Maldives in January, February and May 2011, respectively. CICC Asia/Pacific urges governments to heighten ratification efforts. Ratification will strengthen the Asian voice at the Court and contribute to a robust and meaningful participation intended to ensure that the ICC upholds and abides by the spirit of the Rome Statute.

For latest updates on the campaign, visit
<http://www.coalitionfortheicc.org/?mod=urc>