

ASIA - PACIFIC UPDATE

JULY 2011

TOGETHER FOR JUSTICE

ISSUE 7

CICC ASIA REGIONAL STRATEGY MEETING: A CALL FOR STRONGER ROME STATUTE RATIFICATION AND IMPLEMENTATION EFFORTS



Participants in the CICC Asia-Pacific Regional Strategy Meeting held in Manila in April 2011.

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MEMBERS OF THE COALITION for the International Criminal Court from 11 countries within the Asia-Pacific region met in Manila, the Philippines, from 11-12 April 2011 to discuss strategies to strengthen national and regional campaigns for the ratification and implementation of the Rome Statute in the context of the CICC Asia-Pacific Regional Strategy Meeting (ARSM).

Participants renewed their commitment to increase efforts towards ending Asia's underrepresentation in the ICC, especially in light of continuing human rights violations in the region. They agreed that joining the ICC can have a deterrent effect on potentially gross human rights violations and ultimately contribute to the global fight against impunity. Accordingly, they adopted recommendations addressed to Asian states, the ICC, the Coalition Secretariat and its members, the ASEAN, and other international organizations to further enhance the international criminal justice system. (See pp. 6-7)

The recommendations underscore civil society's continuing advocacy for non-states parties in the region to ratify or accede to the Rome Statute. In addition, they encourage civil society organizations to work and collaborate with each other as well as with key actors, including government officials, international

and regional organizations. Moreover, they stress the need to take necessary measures to advance implementation processes, considering the few existing Rome Statute implementing laws in the region.

Following the ARSM, on 13 April, the Philippine Coalition for the ICC (PCICC) and Amnesty International-Philippines in Quezon City held a forum on upholding global and national justice. Participants discussed the ICC, particularly as it relates to the Asia-Pacific region, and had the opportunity to interact with various panelists, among them, CICC Director of Regional Programs Brigitte Suhr, CICC Regional Coordinator for Asia and the Pacific Evelyn Balais-Serrano, PCICC Co-chair Professor Raul Pangalangan, and Jonathan O'Donohue, Legal Advisor for Amnesty International.

Nongovernmental organizations actively working on ICC-related issues also had the opportunity to engage in discussions on effective strategies to push their respective governments to ratify and implement the Rome Statute. These included CICC focal points from Bangladesh, Burma, Cambodia, China, Indonesia, Malaysia, Nepal, Republic of Korea, Thailand, Philippines, Vietnam, as well as CICC Steering Committee members Amnesty International, FORUM-ASIA, Human Rights Watch and REDRESS.

LETTER FROM THE REGIONAL COORDINATOR EVELYN BALAIS-SERRANO

IN THIS ISSUE, WE WELCOME advances in the ratification processes in Malaysia, Philippines, Maldives and some of the initiatives towards moving the processes forward in Thailand, Nepal, Indonesia and some Pacific states.

We are grateful for the visits by ICC President Judge Sang Hyun Song to the Philippines, Malaysia, and Brunei Darussalam early this year; and by ICC Vice-President Judge Hans Peter Kaul to Thailand in January, which left an important impact on the region. Their visits helped make the ICC visible to Asian audiences, who felt closer to the ICC and its work as it offered an opportunity for them to “put a face to the Court.” We are also grateful for the visits of US Ambassador At-Large for War Crimes Issues Stephen Rapp, and former Chief Prosecutor of the International Criminal Tribunal for Rwanda and the former Yugoslavia Justice Richard Goldstone. Their visits shed light on many issues regarding developments at the ICC. Additionally, it was reassuring for governments in the region to learn more about the US re-engagement with the Court, and the fact that the US is no longer pursuing punitive actions against states that wish to join the ICC. We would also like to highlight that we are truly appreciative of our

colleagues’ efforts and initiatives in the region and look forward to continued collaboration with our members and colleagues from various regional and international organizations, including FORUM-ASIA, Amnesty International, Parliamentarians for Global Action, REDRESS, Human Rights Watch, and FIDH.

It was an honor to host this year’s Regional Strategy Meeting in the Philippines after it had been held, in years past, in Thailand, China, Indonesia, and Nepal. Participants will work diligently to implement the many recommendations generated from this meeting.

We continue to explore all opportunities to generate the broadest regional support in advocating for international justice through the ICC, including by expanding our network to increase and strengthen our advocacy. Engaging the Association of Southeast Asian Nations (ASEAN) and its counterparts, the South Asia Association for Regional Cooperation (SAARC) and Pacific Forum, will depend on how effective we build our civil society network on the ground in order to ensure the sustainability of our initial and continued engagements and partnerships.

We continue to support the regional campaign, of which some of our members are



Evelyn Serrano with ICC Vice-President Judge Hans-Peter Kaul at the International Conference on “The Protection of Human Rights through the ICC as a Contribution to Constitutionalization and Nation – Building”, Bangkok, Thailand, January 2011. (See related photo story on p. 9)

part, for justice for victims of serious crimes perpetrated in Burma and Sri Lanka, particularly as calls for commissions of inquiry for both situations slowly and painstakingly gather support.

Advocating for Asian states to join the ICC remains a challenge but hopefully not for long, as states are beginning to realize they can contribute to international justice and an end to impunity in the world through the ICC.

A COMMENTARY BY JUDGE SANG-HYUN SONG, PRESIDENT OF THE ICC

THE PHILIPPINE CICC *contributed the following commentary by Judge Song to the national daily, the Philippine Daily Inquirer, where it appeared in the Op-Ed section on 7 March 2011. For the online version see: <http://opinion.inquirer.net/inquireropinion/columns/view/20110307-323946/Will-Asia-join-in-global-fight-against-impunity>.*

Since Judge Song’s visit to Southeast Asia, two more countries have acceded (Grenada and Tunisia), bringing the total number of States Parties to 116; and Libya has become the sixth situation under investigation by the Office of the Prosecutor of the ICC.

HISTORY WAS MADE last weekend with the unanimous decision of the United Nations Security Council to refer the situation in Libya to the International Criminal Court (ICC).

For the first time, the entire Security Council—including all the permanent members (China,

France, Russia, the United Kingdom and the United States)—voted in favor of mandating the ICC to secure justice in the face of a threat to international peace and security.

It was an unprecedented expression of the world community’s growing trust in the ICC, the first permanent and independent international judicial institution with jurisdiction over the most serious crimes of international concern—genocide, crimes against humanity, war crimes and the crime of aggression.

The ICC is based on a treaty, the Rome Statute, which was adopted in 1998 and is now joined by 114 nations from all regions of the world. The Court’s member states represent diverse legal and religious traditions as well as many different constitutional systems such as republics, federations and monarchies. But a mere fraction of the States Parties are from Asia and only two of them—Cambodia and Timor-Les— from Southeast Asia.

As the ICC increasingly takes center stage in the global fight against impunity and the protection of the most fundamental human rights, now would be an excellent time for Asia to adopt a stronger role in the ICC.

One of my main goals as the first Asian president of the ICC is to facilitate an informed decision-making process in the Asian countries considering ratification of the Rome Statute. This week I will be in the Philippines, Malaysia and Brunei to raise awareness about the ICC for that purpose.

The International Criminal Court is the result of long-lasting efforts by the global community to put an end to unimaginable atrocities that have plagued humankind for far too long. I personally experienced the horrors of war in my home country, Korea, when I was a child, and I feel honored to be part of this new institution which bears the promise of a more peaceful future for our children and grandchildren.

INSPIRING ROME STATUTE RATIFICATION IN ASIA

ICC PRESIDENT VISITS PHILIPPINES, MALAYSIA AND BRUNEI DARUSSALAM

INTERNATIONAL CRIMINAL COURT (ICC) President Judge Sang-Hyun Song of South Korea, visited Southeast Asia from 7-13 March 2011 to raise greater awareness about the ICC and to “facilitate an informed decision-making process in the Asian countries,” in particular given Asia’s under-representation at the Court.

A press release issued by the ICC quoted Judge Song as saying that he was “...greatly encouraged by the enthusiasm and support for the ICC expressed by a wide variety of stakeholders in Southeast Asia.” It added that the ICC president “...was delighted to learn about prospects of the Philippines, Malaysia and the Maldives moving to join the Rome Statute in the near future”.

Below are some of the highlights of Judge Song’s official trip to the Philippines (7-8 March), Malaysia (8-11 March) and Brunei Darussalam (11-13 March).

PHILIPPINES

Good news marked the first leg of Judge Song’s Southeast Asia trip. Only a few days before his arrival, on 28 February 2011, Philippine President Benigno Aquino III announced that he had forwarded the Rome Statute for ratification by the Philippine Senate. The news was personally conveyed to Judge Song when he called President Aquino III on 7 March.

Judge Song praised the move by the Philippine president at a briefing held with the Senate Foreign Relations Committee. “The next step is to ratify the Rome Statute, which would make the Philippines a full member of the ICC system, sending out a strong signal of your country’s commitment to peace, justice and the rule of law,” he said.

In response, Committee Chair Senator Loren Legarda said she will create a sub-committee to be headed by Senator Miriam Defensor-Santiago, to deliberate more exhaustively the Philippines’ ratification of the Rome Statute.

Upon ratifying, the Philippines will also be eligible to nominate candidates and elect the highest officials of the ICC. Judge Song explained that there would be an advantage to immediate ratification because the next prosecutor and six judges will be elected by December 2011: “[N]ow would be a good time to join the ICC to shape its future development and make it even more global than it is now,” he highlighted.

Judge Song stressed the Philippines’ well-recognized commitment to justice and human rights in the region. Ratifying the Rome Statute would thus be a logical part of the process that began with the active role the Philippines played in the founding of the international criminal justice system, its vote of support for adoption of the Rome Statute and the formal signing by the Estrada administration in 2000.

Judge Song also met with the media, who raised



Senate Foreign Affairs Chairperson Senator Loren Legarda introduces ICC President Judge Sang-Hyun Song in a special hearing on the ICC held on 7 March 2011, the first day of Judge Song’s official visit to the Philippines. (Photo credit: CICC Asia Pacific)

questions on the ICC’s role in relation to Libya. He said that with the UN Security Council’s (UNSC) unanimous vote referring the crisis in Libya to the ICC, the Court is now empowered to investigate the situation for the crimes covered by its jurisdiction, namely war crimes, crimes against humanity, and genocide. “This is a rare step on the part of the UNSC supported even by non-ICC members such as China, the Russian Federation, India and the US,” said the ICC President, that affirms how the ICC is “gain[ing] the world’s trust as an arena for addressing impunity.”

Judge Song also explained the ICC’s principles of complementarity and non-retroactivity in response to queries about specific cases that can be brought before the Court, in particular the killing of journalists.

“The ICC is at the core of the international justice system,” added Judge Song, “but the ICC alone cannot address and resolve all global

peace and justice issues. We need all possible contributions to end impunity.” In addition, as a state party, the Philippines can also participate in proposing other crimes for inclusion in the ICC’s jurisdiction.

PCICC national coordinator Rebecca Lozada added that there should no longer be any bar to ratification because the Philippines domestically codified the core tenets of the Rome Statute with the adoption of the Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes Against Humanity on 11 December 2009.

On 8 March, Judge Song also shared these insights with some 250 students, academics, and civil society advocates who participated in a forum at the University of the Philippines (UP) College of Law in Quezon City. The event was sponsored by the UP College of Law, CenterLaw and the Philippine Coalition for the ICC.

ICC PRESIDENT... CONTINUED FROM PAGE 3



Judge Song briefing the Philippine media on ICC developments (Photo credit: CICC Asia Pacific)

MALAYSIA

Judge Song's next stop was Kuala Lumpur, where he delivered the keynote address at the Asia-Pacific Parliamentary Consultation on the Universality of the ICC organized by Parliamentarians for Global Action (PGA) and the Malaysian government.

After explaining the mandate, jurisdiction, and features of the Court, Judge Song called on the government of Malaysia to accede to the Rome Statute and to play a leading role in the ASEAN in urging other countries in the region to ratify and implement the ICC treaty.

In his welcoming remarks, Minister of Law Mohamed Nazri, who is also Chair of the PGA Malaysia Organizing Committee, spoke about an upcoming discussion in the Malaysian Cabinet regarding ICC accession and stated that "world events these past two months are evidence of the urgent need for more countries to be part of the



Judge Song with members of the Malaysian Bar Council during the roundtable discussion organized by the Malaysian Coalition for the ICC. (Photo credit: CICC Asia Pacific)

ICC...International justice is one of the most important expenditures a Government can invest in, not only for prevention, but also to help reconcile conflict situations in the world."

Other key officials present were Prime Minister Mr. Najib Razak, Deputy Minister of Foreign Affairs Mr. Richard Riot Jaem, Attorney-General Mr. Ghani Patail, Ambassador and head of the EU Delegation to Malaysia Mr. Vincent Picket and PGA Executive Members.

There were four panels during the two-day meeting, with speakers from Malaysia and other countries in the region.

Evelyn Balais-Serrano, CICC Regional Coordinator for Asia and the Pacific, was one of the panelists on "Common Strategies and the Effectiveness and Universality of the ICC."

She was joined by Ms. Lousewies van der Laan, Chef du Cabinet of the ICC Presidency and former MP (Netherlands); Ms. Nilufar Chowdhury



ICC President Judge Song with members of the PCICC and CICC-Asia (Photo credit: <http://www.flickr.com/photos/coalitionforicc/5532495340/in/set-72157626279871722>)

Moni, MP (Bangladesh); Mr. Ross Robertson, MP (New Zealand); Mr. Peter Barcroft, Senior Programme Officer, International Law and Human Rights, PGA.

Another well-attended panel focused on the "Status of Ratification and Implementation of the Rome Statute." Speakers overwhelmingly endorsed ratification of the Statute and called on the Malaysian government to join the ICC community as soon as possible.

On 10 March, Judge Song attended several other events organized by the Malaysian Coalition for the ICC. He first delivered a lecture at the School of Law at the University of Malaya and later joined a roundtable discussion attended by representatives of human rights organizations and members of the Malaysian Bar Council.

BRUNEI DARUSSALAM

President Song's last official visit was the country of Brunei Darussalam. On 12 March, he had an audience with the Minister of Foreign Affairs and Trade, His Royal Highness Prince Mohamed Bolkiah, with whom he shared ICC's mandate and activities. President Song also met with the Attorney-General Datin Paduka Hajah Hayati and the Chief Justice Hon. Dato Seri Paduka Hj Kifrawi.

President Song briefed senior officials of the Attorney-General's Chambers and the Ministry of Foreign Affairs and Trade, and members of the Law Society of Brunei Darussalam on the ICC.

Judge Song was also honored at a reception given by the French Ambassador to Brunei Louis Le Vert. Judge Song delivered a brief presentation on the ICC and the purpose of his visit before guests at the reception which included French and foreign dignitaries, members of the Brunei Law Society and students from Universiti Islam Sultan Sharif Ali (UNISSA).

Relevant sources/links:

ICC. "ICC President builds support for the International Criminal Court during visit to Southeast Asia." <<http://www.icc-cpi.int/NR/exeres/B1E6CCF7-0440-4A9E-853A-D5AC7ABBA1BF.htm>>.

Danial Norjidi. "ICC President here to raise public awareness." <<http://www.borneobulletin.com.bn/weekend/news/mar12h15.htm>>.

MALAYSIAN CABINET AND MALDIVES PARLIAMENT ENDORSE ICC RATIFICATION

MALAYSIA. In a decision hailed as historic both domestically and abroad, the Malaysian Cabinet agreed on 21 March 2011 to join the ICC. The cabinet has the sole authority to approve and ratify treaties. The next and last step in Malaysia's ratification process is to deposit its instrument of accession to the Rome Statute with the UN Secretary General. The Wisma Putra or Ministry of Foreign Affairs has reportedly been working with relevant government agencies to ensure that Malaysia's domestic laws are in line with state parties' obligations under the RS.

In a press release issued by Parliamentarians for Global Action on June 14, 2011, Malaysian PGA member MP Mr. Kula Segaran shared his government's announcement that "between this month of June and July 2011 our country will deposit its instrument of accession to the Rome Statute of the ICC, in line with the commitment of the Minister of Law and Parliamentary Affairs, Mr. M. Nazri [Datuk Seri Nazri Abdul Aziz], and other high officials at the Asia-Pacific Consultation that we hosted at the Parliament in Kuala Lumpur." Judge Sang Hyun Song attended the consultation as the keynote speaker during his official visit to Malaysia in March 2011.

Nazri stated at a press conference: "This can be seen as a declaration that Malaysia rejects and will not commit such crimes. We do not want such things to happen in our country."

The Malaysian Bar Council commended the consensus reached by the Executive and Legislative Branches in a press release issued last 5 March. It urged the Government "...to maintain its focus and resolute direction, and not delay any further its membership of the ICC."

MALDIVES. With only two opposing and one abstaining, 61 members of the Maldives Parliament voted in favor of acceding to the Rome Statute of the International Criminal Court on 14 June 2011.

The vote was made upon the recommendation of the National Security Committee that ratification would be a move towards strengthening criminal justice and human rights in the country.

Since its establishment, the CICC has been advocating for the universal acceptance of the Rome Statute and the ICC through sustained efforts aimed at urging states to ratify the Rome Statute and join this new system of international justice. In May 2011, the Coalition sent a letter to President of Maldives H.E. Mr. Mohamed Nasheed in the context of its Universal Ratification Campaign (URC), a monthly worldwide effort to promote universal acceptance of the ICC and to increase the global momentum and commitment to the fight against impunity. In a press release issued also by CICC to mark the launch of the URC focus on Nepal, CICC Convenor William Pace encouraged Maldives "...to embrace this new system of international justice and honor its growing commitment to the promotion and protection of human rights, as has been demonstrated through its current leadership in SAARC."

In addition, participants at the CICC Asia Regional Strategy Meeting held in April 2011 called on all SAARC Member States (including Maldives) to ratify and implement the Rome Statute. "Joining the Court represents a strong deterrent effect that will contribute toward the prevention of gross human rights violations in the Asia-Pacific region and to the global fight against impunity," they stated.

A COMMENTARY BY JUDGE SANG-HYUN SONG CONTINUED FROM PAGE 2

THE ICC OPENED its doors in 2002, and after just eight and a half years it is a fully functioning international criminal court, with situations in five countries under investigation. Three cases are on trial, involving gruesome allegations such as the use of child soldiers, murder, rape and attacks against civilians.

As a neutral, judicial body, the ICC observes the highest standards of fairness and due process in all of its activities.

Under the Rome Statute system, national justice systems retain the primary responsibility to prosecute atrocity crimes. The ICC is a court of last resort that can step in only where a State is unwilling or unable to carry out genuine investigations or prosecutions.

If the Philippines were to ratify the Rome Statute today, it would come into force for your country on June 1, 2011, and the ICC would only have jurisdiction as of that date in the Philippines since the Rome Statute does not allow retroactive jurisdiction. As a founding member of ASEAN, the Philippines already

plays an active role in the protection of peace and stability in Southeast Asia. Your nation has fought hard to achieve a strong and vibrant democracy, and the Edsa Revolution of 1986 showed that human rights, accountability and a strong sense of justice are cherished values deeply felt in the Filipino heart and soul.

Against this background, it is not surprising that the Philippines has taken active part in the development of the emerging system of international criminal justice. Your country voted in favor of adopting the Rome Statute in 1998, and in December 2000, formally signed the Statute.

The next step is to ratify the Rome Statute, which would make the Philippines a full member of the ICC system, sending out a strong signal of your country's commitment to peace, justice and the rule of law.

Joining the ICC would provide additional protection to your nation against the gravest violations of the universally recognized human rights. If anyone intended to commit such

crimes on your territory, you would have the support of the 114 States Parties of the Rome Statute in responding to such violence with the force of law.

With its strong legal tradition and excellent law schools, the Philippines could help rectify the shortage of Asian staff at the ICC. States Parties to the Rome Statute also have the right to nominate candidates and to vote in the election of the highest officials to the ICC. The next prosecutor and six judges will be elected at the end of this year, so now would be a good time to join the ICC to shape its future development and make it even more global than it is now.

I would be thrilled to welcome the Philippines as a State Party to the Rome Statute at a time when Asia is critically underrepresented at the International Criminal Court. Asian countries have become known as the world's economic tigers—let us make the region a justice tiger as well!

FINAL RECOMMENDATIONS



TO THE PHILIPPINE AUTHORITIES:

Having announced to the ICC President that the Rome Statute will now be transmitted to the Senate for ratification, we call on the Office of the President to forthwith deliver the Statute to the Senate;

TO THE MALAYSIAN AUTHORITIES:

Having announced publicly that the Cabinet has approved accession to the Rome Statute, we call on them to take the final step of depositing the accession instrument at the United Nations as soon as possible;

TO THE AUTHORITIES OF THE ASIA PACIFIC STATES:

- Take all necessary steps to ratify or accede to the Rome Statute of the ICC as soon as possible, if not yet a state party, and ensure that the region no longer remains under-represented in the ICC;
- Fully implement the Rome Statute within the domestic legislation of States, by adopting full implementing laws that include Rome Statute crimes (including the amendments adopted in the ICC Review Conference in Kampala) with adequate penalties, principles of International Criminal Law and provisions on ICC cooperation, thus ensuring that national jurisdictions can take a primary role in investigating and prosecuting through fair and independent trials, those crimes that would fall under the jurisdiction of the ICC;
- Ratify or accede to the Agreement on Privileges and Immunities of the ICC (APIC), so as to ensure that the Court's officials can carry out their functions in an effective and independent manner;
- Comply with the Court's requests for assistance and cooperation at all stages (investigation, arrest and surrender, protection of victims and witnesses, enforcement of sentences);
- Involve civil society experts at all stages of national ratification and implementation processes;
- Follow up on pledges made by Asia Pacific states during the Review Conference in Kam-

pala, and to make new pledges in the future including during the upcoming 10th session of the Assembly of States Parties which may include a commitment to move forward with ratification and implementation processes, cooperation with the ICC, ratification of APIC, financial contributions to different trust funds of the Court, among others;

- Participate in all ICC-related events including the meetings of the Assembly of States Parties to the ICC, and get involved on issues of particular expertise;
- Support capacity building efforts on the ICC, including the training of prosecutors, lawyers and judges, as well as of the military and police officials;
- Actively engage in the upcoming elections of ICC officials, to be held in December 2011 during the 10th ASP, and identify suitable candidates to fill the positions of outgoing judges and a new Chief Prosecutor;
- Promote mutual assistance between states in the region so as to share similar experiences concerning ratification and implementation processes;
- Further engage with regional organizations such as ASEAN and SAARC, so as to promote ICC issues within their agendas;
- Support the establishment of a United Nations commission of inquiry into war crimes and crimes against humanity and other crimes under international law in Burma;
- Support the establishment of an independent international investigation into war crimes, crimes against humanity and other crimes under international law in Sri Lanka;
- Support the ongoing work of the ECCC and encourage it to fully investigate all cases before it independently and impartially, with the aim of ensuring the independence of the process in order to provide justice to the victims of Khmer Rouge atrocities, thus contributing to the global fight against impunity;

TO NATIONAL HUMAN RIGHTS INSTITUTIONS:

Encourage the ratification of the Rome Statute of the ICC among the governments of the region;

TO THE INTERNATIONAL CRIMINAL COURT:

- Conduct relevant outreach as appropriate, particularly in Afghanistan and the Republic of Korea, currently under Preliminary Examination by the Court; and provide regular reports on these situations to the public;
- Continue to monitor, with the assistance of local civil society, situations throughout the region of armed conflict or other situations of social unrest or political turmoil, which could potentially lead to ICC situations;
- Enhance its public information activities in the Asian region;
- Continue to ensure regular high-level visits of the Office of the Prosecutor, Presidency, and other representatives to the region, and meet with different stakeholders including civil society; so as to strengthen and consolidate Asian representation in the ICC;
- Encourage non state parties that are at an advanced ratification process of the Rome Statute, to finalize such processes and deposit their Rome Statute ratification instruments as soon as possible;
- Ensure that ICC organs maintain contact and regularly interact with local civil society, by seeking their input on specific issues and inviting them to relevant events and meetings;
- Make a decision on the composition of the Chambers for reparation proceedings in the best interest of the victims, taking into account the efficiency considerations in respect of reparation evidence already received by the Trial Chambers, ensuring the right of the accused to a fair trial;

TO THE ASEAN:

- Include ICC issues within its working agenda, and, in this regard, consider the adoption of concrete initiatives to promote the universality of the Rome Statute among ASEAN states, through, *inter alia*, the adoption of a Resolution or Declaration calling on the promotion of the ICC and the ratification and implementation of the Rome Statute by member states; as well as consider the organization of an annual working session on the ICC;

- Aim toward adopting a common position of ASEAN in support of the ICC and, in doing so, consult with local civil society and experts from ASEAN member states;
- Promote the adoption of an ASEAN model ICC implementation law and provide any necessary assistance to countries in the ratification and implementation of the Rome Statute and the APIC;
- Strengthen its relationship with the ICC and encourage ASEAN's participation and representation at key meetings of the ICC, including participation within the Assembly of States Parties;
- Commit to ensuring diplomatic support for the Court and promote the fight against impunity in all political dialogues with member states and international organizations;
- Incorporate Rome Statute standards into the proposed ASEAN Declaration of Human Rights

TO THE ASEAN INTER-GOVERNMENTAL COMMISSION ON HUMAN RIGHTS (AICHR):

- Conduct public activities to promote the Rome Statute;
- Conduct a thematic study on strengthening the rule of law and justice in ASEAN, in order to better promote and protect human rights;

TO THE SAARC:

- Call on all SAARC member states to ratify and implement the Rome Statute;
- Prioritize the inclusion of ICC issues within its working agenda, and take the necessary steps to initiate this process in consultation with local civil society and experts on ICC issues;
- Take the necessary steps to create an independent and effective regional human rights commission;
- Take a collective and proactive stand to combat ongoing gross violations of human rights perpetrated by state and non state actors in the South Asia region;

TO OTHER INTERNATIONAL ORGANIZATIONS:

- EU: Encourage EU missions in the region to promote ICC during its contacts with the states and NGOs and civil society in general, whether by advocating for it or encourage sponsoring ICC activities. Continue its marches and dialogues with specific states in

the Asia Pacific region, in consultation with local civil society;

- ICRC: Encourage local ICRC delegations in the region to work together with civil society and government officials with the aim to organise activities on the ICC and to seek technical support and expertise on the ICC ratification and implementation to states requesting such assistance.
- OHCHR: Encourage local OHCHR delegations in the region, where relevant, to cooperate towards enhancing ICC in the region, and organise trainings for prosecutors, lawyers and judges on ICC issues as well as governmental officials.

TO THE CICC SECRETARIAT:

- Continue to provide member organizations timely information on the ICC and ICC-related issues to be discussed at the ASP, and on CICC strategies and policies; and to ensure that members are able to give timely input on issues, not least through continued participation at annual ASP meetings;
- Continue to assist local civil society in its ratification/accession efforts, including in states that are finalizing these processes;
- Continue targeted awareness raising activities on the ICC and the Rome Statute with states, media, NGOs, students, universities and others;
- Continue to develop action plans and advocacy materials for national coalitions and members to implement CICC strategies at the national level;
- Consider the possibility of creating audiovisual materials to help members' advocacy on the ICC;
- Continue to strengthen regular contacts and exchanges mechanisms and opportunities between coalitions members and the Secretariat, in relation to strategies, campaigns and activities;
- Facilitate contacts and cooperation between international and regional organizations and local civil society in the region and experts working on the ICC.
- Continue to support local activities aimed at the dissemination of the ICC and the Rome Statute system.

TO NATIONAL CICC COALITIONS AND MEMBERS:

- Advocate for ratification and implementation of the Rome Statute and APIC, as well as

for strengthened cooperation with the Court by developing strategies nationally and regionally;

- Continue to work together to identify ideal venues and bodies within international and regional organizations where ICC issues can be brought to the agenda;
- Continue to be active on the ICC after achieving Rome Statute ratification by closely advocating and monitoring for implementation, joining CICC issues teams, following ASP issues, as well as ensuring national support for and cooperation with the Court;
- Include the ICC campaign in broader national and regional campaigns for human rights, the rule of law and democratization;
- Encourage key civil society organizations and individuals (including human rights, humanitarian, and other organizations, as well as bar and legal practitioner associations) not yet active in the ICC campaign to get involved by joining the CICC and their respective national and regional coalitions, and contributing to ICC campaigns in every way possible;
- Continue requesting constant dialogue with key national authorities involved in the ICC process and holding high level advocacy meetings with them;
- Participate in the upcoming elections of ICC officials, by identifying suitable candidates in your region; monitoring the qualifications of nominated candidates; assisting governments as well as the Search Committee on the Election of the Prosecutor in the task of identifying said candidate; and engaging the media;
- Work closely with the media and use it as a platform to distribute fair and well-informed information and material (press conferences, op-eds, articles and workshops on the ICC) widely (preferably translated into local language), in order to raise awareness on ICC related issues and increase the visibility of the network/coalition among state officials, and the general public, including by creating blogs/sites with country-specific positions, as to facilitate advocacy by national members and groups;
- Inform regional coalitions and other local civil society, as well as the CICC Secretariat, about its national plans regarding ratification and implementation processes, as well as dissemination activities concerning the ICC.

FINAL RECOMMENDATIONS...FROM PAGE 7

SIGNATORIES

(MEETING PARTICIPANTS):

- Indonesian Civil Society Coalition for the ICC
- Odhikar/Bangladesh Coalition for the ICC
- Bar Council Malaysia
- Vietnam Lawyers Association
- National Coalition for the ICC, Nepal
- Philippine Coalition for the ICC
- Bantay Katarungan
- Amnesty International Philippines
- Minbyun Lawyers for a Democratic Society
- Task Force Detainees of the Philippines
- Center for International Law (CenterLaw, Philippines)
- Burma Partnership
- ICC Project Office in China
- Task Force on ICC, Thailand
- Cambodian Human Rights and Development Association
- Asian Forum for Human Rights and Development (FORUM-ASIA)
- Amnesty International
- Human Rights Watch
- REDRESS



Evelyn Balais-Serrano (CICC Asia Regional Coordinator)



From left: Dr. Aurora Parong (PCICC), Puspa Pokhrel (INSEC/NCICC) and Sr. Cres Lucero (PCICC)



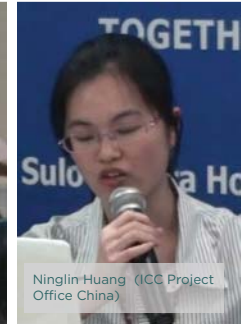
Prof. Raul Pangalangan (PCICC)



Sergey Golubok (REDRESS)



From left: Becky Lozada (PCICC) and Bhatara Reza (IMPARSIAL/Indonesian Civil Society for the ICC)



Ninglin Huang (ICC Project Office China)



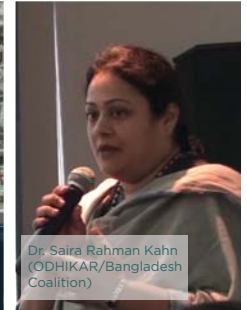
Jonathan O'Donohue, Amnesty International



Tania Chu (Burma Partnership)



Ji-Wong Park (Minbyun)



Dr. Saira Rahman Kahn (ODHIKAR/Bangladesh Coalition)



From left: Adilah Ariffin (Malaysian Bar Council) and Nguyen Ngoc Ha (Vietnam Lawyers Association)



Eleanor Conda (PCICC)



From left: Boonthan Verawongse (Task Force on the ICC-Thailand) and Thun Saray (ADHOC/Cambodia)



Foreground: Michelle Reyes (CICC Secretariat)



Brigitte Suhr (CICC Secretariat)



Oriane Maillet (CICC Secretariat)

CICC Asia-Pacific
Regional
Strategy Meeting
11-12 April 2011

ENVOY AFFIRMS US SUPPORT FOR ICC

ON 10 MAY 2011, the Women of Ateneo, a group of alumnae of the Ateneo de Manila University, held a forum in Makati City, Philippines' business capital, to discuss issues based on the theme, "Where Can the Victims of Atrocities Find Justice?" Keynote speaker, US Ambassador-at-Large for War Crimes Issues Stephen Rapp, spoke on international justice and the need for accountability to establish lasting peace, and to vindicate the rights and experiences of victims.

As former prosecutor of the International Criminal Tribunal for Rwanda and later Chief Prosecutor of the Special Court for Sierra Leone, Ambassador Rapp spoke of his experiences with victims of atrocities in both conflicts and shared some of the breakthroughs in their cases, particularly in the area of gender justice, specifically in Sierra Leone. He stated, "We sought and achieved convictions for rape as a war crime and crime against humanity, and for the first time in history of sexual slavery as a war crime and crime against humanity. But we did not think that this fully recognized the criminal conduct represented in the forcible taking of women as bush wives, so we sought convictions for a crime not specifically described in our statute- for forced marriage as an inhuman act that constituted a crime against humanity. The defense challenged it, but in the end we were able to show that this was an inhuman act of equal or greater gravity than that of the listed crimes against humanity, and achieved the first conviction in history for this criminal conduct."

The Ambassador further explained that "with the closing of these temporary courts, many are asking the question: Where will the victims of other atrocities find justice?" He then spoke on the establishment of the ICC, and its jurisdiction over cases occurring since July 1, 2002, the date on which the Rome Statute creating the ICC came into force.

He also explained US involvement with the ICC: "The United States respects the right of every country to join the ICC. This was the position of the last administration, under [former] Secretary of State Condoleezza Rice, expressed in the public words¹ of her Legal Advisor. In this administration, we have gone further to engage supportively with the ICC. While we have not made the decision ourselves to ratify the Rome Statute, we are participating as observers in the ICC Assembly of States Parties and Review Conference. Additionally, we have offered to assist the Prosecutor and Registrar in each of the current cases of the ICC by seeking ways consistent with our law to help with witness protection and relocation, information-sharing, and the arrest and transfer of fugitives."

He further noted: "The United States strongly supports the prosecution of those who are responsible for genocide, war crimes, and crimes against humanity. Consistent with the ICC principle of complementarity, and as longstanding US policy, we support national efforts to achieve accountability. But when the most grave and serious crimes are committed and there is no will or capacity to prosecute at



From left: Evelyn Balais-Serrano of CICC Asia, Ambassador Stephen Rapp and Chairperson of the Commission on Human Rights of the Philippines Loretta Ann Rosales. (Photo credit: CICC Asia Pacific)

the national level, most of the countries in the world have decided, and the United States accepts, that this justice will be delivered in the International Criminal Court."

Ambassador Rapp also spoke on Burma, a place "where the ICC is unlikely to gain jurisdiction, and where the possibility of justice and accountability at the national level seems but distant hope." He said his government supports the proposal for an international commission of inquiry put forward by various groups he met during his visit at the Thai-Burma border in January.

The open forum allowed Ambassador Rapp to address a number of topics, such as the cases of Saddam Hussein and Osama bin Laden, solutions to the conflicts in Bangladesh, the IHL law in the Philippines, the US' "unsigned" of the ICC treaty and its position on ratifica-

CONTINUED ON PAGE 10



Participants to the International Conference on "The Protection of Human Rights through the International Criminal Court as a Contribution to Constitutionalization and Nation-Building" held on January 21-23, 2011 in Bangkok, Thailand.

ICC SECOND VICE-PRESIDENT, Judge Hans-Peter Kaul, in his keynote address highlighted the relationship between human rights and the ICC. He said, "In creating the ICC, the global com-

munity of sovereign nations recognized that it has to act collectively to put an end to grave crimes which threaten the peace, security and well-being of the world." He further highlighted that, "It was devised by the international community as one means of fighting the impunity of the world's gravest crimes affecting the most vulnerable members of our societies, particularly women and children."

The conference was organized by the German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG) based at the Faculty of Law of Thammasat University in cooperation with the Embassy of the Federal Republic of Germany.

CICC Regional Coordinator Evelyn Balais-Serrano was one of the panelists, which also included the Ambassador of the Federal Republic of Germany to Thailand Dr. Hanns Heinrich Schumacher; the Dean of the Faculty of Law of Thammasat University Dr. Surasak Likasitwatanakul; CPG Principal Coordinator Henning Glasser; Mr. Thun Saray, ADHOC, Cambodia; Prof. Vitit Muntarbhorn, Chulalongkorn University; and other experts from different academic institutions around the world.

ENVOY AFFIRMS US SUPPORT FOR ICC...CONTINUED FROM PAGE 9

tion, and whether the Maguindanao massacre in southern Philippines falls within the ICC's jurisdiction.

On the issue of increasing support within ASEAN for the Commission of Inquiry on Burma, especially given the member states' policy of non-interference, the Ambassador said that "[i]t is now universally accepted that seeking compliance with international humanitarian law is not an interference with a country's internal affairs." He further added, "It is clear that the provisions of the Rome Statute that define these crimes are universally recognized as customary international law, or the UN Security Council could not have acted unanimously, as it did in March, to open the door for Libyans to be prosecuted in the ICC for these crimes when Libya has not ratified the ICC Statute."

Noting that the UN General Assembly in 2005 accepted the "responsibility to protect" the

people of every country from genocide, crimes against humanity, war crimes and ethnic cleansing, he added: "[T]his responsibility rests first with the government of the country where the people are being harmed, and if protection is not provided, then the policy encourages regional and international actors to help make it happen." The Burmese groups are asking for help because they cannot do it alone. They are not asking for international courts or intervention; they are asking for our assistance in finding the truth so that they can push for their own approach for accountability."

Notes:

1John B. Bellinger III, legal adviser to then Secretary of State Condoleezza Rice has, on several occasions, spoken about US and ICC relations. In a 10-day online workshop on "The Reckoning: Understanding the International Criminal Court", he said: "President Bush au-

thorized the State Department to notify the U.S. Secretary General that the U.S. did not intend to become party to the Rome Statute... Although some members of the international community viewed the Bush Administration as entirely hostile to the ICC, in fact Secretary of State Condoleezza Rice supported the referral of the genocide in Darfur to the ICC, and I personally gave numerous speeches stating that the U.S. Government was prepared to support the ICC's work, even if the U.S. did not intend to become party." For the full transcript, check the link <<http://reckoning.facin-ghistory.org/experts/john-bellinger>>.

Links to transcripts of Ambassador Rapp's speech and the open forum:

http://www.amicc.org/docs/Rapp_Remarks_Philippines_10_May_2011.pdf

http://www.amicc.org/docs/Rapp_Q_and_A_Philippines_10_May_2011.pdf

CALL FOR COMMISSION OF INQUIRY ON BURMA GAINS GROUND

AMID REPORTS THAT member-states are considering giving Burma the chair of the Association of Southeast Asian Nations (ASEAN) in 2014, support grows for the recommendation of the UN Special Rapporteur on Myanmar Tomas Ojea Quintana to hold a Commission of Inquiry (CoI) to probe unabated reports of human rights abuses in the country.

In a statement read before the Foreign Correspondents' Club of Thailand last 23 May 2011, Quintana said he had discussed the issue with Aung San Suu Kyi, leader of Burma's Democracy Movement. "She supports a commission of inquiry absolutely. She said a commission of inquiry is a commission of inquiry, not a tribunal. I agree with her. The idea of a commission of inquiry is that it would be an instrument to bring about transition to democracy, national reconciliation and establishment of accountability. It should pursue the truth and facilitate reparations. It should also end and prevent ongoing human rights abuses." This is where the international community can play a role, he said, "...particularly if the Government fails to meet this responsibility."

During his one week mission to Thailand from May 16-23, 2011, Quintana gathered information about the post-election situation in Burma, which he has been unable to visit. "My findings from this mission are that the situation of ethnic

minority groups in the border areas presents serious limitations to the Government's intention to transition to democracy," he stated. "Violence continues in many of these areas. Systematic militarization contributes to human rights abuses. These abuses include land confiscation, forced labor, internal displacement, extrajudicial killings and sexual violence. They are widespread, they continue today, and they remain essentially unaddressed by the authorities."

Aung San Suu Kyi made her own appeal to the international community through a taped speech played at the opening of the ASEAN People's Forum in Jakarta, Indonesia on 3 May 2011. "It is not out of selfishness that I'm asking that you help us in our struggle for democracy in Burma, that you help us in our attempts to strengthen civil society in our country," she said. "It is by starting here that we can start to help our region and the rest of the world." (<http://www.thejakartapost.com/news/2011/05/03/suu-kyi-calls-asean-countries-push-burmas-democracy.html>)

Burma's bid to chair the ASEAN by 2014 was not decided upon during the summit. As Indonesian foreign minister Marty Natalegawa told reporters, the issue would probably be raised again in the next ASEAN summit in Bali, Indonesia this coming November 2011.

In other developments, a bipartisan group of more than 30 eminent lawmakers urged US

President Barack Obama, in a letter dated 28 April 2011, "to redouble his administration's efforts" in support of establishing the CoI on Burma.

"With 16 countries, including the United States, already pledging support for a Commission, we believe the time has come to once and for all make this happen. We strongly urge you to redouble United States efforts, at the highest level, to establish the Commission," the congressmen said. (<http://www.unpo.org/article/12594>)

To view the keynote speech of Aung Sang Suui Kyi, at the ASEAN People's Forum, held from 3-5 May 2011 in Jakarta, Indonesia, please visit <http://youtu.be/iMumBlWaQyA>.

Countries supporting a UN Commission of Inquiry into war crimes and crimes against humanity in Burma:

European Union members: Belgium, Czech Republic, Denmark, Estonia, France, Hungary, Ireland, Latvia, Lithuania, Netherlands, Slovakia, United Kingdom

Other countries: Australia, Canada, New Zealand, USA

SEEKING JUSTICE IN SRI LANKA

SUNILA ABEYSEKERA*

IN RECENT WEEKS there has been renewed interest in the situation of post-war Sri Lanka, generated by the release of the report of the Panel of Experts, appointed by the UN Secretary General in June 2010, to look into accountability issues related to the last months of the war in Sri Lanka.

According to the Report, 'the Panel found credible allegations which, if proven, indicate that a wide range of serious violations of international humanitarian law and international human rights law was committed both by the government of Sri Lanka and by the Liberation Tigers of Tamil Eelam (LTTE), some of which would amount to war crimes and crimes against humanity'. In a context in which the Sri Lankan government has not ratified the Rome Statutes establishing the International Criminal Court, the Panel Report is a critical tool for seeking justice and reconciliation.

The main recommendations of the Report call on the government of Sri Lanka to commence 'genuine' investigations and on the Secretary General to 'establish an independent international mechanism to: a) monitor and assess the domestic accountability process, b) conduct independent investigations into the alleged violations and c) collect and safeguard information for appropriate future use'. Other recommendations are for immediate remedies such as the repeal of Emergency Regulations, modification of the Prevention of Terrorism Act (PTA), publication of a list of all those held in detention at present and the recovery and return of human remains to families. Up to date, the government has simply challenged the validity of the Report, and the independence and impartiality of the three Panel members.

The government announced the establishment

of the "Lessons Learned and Reconciliation Commission" (LLRC), appointed by the President in May 2010, as the appropriate national mechanism for accountability and reconciliation. However, human rights groups in Sri Lanka and outside have shown that the LLRC mandate is limited, does not comply with internationally accepted standards on independence and impartiality and functions without any framework for witness protection.

The LLRC is one of a long line of Presidential Commissions of Inquiry appointed since the mid 1990s to look into allegations of grave violations of human rights in Sri Lanka. Most of the recommendations of past Commissions remain unimplemented, the perpetrators named by the reports have gone unpunished, and justice has not been done to the victims and survivors. It is the failure of these domestic mechanisms that led to the culture of impunity which grips the island today.

The LLRC began work on August 11, 2010 and held public hearings in the capital, Colombo and in various parts of the war affected areas of the country. In November 2010, an Interim Report proposed creation of a special mechanism in the Attorney General's Department to examine each case of detention, the publication of a list of detainees, a policy statement on land use in the conflict affected areas, and the disarming of armed groups. A special Inter-Agency Committee was formed to implement these recommendations. However, as of June 2011, there is no clarity regarding the status of implementation of any of the recommendations.

In a context where accountability and justice for violations of international law committed during the last months of the conflict is critical for reconciliation, none of the Interim recommendations



Women holding photographs of missing loved ones at LLRC session held in Mannar, Sri Lanka January 8-9, 2011. (Photo credit: Anupama Ganegoda, Center for Human Rights Sri Lanka.)

of the LLRC address issues such as payment of compensation or other forms of restitution, nor do they comment on the consequences of acts such as denial of rights of Tamils in the north and east of the island to mourn their dead. This is in spite of repeated rhetorical commitments that the government of Sri Lanka is pursuing the path of restorative justice.

The debate about modalities for investigating allegations into war crimes and crimes against humanity in Sri Lanka takes place in a broader context of continuing impunity in Sri Lanka. In the absence of a significant discussion with Tamil political leaders and the Tamil community regarding processes including of Constitutional reform that would lead to power-sharing and affirmation of the equal status of minorities in Sri Lanka, the potential for further polarization between the communities seems unhappily inevitable.

Sunila Abeysekera is currently the Executive Director of the human rights monitoring organization INFORM.

ICC ELECTIONS: CIVIL SOCIETY COMMITTED TO ENSURING FAIR AND MERIT-BASED ELECTIONS

ON 12-21 DECEMBER 2011, the Assembly of States Parties (ASP)—the Court's governing body—will elect six new judges and a new prosecutor. Elections will also be held for a new ASP President, two vice-Presidents, 21 members of the Bureau (the ASP's executive committee) and six members of the Committee on Budget and Finance. The Court will in turn hold elections for the positions of ICC President and Vice Presidents in early 2012. The importance of ensuring that the 2011 elections are independent, transparent, fair

and merit-based cannot be over-stated. States parties to the Rome Statute (RS) have the responsibility of nominating the most highly qualified candidates through a transparent, participatory and rigorous process.

The judicial elections will be held to fill the vacancies of six outgoing judges. The current bench is composed of 11 women and 7 men representing the world's different regions and legal systems and includes 12 experts on criminal law and procedure ("List A") and 6 experts on international law,

including international humanitarian law and international human rights law ("List B").

To continue to guarantee the diversity intended by the Rome Statute, the ICC judicial elections include minimum voting requirements (MVRs). This means that states parties, during the elections, have to vote a minimum number of times, based on an established formula, for candidates from underrepresented areas on the bench. Based on the MVRs for the 2011 elections, states will have to vote for at least 3 candidates who

ICC ELECTIONS...CONTINUED FROM PAGE 11

fit "List A", at least 2 candidates for GRULAC, 1 for Eastern European states, and at least 2 male candidates. According to the provisions regulating MVRs for regional groups, the MVR rises from 2 to 3 per region (minus the judges from the regional group remaining in office) when the number of states parties from a region reaches 17. Thus, if Asia were to reach 17 or more states parties at the time of the judicial elections, the region will have one MVR for these elections.¹ It must be noted that the Asia group -- the ICC follows the geographic grouping from the UN -- currently has 15 states parties (including Jordan), which translates into no MVRs for this region.²

Several countries in the Asia region are currently moving forward in their ratification processes, and 3 of them are at an advanced stage. It is therefore encouraging to note that, were the Asia region able to reach 17 states

parties by 2 September 2011 (closing date for nominations) the region would receive 1 MVR, guaranteeing an extra judge from the region within the ICC bench.

In line with upholding fair, merit-based, independent and transparent elections, the Coalition established an Independent Panel on ICC Judicial Elections composed of high-level experts who will assess the qualifications of candidates put forward by states parties. It will neither endorse nor oppose any individual candidates. The establishment of the Independent Panel provides strong incentive for states to nominate the highest qualified candidates for the upcoming elections.

Elections will also be held for the next chief prosecutor given that Prosecutor Luis Moreno-Ocampo's mandate will end in June 2012. Unlike in 2003, the new prosecutor will take up office in a fully operational

Court, with six situations currently under investigation, and ten situations under preliminary examination.

In December 2010, the ASP set up a Search Committee for the next ICC prosecutor. The committee has a mandate to identify suitable candidates to fill the position, through consultations with states parties and non-state actors, including civil society. The Coalition encourages civil society members to consider submitting names of the most highly qualified individuals to the Search Committee. The Coalition acknowledges the establishment of a mechanism to enhance the effectiveness of the elections process and will urge the Committee to be as transparent as possible.

³ MVR minus the number of Asian judges currently on the bench (2) = 1 MVR

³2 MVR minus the number of Asian judges currently on the bench (2) = 0 MVR

COALITION FOR THE
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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 organizations around the world working in partnership to strengthen international cooperation with the ICC; 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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Such support is essential to the Coalition's effort to secure a future in which justice is accessible to all. If you would like more information about how you can join in this effort, please visit our website at www.coalitionfortheicc.org or contact the Coalition's Development office by phone at +1.646.465.8527 or via email at development@coalitionfortheicc.org. The contents of this publication are the sole responsibility of the Coalition for the International Criminal Court and can in no way be taken to reflect the views of the European Union, Irish Aid, or any other donor.