

TOGETHER AGAINST IMPUNITY IN THE GREAT LAKES REGION (TAI/GLR)



CONFERENCE REPORT

Theme: Understanding International Criminal Justice and International Criminal Court
Date and Venue: September 14, 2007 - Hotel NOVOTEL – Kigali- RWANDA

Introduction.....	1
Conference Participants.....	2
Progress of the Conference.....	3
The Guest of Honor.....	3
The Presentations in Brief.....	4
• The role of International Criminal tribunals/Court in peace building and security.....	4
• The principle of complementarity in the ICC legal system.....	5
• The national legal framework and international crimes.....	6
• The Role of NGOs in the process of the International Criminal Court.....	7
Conference Recommendations for Rwanda.....	8
Facilitators.....	8
Sponsor.....	8

CONFERENCE REPORT

THEME OF THE CONFERENCE: UNDERSTANDING INTERNATIONAL CRIMINAL JUSTICE
AND THE INTERNATIONAL CRIMINAL COURT

DATE AND VENUE: SEPTEMBER 14, 2007, HOTEL NOVOTEL, KIGALI-RWANDA

ORGANISED BY: TOGETHER AGAINST IMPUNITY IN THE GREAT LAKES REGION (TAI/GLR)

Introduction

On September 14, 2007, TAI/GLR organized a one-day conference in Kigali under the theme, “*Understanding International Criminal justice and International Criminal Court.*” The conference was in the framework of promoting International Criminal law and International Humanitarian law, and its main purpose was to raise awareness on the work of the International Criminal Court, and assess the impact of international criminal justice in the effort to end impunity for perpetrators of the crime of genocide, war crimes, and crimes against humanity.

According to the problem statement prepared by Mr. Alphonse Muleefu, Founder and President of TAI/GLR, regional conflicts continue to foster instability, disrupt economic activity and reduce opportunities for the citizenry. In particular, the culture of impunity has made the Great Lakes Region a slaughterhouse for human lives, and a safe haven for perpetrators of genocide, war crimes and crimes against humanity. The International Criminal Court (ICC) was established to address the challenges and limitations of prosecuting international crimes through domestic law. However some countries, including Rwanda have not yet understood the benefits of joining the ICC. It is therefore important to get some explanations from competent experts in this field, hence the conference.

The Conference in Kigali was further justified by the role played by Rwanda in building peace and stability in the Great Lakes Region, and Africa in general, and its continued support for regional political cooperation and economic integration. Given the importance of ending impunity for widespread past crimes and ensuring that nascent judicial system in Rwanda comply with internationally recognized human rights standards, combined with the recent initiative to abolish the death penalty, it is the right moment to start thinking of the benefits the Rome statute would bring to the crusade against impunity in the region.

The specific objectives of the conference included: Understanding the Rome Statute; Spreading knowledge on the role of the International Criminal Court in achieving everlasting peace and stability in the Great Lakes Region; Fostering the habit of national dialogue and consultation on issues of cooperation through the integration of government actors, civil society representatives, donors, diplomats and the media.

Conference participants

Names	Organization	Position
ABANGIRA Robert	Pivot Corp.	Developer
BARYA Georges	FACT	Journalist
BIKESHA Denis	National Service of Gacaca Courts	Director of Trainings and mobilization
GASHAGAZA Philbert	Tribunal de Grande Instance de Musanze	Judge
GEOFFREY Veronique	European Commission	Diplomat
HITIYAREMYE Alphonse	Parquet General	Procureur Général Adjoint
KARAKE Theogene	Institute of Research and Dialogue for Peace	Researcher
KARAMA Joseph	FOCUS	Journalist
LLOPIS Audrey	Penal Reform International	Coordinator
MBEMBE BINDA	National University of Rwanda	Lecturer
McCourt Kerstin	Danish Institute for Human Rights	Head of Mission
MIREMBE Alphonsine	Ministry of Justice	Coordinator Officer
MUKANDOLI Fortunée	UNILAK	Lecturer
MUSINGUZI Martin	Legal Aid Forum	Liaison Officer
MUTAGOMA Paul	AJPRODHO	Chargé de Programme
NDIFUNA Mohammed	HURINET-U	National Coordinator
NGUTEGURE Bellancilla	HAGURUKA	Social Worker
NZINDUKIYIMANA Augustin	Ombudsman	Deputy Ombudsman
PYLYSER Benoit	UNDP	Program Analyst
QUININE Timmerman	Netherlands Embassy	Diplomat
RUHINGUKA Eugene	High Council of the Press	Director of Regulations
SAFARI Placide	City Radio	Journalist
VINCENT Paul	PPFA	Chairperson

Progress of the Conference

The conference started at 9.30 am with welcome remarks from the Founder and President of TAI/GLR, Mr. Alphonse Muleefu. He started by explaining the mission of TAI/GLR; it was created for the promotion of victims' rights as provided in the UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power. The organization's members strongly believe that victims' rights before, during, and after trial are fundamental rights to be respected by any responsive criminal justice system. On another hand TAI/GLR also aims to promote International Humanitarian Law and International Criminal Law with a belief that principles of international law can supplement domestic systems.

He said he was happy to speak on the Rome Treaty that created an International Judicial Body that contains those great principles of justice for victims of crime; where you find victims' rights in both the texts and in the organizational structure of the Court. He also said he couldn't avoid expressing his own modest contribution in designing some strategies for victims' participation in the ICC's criminal process during his six months internship at the ICC in The Hague.

He further said that although Rwanda is not a State Party to the Rome Treaty, he also shares the view that in some cases states do not ratify treaties not for lack of political will but for the lack of resources, expertise, and to some extent due to many other things that make up the national priority agenda. The conference was aimed at raising awareness on the contribution of the International Criminal Court in the crusade against impunity for perpetrators of worst atrocities, he said. He expressed confidence that the conference will enhance understanding of the benefits of the treaty in the process of strengthening national legislation; the principle of "complementarity" that encourages states to introduce legislation criminalizing genocide, crimes against humanity, and war crimes and enabling those crimes to be prosecuted at the national level.

He then introduced the different personalities that would facilitate the event, before inviting the guest of honor to officially open the activities of the conference.

The Guest of Honor

The Deputy Prosecutor General of the Republic of Rwanda Mr. Alphonse Hitiyaremye announced he was standing in for the Prosecutor General who could not be available due to other official duties. He thanked the organizers of the conference for choosing a topical theme in view of the conflicts and associated crimes that are currently disturbing the region.

Mr. Hitiyaremye then gave a brief evolution of the international criminal justice system, up to the International Criminal Tribunals for Rwanda and the former Yugoslavia and to the UN Special Court in Sierra Leone. He said that the many shortcomings of the *ad hoc* international criminal tribunals justify the formation of a permanent tribunal like the ICC. The criticisms labeled against *ad hoc* tribunals like the ICTR and ICTY, he said include;

- The trials are slow in process; mainly due to actors trying to understand the intricate situation under their consideration of which they don't have background knowledge
- Confrontation of judicial decisions because the judges come from different countries with different legal backgrounds
- Trials take place far from victims like ICTR in Arusha of the United Republic of Tanzania for Rwanda and ICTY in The Hague of the Netherlands for the former Yugoslavia
- International cooperation necessary for gathering evidence and protecting victims is often lacking
- It is hard to distinguish politics from justice
- Lack of independence of Judges vis-à-vis the Prosecutor

He also mentioned that the ICC has a wider territorial competence than the *ad hoc* tribunals which were focused in terms of specific time frames or period and in specific territories. [*temporis & loci*].

He thus affirmed the need to support the ICC's role in promoting international criminal justice and fighting impunity. He ended his speech by declaring the conference officially open.

Presentations in brief

1. The role of International Criminal tribunals/Court in peace building and security

Speaker: Mr. Muhammed Ndifuna, National Co-ordinator, HURINET-U

Moderator: Benoit Pylser Program Analyst, Justice, Human Rights (UNDP)

He started his topic by noting that few topics are of greater importance than the fight against impunity and the struggle for peace and justice and human rights in conflict situations in today's world. He then listed key milestones in the path towards the formation of the International Criminal Court, noting that the question of the criminal court has always been underscored by the recurrence of genocide, war crimes, crimes against humanity and instances of state aggression in history.

The Statute of the International Criminal Court was adopted on 17 July 1998 after the conclusion of the Rome Conference. On 1st July 2002, the Rome Statute establishing the ICC entered into force.

Other than the ICC, there are other recent international criminal tribunals, which are *ad hoc* in nature. These include the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Tribunal for Former Yugoslavia (ICTY). The precedents of the Nuremburg and the Tokyo International Military Tribunals are often referred to when the historical background of the ICTY and ICTR are discussed. They established the so-called Nuremburg principles that established individual criminal responsibility for the first time.

His presentation then turned to the various factors that make the establishment of the ICC necessary. The ICC was established among other things, to help end conflicts, to remedy the deficiencies of the *ad hoc* tribunals, and to deter future war criminals.

He also discussed the scope of the ICC where he covered some provisions that deal with important issues such as; ICC jurisdiction, general or individual entry into force of the Rome Statute, and how to refer a situation to the ICC.

On applicability of the Rome Statute, he said that states are required to ratify and domesticate the statute. This he said is crucial to secure the states' cooperation in implementing the provisions of the Rome Statute.

Lastly, he highlighted the relationship between the ICC and peace building, saying there exists a variety of views; there are those who view the ICC as a bottleneck to peace building (case of the war in Northern Uganda); others consider that the ICC is a critical strategy to end impunity, genocide and crimes against humanity; still others think it is too early to judge; while there are those who think it is the responsibility of us all to make the ICC work; and yet there are those who think the ICC is a necessary stimulus to the end of intractable conflicts (citing Northern Uganda again).

2. The principle of complementarity in the ICC legal system

Speaker: Mr. Alphonse Muleefu, President, TAI/GLR

Moderator: Ms. Alphonsine Mirembe, Coordinator Justice Sector, Ministry of Justice

He opened his presentation by remarking that the criticisms of the ICC are mainly due to the misinterpretation of the articles found in the Rome Statute that created the Court. The objection being based on the fact that it should be the primary role of states to prosecute and try alleged perpetrators of genocide, crimes against humanity and war crimes. Some see ICC's role as undermining state sovereignty; they see it as a supra-national criminal court that would result in countries losing domestic control of criminal prosecutions. To understand the role and the effectiveness of the Court, it is vital to understand the principle of complementarity.

The Complementarity principle encourages states to investigate and prosecute heinous crimes and where states fail genuinely to perform their duty of giving justice to victims, the International Criminal Court should intervene. Therefore, the primary responsibility to prosecute alleged perpetrators of genocide, crimes against humanity and war crimes remains in the hands of states. This is what makes the principle of complementarity a key principle for the operation of the ICC.

Mr. Muleefu also noted that the principle of "objectivity" should guide implementation of the complementarity principle for all situations/cases before the Court to be demonstrated in a similar manner. The complementarity principle further obliges the ICC to defer to national judicial systems "investigating" or "prosecuting" a case in good faith, meaning the ICC only comes in when there is proven unwillingness or incapacity on the part of the state to try such cases.

Mr. Muleefu then delved into the Rome statute to highlight some provisions that are related to the complementarity principle; he went through the preamble and articles 1, 17, 18, and 19 of the Rome Treaty. In addition he highlighted various fundamental safeguards reflected in the Rome Treaty to guide the objectivity of the Court e.g. the UN Security Council can suspend the activity of the Court, the person on which arrest warrant is issued and the State can challenge the admissibility of the case. In conclusion, he said that the practice of respecting the sovereignty of

states and the states' primary role to conduct prosecutions of international crimes shall strengthen the effectiveness of the ICC, thus achieve the universal protection of human rights.

3. The national legal framework and international crimes

Speaker: Mr. Denis Bikesha, Director of Trainings & Mobilization, National Service of Gacaca Courts

Moderator: Ms. Alphonsine Mirembe, Coordinator Justice Sector, Ministry of Justice

He said Rwandan legal framework can generally be categorised into:

- The Constitution of the Republic of Rwanda;
- Organic laws;
- Ordinary laws;
- International Agreement and Treaties;
- Presidential Decrees
- Ministerial Orders
- Instructions
- Etc

He said that international crimes like genocide, crimes against humanity and war crimes have been provided for in the national legal system. The Constitution of the Republic of Rwanda provides for the crime of genocide in articles 9 and 152. Then there is the Organic law N° 16/2004 of 19/06/2004 establishing the organisation, competence and functioning of Gacaca Courts charged with prosecuting and trying the perpetrators of the crime of genocide and other crimes against humanity, committed between Oct.1,1990 and Dec. 31, 1994. There is also Law n° 33 bis/2003 of 06/09/2003 concerning repressing the crime of genocide, crimes against humanity and war crimes.

The national courts are competent for trying:

- . The crime of genocide;
- . Other crimes against humanity;
- . Other crimes provided for in the penal code of Rwanda, but according to the declarations from the Public Prosecution or testimonies against the defendant.

His presentation also covered in detail how the various international crimes are defined in the various national laws. In conclusion he said that Rwanda has tried to include international crimes in its national legal framework, but that other ratifications are needed in some areas of international crimes.

4. The Role of NGOs in the process of the International Criminal Court

Speaker: Mr. Muhammed Ndifuna, National Co-ordinator, HURINET-U

Moderator: Mr. Paul Mutagoma, in charge of programs AJPRODHO

He started his presentation by giving the World Bank definition of NGOs as, “groups and institutions that are entirely or largely independent of government and characterized primarily by humanitarian or cooperative, rather than commercial objectives.”

He said that NGOs have been active in the quest for lasting solution to impunity and have contributed to a variable extent to the emergence of the different mechanisms to end impunity including the establishment of the ICC. E.g. the CICC.

He then explained three different levels of NGO operation, saying they can operate as; international coalitions e.g. CICC; as national coalitions e.g. UCICC, or as individual NGOs.

He discussed different ways in which NGOs can play a role in ratification of the ICC. These include;

- ☐ Public education and awareness raising-through schools outreach programmes; radio talk shows, TV talk shows; feature articles; radio and TV spot messages sensitizing the public on the ICC
- ☐ Executive lobbying and advocacy- organize lobbying meetings with members of the executive e.g. key line ministries
- ☐ Legislative lobbying and advocacy- organize briefs and positions paper for the relevant parliamentary committees; organize breakfast meetings with key legislators to discuss the issue of ratification
- ☐ Form coalitions to lobby for ratification of the Rome statute by your country
- ☐ Create of academic think tankers to activate debate of the issue of the ICC, ratification and implementation
- ☐ Organize workshop to train members of civil society organizations on the ICC and the need for ratification of the Rome Statute.

He ended his presentation with some factors that favor ratification. These are:

- ☐ Political will for ratification
- ☐ An informed citizenry demanding for end to impunity
- ☐ An informed legislature
- ☐ Engaged and sensitized executive

The presentations were followed by a discussion/debate that involved all the participants in the conference. The discussion session ended in several recommendations.

Conference Recommendations for Rwanda

1. Ratification of the Rome Statute. Given the advantages of being a member of the ICC highlighted by the various presenters, Rwanda should ratify and establish an implementing law in the domestic legal system
2. NGOs need to form a coalition to strengthen their lobby and advocacy for ratification and implementation of the Rome Statute
3. Public education and awareness raising-through schools outreach programmes; radio talk shows, TV talk shows; feature articles; radio and TV spot messages sensitizing the public on the ICC
4. Organize debates involving all relevant institutions and other stakeholders
5. Organize follow up workshops to evaluate how these recommendations are adopted
6. Organize workshops to train members of civil society organizations.

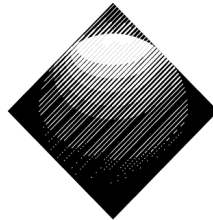
Facilitators

BIKESHA Denis
 HITIYAREMYE Alphonse
 KARAMA Joseph
 MIREMBE Alphonsine
 MULEEFU Alphonse
 MUTAGOMA Paul
 NDIFUNA Mohammed
 PYLYSER Benoit

Sponsor

Thanks to our sponsor; the World Federalist Movement-Institute for Global Policy (“WFM-IGP”) on behalf of the Coalition for the International Criminal Court (“CICC”).

WORLD FEDERALIST MOVEMENT



End