



**PARLIAMENTARIANS FOR GLOBAL ACTION
ACTION MONDIALE DES PARLEMENTAIRES**

**Conference on Implementing Legislation of the Rome Statute of
the International Criminal Court (ICC) in African Indian Ocean
countries**

February 25-26, 2010, National Assembly of the Union of Comoros, Moroni

**Status of legislation implementing the provisions of the Rome Statute of
the International Criminal Court (ICC) in the African Indian Ocean
countries & Djibouti, the DRC and Tanzania**

Among the current 110 Members States of the International Criminal Court, 30 are African States, which makes of Africa the region of the world that is most represented within the ICC, even though there are still 23 African States which need to ratify the Statute.

8 African countries have a national legislation that incorporates in a satisfactory manner the definitions and general principles of the Rome Statute (Burundi, Burkina Faso, Ethiopia, Kenya, Mali, Niger, Senegal and South Africa). Only 6 have a legislative base ensuring the efficient and effective cooperation with the ICC (Burkina Faso, Comoros, Kenya, Central African Republic, Senegal and South Africa). 11 African states have acceded to or have ratified the Agreement on the Privileges and Immunities of the International Criminal Court (APIC). This Agreement, effective since 22 July 2004, has been created to enable officers and staff of the ICC to enjoy certain privileges and immunities that are necessary for them to independently and unconditionally perform their tasks. These countries are Benin, Botswana, Burkina Faso, Lesotho, Liberia, Malawi, Mali, Namibia, Uganda, CAR and DRC.

Since the International Criminal Court is an extension of national jurisdiction of States Parties to the Statute, the purpose of implementing legislation presents is two-fold: (i) To enable States Parties to cooperate with the Court (e.g. the Court relies on its Member States to execute arrest warrants and support investigations, as it is a Court without police at its disposal), and (ii) to activate their national legal order to fulfill their duty to investigate, prosecute and adjudicate alleged perpetrators of international atrocities, thus preventing the intervention of the Court (principle of complementarity). Therefore, implementing

legislation contributes to the effectiveness of the fight against impunity, which is the main goal of the Rome Statute system.

An overview on the status of ICC implementing legislation in the region of the Indian Ocean Countries (Comoros, Madagascar, Mauritius, Seychelles), plus Djibouti and Tanzania, is hereby enclosed.

Comoros (State Party of the Rome Statute)

The Union of Comoros signed the Rome Statute on 22 September 2000 and ratified it on 18 August 2006, after an intense 9-month campaign led by Dep. Assoumani Mondoha, who joined PGA at the Assembly of States Parties of the ICC in November 2005.

A cooperation bill was enacted on 7 February 2007 under the leadership of the rapporteur of the draft bill, PGA member Dip. Assoumani Mondoha, Chair of the Foreign Affairs Committee.

A separate Bill on Crimes, resulting from a joint workshop civil society-government of September 2008, has been discussed in the relevant Agencies and transferred from the Ministry of Justice to the National Assembly in January 2009. The bill has been discussed in the parliamentary session in April 2009, but not yet adopted.

Priority (parliamentary) action:

1. To ensure the debate, strengthening (via amendments, as appropriate) and adoption of the tabled ICC crimes bill
2. To accede to the Agreement on the Privileges and Immunities (APIC)

Democratic Republic of Congo (State Party of the Rome Statute, situation under investigation by the ICC)

The DRC signed the Rome Statute on 8 September 2000 and ratified it on 11 April 2002. The country ratified the Agreement on the Privileges and Immunities of the ICC on 3 July 2007.

In March 2008, comprehensive draft ICC Implementing Legislation was drafted and deposited in Parliament by two PGA Members, **Prof. Emmanuel Nyabirungu Mwene Songa** and **Hon. Crispin Mutumbe**. The bill differs from the 2005 Bill deposited by the Transitional Govt. because it does not include the death penalty for genocide, crimes against humanity and war crimes, and because it is more in line with the Rome Statute and, where necessary, the customary international (criminal) law (i.e. it rejects the defense of property as a legitimate defense for certain war crimes, and it rejects the doctrine of manifest unlawfulness of the superior order as possible defense for war crimes committed by

subordinates). Under the leadership of **Hon. Emmanuel Adubango Ali**, MP and President of the National Group PGA-DRC, PGA organized a pivotal parliamentary seminar in March 2009 in Kinshasa to ensure the calendarisation and prioritisation of the Bill in Parliament.

The Bill was tabled for the parliamentary session beginning on 15 September 2009 and has been moved, due to procedural reasons, to the session starting on 15 March 2010. Follow up action and lobbying is ongoing by the PGA DRC multi-party national group. At the regional Kinshasa Conference of 10-12 December 2009, PGA has managed to receive an impressive endorsement for the adoption of the Legislation by the Speaker of the Lower House, the Minister of Justice, top MPs from majority and opposition, as well as Madame Jaynet Kabila.

Priority (parliamentary) action:

1. To ensure the debate and adoption of the ICC crimes bill in the next parliamentary session, starting on 15 March 2010.

Djibouti (State Party to the Rome Statute)

Djibouti has signed the Rome Statute on 7 October 1998 and ratified it on 5 November 2002, becoming the 82nd State Party of the ICC. A high level delegation of Djibouti attended the Francophonie/PGA Conference on ICC Ratification held in Mauritius in May 2002, in which Dr. Hersi (Secretary General of the Ministry of Justice) was the rapporteur of the conference. Dr. Hersi has been the main proponent of ICC Ratification in Djibouti.

Djibouti does not yet have implementing legislation of the Rome Statute.

Its membership of the ICC, the African Union, the Arab League and the Francophonie gives the country a unique position and a rich potential to play an important role in the promotion of universal human rights throughout the African and Arabic world, and in mediating with the position expressed by States that are not yet Parties to the Rome Statute.

Priority (parliamentary) action:

1. To draft legislation incorporating the ICC crimes in the Penal Law and to cooperate with the ICC; to transmit this draft legislation to Parliament for the purpose of consideration and, as appropriate, adoption.
2. To accede to the Agreement on the Privileges and Immunities (APIC)

Madagascar (State Party to the Rome Statute)

Madagascar signed the Rome Statute on 18 July 1998 and ratified it on 14 March 2008. On 12 September 2002, Madagascar also signed the APIC.

In April 2007, the Constitution had been amended by referendum to bring it in conformity with the Rome Statute. The amendment had been triggered by a previous ruling by the High Constitutional Court, according to which the ratification of the Rome Statute by Madagascar would be unconstitutional. With the new Constitution, the ratification of the Rome Statute is expressly authorized by article 131. PGA has been consulted by Madagascar authorities during the constitutional revision process.

Since 17 March 2009, when democratically elected President Marc Ravalomanana stepped down, opposition leader Andry Rajoelina is heading the High Transitional Authority (HAT); a power-sharing agreement reached in August 2009 which established a 15-month transition period, concluding in general elections in 2010. In the absence of Parliament, the HAT has the prerogative to decide on legislation.

Priority (parliamentary) action:

1. To draft legislation incorporating the ICC crimes in the Penal Law and to cooperate with the ICC; to transmit this draft legislation to Parliament (or to the transitional legislative authority) for the purpose of consideration and, as appropriate, adoption.

Mauritius (State Party to the Rome Statute)

Mauritius signed the Rome Statute on 11 November 1998 and ratified it on 5 March 2002, becoming the 53rd State Party. PGA Members played a very active role in promoting ratification and decided to host, in May 2002, an important Conference on ICC Ratification for 10 Francophone African countries, which was co-organised by the International Organisation of the Francophonie and PGA in the Parliament of Mauritius and the Hotel La Pirogue.

Mauritius has neither drafted nor enacted implementing legislation, even if the office of the Attorney General has been active for several years on this legislative dossier.

Priority (parliamentary) action:

1. To draft legislation incorporating the ICC crimes in the Penal Law and to cooperate with the ICC; to transmit this draft legislation to Parliament for the purpose of consideration and, as appropriate, adoption.
2. To accede to the Agreement on the Privileges and Immunities (APIC)

Seychelles (State Not Party to the Rome Statute)

Seychelles has signed the Rome Statute on 28 December 2000 but has not yet ratified the treaty.

Priority (parliamentary) action:

1. To gather information from the government about their evaluation relating to the ratification to the Statute of Rome, take immediate action to remove obstacles (e.g. misunderstandings on the subject-matter jurisdiction of the ICC) and persuade the Government to transmit an ICC Ratification Bill to Parliament as early as possible for consideration and, as appropriate, adoption, possibly before the Kampala Review Conference of the Rome Statute (May 31-June 11, 2010).
2. To start working on the preparation of implementing legislation.
2. To accede to the Agreement on the Privileges and Immunities (APIC)

Tanzania (Member State of the Rome Statute)

Tanzania signed the Rome Statute on 29 December 2000, and ratified on 20 August 2002, becoming the 78th State Party. The country signed the APIC on 27 January 2004.

PGA organized the first sub-regional conference of its ICC Campaign in Arusha, Tanzania (seat of the International Criminal Tribunal for Rwanda), in June 2000: This event paved the way for the subsequent campaigns for the ratification of Tanzania, Kenya and Uganda.

A Draft ICC Bill on implementation should be completed as soon as possible in view of prospective Cabinet approval and for transmission to Parliament. PGA Member **Mr. J.S. Malecela**, former Prime Minister and Vice-President, announced this commitment at the PGA Workshop on Implementation in East African countries held in Nairobi, Kenya from 23-24 April 2009.

Priority (parliamentary) action:

1. To ensure the transmission to and the discussion in the parliament of the implementing bill of the Rome Statute

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With support for the PGA ICC Campaign for the European Commission (European Instrument for Democracy and Human Rights) and the Governments of Belgium, the Netherlands and Switzerland, and the Municipality of The Hague