



REPUBLIC OF FIJI

STATEMENT BY THE ATTORNEY GENERAL & MINISTER FOR JUSTICE
REVIEW CONFERENCE OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT,
KAMPALA, UGANDA, 1 JUNE 2010

Mr. President, distinguished ladies and gentlemen.

I am sure we are all in agreement that since 1998, the Rome Statute, its philosophical basis and indeed its implementation has been successful. I would like to this afternoon put before you some ideas for consideration in the deliberations which are to take place over the next two weeks.

The chance we have in this review process here in Kampala is to assess the hitherto achievements, consider ways of improving the implementation of the Statute, and I would suggest an assessment of what needs to be committed to, if there is to be sustainability and an augmented legitimacy and recognition of the ICC.

Furthermore while we are all gathered here to discuss the future of the ICC, we must also recognize that the ICC is the last resort. The ICC and our domestic courts which have or should have domestic laws that compliment the Rome statute are curative.

What I mean Mr. President, is that we have an equal a duty to not just ensure the ICC is successful and more countries ratify the Rome Statute, but to also ensure that the crimes, the offences, the acts which fall within the domain of the Rome statute do not actually take place or at the very least are minimized. After all, prevention is better than cure.

How do we do this?

The Fijian Government believes, and I am sure that you would all agree, that these acts are minimized by a change in attitude, by putting in place structures and systems that actually give rise to justice or conversely remove injustices and create peace. Systemic injustices over prolonged periods provide the 'reason' for some perpetrators of such abhorrent crimes.

So what are the some of these structural issues? These include for example ensuring that the national electoral systems are based on the principles of actual equal suffrage and on common and equal citizenry that ensure one person, one citizen has one vote irrespective of religious, ethnic or other communal notions. The value of those votes must be equal. Equality in this sense creates equality and access to political and economic resources.

On the other hand, within the context of complementarity, what we call the supplementary measures, laws must be introduced to ensure attitudinal change and acceptance of certain values. These for example would include, as we have done in Fiji, the criminalization of domestic violence, the removal of gender bias rules of evidence and laws, removal of systemic discrimination and corruption.

In addition, international conventions such as the Convention on the Elimination of Discrimination Against Women, the Convention on the Rights of the Child and the UN Convention Against Corruption, are integral parts of the supplementary measures. These create the fundamental framework to inculcate universally accepted values and principles in the first place.

Mr. President,

I am pleased to report that Fiji, in the past 12 months, has made enormous strides in the areas I have just highlighted.

As far as complimentarity is concerned we have recently repealed nearly a 100 year old Penal Code, inherited from our colonial past, and replaced it with the Crimes Decree.

This Decree incorporates all the offences prescribed as crimes against humanity and genocide. The Crimes Decree also removes all gender biases, including Victorian rules of corroboration in rape trials.

If I could at this stage suggest that complementarity will be successful if countries with limited resources are provided adequate and appropriate resources. Fiji is one of the five countries from the Pacific small island developing states that has ratified the Statute. Fiji is the largest with a population of approximately 900,000. Some of you have that many people in one of your suburbs. You can see that resourcing would be an issue.

Mr. President, assistance can also take the form of acknowledgement and recognition. The recent strides made by Fiji have gone largely unacknowledged by the larger and economically more powerful neighbors and indeed internationally. Nonetheless, Fiji shall pursue its objective to be a good international citizen, promote justice domestically and internationally, and be a strong advocate of the ICC.

The former Secretary General of the UN, Mr Kofi Annan, a key proponent of the Statute, yesterday made two critical points. First, that 3 out of the 5 permanent members of the UN Security Council and 6 out of the G20 are yet to ratify the Rome Statute.

He also alluded to the fact that we cannot have the smaller states, the less powerful states become State Parties when the powerful do not. We agree with Mr. Annan.

This situation Mr. President will become untenable after a period of time. It can undermine legitimacy. Indeed, this becomes even more poignant if and when referrals are made by the Security Council to the ICC.

In addition, this lends to impunity. Indeed, the discussions have centered to a large extent on impunity of those within the system so to speak but not outside. I would suggest that the removal of impunity must be universal. Not selective.

Selection in this sense, or what some would term disequilibrium, will at the very least create a perception of, a sense of, injustice. The ICC is too important to let it fall within the same space of, at times, the selective application or obfuscation of various United Nations resolutions and international law.

The principle of the rule of law, which put simply is, the law is applied to all and that when that law is applied, it is applied equally, must be adhered to. The system, both domestic and international, must ensure that this principle prevails. It cannot and should not be allowed to be politicized or interfered with.

After all, some would suggest that the real test of the ICC will be when individuals from the powerful, from the well connected States, are referred to it for prosecution.

Mr. President,

While the debate of peace and justice continues we also suggest that it must be remembered that any peace built on injustice will in all likelihood lead to an eventual break down of that peace, it will be a temporary peace.

We have at times seen and we ourselves have experienced that power politics, be it regional or global, has undermined efforts to correct injustices at State levels. It is therefore imperative that we all as State Parties support each other in these efforts irrespective of political differences, with justice being the denominator.

Thank you.