

Stocktaking of international criminal justice

Complementarity

Focal points' compilation of examples of projects aimed at strengthening domestic jurisdictions to deal with Rome Statute Crimes

With a view to stimulating debate and giving some practical examples of how domestic jurisdictions can be strengthened and enabled to deal with the most serious crimes of international concern in relation to complementarity, the focal points for complementarity, Denmark and South Africa, have requested organizations doing work in this area to submit background material. From this material, the focal points have compiled the following examples:

- Example A: Current ICC¹ budget-neutral activities
- Example B: ICLS², IICI³ & ILPD⁴ capacity building project in Rwanda
- Example C: UNODC⁵ Witness protection project in Kenya
- Example D: ASF⁶-B integrated justice sector project in DRC
- Example E: NPWJ⁷ complementarity projects
- Example F: Commonwealth project on best practices for international and national courts
- Example G: ICTY⁸ activities in the Balkans
- Example H: EU⁹ Justice Project in Colombia
- Example I: Danish ICC Rule-of-Law project in Uganda
- Example J: PGA¹⁰ support for the Rome Statute
- Example K: Legal Tools project ICC
- Example L: Contribution of the Organization of American States to Colombia's Transitional Justice Process

The examples are merely indicative and meant to serve the purpose of informing and inspiring. The appendices are produced by the relevant organizations themselves and are not the responsibility of the focal points. Factual changes may be made.

¹ International Criminal Court.

² International Criminal Law Services.

³ Institute for International Criminal Investigations.

⁴ Institute of Legal Practice and Development.

⁵ United Nations Office on Drugs and Crime.

⁶ Avocats Sans Frontières.

⁷ No Peace Without Justice.

⁸ International Criminal Tribunal for the former Yugoslavia.

⁹ European Union.

¹⁰ Parliamentarians for Global Action.

Example A

Examples of action that the Presidency/Registry of the Court can take to further complementarity (strengthening the capacity to prosecute ICC crimes nationally)

The Presidency and the Registry of the Court are currently reviewing their operations in order to see how positive complementarity can be mainstreamed in ongoing activities. Without foreclosing the outcome of this review, some current initiatives are set out below, for illustrative purposes, that highlight important ways in which the Court can contribute, through ongoing activities, to the strengthening the national capacity to prosecute ICC crimes.

Witness Protection

The Registry's work in protecting victims and witnesses may have a positive impact on a situation country's capacity to protect witnesses in any domestic trial. The Registry's VWU cooperates with local law enforcement authorities on local security arrangements, for example by setting up an Immediate Response Mechanism for any emergencies. In DRC, the Court has worked mainly through special units trained by the UN civilian police under MONUC. On top of that, the Court gave specific witness handling training to this special unit. So the Court is trying as much as possible to foster the development of a national capacity on witness protection, so that a national solution can be found. This strengthens both the ability of the Court to conduct fair trials in The Hague, as well as the local capacity to conduct fair trials in-country.

As a last resort, the international relocation of protected ICC witnesses is the only solution where the threat does not permit internal resettlements. The Registry is now trying to match countries or organizations that have capacity, skills and resources to develop witness protection programmes with countries that have the willingness to accept protected witnesses, but no capacity or resources for doing so. A voluntary trust fund has been opened to accept voluntary contributions and the UNODC has agreed to working together with the Court to build witness protection programmes in countries willing to host ICC witnesses. This is a good initiative to strengthen local capacity to protect witnesses in any interested State Party, and thus to build on the principle of complementarity.

Training of Counsel

Good defense representation at the Court is essential for credible trials, bearing in mind the nature of proceedings and the gravity of the crimes. Similarly, effective victims' representation is key to fulfilling one of the more ambitious and progressive aspects of the Rome statute, namely the right of victims of atrocities to be able to participate in the judicial proceedings before the Court. To this end, external legal representation is available to both defendants and victims, supported by two internal and functionally independent offices for public counsel for the defense and for victims. Any counsel wishing to practice before the Court, either on behalf of defendants or on behalf of victims, must be inscribed in the list of counsel administered by the Registry.

The Registry organizes a yearly seminar for counsel, where all counsel on the list are updated on the latest Court jurisprudence and other topical issues. This is followed by a training course for counsel, where a smaller group of counsel, especially those from situation countries, are briefed on the Court, its jurisdiction and applicable procedure.

This system fosters complementarity in important ways. Counsel so trained will have the ability to prosecute or defend international crimes in national jurisdiction. In order to further these effects, the

Registry is looking to include more specific complementarity issues into its seminar and training for counsel. Also, the Registry will be introducing a “train the trainer” component so that these training sessions can be replicated nationally by the lawyers themselves, further spurring national ownership.

Training of Judges and other personnel

Local judges, lawyers and bar associations act as a key multiplier of the Court’s outreach. The Registry’s PIDS is currently running basic information sessions on the ICC targeted at the local judiciary in situation countries, as part of its outreach strategies. These information sessions cover the mandate and structure of the ICC, as well as information concerning the current situations and cases before the Court. The Registry’s Defence Support Section is now working with PIDS to deepen these information sessions to cover the jurisprudence of the ICC and other legal issues, similar to those developed for the above mentioned seminar for counsel. Such initiatives further complementarity in a significant way by empowering the domestic judiciary with some of the learning and tools necessary to try ICC crimes.

Internship and visiting professional programme

The Court offers 200 internship positions yearly to young professionals in the early stages of their careers. The internship is a practical educational experience aiming to provide interns with the opportunity to put into practice and further develop their theoretical knowledge. Internships are offered for a period of between three and six months. The Court will provide a stipend for up to 100 interns a year. The financial assistance provided by the Court has been instrumental in enabling candidates, particularly those from developing countries, to participate in this programme. Visiting Professionals placements are offered to 50 candidates who have extensive academic and/or professional expertise in an area of work relevant to or related to the Court. The Court will provide a stipend for up to 25 visiting professionals a year.

Both interns and visiting professionals will finish their time at the court with an enhanced expertise in the Rome Statute system of international criminal law, and will be able to strengthen national capacity to prosecute the crimes set out in the Rome Statute. A few examples of the programme’s alumni are illustrative: judges at the High Court of Uganda, a Gambian national PhD fellow teaching back home on ICC related matters, representatives of the University of Makere, Uganda; a judge in Burkina Faso teaching at the University of Ouagadougou and member of the Department of Justice and Council of Lawyers, a Japanese judge who subsequently became judge at the Extraordinary Chambers of the Courts of Cambodia. These former interns or visiting professionals are all now playing their part in strengthening the Rome Statute system.

Example B



ICLS-IICI-ILPD PROJECT: ENHANCING THE CAPACITY OF RWANDAN INVESTIGATORS AND PROSECUTORS

Lead-partner organisations:

- International Criminal Law Services (ICLS) based in The Hague (www.iclsfoundation.org)
- Institute for International Criminal Investigations (IICI) based in The Hague (www.iici.info)
- Institute of Legal Practice and Development (ILPD) based in Rwanda (www.ilpd.ac.rw)

Cooperating organisations: Office of the Prosecutor-General of Rwanda, and the Rwandan National Police.

Project-funding organisations: The Foundation Open Society Institute (Zug), and the UK's Foreign and Commonwealth Office.

Type of project: Capacity-enhancement and technical advice.

Purpose and background: The purpose of the project was to strengthen the capacity of Rwanda's investigators and prosecutors to investigate, prosecute and otherwise deal with genocide, crimes against humanity and war crimes cases that may come before that country's ordinary (non-*gacaca*) and military courts. Rwanda's non-*gacaca* courts have dealt with thousands of genocide-related cases since 1994. Many are yet to be investigated and prosecuted. Some prosecutors and investigators are very experienced in such cases, but others are not.

"Complementarity" and "cooperation" elements: The International Criminal Tribunal for Rwanda (ICTR) may transfer some cases to Rwanda for trial at the national level. Some states are considering or will have to consider extraditing alleged *génocidaires* to Rwanda for trial. The project was aimed in part at further strengthening the relevant Rwandan practitioners' capacity to effectively pursue such transfer and extradition cases in accordance with human rights standards. The project was also aimed at strengthening their capacity to so pursue the larger number of non-extradition and non-transfer cases.

Content of 'training' course: Given the purpose and background sketched above, the subjects covered ranged from Rwanda-relevant genocide, crimes against humanity and war crimes law – including ICTR law – and investigation techniques to extradition and mutual-legal assistance issues. They also included the investigation of and law on sexual-violence and other gender-related crimes. The 'training' was tailored to the needs and wishes of Rwandan investigators and prosecutors. It sought to build on earlier trainings, including by the ICTR.

‘Trainers’: The facilitators of the main interactive ‘training’ event were Rwandan and foreign experts. They were all experienced practitioners in national, hybrid and international fora.

Course materials: The participants were provided with various electronic and hard-copy course materials prior to and during the ‘training’ event. The participants could also use these materials afterwards as resource tools in their daily work.

Size of group of participants: The average size of the group of participating practitioners was about 24. Some sessions involved only prosecutors or investigators; most were joint sessions.

Location and duration of ‘training’: The ‘training’ was held in Kigali, Rwanda, in August 2009. It lasted seven work days.

Interpretation: Simultaneous English-French interpretation was provided throughout.

Technical-advice component: ICLS wrote a ‘commentary’ on a Rwandan law, mainly from the perspective of international criminal law and practice. It was intended for use by Rwandan practitioners, foreign prosecutors and officials dealing with extradition requests from Rwanda, and the ICTR.

Example C



UNODC

United Nations Office on Drugs and Crime

Support to Kenya in order to Operationalize a Witness Protection Programme

1. In the context of support to the Government of Kenya (GoK) in upholding the rule of law, UNODC support to the Attorney General's Office in establishing a witness protection program began in July 2008 with a training by international experts and an assessment.
2. Upon further request, a witness protection expert was posted in March 2009, to serve in an advisory position in the State Law Office to work on a day to day basis with the acting chief of the unit in an effort to operationalize the Witness Protection Unit.¹¹ The goal has been to have a WPU built on the following four pillars of i)operational autonomy and capacity; ii)covert Capability; iii)confidentiality; and iv) accountability.
3. In the course of operationalizing the witness protection unit, the need to amend the existing Witness Protection law became evident. (WP Act 2006)
4. In August 2009, UNODC assisted in preparing a draft law and the implementing regulations. UNODC shepherded the process of internal consultation and redrafting of the Act within the State Law office. We held and participated in a drafting retreat to finalize the draft. The Amendment Bill was submitted to Cabinet in early December 09 and approved unanimously in 5 February. The Amendment Bill will go to the Parliament on 23 February.
5. The main thrust of the draft amendments is to make the witness protection unit a separate agency, like the Kenya Anti-Corruption Commission. The rationale was the need to secure autonomy from the State Law Office (Office of the AG) and sufficient funding for witness protection operations. At present, there is a limited amount of funding the unit can receive while situated under the Attorney General's office. The amendments would also allow for the unit's personnel to carry and use firearms, essential for protection operations.
6. Because witness protection at the national (Kenya or elsewhere) and international levels (ICC) requires cooperation for the relocation and protection of witnesses, Kenya will need other countries in the region with whom it can cooperation for the protection / relocation of its witnesses.
7. In November 2009, UNODC held a conference for East Africa and other African countries on witness protection. (the fist ever in Africa) with participation from, the Prosecutor's Office of the Netherlands, the WP Unit of South Africa, the United States Marshall's Service, ICC Victim and Witness Unit and the ICC Office of Investigations; ICTR and ICTS. The conference showed that there are already a number of countries who are interested in support for their own budding initiatives and would be willing to support Kenya, if needed.

¹¹ The advisor, Gerhard Van Rooyen, previously served as witness protection officer at the International Criminal Court and before then with many years of experience as a witness protection officer and police manager in South Africa.

8. The results of this conference were discussed during the Eastern Africa Inter Ministerial Conference that was held 10 days later and has given rise to sub programs within the region. (See the UNODC Regional Program Document: Subprogram I: Countering illicit trafficking, organized crime and terrorism).
9. In December the acting chief of the witness protection unit made a working visit with the advisor to South Africa in order to see how they function.
10. In February, the UNODC advisor provided a two-day training of the Kenyan National Human Rights Commission with the aim of educating them on the law and how to draft and submit requests for protection to the WPU.
11. With the above as background, the Attorney-General issued instruction on 26 January 2010 that the creation of the permanent witness protection structure should be expedited and that urgent interim measures should be instituted to facilitate the operationalization of the current Witness Protection Unit as precursor to the long term Witness Protection Agency but most importantly, to enable the WPU to start protecting witnesses. As part of the interim measure, arrangements have been made with different state departments to provide the much needed personnel to operationalize the Witness Protection Unit. The operational training of the allocated staff is of the utmost importance to ensure operational readiness in regards to all facets of the required function. However, funds are needed to train and equip this structure, which shall form the basis of the permanent structure being developed. See attached description and budget.

Example D



Integrated Project on Fighting Impunity and the Reconstruction of the Legal System in the DRC

ASF established its first country office in Kinshasa in 2002, and has since opened provincial offices in Bukavu (South Kivu), Kindu (Maniema) and Mbandaka (Equateur). ASF's major activities consist in capacity building of the justice system, legal aid and awareness raising through legal clinics, and assisting the organisation of mobile courts to provide access to justice in the remotest regions of the vast country.

Towards the end of 2004, ASF launched project that combines the objectives of combating impunity and reconstructing the country's weak justice system', with the financial support of the European Union. The project was born out of a realisation that the scale of the atrocities in the DRC and the expectations of communities affected by the violence surpassed the capacities of that country's weak national legal system as well as that of the ICC. As such, it involved an integrated approach to fighting impunity aimed at contributing to the reconstruction of the justice system, providing legal aid and strengthening the International Criminal Court. The approach consisted of sets of activities, which were implemented in six provinces that are most affected by insecurity and violence (North-Kivu, South-Kivu, Maniema, Oriental Province and Equateur and Katanga)

The project has been funded by The European Commission /EIDHR, The Belgian Government and the MacArthur Foundation for the period 2005 – 2009, with a total amount of 1.2 million euro's. Activities for the period 2009 – 2011 will be funded by the Belgian Government and the MacArthur Foundation.

Strengthen capacity of the Congolese justice system through the training of judges and lawyers

Between 2005 and 2009 a total of 6 training sessions have been organized by ASF in 6 provinces and over 460 magistrates have benefitted from these sessions. About one third of the participants are judges and prosecutors of the military tribunals, which have exclusive jurisdiction over International Crimes.

Similarly, between 2006 and 2007 training seminars were organised Kinshasa and in five provinces target over one hundred lawyers have participated in training seminars organised in. The subjects covered during these seminars included introduction to international humanitarian law and the Rome Statute, the ICC and other mechanisms of international justice, the principle of complementarity, the applicability of international human rights conventions in the Congolese legal system, International fair trial standards, the rules of evidence and procedure in relation to the prosecution of international crimes.

Many of these training programmes were organised in collaboration with the ICC and have benefitted from the expertise of members of the different organs of the Court as well as other international organisations such as ICRC and MONUC.

It is interesting to note that merely a year after the launching of the project, Congolese magistrates had undertaken the remarkable step by applying the Rome Statute, leading to more than dozens of trials for crimes falling under the jurisdiction of the court. The above experience is remarkable, in a number of

ways, as described in a Case Study recently published by ASF¹². First, it involves a rare initiative on the part of Congolese judges to apply the Rome Statute directly in the face of inaction on the part of political authorities and the absence of implementation legislation. Secondly, it is similarly remarkable that military prosecutors and judges showed limited restraints in prosecuting crimes involving the army and committed in the context of armed conflict. Third, the rulings demonstrated a reasonable understanding of international criminal law and the jurisprudence of the ad hoc International Criminal Tribunals, in view of the limited training they have received. Fourth, the judges have sometime applied a progressive interpretation of the law both by national standards and the standards of the Rome Statute, such as the exclusion of capital punishment.

Many of the lawyers who have acted as counsel for victims or the defense in those and other more recent trials in the DRC have benefitted from the training sessions organised as part of the project in question. Many of these lawyers are also on ICC's list of counsel, while several of them appear in the two cases pending before the court in different capacities. At the national lawyer, have become active players in the development of Congolese law and jurisprudence concerning crimes falling under the Rome Statute.

Ongoing Training and Support for local Civil Society Organisations

ASF organises three training sessions per year for representatives of about 40 NGOs in five provinces on a range of topics including introduction to international criminal law and criminal procedure, trial observation, the confidentiality of communications with victims, victims' protection and participation before Congolese Courts and the ICC. The training courses also address the role and limitations of civil society organisations in the investigation crimes. Between 2005 and 2009, more than 80 individuals representing 43 NGO's have benefitted from the training program. This has provided a pool of trained personnel across five provinces who continue to provide valuable services to victims and their communities but also have become valuable interlocutors for the ICC as well international organisations in the field.

The Support provided to local NGOs has enabled them to, assist victims in the exercise of their rights before the International Criminal Court and before the Congolese courts, observe trials and report upon their observation. The investigation and documentation work done by NGOs, on the other hand, has assumed a particularly crucial role in the DRC, given the reluctance and unwillingness of law enforcement officials. The number of cases brought to court by Prosecutors at the instigation of civil parties assisted by NGOs confirms the impact of activities such as those undertaken under this project in influencing institutional behaviour and policy. Civil society organisations are also increasingly able to work in a manner that is more systematic and sensitive to the needs of victims in gathering information and assisting victims in understanding and completing the rather complex application forms for participating in the ICC proceedings.

In broader terms, the counseling and training program has reinforced the personal and institutional links between the different civil society actors engaged in the justice and human right sector and contributed to

¹² The Application of the Rome Statute of the International Criminal Court by the Courts of the Democratic Republic of Congo: Case Study, ASF, November 2009 available at http://www.asf.be/publications/ASF_CaseStudy_RomeStatute_Light_PagePerPage.pdf

a better understanding of the mandate, procedures of the ICC and its limitations when it comes to dealing with the scope of human rights violations committed in the DRC and providing redress to victims.

Roundtable Meetings between stakeholders

In addition to the training programmes and support for civil society organisations, the project involves round-table discussions among local justice sector officials in the five provinces to examine problems encountered in tackling the problem of impunity and create synergies between the stakeholders. These roundtables bring together lawyers, judges, both civilian and military, law enforcement agencies, local authorities, civil society representatives and, in some cases, MONUC.

Legal Aid

Given the limited financial resources of the majority of the population and the need to ensure fair and efficient proceeding, ASF offers legal aid to victims participating in ICC proceedings and to indigent defendants and victims in proceeding before Congolese Courts.

Since the start of the project, ASF was able to provide legal assistance to 506 victims and 106 defendants in about 19 cases involving international crimes, through 28 Congolese lawyers, many of whom had benefited from the training programmes referred to above. Similarly, ASF had assisted 60 other victims during the pre—trial phase of the proceedings in the Lubanga and Katanga cases. In addition to allowing these victims to exercise the rights provided under the statute, the pro-bono representation provided by ASF lawyers during the pre-trial phase has helped the court to spare its limited resources to other priority areas.

Remarks

However significant the results of the project may be, they must be nuanced against the challenges and constraints that persist. Despite consistent advocacy and technical assistance facilitated by ASF, the DRC has yet to adopt implementation legislation. This has hampered the transfer of jurisdiction over international crimes to civilian courts, as foreseen in the 2006 Constitution and the draft implementation legislation, an effective exercise of domestic jurisdiction in line with the principle of complementarity. The number of domestic trials and decisions rendered pale significantly compared to massive and ongoing human rights violations, particularly in Eastern DRC. There are very few new prosecutions of crimes falling under the jurisdiction of the ICC since 2008. A lot needs to be done also to improve the quality of the judgements, as demonstrated in a recently published case Study by ASF. More importantly, inadequate security in prisons and lack of commitment on the part of authorities has allowed a significant proportion of the convicts to escape prison and remain at large. Similarly, the Congolese state has so far failed to pay the reparation awarded by the courts.

Despite the above, ASF continues to believe that it is important to encourage and help the authorities live up to their declared commitments and continue its activities aimed at reinforcing the capacity of the legal system and local civil society actors. ASF is prepared to restart the training programme for lawyers in anticipation of the enactment of the long awaited Implementation Legislation.

On the other hand, the implementation of the DRC project has helped ASF identify lessons that are transferable and is currently working to standardize the training modules for use in other contexts. The pilot project planned for September of this year in Uganda is a result of the above exercise. The latter

project seeks to organise a training workshop of a small group of lawyer on the Rome Statute system and the recently adopted International Crimes Bill. A similar activity is planned in Colombia for this year in collaboration with Lawyers without Borders Canada, one of the members of the ASF movement.

Example E

NPWJ Activities in support of Implementation of the Principle of Complementarity

No Peace Without Justice (NPWJ) works to promote implementation of the principle of complementarity between the ICC and national justice systems by building political support, increasing capacity and through advocacy and lobbying of those in a position to contribute to implementation of the principle of complementarity. While in its purest sense complementarity relates to the investigation and prosecution of crimes under international law by national systems, in the broader sense it also relates to political will to do so, the removal of obstacles or reasons not to and the capacity and willingness of local actors to push those in positions of power and authority to do so. NPWJ focuses on the broader meaning of the principle of complementarity, seeking through its work to build political will, remove obstacles to or alibis for inaction and build knowledge and capacity of local civil society about international criminal justice.

The following is a snapshot of some of the work NPWJ has done to promote implementation of the principle of complementarity in a variety of countries and using a variety of means and methods.

Conflict Mapping in Afghanistan, 2005 – present

The Afghan Independent Human Rights Commission (AIHRC) has been implementing a conflict mapping program, forms part of the Afghan Plan of Action for Peace, Justice and Reconciliation, since December 2005 that gathers and analyses information related to the conflicts in Afghanistan from 1978 to 2001, with a view to identifying those who bear the greatest responsibility for violations of the laws of war committed during that time. Since 2005, through staff trained by NPWJ in conflict mapping, the AIHRC has collected statements from more than 6,500 people in over 200 (out of 390) districts across Afghanistan. Information has been gathered from victims, witnesses and key “insider” informants concerning violations, chains of command of the different fighting factions and troop movements. The information gathered is stored on a secure database, which is designed to facilitate the analysis work of putting together the larger picture of events and identifying those responsible for violations. The AIHRC has also conducted extensive outreach regarding its conflict mapping work and transitional justice more generally, holding (*inter alia*) consultations with community elders, victim’s groups, provincial council representatives, civil society organisations and women’s groups.

Conflict Mapping aims to reconstruct the chain of events during a conflict through gathering information in the field and analysing the decision-making processes to ascertain the role of those who bear the greatest responsibility for the conduct of armed forces and groups in conflict, and in particular for policies of systematic and massive violations of the laws of war. This analysis is based on testimonial and other information, overlaid with order of battle and command structures of the various forces, as they evolved over time and space. This chronological and geographical mapping of the conflict, by piecing together information from disparate sources serves to analyse events within a wider view of a conflict, and identify those who bear the greatest responsibility for designing, ordering and conducting systematic campaigns of violations of the laws of war. NPWJ has provided technical assistance to the AIHRC through a series of visits to Kabul since 2005 that have developed the AIHRC

conflict mapping program and trained its staff in how to gather and analyse information related to crimes under international law.

Outreach and conflict mapping in Sierra Leone: 2000-2004

The overall objective of the project in Sierra Leone, which was conducted from August 2000 to March 2004, was to strengthen the ability of Sierra Leonean society to address violations of human rights and humanitarian law. The aim underpinning the project was to increase awareness of human rights and humanitarian law norms within the Sierra Leone Government and other local stakeholders, including legal professionals, civil society and others, and therefore the full spectrum of people and interests they represent, to participate and influence the processes for re-establishing and maintaining the rule of law, peace and stability. An important aspect of this was to facilitate ownership by Sierra Leoneans of the accountability processes in Sierra Leone, by working with local organisations to formulate and disseminate accurate and timely information about the accountability mechanisms through an outreach program. In order to encourage long-lasting impact of these processes, this project aimed to strengthen domestic law through a process of national implementation of international instruments. Finally, the chronological and geographical mapping of violations of humanitarian law in Sierra Leone was aimed at helping to create an historical record of the truth, including individual and command responsibility. The report from NPWJ's conflict mapping work was introduced as evidence at the Special Court and cited in its judgments.

The outreach program increased awareness within Sierra Leone of the mandate and operations of the Special Court. This included promoting knowledge about human rights and humanitarian law issues to the public at large. The Outreach program worked through the medium of local organisations, in particular the Special Court Working Group (SCWG), by building the capacity of such local organisations to formulate and disseminate information coherently and in simple terms. Part of this process included working with local organisations to formulate the issues in language and ways easily understandable by the general public. This fostered the role of civil society in promoting accountability within Sierra Leonean society and created a stronger civil society by supplementing them with potent means to raise the issues publicly, both in general and in terms of prompting the Government to ensure international standards are promoted. The main activities of the Outreach program included supporting radio programs, organising and co-hosting public lectures, running training seminars, supporting a drama group and supporting the work of the SCWG. Further information about NPWJ's activities in Sierra Leone are available from <http://www.specialcourt.org>.

Documentation in Kenya: 2008

NPWJ assisted the Kenya National Commission on Human Rights (KNCHR) - an independent National Human Rights Institution established by an Act of Parliament in 2002 - in the documentation and investigations into the post-election violence that resulted in the death of more than 1,000 people, the displacement of about half a million people and a critical humanitarian situation. NPWJ's assistance consisted of providing support with all practical aspects of the investigative operations, including training and expert assistance to the teams of investigators that the KNCHR dispatched to the whole of the conflict areas—Rift Valley, Nairobi, Central, Coast, Nyanza, Western Kenya and other regions.

Teams of investigators gathered information in the field from victims, witnesses, local leaders, security officers, and those in positions of command or control in order to reconstruct the chronological and geographical chain of events during the post-elections violence. Information gathered was electronically organised using a database and was collated, categorised and stored in such a way as to enable easy search and retrieval by analysts. The main result of the work carried out by the KNCHR was to remove a potential obstacle to subsequent investigations and prosecutions, including by the ICC, by ensuring the timely collection and preservation of information about crimes under international law, to build momentum for subsequent accountability mechanisms, including the Waki Commission into the Post-Election Violence, and support local actors in their quest for accountability.

Other activities

NPWJ has worked in a variety of countries to build political will and civil society capacity on international criminal justice and implementation of the principle of complementarity, such as a regional roundtable discussion with civil society on strategies for achieving accountability, through the ICC and other accountability mechanisms, in the Pacific (Fiji, 2008); workshops on the role of the media in building political will towards ratification and implementation of the Rome Statute with media professionals (Yemen, 2006 and Lebanon, 2009); promotion of the adoption of implementing legislation through technical assistance (the secondment of legal advisers) and national consultations (Ghana 2001; Lesotho 2001; Sierra Leone 2006 and 2010).

Example F



COMMONWEALTH SECRETARIAT

EXAMPLE OF A RECENT PROJECT UNDERTAKEN BY THE COMMONWEALTH SECRETARIAT IN SUPPORT OF PROMOTING THE RULE OF LAW THROUGH DEVELOPING BEST PRACTICE OF REGISTRARS FROM THE FINAL/APPELLATE, REGIONAL AND INTERNATIONAL COURTS AND TRIBUNALS

BACKGROUND

1. The Commonwealth Secretariat is an intergovernmental organisation of 54 States committed to promoting the rule of law, good governance, respect for human rights and sustainable economic development. Specifically, within the context of rule of law work our objective is to support Commonwealth countries to develop legal, judicial and constitutional reform and strengthen both legal and regulatory frameworks which protect and promote the rule of law. We also assist in the negotiation of international and regional agreements which impact on specific areas including human and economic and development.

2. The administration of justice is fundamental in all democratic societies. We help improve it by working with the national courts, correctional services, police forces and other bodies that are central to delivering justice to all citizens. Our work often requires collaboration with specific or specialised sectors of the legal profession, judiciary, academic or other institutions, depending on the project. This cross-sector work allows us to achieve holistic solutions to problems.

3. Our work directly impacts on government officials and members of judiciaries in Commonwealth countries. For example, the Secretariat has worked with Zambia and Zanzibar to develop a Court Handbook which will help professionalise the administration of justice in these courts. These Handbooks set down the precise procedures court personnel should follow in doing their work. This will assist in preventing lost files and delays in the preparation of documentation. In turn, they will give rise to more efficient court staff, who can provide better service and advice to the public.

4. A recent example of work we have been doing with Registrars of Final/Appellate/Regional and International Courts is set out below for information purposes:

Nature of the Project

Registrars of Final/Appellate, Regional and International Courts and Tribunals met in Ottawa from 13-16 April 2010. The meeting, organised by the Commonwealth Secretariat was the first of its kind, and was generously hosted by the Supreme Court of Canada. The meeting was organised pursuant to paragraph 16 of the Communique of the Meeting of Commonwealth Law Ministers 2008 where law Ministers acknowledged that mechanisms to improve court administration, including training and

innovation played an important role in enhancing the efficiency of the justice system. Approximately 22 Registrars drawn from various geographical regions and from the different levels of Courts and Tribunals attended the meeting. The full cost of return travel and accommodation for all participants in Ottawa was paid for by the Commonwealth Secretariat.

Modalities of the Meeting

The meeting met in four working groups clustered under the following areas: (i) Institutional matters; (ii) Information and Document Management; (iii) Users of Courts and Tribunals; and, (iv) Performance of Courts and Tribunals.

Outcome of the meeting

It was the agreed collective aim from the outset that the Commonwealth Secretariat through its Legal and Constitutional Affairs Division would produce a handbook of the Best Practices for Registrars of Final/Appellate, Regional and International Courts and Tribunals, as a means of assisting Registrars in the day to day performance of their duties, thereby contributing to the administration and efficiency of the Courts and Tribunals.

Delegates acknowledged that the meeting constituted a substantive platform for the consideration of matters relating to Court administration and enhancing the efficiency of the justice system, as well as for the sharing best practice. The delegates resolved to consider ways in which to organise more regular meetings of Registrars and to broaden the participation base as well as to identify future funding.

Cost of the event

The overall cost of financing this project in Ottawa was UK Sterling 50K for the the Commonwealth Secretariat, but additional meals and venue including local transportation was generously provided by the Supreme Court of Canada to all participants.

Example G

Office of the Prosecutor (OTP)

International Criminal Tribunal for the former Yugoslavia (ICTY)

Note on the activities by the ICTY Office of the Prosecutor to enhance the effectiveness of national jurisdictions' capacity to prosecute serious crimes

April 2010

The International Criminal Tribunal for the former Yugoslavia (ICTY) has primacy over national courts with concurrent jurisdiction. Established by the United Nations Security Council (UNSC) Resolution 827 in 1993 to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia from 1991 onwards, the ICTY's principal contribution to ending impunity and strengthening the rule of law has been the prosecution of its own cases. The ICTY's body of substantive jurisprudence and practice benefits all courts prosecuting serious violations of international humanitarian law.

Complementary to its core function, the Office of the Prosecutor (OTP) supports national prosecutions in various ways and enhances the capacity of its national counterparts. Prosecutions before national courts have remained essential due to the number and scale of crimes committed during the conflict and the inability of the ICTY to try every offender. Effective 1 January 2005, the Prosecutor could no longer file new indictments. While the prosecution of the remaining indictments remains a priority, the Residual Mechanism process will recognize the importance of continuing to support the efforts of national prosecutions.

This paper describes the OTP's capacity-building efforts and interactions with national prosecution services. First, it describes the role of the Transition Team in coordinating cooperation efforts with national prosecutors. Second, it addresses the different forms of assistance, namely (1) the provision of direct assistance by responding to specific requests and facilitating access to OTP material; (2) the transfer of cases and provision of follow-up assistance; (3) the review of evidence; and (4) the transfer of knowledge and lessons learned. Finally, the paper describes OTP efforts to improve regional cooperation development through closer interaction and partnerships with national prosecution services.

Coordinating cooperation and capacity building

In 2004, the OTP established a special unit - the "Transition Team" – to coordinate the office's cooperation efforts with national prosecutors from the former Yugoslavia. The Transition Team's *raison d'être* is to support domestic prosecutions. It performs a key coordination function and acts as a liaison between the OTP prosecution trial teams and domestic prosecutors from the region. It also fulfils a central role in transferring material and knowledge to national prosecutions. Currently, the Transition Team:

- provides direct assistance to domestic prosecutors seeking access to material in the OTP documents collection;
- handles the transfer of cases and investigative material to regional authorities;
- monitors judicial developments in the region and maintains ongoing contact with domestic prosecutors.

OTP assistance to national prosecutions

The OTP possesses an important collection of material relating to the conflicts in the former Yugoslavia, including witness statements, documents, videos and audio files. The collection contains over eight million pages of documents. The OTP provides national prosecutors with remote electronic access to a large proportion of its non-confidential documents. In addition, the OTP regularly responds to requests for assistance from States and international organisations investigating war crimes and crimes against humanity cases. This assistance significantly contributes to national prosecutions, in particular those from the former Yugoslavia.

In major investigations such as the Srebrenica genocide, the OTP has continued to support domestic investigations and prosecutions. State Court prosecutors have access to the forensic, demographic and other expert reports prepared by the OTP for its prosecutions before the ICTY. The reports are received as evidence by courts in the region and are introduced through ICTY experts who prepared them. Since 2001, the authorities of Bosnia and Herzegovina, with international support, have been in charge of identifying and exhuming mass graves of Srebrenica victims. This work is greatly assisted by the investigative materials and aerial imagery assembled by the OTP between 1996 and 2001, when it was turned over to the authorities of Bosnia and Herzegovina for their continued work on this important project.

The OTP also contributed to institution and capacity building in the region by assisting national authorities seeking specific information in relation to individuals suspected or accused of crimes within the ICTY's jurisdiction. For example, as part of the implementation of the Dayton Peace Accord, the OTP assisted the UN Peacekeeping Mission in Bosnia and Herzegovina (UNMBiH) with the vetting of Bosnian police officers after the conflict. Given the close connections between police forces, paramilitary groups and others who were involved in committing war crimes and crimes against humanity, UNMBiH access to the ICTY collection of evidence and materials, much of which was otherwise unavailable, proved to be invaluable. As a result of this cooperation, officers who had committed human rights violations were removed from their functions.

Transfer of cases to the Region

Following UNSC Resolution 1503 on the Completion Strategy (2004), the OTP has concentrated on prosecuting only most senior leaders suspected of being most responsible for crimes within the ICTY's jurisdiction. Cases in which an indictment had been issued but not meeting this threshold were transferred to the courts in the region. A procedure was established under the Tribunal's Rule 11*bis* to organise the referral of cases. Referral of a case requires the Chamber to determine whether the pre-conditions, including whether the accused's fair trial rights, will be met. The last Rule 11*bis* case was transferred in 2007. The Organisation for Security and Cooperation in Europe (OSCE) monitors referral cases and reports regularly to the OTP on the progress of the referred cases. All referral cases have been concluded at first instance and only one remains pending on appeal.

The OTP has also transferred pre-indictment investigation files directly to national prosecutors. These investigative files contain all relevant information including witness statements, documents and analytical reports. The review and transfer of these cases are now complete. Although these cases are not monitored by the OSCE, the OTP follows relevant developments and provides continuing assistance to the national authorities when required.

The transfer procedure has significantly promoted capacity building as have the legal concepts applied by the ICTY (such as command responsibility and joint criminal enterprise), which have been accepted

into the jurisprudence in the domestic prosecutions of transferred cases. The evidence provided by the ICTY to national authorities has resulted in several successful prosecutions in local jurisdictions.

Evidence review under the Rules of the Road

Between 1996 and 2004 the OTP fulfilled an important review function *vis-à-vis* national investigations and prosecutions. Under the Rules of the Road Project¹³, prior to arresting or detaining a person on charges of serious violations of international humanitarian law, authorities of Bosnia and Herzegovina were obliged to submit a file or dossier of the evidence to the OTP for assessment as to whether a *prima facie* case of war crimes or crimes against humanity existed. Once the OTP made a positive finding, then the domestic authorities could proceed. The OTP's review was a limited one. The OTP review was designed to prevent groundless or politically motivated criminal allegations and arbitrary arrests and to restore confidence in the integrity of the national processes.

Knowledge transfer and lessons learned

Knowledge transfer and lessons learned are important capacity building functions. OTP staff actively lecture in the region to State prosecutors and members of the judiciary on legal and strategic issues related to prosecutions. Staff members also publish articles on war crimes investigations and prosecutions. For example, the "ICTY Manual on Developed Practices" was prepared by the ICTY in conjunction with the United Nations Interregional Crime and Justice Research Institute (UNICRI), and launched in 2009. The Manual is designed to assist national and international investigations and prosecutions of crimes committed during armed conflicts including those taking place in the former Yugoslavia. The OTP also contributed to "Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer," a report prepared by the Office for Democratic Institutions and Human Rights (ODIHR), of the OSCE, in conjunction with the ICTY and UNICRI.

Developing close interactions and partnerships with national prosecutors

Over recent years, the OTP developed direct relations with stakeholders including national prosecutors. The OTP has consolidated its partnerships with prosecutors and courts throughout the former Yugoslavia and enhanced the domestic prosecution of serious crimes committed during the conflict by fostering open communications, promoting the exchange of information and sharing best practices. Representatives from the OTP regularly meet government officials and members of the judiciary from the region to discuss the practical difficulties and to provide guidance and assistance.

In June 2009, the OTP, with financial assistance from the EU Commission, brought liaison prosecutors from Bosnia, Croatia and Serbia to work in the Transition Team in The Hague. These liaison prosecutors continue to work for their respective prosecution services and act as contact points for other national prosecutors throughout the region. Being on-site at the Tribunal facilitates their easy access to ICTY materials for domestic investigations. Their interaction with OTP staff promotes an exchange of ideas and development of inter-institutional understanding and memory. The project has contributed significantly to the prosecution of cases at the national level.

¹³ The project was initiated by the Rome Agreement signed on 18 February 1996, which provided that:

Persons, other than those already indicted by the International Tribunal, may be *arrested* and *detained* for serious violations of international humanitarian law only pursuant to a previously issued order, warrant, or indictment that has been reviewed and deemed consistent with international legal standards by the International Tribunal. Procedures will be developed for expeditious decisions by the Tribunal and will be effective immediately upon such action.

The EU Commission also funds internships for young legal professionals from the former Yugoslavia with a special interest in war crimes and crimes against humanity cases. The selected young professionals directly assist OTP trial teams and develop skills that will enhance the future capacity of regional authorities to deal with complex criminal cases, including violations of international humanitarian law committed during the conflict in the former Yugoslavia.

The OTP actively supports mechanisms to strengthen cooperation between the prosecution offices of the States of the former Yugoslavia. For example, in April 2009 the OTP hosted a conference in Brussels (with the support of the European Commission) to promote cooperation between prosecution services from Bosnia and Herzegovina, Croatia, Serbia, Montenegro and Macedonia. These efforts are aimed at overcoming existing inter-State legal barriers to the prosecution of serious crimes of international concern and closing remaining impunity gaps.

Example H



EUROPEAN UNION - JUSTICE PROJECT IN COLOMBIA

1. The 2004-2010 '**Programme for the Promotion of Justice and Fight against Impunity in Colombia**' (EU Contribution 10.5M€) was designed to contribute to the consolidation of the Rule of Law in Colombia, as well as to facilitate a significant reduction of the impunity by enhancing the capacity and effectiveness of the national judicial system. This project supports the modernization of the justice system and increases access to legal services.
2. The Programme is mainly providing technical assistance to help **the transition of the Colombia's judicial system from an inquisitorial to an adversarial system of criminal justice**. The institutions involved in the project implementation are: Ministry of Interior and Justice, Vicepresidency of the Republic, Public Prosecutor's Office, General Attorney, National Ombudsman, and Superior Council of the Judiciary.
3. The project implementation unit is established within the Ministry of Interior and Justice, which distributes resources to the Ministry itself and to the aforementioned collaborating institutions.
4. While this Programme is mainly oriented to the introduction of the new adversarial system of criminal justice, the introduction of the Justice and Peace Law provided another opportunity for combating impunity in Colombia for those cases of massive violations of Human Rights and International Humanitarian Law.
5. The entrance into force of Law 975 (Justice and Peace Law - JPL), on 25 July 2005, was preceded by a drawn-out and turbulent legislative process. It is the first transitional justice law in Colombia's history and provides means for dealing with the grave crimes committed by illegal armed groups. This Law facilitates the demobilization of paramilitaries, offering reduced sentences in return for demobilization, public admission of offences, reparations to victims and reintegration. How Colombia implements this new legal framework for demobilizing the illegal armed groups and returning them to society is critically important.
6. In the second half of the year 2009, a small '**Justice and Peace**' activity was set into motion ("The Project"). This component is being executed from October 2009 to date by two international experts, funded by the International Technical Assistance component of the broader Programme: Héctor Olásolo and Jose Ricardo de Prada. Mr. Olásolo is a professor of International Criminal Law and Procedure at the University of Utrecht and has worked for a number of years at the ICTY Office of the Prosecutor and the ICC Chambers. The second is a Magistrate of the Spanish *Audiencia Nacional* who has worked for several years as an international magistrate in the War Crimes Tribunal of Bosnia and Herzegovina.
7. The activities of these experts are being coordinated by the Head of the International Technical Assistance, which is located at the Project Implementation Unit within the Ministry of Interior and Justice. Ms. Beatriz González, a Spanish Magistrate, is the Head of the International Technical Assistance.
8. So far, this Project /activity focused on assisting three magistrates of the Trial Chamber (*Sala de Conocimiento*) created to date for the implementation of the JPL. The reasons for the selection of this beneficiary are the following: (i) all cases related to the JPL process must come before this Trial

Chamber, once the charges are confirmed by the Pre-Trial Judges (*Magistrados de Garantías*). (ii) In order to maximize the limited resources available for this specific Project / activity, it was preferred to focus our action on the Justice and Peace Trial Chamber. (iii) Since 2006, most contributions from the international community were provided to the other institutions involved in the JPL, and in particular to the Public Prosecutor's Office.

9. The specific aim of this Project /activity was to enhance the capacity of the beneficiaries in relation to the substantive, procedural and evidentiary elements that distinguish the investigation, prosecution and adjudication of international crimes in scenarios of mass-atrocities.
10. During the first trials issued by the JP Trial Chamber in the first half of 2009¹⁴, the Peace and Justice Trial Chamber was, at that time, focused on the scene of a few instances of criminal activity, as opposed to setting its orientation on the manner in which the Colombian nation-wide paramilitary structures were organized, and the pattern of their criminal activities. As a result of these shortcomings, the Criminal Chamber of the Colombian Supreme Court overturned the two above-mentioned trials between June and August 2009.
11. Given the fact that the magistrates of the Peace and Justice Trial Chamber were not familiar with the specific features of international crimes, particular attention has been devoted between October 2009 and April 2010 to the legal, procedural and evidentiary implications of the fact that international crimes are committed in situations of armed conflict and/or widespread or systematic attacks against civilian population, that they usually have a collective nature and that they are often committed through organizations which are hierarchically organized.
12. From a legal perspective, the content and elements of a number of legal notions (such as control of the crime, joint criminal enterprise, armed conflict of a non international nature, etc), which have been developed in recent years by the case law of the International Criminal Court as well as by the case law of the *ad hoc* international (former Yugoslavia and Rwanda) and hybrid (Sierra Leone, Cambodia, Lebanon) criminal tribunals were addressed in detail by the Project.
13. From an evidentiary point of view, the importance to maintain the attention on the analysis regarding the organization of the paramilitary structures, the pattern of their criminal activities and their relationship with other national and regional actors which facilitated their criminal actions was emphasized by the technical assistance provided by the Project.
14. During a second stage of the project, which is schedule to take place between May and August 2010, the focus is partially shifted towards the forms of individual and collective reparations to the victims of the crimes, as well as to the elaboration of an evidentiary protocol for the proof of the contextual elements of the crimes. Other aspects, such as the political, economic and military internal organization of the relevant paramilitary structures and their ties with external entities and individuals will be taken into consideration. Moreover, with the assistance of senior analyst with broad experience in the preparation and presentation of international criminal cases in The Hague, a data base is intended to be created in order to increase the organization and accessibility of the information received by the magistrates of the Peace and Justice Trial Chamber
15. The methodology applied in the implementation of the Project is based on the following principles: (i) assistance provided by a very small number of international experts fluent in the Spanish language and with full expertise in the investigation, prosecution and judicial adjudication of international crimes

¹⁴ The affairs against '*alias el Loro*' and '*alias el Tuerto*': two low level perpetrators that committed a few crimes.

before national and international courts. (ii) The international experts undertake missions of 30 to 45 days, and stay in permanent and close contact with the beneficiary institutions. (iii) During the time they are in the field (four to six week in a row), international experts work on real cases together with the national operators on the above-mentioned issues.

16. After the first six months of the Project, the previous situation (September 2009 has) been reversed to an important extent. The latest judgments or trials issued by the Peace and Justice Trial Chamber in the cases against *alias El Iguano* (head of the *Fronteras* Unit from the *Catacumbo* paramilitary group), *alias Juancho Dique* (head of the *Canal del Dique* Unit from the *Montes de Maria* paramilitary group) and *alias Diego Vecino* (head of the *Montes de Maria* paramilitary group) have shown a significant emphasis in the organization of the relevant paramilitary groups, its external relations with regional actors and the pattern of their criminal activities. These judgments have been recently upheld by the Penal Chamber of the Colombian Supreme Court.
17. Currently, the EU is funding a **new Programme called ' Institutional Strengthening for assisting conflict victims'** (EU contribution 7.4M€) which aims at supporting state institutions and ensuring that victim's rights are protected through the proper implementation of the JPL. The activities of this new Programme have not started yet, but international technical assistance will be provided in a similar manner (like the previous Programme) to the operators of the Public Prosecution's Office.
18. While the purpose of this last Programme is to improve the assistance to victims at large, the **Instrument for Stability funding** (IfS) provided grants for specific projects to a total amount of €6.5 million. These projects started in late 2007 and provide directly legal assistance to victims (in addition to what is foreseen through the National Ombudsman), support to victims' organisations for transitional justice policies, and promotion of truth, justice and integral reparation. They currently comprise three main components, to be implemented by four leading national and international NGOs -- CCJ (Colombian Commission of Jurors), ICTJ (International Centre for Transitional Justice), PCS-Project Counseling Services, and INTERMON Oxfam -- and almost twenty-partner organizations representing different victims' groups on sector, ethnic or gender basis. In view of the sensitivity of issues and debates at stake, and the need for a real involvement in the process of all future stakeholders, in particular victims' organizations, the design of these projects was done very carefully. These actions complement the broader portfolio of EC-funded programmes on governance in Colombia.

Example I

Danish Support to the War Crimes Court and the Judiciary in Uganda



ICC's present *situation countries* are all poor developing nations in Africa where justice, law and order are in different stages of reform. Uganda is an example of a country that has come a long way in building up the judiciary.

Uganda has gone through its own cycles of conflict and violence in its young history as an independent nation. In the middle of the 1980's Uganda's physical and political infrastructure had more or less collapsed, following the rule of Idi Amin in the 1970's and the wars settling who should replace him in the first half of the 1980's. Uganda's legal system had to be rebuilt. Uganda did get a new and modern constitution in 1996 and has built up a national judiciary in the past 20 years. The young system does still face challenges but it is one the first in the world to have established a particular division for war crimes. Also, Bosnia has a War Crimes Chamber integrated into the National Justice System.

Denmark established an Embassy in Uganda in 1994 and became almost from the outset a partner in support of justice. Historically the support has followed three major work streams:

- Capacity building in the Judiciary through training of mainly young magistrates from lower benches. The training in Denmark has offered an in-depth exposure to the workings of a modern court system. The magistrates have over the years moved into influential positions and been able to disseminate their knowledge and coach colleagues and junior staff. 165 Ugandan magistrates have been trained in Denmark since 1996.
- Physical infrastructure through building of numerous court houses in Kampala and across the country in order to improve the population's physical access to justice across the whole country and not only in urban centres.
- Legal aid service provision through NGOs and civil society organizations, i.e. para-legal advisory service, pro bono pilots and advocacy initiatives.

The negotiations on peace in Northern Uganda that took place in Juba South Sudan had a strong focus on (transitional) justice. This is due to the fact that the ICC – upon request of the Ugandan government - had issued arrest warrants on Joseph Kony and four other leaders of the LRA in 2005. The arrest of Kony was given *à priori*.

The Final Peace Agreement (FPA), therefore, contains a good text on accountability and reconciliation. The FPA is signed by the Government of Uganda, the leader of the LRA's negotiating team and representatives from the international community. The FPA did not enter into force as Joseph Kony – despite several attempts – declined to sign it.

The Government of Uganda, nonetheless, did go forward and committed itself to fulfilling its obligations on accountability and reconciliation with a view to heal the wounds after 20 years of bloody civil war. In order to turn its commitment into practice the Government of Uganda established a *Transitional Justice Working Group* (TJWG) with the Principal Judge as chair. The Working Group has set itself four tasks:

- To establish a War Crimes Division of the High Court,

- To do research on traditional justice systems and how they can be linked to the formal system,
- To familiarise on best practices in other post-conflict countries e.g. Sierra Leone and Bosnia and Herzegovina,
- To construct a particular building to house the War Crimes Division of the High Court and the respective specialized division of the Directorate of Public Prosecution and Uganda Police Force.

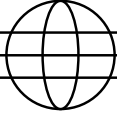
Denmark had been an active partner to the Government of Uganda in support of the Juba peace process. It was logical therefore, that this effort was followed up with support to the wider Transitional Justice Work Plan through a grant from the Embassy. The grant amounts to 1 million USD – over and above – the current support to justice, law and order. The purpose of the grant is to support of the work of the Transitional Justice Working Group and in particular the War Crimes Division of the High Court.

The grant has, among other things, financed an ambitious and wide ranging study tour in order to help The Transitional Justice Working Group and the War Crimes Division becoming familiar with international best practices outside its jurisdiction. The study tour gathered altogether 21 individuals, including the Principal Judge, two Judges of the court, two Prosecutors, three Investigators and two Defense Counsels. The participants travelled to Sierra Leone, Bosnia-Herzegovina and the International Criminal Court in the Hague. The study tour provided the participants with a solid basis of knowledge of and insight in how war crimes are investigated and brought to justice in the aftermath of violent and bitter conflict.

The War Crimes Division consists of a panel of four judges with its own registry. The International Crimes Bill is the legal basis for the War Crimes Court. The Bill was adopted by Parliament medio March and Uganda was the fourth African country to do so. The bill does contain some important key provisions:

- The age of criminal responsibility proposed amendment of 18 was not adopted - it was left as is in the Rome Statute which is that the law of the state regarding criminal responsibility applies (ie in Uganda that could be from 12, in practice the DPP has discretion).
- The presidential immunity proposed amendment of domestic immunity was not adopted - it was left as is - which is the same as the Rome Statute (i.e. there is no presidential immunity).
- The date of application proposed amendment of 1995 was not adopted. The date of application/commencement will be from the Rome Statute (i.e. 2002).

Example J



PARLIAMENTARIANS FOR GLOBAL ACTION

ACCION MUNDIAL DE PARLAMENTARIOS

Parliamentary Action to give effect to the Principle of Complementarity

For Parliamentarians for Global Action (PGA), the principle of complementarity reaffirms the obligation of States to detect, investigate, prosecute and adjudicate the most serious international crimes, both under applicable international law and the Rome Statute. The first and minimal condition enabling States to abide to this obligation is the existence of legislation that incorporates in National law the crimes and general principles of law contained in the Rome Statute, unless these substantive provisions would be deemed as “self-executing” in the domestic legal order of a State Party and would, therefore, be directly applied by Judges and Prosecutors of the country in question.¹⁵

The fact that from the five current ICC situation countries only two, Kenya and Central African Republic, have incorporated the crimes in their legislation, and that only 44 of the 111 States Parties are legally equipped to conduct national trials on Rome Statute’s crimes, may account for the challenges faced in truly creating an “ICC system” solidly founded on domestic jurisdiction. The reality is that the process of incorporating the Rome Statute competes against other priorities in the national agendas. In addition, a culture of individual accountability, “no-impunity” and respect for victims’ rights for the most serious international crimes is generally lacking at the national levels leading to the fact that there is insufficient political will to recur to judicial processes to address international crimes.

Against this context, in the framework of **Parliamentary Campaign for the Effectiveness and Universality of the Rome Statute of the International Criminal Court system (PGA ICC Campaign)**, PGA has aimed at giving effect to the principle of complementarity through the political and legislative mobilization of parliamentarians to prioritize and achieve the implementation of the Rome Statute in national legal orders. The process of implementing the Rome Statute, in addition of allowing complementarity to take place through the preparation and enactment of the necessary legislation, also constitutes a social process, which is fundamental to build political will for the use of judicial remedies to address impunity for international crimes. The preparation, drafting, discussion and approval of bills at the parliamentary level contributes to awareness-raising to prevent international crimes, to undertake military and security-sector policy changes, to reflect and possibly take action on past atrocities (which normally falls outside the temporal jurisdiction of the Rome Statute), and to empower parliamentarians to engage in further human rights and law reform. Implementing legislation

¹⁵ As of today, only Namibia seems to have recognized the Rome Statute’s penal provisions as self-executing, while the DRC military justice system has done the same but within the limits of this specific branch of the National judiciary.

not only contributes to effective complementarity, but also turns the Rome Statute into an indispensable tool for the construction and consolidation of the Rule of Law, thus strengthening the ICC system.

Methodology

PGA's work on implementing legislation is global in scope and is sustained by its network of parliamentarians, from 131 countries with democratic status from all regions of the world, who commit individually to pursue legislative initiatives in relation to the Rome Statute in their own countries as well as to assist in peer-to-peer transnational dialogue and political support for the fight against impunity.

Priorities are determined the basis of a case-by-case analysis conducted by the PGA Secretariat with input from lawmakers regarding the political context, opportunities and procedures required to ensure the adoption of legislation as promptly as possible. Target groupings include: 1) Countries that are current ICC situation-, situation-related, or potential situation-countries; 2) Rome Statute States Parties where PGA builds on past pro-ICC parliamentary support; 3) Targets for the Universality of the Rome Statute where implementation could (or should) take place in parallel of ratification; and 4) States not *yet* parties to the Rome Statute where ratification is *not* imminent but where political conditions allow for a more politically-neutral discussion on crime prevention through "implementing" legislation.

Modalities

Parliamentarians are involved in the international, regional and/or national activities of the *PGA ICC Campaign* in order to recognise the importance of implementing legislation, and then be able to take relevant action within their national systems (see below). Upon the identification of adequate conditions, and in full respect of their own institutional mandate vis-a-vis their Parliaments and constituencies, individual MPs implement, with the assistance of the PGA Secretariat, the activities of the project under the following modalities:

- Calling for, and making *demarches* towards, the Executive Branch to ensure the initiation of the implementing legislation process at the Executive level
- When needed, the preparation of legislation (e.g. drafting)
- Revising, amending and/or supporting legislation submitted to Parliament by other branches
- Building multi-party consensus to ensure the discussion and adoption of effective and comprehensive legislation before Parliament

Scope

PGA aims at ensuring that the following check-list of items is at least considered for inclusion in each national legislative initiative by its Members. That,

- Definitions of crimes are in line with the Rome Statute, with some adjustments that may be made to reflect more protective definitions that may exist in respect of certain prohibited conduct under general international law or other applicable treaties
- Certain crimes that may be related to Rome Statute crimes (e.g. illegal arms' trafficking, drug trafficking, money laundering) are punishable also when committed as part or in support of the commission of international crimes
- Crimes against the administration of justice are punishable

- The bases for the exercise of jurisdiction are sufficiently broad and effective to minimize the “impunity gap”, where possible including the application of the jurisdictional criteria of universal jurisdiction (in line with international law, even if not included in the Rome Statute)
- The general principles of law of Part III of the Rome Statute, including the non-applicability of immunities and of Statutes of Limitations, are incorporated
- Due process and defence rights are upheld
- Victim and witness protection is guaranteed, with specific emphasis on women and children, in accordance with the high standard provided in article 68, paragraph 1 of the Statute
- National reparations for victims are provided for
- Penalties, including accessory penalties such as cessation of functions for government officials, with maximum penalties possibly in line with those applicable by the ICC for individuals allegedly bearing the greatest responsibility for the most serious conduct, are considered
- Adequate budgetary, infra-structural and human-resources are allocated to police/law-enforcement and judicial authorities for the carrying out of effective and independent investigations, prosecutions, trials and reparations-proceedings, as well as for the enforcement of detention-sentences
- Legislation and policies aim at the reinforcement of the separation of powers and independence of judges and prosecutors.¹⁶

Results and Targets¹⁷

Past parliamentary action within the *PGA ICC Campaign* with concrete outputs to incorporate the Rome Statute and give effect to the principle of complementarity have brought about tangible results in over 20 States with enacted legislation in: Argentina, Burundi, Central African Republic, Chile, Costa Rica, Georgia, Kenya, Nicaragua, Panama, Portugal, South Africa, Trinidad and Tobago, and Uruguay, and Non State Parties, The Philippines and Turkey.

Ongoing work is being conducted in countries where there is **completed draft legislation that is pending to be approved and/or enacted** (Brazil, Comoros, Democratic Republic of Congo, Dominican Republic, Jordan, Nigeria, and Uganda¹⁸).

Additionally, PGA has supported or is prepared for mobilisation in relation **to legislation pending to be completed as final draft or pending to be formally submitted to parliament for consideration**

¹⁶ Please note that PGA applies other minimum benchmarks to implementing legislation in the area of cooperation with the Court (i.e. adoption of legislation for judicial cooperation, judicial assistance with the Court and other countries, and ratification and implementation of the APIC).

¹⁷ This Section comprises only where PGA has had substantive contribution to the legislative processes. The list excludes contributions to the enactment of legislation on cooperation with the Court. For the current status of enacted or draft legislation related to complementarity and cooperation, please contact the PGA Secretariat.

¹⁸ The Ugandan ICC Bill 2006 has been adopted by Parliament in third reading on March 10, 2010 thanks to the leadership of PGA MPs led by Hon. S. Tashobya, MP (Chair, Legal and Parliamentary Affairs Committee). The Bill is pending to be signed into Law by the President of the Republic.

(Afghanistan, Chad, Ecuador, Gambia, Ghana, Italy, Liberia, Sierra Leone, Suriname, Sweden, Tanzania, Venezuela).

In 2010-2012, the PGA ICC Campaign's target-countries for increased mobilisation include, but are not limited to, (i) Rome Statute States Parties: Albania, Chad, Cook Islands, Czech Republic, Guinea, Jordan, Kenya¹⁹, Madagascar, Mexico, Panama, Paraguay, Russian Federation, and (ii) **Non States Parties:** Armenia, Bahamas, Bahrain, Bangladesh, Cape Verde, Cameroon, El Salvador, Indonesia Jamaica, Kiribati, Lebanon Malaysia, Micronesia, Moldova, Morocco, Mozambique, Philippines, the Seychelles, Solomon Islands, St. Lucia, Turkey, Tuvalu, Ukraine, Vanuatu.

Case 1- Central African Republic: Bringing a Draft in line with the Rome Statute

The revised Penal Code, adopted on 29 September 2009, contains provisions on genocide, crimes against humanity, some war crimes and some general principles of international criminal law: PGA Members – who had pushed the Government to table the draft legislation for several years – managed to pass important amendments to remedy some of the flaws of the draft legislation (e.g. the absence of murder and extermination from the list of crimes against humanity, the mistaken use of discriminatory motives in the chapeau of crimes against humanity and the mistaken characterisation of the attack against civilians as “widespread *and* systematic”). PGA Members have proposed new amendments to the section of the Penal Code on international crimes, which contained substantive flaws, such as regarding the notion of civilian population in the chapeau of crimes against humanity, the incomplete list of war crimes and the lack of superior/command responsibility in the national legal order.–The revised Criminal Procedure Code was also adopted on 30 September 2009, and it contains a new section on cooperation with the ICC, regarding which PGA Members are preparing amendments, including one that could permit the holding of ICC “in situ” trials in CAR. In the process of drafting of both the Penal Code and the Criminal Procedure Code, the CAR Government had received advise from various stakeholders, including the UNDP, but the drafts (especially the substantive law or “complementarity law”) had serious weaknesses.

Case 2 – Chile: Multi-Party Consensus Building

Implementing legislation on Rome Statute crimes was adopted by the Senate with unanimous vote on 7 April 2009, and Chamber of Deputies on 6 May 2009. The Constitutional Tribunal confirmed its constitutionality on 24 June 2009. PGA members and Secretariat actively supported the work of the Santiago-based think tank of one of the right wing parties, “Instituto Libertad” chairing the technical committee to draft the bill. PGA members, led by former Speaker Dip. Gabriel Ascencio (Christian Dem.) mobilised support to the bill from the left-wing, required in light of a neutral solution in the Bill for the crimes of the past. Passage of the Bill was essential to the unblocking support from right wing parties, after 7 years of stalemate). PGA members contributed as well to the drafting and approval in both Chambers of a constitutional amendment that gave recognised the jurisdiction of the ICC, enabling the

¹⁹ The Kenyan Int. Crimes Act, sponsored and supported by the multi-party PGA Group, has been adopted by Parliament on 11 Dec. 2008 and entered into force on 1 Jan. 2009. Additional legislation is needed for Kenya to exercise jurisdiction over “post-electoral violence” cases (Dec. 2007-Jan. 2008).

ratification, and paving the way for the principle of complementarity to receive constitutional rank within the Chilean legal order.

Case 3-Democratic Republic of Congo: Tabling Private Members Bills, Eliminating the Death Penalty and Mobilizing MPs

A comprehensive draft ICC Implementing Legislation was drafted and deposited in Parliament by two PGA Members in March 2008. This bill differs from the 2005 Bill deposited by the Transitional Government in that it does *not* include the *death penalty* for genocide, crimes against humanity and war crimes. The 2008 Bill is also more in line with the Rome Statute with respect to defences and superior orders. PGA organised 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 September 15, 2009, but was not discussed due to competing issues in the agenda of Parliament. At the PGA regional Kinshasa Conference on Justice and Peace in the Great Lakes region, held on 10-12 December 2009, impressive public endorsements 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 were manifested. PGA Members have now taken up the initiative to reproduce and deposit the existing legislative text in the Senate in order to benefit from a more speedy treatment and adoption of the bill which is stalled in the lower chamber.

Donors and Costs

PGA's action on implementing legislation, which is inserted in the broader *PGA ICC Campaign*, is a highly cost-effective initiative that aims at empowering and supporting the work that Legislators and other officials are conducting as part of their official mandate/functions. Resources are devoted primarily to cover the participation of MPs in regional or national events or small missions, which are generally partly supported with in-kind contributions of concerned Parliaments or Governments. Under exceptional circumstances, resources may be allocated for local consultants working within national legislatures.

The *PGA ICC Campaign* is funded by the European Union (EIDHR) and the Governments of Belgium, Germany, The Netherlands and Switzerland. PGA receives core support from the Governments of Denmark and Sweden, and The Hague Municipality.

Related Activities:

Database on Implementing Legislation

On the basis of consultations with its members, the PGA Secretariat maintains an advocacy-oriented database that builds on and, where appropriate, expands, information contained in key public databases. This PGA database includes politically-sensitive and process-oriented details about the legislation recognizing that despite the existence of legislation in a given country, this legislation is perfectible and advocacy efforts should remain for their revision and strengthening in order to tackle more effectively the challenges of the Court and of the Rome Statute system.

Consultations with Stakeholders

PGA continuously makes its information and analysis available to informal partners, such as ICC officials, ASP Focal Points and Secretariat, the EU-COJUR (Public Int. Law, ICC sub-area), ICC Member States, as well as the Commonwealth Secretariat, Amnesty International (International Justice Project), the Legal Tools Project University of Nottingham University, the ICRC (legal advisory services), and the OAS (Department of International Law) to support their own advocacy and efforts with branches of government other than Parliament. Consultations with key actors have also been organized by PGA in order to revise the common pitfalls that take place in the process of implementing legislation.

PGA, International Law and Human Rights Programme (New York-The Hague)

www.pgaction.org

Data as of 7 May 2010

Example K

THE ICC LEGAL TOOLS PROJECT

The International Criminal Court

Partner Institutions:

- The Norwegian Centre for Human Rights, University of Oslo, Norway
- The Department for Foreign and International Criminal Law of the Institute for Criminal Law and Criminal Justice of the Georg-August-Universität Göttingen, Germany
- The Hague Institute for the Internationalisation of Law (HiIL) and the T.M.C. Asser Institute, the Netherlands
- The Human Rights Law Centre, University of Nottingham, UK
- The European academy of eJustice, Germany
- The International Research and Documentation Centre for War Crimes Trials, University of Marburg, Germany
- Korea University, Republic of Korea
- The University of Graz, Austria
- Track Impunity Always (TRIAL), Switzerland
- Whitney R. Harris World Law Institute, Washington University in St. Louis, USA

Background:

The Legal Tools have been developed as part of the ICC Legal Tools Project of the ICC Office of the Prosecutor. They offer a comprehensive online or electronic knowledge system, developed to provide an expansive library of legal documents and range of research and reference tools to encourage and facilitate the efficient and precise practice of criminal justice for core international crimes. Although the Legal Tools were originally created for use within the ICC, the acknowledgement of their value as an important means of constructing national capacity has led to their adaptation for use beyond the Court. By offering the resources and applications that allow national institutions to engage with the practice of international criminal law, they are set to make an important contribution to enhancing national ability and, consequently, to ensuring the success of the ICC's system of justice. During the Eighth Session of the Assembly of States Parties, Resolution ICC-ASP/8/Res.3 was adopted by consensus highlighting the value of the Legal Tools Project, recognising its "[significant contribution] to the promotion of international criminal law and justice and thus to combating impunity".

The Legal Tools Project consists of three main clusters of services:

- a) The Legal Tools Database and Webpage
- b) Digests on the law and evidence of international crimes and modes of liability:
- c) The *Case Matrix* database structure for the organisation and structuring of evidence in core international crimes case.

The Legal Tools Database and Webpage

The Legal Tools Project provides the general public with free access to the Legal Tools Database of basic legal information in international criminal law through the Legal Tools Website www.legal-tools.org. In so doing, the Project represents a significant effort to disseminate legal information in the Court's area of work.

The Legal Tools Database is the most comprehensive on international criminal law. It contains more than 40,000 documents, including decisions and indictments from all international or internationalised criminal tribunals, preparatory works of the ICC, case documents from the ICC, treaties, information about national legal systems, and relevant decisions from national courts. The service also contains a new knowledge-base on national legislation implementing the ICC Statute.

The Elements- and the Means of Proof Digests

The Elements Digest is a doctrinal text on each element of the crimes and legal requirement of the modes of liability in the ICC Statute. It draws on all main sources of international criminal law and seeks to give users access to the text of relevant sources for a reasonable understanding of the substantive law of the ICC Statute. The Means of Proof Digest provides practical examples of the types or categories of evidence used in national and international criminal jurisdictions to satisfy the legal requirements of the crimes and modes of liability contained in the ICC Statute. It is a comprehensive document amounting to more than 6,000 A4 pages of text. The Digests are made available through the *Case Matrix*, and text does not necessarily represent views of the ICC, any of its Organs or any participant in proceedings before the ICC.

The Case Matrix

The Case Matrix is a law-driven case management and legal information application representing significant innovation in how to approach core international crimes cases. It can be used for work on cases as well as for training and other capacity building and knowledge transfer purposes. It can be customised for different user groups such as judges, prosecutors and investigators, defence and victims' counsel, non-governmental organizations, and states.

The Matrix has four primary and several secondary functions. Three of the primary functions offer access to international criminal law information: (a) the 'Legal texts' function, an electronic library of key documents selected from the collections and databases described above; (b) the 'Elements Digest' function which gives access to the through general tables of contents as well as at the level of the most specific legal requirements of the crimes that are under consideration in a case; and (c) the 'Means of Proof Digest' functionality which provides access to the Digest in the same ways as to the . The fourth primary function is a database structure for the organization of information and evidence on the core international crimes in a case. This function offers an overview of case facts in light of the legal requirements.

The technical platform of the Case Matrix is based on unlicensed open source components. Ralph Hecksteden of the Institute of Informatics and Law of the University of Saarland (Germany) has developed the technical platform pursuant to the design of Morten Bergsmo. They were awarded the 2008 Dieter Meurer Prize for Legal Informatics for making the Matrix.

Work on the Tools

The ICC Office of the Prosecutor is committed to the further development of the content and technical qualities of the Legal Tools. As the work to collect documents, register metadata for each document, and upload the documents onto the website is labour intensive, and as the ICC is an operational criminal Court with limited human resources, this work on the Legal Tools has been outsourced to agencies outside the ICC with expertise in this field, without any cost to the ICC. The purpose of this outsourcing is to create a broad, stable and long-term capacity to collect relevant documents, register metadata for each document, and upload the documents onto the Legal Tools Database, with a view to ensuring that the quality of its services will be as high as possible. The outsourcing partners must use their own human resources and find funding themselves for this activity and the Governments of Austria, Germany, Norway and Switzerland have contributed to the Legal Tools activities of the outsourcing partners.

Training and Helpdesk

The ICC Legal Tools amount to a comprehensive and cost-effective knowledge transfer and capacity building platform for core international crimes that can rapidly empower personnel in national institutions to sustain processes of criminal justice for atrocities and thus fulfill state obligations under the Rome Statute. Training of users and subsequent helpdesk support is provided free of charge to the users through the assistance of highly qualified advisers.

Example L



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS MISIÓN DE APOYO AL PROCESO DE PAZ MAPP/OEA

CONTRIBUTION OF THE ORGANIZATION OF AMERICAN STATES TO COLOMBIA'S TRANSITIONAL JUSTICE PROCESS

Legal framework

Colombia is currently in the process of implementing Law 975 of 25 July 2005, also called the Justice and Peace Law with the aim of achieving peace with illegal armed groups while at the same time providing accountability mechanisms for those responsible for serious crimes. The principles of truth, justice, and reparation are the backbone of this Law. These principles were absent in previous processes in which armed groups always rejected any justice element to the extent that it became a taboo. Any mention of accountability implied the end the negotiations. Colombia is now facing the challenge of carrying out a comprehensive transitional justice process and the Organization of American States (OAS) has decided to contribute to its success.

On January 23, 2004, the Government of Colombia and the OAS signed an agreement to establish a mission (MAPP/OEA²⁰) of the Organization in Colombia that would support the transitional justice process in its different components.

The mandate of such mission was defined in wide terms under the principles of autonomy, neutrality and flexibility, allowing it to work in a wide range of areas related to the peace process. The Mission would carry out the following functions:

- a. Verification of the peace process, particularly in relation with the cease-fire and cessation of hostilities, disarmament and demobilization, and reintegration.
- b. Support to the efforts of the Government, civil society organizations and others stakeholder, by contributing with resources to policy initiatives, programs and activities.
- c. Verification of disarmament and definition of programs for the destruction of weapons.
- d. Support for local initiatives in conflict zones; promotion of measures to enhance trust and reconciliation and to develop a culture of democracy, peace and peaceful resolution of the violence. Identification, development and implementation of social initiatives and projects in conflict zones.

During the course of the Mission and taking into account the justice component of the peace process in Colombia, the OAS realized the need to update its mandate and extend it to issues related with the judicial proceedings against those responsible for serious crimes and the recognition and effective exercise of victims rights to justice, peace and reparation.

²⁰ For its name in Spanish *Misión de Apoyo al Proceso de Paz/ Organización de Estados Americanos* (Peace Process Support Mission/ Organization of American States)

As a consequence the Government of Colombia and the OAS signed on 19 February 2010 an additional Protocol to the 2004 agreement by which the scope of the Mission's mandate was extended to include the following activities:

- a. Accompany the implementation of the Nation Policy for Social Reintegration in all its aspects with an emphasis in community-based reintegration. Offer constructive advice on specific issues following a request by the National Government.
- b. Monitor the implementation and outreach activities of the Justice and Peace Process. Accompany the institutional efforts within this framework with the aim of achieving truth, justice and reparation.
- c. Monitor and accompany the comprehensive attention to victims and collective reparations, as well as the reconstruction of social networks and the reconciliation process by supporting the efforts of the National Commission for Reparation and Reconciliation (CNRR), State institutions and civil society.
- d. Accompany the efforts undertaken by the Government, other State institutions, civil society and international organizations in the field of recruitment prevention, including recruitment of children.
- e. Verification of the peace process, particularly in relation with the cease-fire and cessation of hostilities, disarmament and demobilization, and reintegration.

This extended mandate has given the Mission an important role in generating confidence in the judicial system by supporting victims' participation and monitoring the implementation of the Justice and Peace Law, and therefore has contributed to enhance the legitimacy and capacity of Colombia's judiciary.

Moreover, the technical nature of the Mission has been one of its key features. In other words, it does not get involved in domestic political and legal issues, nor does it get involved in disputes generated by the peace process.

Organization and areas of work

The Mission has a main office in Colombia's capital city, Bogotá, and 12 regional offices in Apartadó, Valledupar, Barranquilla, Puerto Asís, Bucaramanga, Villavicencio, Cali, Cauca, Medellín, Pasto, Quibdó and San Pablo. International coordinators and national professionals compose each of these offices.

In its supporting role to the transitional process, the Mission participates, as an observer, in the meetings of the Inter-Institutional Justice and Peace Coordination Committee²¹. It offers advice on a wide range of topics and raises awareness about the vulnerabilities and weaknesses.

The Mission has identified four areas of work, namely, justice and peace, communities and victims, reintegration and recruitment prevention and public order.

²¹ Article 21 of Decree 3391 of 2006 established the Inter-Institutional Justice and Peace Coordination Committee formed by the Vice-president of the Republic, the Ministry of Interior and Justice, the Ministry of Defense, the Office of the High Commissioner for Peace, the Presidential Agency to the Social Action, the Supreme Court of Justice, the Attorney's General Office, the Superior Council of the Judiciary, the Peoples' Ombudsman, the High Commissioner for Reintegration, the Family Welfare Institute, the National Commission for Reparation and Reconciliation and the Regional Commissions of Restitution of Assets.

The area of **justice and peace** monitors the development and implementation of the Justice and Peace Law, in order to identify the progress it achieves and challenges it faces. Likewise, it assesses victims' access to the justice and peace process, by accompanying state institutions. Based on its research, the Mission participates in various inter-institutional committees related with the implementation of the Law.

With regards to **communities and victims**, this area identifies the challenges, progress and difficulties of national institutions responsible for making the follow-up of collective reparations, community reintegration, and the strengthening and organization of victims of violence. It also gives visibility to successful experiences, thereby contributing to the construction of the historical memory through projects supporting a culture of peace.

In the field of **reintegration and recruitment prevention**, the Mission verifies the State's institutional offer to former combatants that are in the process of returning to civilian life and the fulfillment of the commitments made to demobilized individuals. It identifies the main difficulties, challenges and progress in the reintegration process, with special attention to demobilized women. The Mission supports joint action by institutions to promote early warning systems and other working mechanisms to prevent the recruitment of youngsters, children and demobilized persons.

Finally, the Mission monitors the risk and critical situations created by illegal armed groups that affect the civilian population and **public order**. It also alerts the authorities about the zones that are most vulnerable, pointing out possible actions aimed at providing better security to the population. This area also looks to the potential of demobilized armed groups, by orienting teams in the field in their work with these structures.

Support to victims and capacity building

The justice component of the Justice and Peace Law is carried out in three of Colombia's main cities (Bogotá, Medellín and Barranquilla). Nevertheless, experience has demonstrated that medium size towns far from these three cities have really important dynamics because the increasing number of victims willing to participate in the process. For this reason, the Mission is based on a fundamental principle: *institutions must be proactive in approaching victims and not simply wait for them to approach institutions.*

In this sense there has been a gradual decentralization of the judicial work through a strategy of hearings in all the regions by means of live broadcasts and prerecorded broadcasts with the support of international cooperation programs. The Mission has focused on monitoring and accompanying this process where it has found a larger number of victims or where these victims have been isolated.

The Mission has also been monitoring and accompanying more than 300 victim's information sessions. At the beginning these meetings were carried out in regional capitals and intermediate cities, but slowly the National Commission of Reparation and Reconciliation (CNRR) and the Attorney General's office have reached the most remote and inaccessible places. The Mission has supported these events by being present and advising the institutions where to go according to the number of victims and their vulnerability situation.

Special attention has been given to indigenous and Afro-Colombian communities where the Mission has carried out research to better understand their cultural context. It has pointed out the need to improve the conditions of access to justice and reparations and it has called for the recovery of a historical memory that respects their own traditional perspective.

With regards to the criminal proceedings established in the Justice and Peace Law, since December 2006, the Mission has participated in more than 300 public hearings and in about 80 indictments and acceptance of charges hearings. At the beginning, the average of voluntary hearings was about once a week but that number has increased and today more than 20 such hearings are programmed each day. The Mission has evolved from a quantitative to a qualitative monitoring system. These hearing have also been decentralized to allow a wider and easier participation of victims.

The Mission also collaborates in the preparation of victims for their participation in the advanced stages of the criminal proceedings and in particular in the integral reparation hearings. It works together with private or public defendants in order for victims to have an adequate judicial representation. This orientation activity is fundamental to ensure that victims can properly exercise their rights to truth, justice and reparation.

Other areas of work of the Mission include:

- a. Monitoring the security conditions of individuals seeking land restitution.
- b. Monitoring the prison system and condition of detainees who participate in the process.
- c. Monitor the implementation of administrative reparations program.
- d. Monitor the initiatives for the reconstruction of historical memory.
- e. Monitor and support exhumation missions.

The presence of the Mission in these activities has helped to promote the participation of the victims in the transitional process while at the same time it has had a dissuasive effect on potential victimizers.

Quarterly reports

The Mission issues Quarterly Reports, which are presented by the Secretary General of the OAS to the Permanent Council. These Reports analyses the progress, challenges and difficulties of the process and makes a number of recommendations. The Quarterly Reports are a useful tool to help the international community understand how the Colombian transitional process is progressing.

Since the Mission started its work in Colombia is has reiterated the important role the international community can play in support of the transitional justice process.

In the XIV and most recent Quarterly Report the Mission stated, “given the nature and size of the Justice and Peace process, a call should be made for all Colombians and the international community to provide support and to combine their efforts. That requires, at this consolidation phase, the maintenance of a clear, objective, and dispassionate outlook that will enable sustained progress to be made with regards to the opportunities and possibilities offered by the prosecution of hundreds of individuals who contributed to violence in different regions of the nation’s territory.”²²

Conclusion

Colombia has undertaken an original and comprehensive peace process that for the first time incorporates important accountability mechanisms. Thousands of victims are for the first time exercising their rights to truth, justice and reparation.

²² Fourteenth Quarterly Report Of The Secretary General to the Permanent Council on The Mission to Support the Peace Process In Colombia. 28 April 2010.

The process has made significant progress but has encountered many difficulties and set back along the way. There still remains a long work to be done in order to bring peace and reconciliation to a country that has long been affected by violence.

The OAS is committed to strengthening the capacity of State institutions and civil society organization by monitoring, accompanying, and helping to coordinate a wide range of actions and initiatives related to justice and peace. The OAS encourages the international community to join this effort and reinforce its commitment to support the Colombian people in their purpose of achieving long lasting peace.