



PARLIAMENTARIANS FOR GLOBAL ACTION
ACCIÓN MUNDIAL DE PARLAMENTARIOS

**Delegation of Parliamentarians from El Salvador
to the ICC and related institutions**
The Hague, 5-7 September 2010
Internal document – not for distribution

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Contents: *I. Presentation – II. Objectives – III. Delegation – IV. Agenda – V. Relevant Issues – VI. ICC Process in El Salvador*

I. PRESENTATION

EL Salvador is one of the nine countries in the Americas pending to join the system of the ICC.¹ According to PGA's analysis, the ratification of El Salvador is not only possible, but also desirable, both as a measure of reparation to the victims of serious crimes during the civil conflict and as a guarantee of non-repetition of such crimes. Moreover, if concluded successfully, the ICC ratification by El Salvador would have a spill-over effect in the much more complex ratification processes in Guatemala and Nicaragua, with an eventually positive effect over the USA.

While the ICC dossier in El Salvador has been promoted mainly by PGA members belonging to the now governing party, the left-wing FMLN, PGA aims at generating multi-party support for the ratification of the Rome Statute. This inclusive approach is necessary given the requirement of simple majority, which none of the seven parties in Parliament has, but also in light of the recent civil conflict which derived in absent approaches to redress and prosecute international crimes.

The mission of Parliamentarians from El Salvador to The Hague is part of a broader project of PGA reactivated in 2009 upon the arrival of the FMLN to government.

¹ El Salvador did not sign the Rome Statute. States not yet parties to the Rome Statute in the Americas are: Bahamas, Cuba, Grenada, Guatemala, Haiti, Jamaica, El Salvador, Nicaragua and the United States.

II. OBJECTIVES OF THE MISSION TO THE HAGUE

- To provide a space of dialogue between high-level Parliamentarians and ICC officials and other stakeholders, in order to transmit accurately the mandate and operation of the ICC;
- To provide a space for the transmittal of positions and concerns of Salvadorean MPs with respect to the Rome Statute and the ICC;
- To address and eliminate lingering political and legal obstacles to ICC ratification;
- To transmit and express the importance and interest of other States Parties in El Salvador's ratification;
- To promote and enhance the role of parliamentarians in reaffirming, strengthening and protecting the justice mandate of the Court.

III. DELEGATION

1. **Dip. Federico Guillermo Ávila Quelh (ARENA)**
Chair, Legislation and Constitutional Issues Committee
2. **Dip. José Rafael Machuca Zelaya (PCN)**
Justice and Human Rights Committee, and Legislation and Constitution Committee. Dip. Machuca has been member elected to Parliament 8 consecutive terms since 1987.
3. **Dip. Othon Sigfrido Reyes Morales (FMLN), PGA member**
Deputy Speaker of the Assembly. Spokesperson of the FMLN during the Funes Presidential Campaign. Previously, Dip. Reyes participated in the political and armed struggle of the National Liberation Front Farabundo Martí of El Salvador (FMLN) in the decade of the 80's and early 90's. He was a member of the National Commission for the Consolidation of Peace (COPAZ), the national entity in charge of overseeing the 1992 Peace Accords and founding member of the FMLN political party. Dip. Reyes has been a consultant to the National Commission for Development of El Salvador and guest consultant at the World Bank, advising on strategies for regional integration in West and Central Africa. He graduated in International Relations from the University of El Salvador (1995) and holds a master's degrees in Trade and and another in Economic Policy Management. Diputado Reyes speaks English, French and Russian. From 2011 he will function as Speaker of the Parliament of El Salvador.
4. **Dip. Jackeline Noemí Rivera Avalos (FMLN)**
Foreign Affairs Committee and Constitutional and Electoral Issues Committee. Member of the Executive Committee of the FMLN Party. She served in the past as advisor to the Supreme Court.
5. **Dip. Mario Alberto Tenorio Guerrero (GANa)**
Secretary of the Board of the Assembly. Lawyer and Notary, former auxiliary district civil judge, and legal advisor to numerous corporations Dip. Tenorio is part of the newly formed parliamentary block GANA which separated from ARENA.

6. **Dip. Francisco José Zablah Safie** (Lideres por el Cambio)
Budget Committee. A business person and activities in favour of gender equality, Dip Zablah is part of delegation involved in economic and trade negotiations between El Salvador and the EU.

7. **Dr. Oscar Santamaría** (ARENA)
Legal Advisor to the ARENA Block in Parliament. Lawyer and Professor of Constitutional law, Dr. Santamaria was Minister of Justice of El Salvador from 1989-1991, and Minister of Foreign Affairs from 1994 to 1995. In the framework of the peace negotiations with the FMLN he served as Chief of the Commission of Governmental Discussion from 1989 to 1992 and until 1995 as Minister responsible of compliance with the peace agreement.

8. **Sen. Carlos Cantero** (Chile) *International Council of PGA*
Senador Cantero, former Renovacion Nacional and current Independent, is member of the International Council of PGA. In 2007 he joined PGA and promoted pluri-partisan approach to the political process which culminated in the ratification of Chile of the Rome Statute in 2009. Senator Cantero studied geography and sociology and is a leader in information technology and development issues in Chile.

9. **Dr. David Donat Cattin**, *Director, International Law and Human Rights Programme, PGA*
10. **Deborah Ruiz Verduzco**, *Senior Programme Officer, International Law and Human Rights Programme, PGA*

IV. AGENDA (ANNOTATED)

September 4 & 5:

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| 13.00 | Arrival of delegates Amsterdam |
| 20.00 | Free [Suggested: Visit of Van Gogh Museum, Amsterdam]
Welcome Dinner offered by Sen. Cantero on behalf of PGA.
H.E. Francisco Lloreda Mera, Amb. of Colombia to The Netherlands and Dip. Kathleen Ferrier, MP (to be confirmed) as guest
[Maxime Buitenhof, Den Haag] |

September 6 (Monday):

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| 9.30 | ICC President, H.E. Juez Sang-Hyun Song
<i>ICC principles, non retroactivity, judicial activity, challenges on operations, mission</i> |
| 10.30 | ICC Prosecutor, Luis Moreno Ocampo
<i>Investigations in Colombia, Afghanistan, Palestine. Challenges on cooperation. Criteria for selection of cases, and complementarity</i> |

- 11.30 **ICC Registrar, Silvana Arbia**
Budget of the Court and potential contribution by El Salvador, oversight and management, operations on outreach and victim protection
- 12.30 **Lunch with ICC Judges**
H.E. Judges Rene Blattman (Bolivian) [to confirm] and Elizabeth Odio Benito (Costa Rican), and Sylvia Steiner (Brazilian)
Interpretation of ICC principles, challenges in trial
- 14.00 **Visit of the Courtroom and attendance of ongoing Hearing**
- 16.00 **Ministry of Foreign Affairs of The Netherlands**
H.E. Pieter de Savornin-Lohman (Ambassador to the ICC), Mr. Thomas Henquet (Legal Adviser), Mr. Guusje Korthals-Altes (UN Department), Mr. Koen Hartog (ICC Policy Officer)

Relationship with the ICC as host country. Challenges with respect to arrest and surrender of ICC indictees. Relations with other States Parties. Contribution of support to the ICC to Foreign Affairs agenda. Relation with the US. Linkage between ICC and military contributions to UN and other operations.
- 19.30 Dinner with Economic and Social Council of El Salvador, offered by the Embassy of El Salvador [location TBA]
- September 7 (Tuesday):**
- 10.30-12.00 **Interview at Radio Nederlands Worldwide [Hillversum]**
- 13.00-14.30 **Lunch with the Vicepresident of the Assembly of States Parties, H.E. Jorge Lomonaco, Ambassador of Mexico to The Netherlands [Kurzaal, Steigenberger Kurhaus Hotel]**
- 15.00-16.00 **Hearing ICTY, Case Karadzic [depending on judicial schedule]**
- 16.30-17.00 **Hearing with Standing Committee on Foreign Affairs / Tour of Parliament [Tweede Kamer]**
- 9.00 **Closure Working Dinner with PGA [Humphrey's Molenstraat]**
- September 8-10:**
Departures

V. RELEVANT ISSUES

The main obstacles identified by PGA stalling the process in El Salvador are as follows:

Concerns of right wing parties and groups:

- Suspicion over the application of the non-retroactivity principle of the Rome Statute
- Concern over the impact that the implementation of general principles of law and crimes of the Rome Statute on the amnesty law and on future actions concerning access to justice, redress and criminal prosecution for acts committed during the conflict
- Concern of tension with the United States

Concerns of current government:

- Lack of identification of concrete benefits in joining the ICC
- Concern to create tension with the United States
- Concern to accept the FMLN agenda, looking too left-wing if ICC is supported

Legal concerns:

- Debate on the need of a constitutional amendment in order to avoid the ratification being subsequently challenged at the Supreme Court (constitutionality is evaluated only after the adoption of law and can be raised by any citizen)
- Compatibility of life imprisonment in the Rome Statute with constitutional prohibition
- Compatibility of obligation to surrender of nationals to the ICC with constitutional prohibition

Political balance:

- Funes administration distancing himself from FMLN party agenda
- Need of a simple majority (42 + 1) to ratify a treaty
- Seven political parties represented in Parliament, none with enough votes for a simple majority [FMLN (35, pro ICC), ARENA (18, anti-ICC), GANA (13, anti-ICC), PCN (10, anti-ICC), LPC (5, neutral), PDC (2, pro-ICC), CD (1, pro-ICC)]

VI. ICC Process in El Salvador

1979	Coup d'état to Gral. Romero Mena by reformist Civil Military Junta
1980	Beginning of civil war between Military Government led by José Napoleón Duarte and five left-wing militias grouped as the FMLN (Frente Farabundo Martí de Liberación Nacional)
1981 1982-1984	ARENA party founded by Gral. Roberto D'Aubuisson Term of Alvaro Magaña as president of El Salvador on behalf of ARENA
1989	Alfredo Cristiani (ARENA) term as President of El Salvador begins.
16 January 1992	Signing of the Peace Accords between the Government and the FMLN

15 March 1993	Truth Commission of El Salvador chaired by Thomas Buergenthal publishes its report attributing numerous murders and enforced disappearances to armed forces and extra-judicial killings to militias.
22 March 1993	Presidents Alfredo Cristiani sanctions the Decreto 486, adopted by the Legislative Assembly, which grants broad, unconditional and general amnesty law to all participants in the armed conflict.
1994-1999	Presidency of Armando Calderón Sol on behalf of ARENA. FMLN is defeated in the elections.
1999-2004	Presidency of Francisco Flóres Pérez on behalf of ARENA. FMLN is defeated in the elections.
2002	Mr. Shafick Handal, FMLN politician from EL Salvador joins PGA
25 October 2002	President Calderon signs Bilateral Non Surrender Agreement to the ICC with the United States
2003	El Salvador participates in the Coalition of the Willing sending troops to Iraq
29 April 2004	National Assembly ratifies Bilateral Non Surrender Agreement to the ICC with the United States
1 June 2004	Presidency of Antonio Sacca on behalf of ARENA begins. FMLN is defeated in the elections
March 2006	Delegation of MPs from El Salvador attends PGA Seminar on the ICC and implementing legislation in the Mexican Senate. FMLN MPs confirm that under an ARENA administration the ICC dossier is absolutely blocked
1 June 2009	FMLN wins elections. Presidency of Mauricio Funes begins. FMLN includes in its programme of government the ratification of the Rome Statute
24 & 25 September 2009	Delegation of PGA with parliamentarians from Dominican Republic, Nicaragua and Venezuela to El Salvador http://www.pgaction.org/PGA_El_Salvador_2009.html
November 2009	El Salvador reports to the UN Human Rights Council, in relation to the UPR mechanism, the beginning of consultations to facilitate the eventual ratification of the Rome Statute. El Salvador's Ambassador to The Hague delivers speech in support of the ICC at the ASP Session. http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-El%20Salvador-SPA.pdf
16 January 2010	On the occasion of the Anniversary of the signing of the Peace Accords, President Funes acknowledges the responsibility of the State for serious crimes committed during the conflict and apologises to the victims. President Funes commits to the investigation and prosecution of those crimes.

<http://www.presidencia.gob.sv/discurso/2010/01/disc1601.html>

- January 2010 Dip. Sigfrido Reyes intervenes at OAS Annual Session on the ICC on behalf of PGA, <http://www.pgaction.org/OAS.html>
- January 2010 13 parliamentarians leave ARENA party in protest against its president, former President of El Salvador Cristiani, and create new political party and block GANA
- 9 February 2010 Working Group on the UPR at the UN Human Rights Council recommends to El Salvador the ratification of the Rome Statute. While the Government committed to the ratification of the Optional Protocol of the Convention against Torture, it only promises to report on June on the suggestion on the ratification of the Rome Statute.
- April 2010 Amb. Wenaweser conducts mission to El Salvador
- April 2010 Dip. Sigfrido Reyes intervenes at ASP Panel on the Review Conference at the UN, on behalf of PGA
- May 2010 MPs from FMLN and GANA attend PGA's Consultative Assembly of Parliamentarians for the ICC and the Rule of Law at the Ugandan Parliament
- June 2010 El Salvador Delegation attends Review Conference in Kampala. PGA arranges a meeting between US delegate Amb. Rapp, and delegate from El Salvador Dr. Morales, to convey that "relations between the US and El Salvador will not be affected in the case of ratification of the Rome Statute by El Salvador".
- June 2010 In report to UPR, El Salvador does not include commitment to ratify the Rome Statute
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/141/13/PDF/G1014113.pdf?OpenElement>
- 5- 8 September 2010 Delegation of MPs from El Salvador to ICC and related institutions in The Hague
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