

“Where Can the Victims of Atrocities Find Justice?”
Remarks of
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Thank you very much Lizza, and thank you, Irma Cecilio, for making this session possible. It is a great honor for me to be here with the graduates of Ateneo de Manila University, one of the foremost universities of this country. I visited the Rizal Shrine in *Intramuros* on Sunday and learned that the national hero of the Philippines, Jose Rizal, graduated from Ateneo. I know that it has produced other great leaders of this country, including your current premier, President Benigno Aquino III.

I am particularly proud to be here with the Women of Ateneo, an organization that I learned about from our mutual friend, Mayee Bringas-Warren, probably my closest colleague in international justice over the course of the last eight years. Mayee was part of the first class of women that graduated from Ateneo in 1977, just 34 years ago.

I join you in support of progress for women. I am a believer in those words from the century-old women's marching song, “Bread and Roses,” about the “the rising of the women” bringing “the greater days.” I share with my boss, U.S. Secretary of State Hillary Rodham Clinton, a strong commitment to the education, the promotion, and the empowerment of women—certainly because it is right, but also because it is the most effective single strategy for achieving economic development, human welfare, security and justice.

Like those of you who are among the first women graduates of Ateneo, I was part of the generation that finished university in the 1970s. We are not yet old, but we can reflect on how much progress has been made, and how the world has changed during our lifetimes. I was reminded of that progress in my own country a few days ago when I saw a copy of the birth certificate of the President of the United States published in our newspapers. Some focused on the strange and crazy controversy that led the President to release it. What struck me were the details -- that a mother, native of Kansas, only 18 years old, had given birth to an African-American child in August of 1961, and I reflected on what she could have looked forward to in raising him at that time in the United States of America.

I am older than the President [of my country]. I was twelve years old in the summer of 1961. I remember it well because it was when my family and I traveled from our home in Iowa to Washington D.C. for the first time, for a wonderful trip. But during that trip I remember eating

at a lunch counter, just outside Washington, where I noticed the members of an African-American family standing behind us, getting their food in a sack even though there were chairs available. I asked my father why they were standing. He said that in this part of the country, black people were not allowed to sit at lunch counters. The summer that our President was born, black persons faced legal discrimination in public accommodations in many parts of his [our] country. In America and elsewhere, women were denied places in great universities. In many parts of the world, nations were only then breaking free from colonial control. Great progress has been achieved in our lifetimes, and human potential on this planet has been unlocked in ways that were never before foreseen. We owe it to the struggle of many, because it did not happen automatically that all those walls crumbled.

We now have the opportunity to draw on human talent from people of different parts of the world and different backgrounds, not just from elites, but from all of humankind. We are not limited to those of narrow minds and narrow views, but can bring together brothers and sisters from across the planet to face its challenges. Those challenges include the need to bring the same opportunities to those who continue to suffer from discrimination. In particular, we need to act together to protect those who are subjected to discrimination at its worst-- to systematic violence, to genocide, to war crimes, and to crimes against humanity.

All through human history, people have suffered during wars and other armed conflicts. Here in the Philippines, and elsewhere in the Pacific, World War II brought great suffering to both combatants and non-combatants. But in the world of 2011, in many conflict zones it has become far more dangerous to be an innocent woman or child than it is to be a soldier. I remember the tasks that Mayee Warren and I confronted when we came first to the International Criminal Tribunal for Rwanda. My job was to prepare for an immediate trial, and hers was to organize the evidence. But we both had to try to understand the Rwanda genocide: the murder of 800,000 men, women, and children in a period of only 100 days -- a rate of killing that exceeded that of the Nazi death machine at its most effective. I remember that defense teams would sometimes argue that it was unintended, and say "This always happens in a war; people get caught in the cross fire. You have to expect it." But I remember sitting with a soldier who fought on the losing side of the civil war for control of Rwanda in 1994, and asking how many soldiers were killed in the conflict. He said that there were fewer than a hundred killed on his side, probably fewer on the other. In fact, the war had not been fought in active battles. The winning army had prevailed by strangling the other side's supply lines and by occasional bombardments, forcing the other army to retreat. But at the same time that the retreating army was losing the country it was actually winning a genocide—the destruction of the Tutsi ethnic group that it associated with the winning army. The losing army participated in a mass-murder campaign, together with militia and armed citizens, against innocent men, women, and children - - soft targets. It is this kind of targeting that we see in other conflict zones today.

The world, however, has responded to the targeting [on behalf] of the innocent, not evenly, not always effectively, but it began to do so in the 1990's with the creation of International Tribunals for the former Yugoslavia and for Rwanda. The Rwanda Tribunal where Mayee Warren and I worked is only now completing its mission. It has been successful in arresting the key leaders of the genocide in 26 different countries and bringing [perpetrators or countries? – 'them' seems to apply to countries] them to trial. Among these were 13 government ministers, including the Prime Minister, 12 military leaders, various territorial governors and mayors, media directors, like those I personally prosecuted, as well as other prominent individuals. Its judgments have told the story of what happened, and pronounced convictions for the crime of genocide for the first time in human history.

The question that was always on my mind during these trials was whether we were delivering justice for the victims. I have talked with so many Rwandans who had lost almost every member of their family, and I have tried to figure how I would feel if I had gone through that experience. I have wondered what I would think of the long trials, and of the efforts necessary for an international court to test the evidence and hold certain leaders accountable for what they have done. Even if I saw foreign investigators, lawyers, and judges working hard, putting their hearts and souls into the effort, I have wondered whether I would think it worthwhile.

I received an answer at the end of the 34-month "media trial"-- a case where the accused persons included a newspaper editor and two principals of a radio station. The newspaper editor's case was the most straightforward because the paper had been known for its extremist rhetoric, and for running vicious cartoons that demeaned anyone who would protect the Tutsi ethnic group from violence, rape and murder.

The cases of the two alleged to be responsible for the radio station were more challenging. Both were very distinguished men: one was the general secretary of the Foreign Ministry of Rwanda, founder of a political party, and a former secretary to the Chairman of the Organization for African Unity. The other was probably the greatest intellectual in his country, who had received a doctorate in African History with distinction from the University of Paris. Under Rwandan President Habyarimana, he had been in charge of the government newspapers and radio until he lost the position when the President was forced to form a coalition with the opposition. Thereafter he established a private radio station to support the President's party. The station was RTLM, which became the famous "hate radio."

The radio station was immensely popular, because unlike government radio, it actually provided entertainment—the first time this had happened on the airwaves in Rwanda. But it was entertainment full of the messages of ethnic division and hatred, and designed to stir up old grievances that many people had almost forgotten. The constant theme was that the Tutsi-led rebel army fighting to take control of Rwanda threatened Hutus with a return to the discrimination, even to the slavery they believed they had experienced in the past at the hands of

the Tutsis. This message was accompanied by the suggestion that the Tutsi civilians in Rwanda were the accomplices of the rebel army. Proving that the radio programs targeted these Tutsi civilians for genocide was the challenge. But we were able to prove it from the broadcasts, from audiotapes gathered in Mayee's evidence unit, in particular with one where the announcer described the enemy by his physique. "We know the enemy: we know him by his height, we know him by that small nose. Break that nose!" This was a clear reference to Tutsis, whose stereotype was tall with a thin nose, as opposed to that of the Hutu that was short with a wide nose. With the articles and the broadcasts, and with other evidence showing the control of defendants over the newspaper and radio, we were able to achieve the first convictions in history for Direct and Public Incitement to Genocide through messages delivered by the mass media.

I remember talking to a Rwandan who had lost members of his family in the genocide who was in the gallery the day the Trial Chamber announced the convictions. He came up to me and at first I was worried that he would express misgivings. We had not won on every count or on every issue but his message was about the effect of the judgment on a personal level. He said that the men the judges had convicted were people far more powerful than he and his family had been in Rwanda. The[re]y were men of such station that he would not have been allowed to be with them in the same room. Yet they had been responsible for inciting the killing of his family, and he had thought that they would never be held to account. But the judges had made them stand to hear their guilt pronounced to the entire world, and sent them to prison for life for what they had done to their victims. He then said, "this is the greatest day of my life." The judgment could not bring back the victims. It did not provide financial compensation to the survivors. But that judgment holding men of great power responsible for crimes against innocent victims under universal law was a message of immense power.

In Sierra Leone we faced different challenges and approached them in a different way. It was not a UN court like the Rwanda Tribunal or the Yugoslav Tribunal. When I went there, it meant I no longer had the direct benefit of the services of the many Filipinos who work in the United Nations, and who keep UN institutions going. When I was with the UN, I can say that I never would have been employed or renewed were it not for Marilyn Dantis or Janina Ogtong in Human Resources, or paid were not for Danilo Carlos in budget, or had anything to present in court were it not for Mayee Warren in evidence.

But the Special Court for Sierra Leone was established as a partnership between the United Nations and the government and people of Sierra Leone. Some of the judges and more than 55% of the employees of the Court were Sierra Leoneans. It was an institution where our police investigators, our witness protection officers, and outreach officers knew their communities. They knew when a witness was telling the truth and when a witness was lying. They were the most effective in telling the people of the country what the court was doing. Our 13 Sierra Leonean outreach officers were based in each district, and made thousands of community presentations each [a] year about the court's work, including sessions where videos would be

shown of court proceedings and where the prosecutor, defense attorneys, and other court officers would appear in person to be questioned by the public. In a country where the penetration of television is about 2%, and where few newspapers circulate more than 500 copies, 90% of the people in the country, according to an independent poll, said that they knew about the work of the Special Court, and 80% of them thought that it had been a force for peace and stability.

We prosecuted only senior leadership which meant fewer trials, but they were more extensive and including more alleged crimes scenes and criminal acts. They attracted audiences who knew of the crimes, because so many had been committed within earshot and view of the court itself. Unlike the Rwandan Tribunal which was in Arusha, Tanzania, about 800 km from Rwanda, or the Yugoslavia Tribunal which was in The Hague, Netherlands, about 1500 km from the Balkans, all of the trials of the Special Court - except that of Charles Taylor, - were conducted in Sierra Leone.

These [heinous] crimes deeply scarred the people of this small [vibrant] country. There were thousands of men, women, even children, who had their hands and arms brutally amputated, just as you may have seen in the movie, "Blood Diamond," with vicious rebels asking the victims whether it would be "long sleeves" or "short sleeves"--whether they would be hacked at the wrist or above the elbow. You meet the victims of this crime in the streets of Freetown, like my friend Jabati Mambu, with a bandage covering his wrist bones, but who with great enthusiasm manages the Amputees' Football Club. There are the survivors of the tens of thousands who were killed, who suffer from the loss of their loved ones and from the memories of the often vicious ways in which their lives were taken. And there is the ongoing pain inflicted on the more than one hundred thousand victims of sexual violence. There was rape, there was sexual slavery, and there was a crime not before recognized, where women were conscripted as "bush wives" of rebel leaders, and stigmatized in a way that they could never go home again. We sought and achieved convictions for rape as a war crime and crime against humanity, and for the first time in history for sexual slavery as a war crime and crime against humanity. But we did not think that this fully recognized the criminal conduct represented in the forcible taking of women as bush wives, so we sought convictions for a crime not specifically described in our statute--for forced marriage as an inhuman act that constituted a crime against humanity. The defense challenged it, but in the end we were able to show that this was an inhuman act of equal or greater gravity than that of the listed crimes against humanity, and achieved the first convictions in history for this criminal conduct.

Our mandate was limited to charging only those "bearing the greatest responsibility," so many who committed awful crimes, but were not national leaders, have escaped justice. As at the Yugoslav and Rwanda tribunals, there was no effective way for the court to provide reparations for the victims. But for those victims, so many of whom I met across Sierra Leone, the convictions of the powerful men who commanded or enabled these brutal acts, and the condemnation and punishment for each of the ways in which the innocent were made to suffer,

has been exceptionally meaningful. These trials and convictions, and the way in which they were communicated through the court's outreach, have broken the cycle of impunity in Sierra Leone, contributing to a situation where governments now changed in Sierra Leone are not run by violence but by election. All the trials and appeals are now complete except for that of former Liberian President Charles Taylor. His case now awaits only the pronouncement of judgment by the Trial Chamber sometime in the next four months, with any appeal thereafter likely to take about six more months. With its conclusion, the active proceedings of the Special Court will be at an end.

With the closing of these temporary courts, many are asking the question: Where will the victims of other atrocities find justice? I face the [same] question everywhere. These courts have raised the expectations of victims around the world. They ask why they cannot have a special court like [the citizens] you had in Sierra Leone, or the same kind of justice that was provided for the victims of the Rwandan genocide. Have they not suffered similar crimes?

For cases that have arisen since July 2002, there is an answer in the system established by the Statute of Rome, with the International Criminal Court in The Hague as the court of last resort but with countries encouraged to try these cases at the national level under the principle of "complementarity." I know that here in the Philippines, your Senate will soon consider ratification of the Statute of Rome.

I have had a great deal of contact with ICC and its officers. By special arrangement, the Sierra Leone court conducted most of the trial of Charles Taylor in the courtrooms of the ICC. I have come to know well the ICC Prosecutor, Registrar, and President. Our mutual friend, Mayee Warren, was Chef de Cabinet to the ICC Prosecutor, who has generously allowed her to come on loan to work at the Special Court for Sierra Leone until it closes in order to ensure that its archives are secured, its witnesses protected, and its legacy preserved.

I am no longer an international prosecutor, but now an Ambassador at Large for the United States of America. I now visit the ICC as the representative of my government. Recently when I was in The Hague, I saw the ICC President, Judge Song of South Korea. He and I had traveled to Kinshasa in the DR Congo in December 2009 to both deliver a message in favor of adopting legislation to permit the national prosecution of ICC crimes in the Congolese courts. He and I often talk about his worldwide travels to encourage ICC ratification and its implementation into national law. This time he spoke of his trips in March of this year to Malaysia and the Philippines in support of ICC ratification. He said to me, "When I travel, I find people who have this impression that the ratification of the ICC will be viewed as an unfriendly act by the Government of the United States. Apparently, this is not the case. Why don't you just say it?"

So I will. The United States respects the right of every country to join the ICC. This was the position of the last administration, under Secretary of State Condoleezza Rice, expressed in the

public words of her Legal Advisor. In this administration, we have gone further to engage supportively with the ICC. While we have not made the decision ourselves to ratify the Statute of Rome, we are participating as observers in the ICC Assembly of States Parties and Review Conference, and we have offered to assist the Prosecutor and Registrar in each of the current cases of the ICC, seeking ways consistent with our law to help with witness protection and relocation, information-sharing, and the arrest and transfer of fugitives.

The United States strongly supports the prosecution of those who are responsible for genocide, war crimes, and crimes against humanity. Consistent with the ICC principle of complementarity, and as longstanding US policy, we support national efforts to achieve accountability. But when the most grave and serious crimes are committed and there is no will or capacity to prosecute at the national level, most of the countries in the world have decided, and the United States accepts, that this justice will be delivered in the International Criminal Court. We will work closely with our allies and friends who within the ICC, which may soon include the Republic of the Philippines, to strengthen the ICC, to make it the kind of institution that can be effective in investigating, prosecuting, and trying those responsible for these crimes. We want those arrest warrants to be executed. We want the guilty to be found guilty and the innocent not to suffer. We want the victims to achieve justice, and we hope that this will deter crimes and protect others from becoming victims in the future.

But it is also important to recognize that the ICC alone cannot meet the [for] need for justice even in countries where the ICC is prosecuting cases with national cooperation. Given its number of judges, its limited resources, and the legal requirements for admission of its cases, it is not likely to ever have more than 20 or 30 individuals before it [at] any [given] time. Evaluating it in terms of [Given] its global reach, it may be able to do only two or three trials in any specific country situation. It may be able to prosecute senior leaders, but will not be able to reach those beneath them who may be responsible for hundreds of atrocities.

Where will the victims of these atrocities find justice? That question is being asked, and I hope answered, in the Democratic Republic of Congo, a country to which I will make my seventh visit the day after tomorrow. Four of the five people in custody at the ICC are charged for crimes in the DR Congo. But the cycle of impunity is not yet broken. In the last two years in two provinces of the Eastern Congo, more than a fifteen hundred innocent civilians have been killed by armed groups, and more than fifteen thousand women and girls have been raped. Mass rape has become a weapon of war to announce a group's presence and power, and to humiliate, devastate, and destroy targeted communities. In some notorious cases, there has been success in the Congolese military courts, most recently in convicting those responsible, including a colonel, for 52 rapes committed on New Year's Day 2011 in Fizi, South Kivu. But the colonel's case is an exception; it is difficult to bring those of senior rank to account. To take on senior commanders responsible for current crimes that are not being prosecuted at the ICC, and to deal with those who committed major atrocities before 2002, when ICC jurisdiction began, the

Congolese parliament is considering legislation to establish a specialized mixed court within the national justice system. This court would include international judges in trial and appeal chambers, and international staff in investigative agencies and prosecution offices. This could help ensure the capacity and independence to prosecute and try the cases of powerful individuals. This can bring together international expertise and local knowledge and experience, in a way that cannot be accomplished in any existing institution. It will take great efforts to accomplish this in the DR Congo, but this approach offers the best promise of achieving justice in a way that will truly end the cycle of impunity.

There are places, however, where the ICC is unlikely to gain jurisdiction, and where the possibility of justice and accountability at the national level seems but a distant hope. I refer to the situation in Burma. Over the course of several decades, its military government has engaged in massive repression, denying its citizens a voice in their government, imprisoning those who engage in peaceful protest, while engaging in wars in the border areas against ethnic armies that are fighting for greater autonomy. In the conduct of these wars, the military has targeted the local populations, destroying thousands of villages, subjecting almost every civilian in these areas to pillage and forced labor, and killing and raping at will. These brutal practices are not committed by soldiers who are out of control, but rather are part of the implementation of the strategy of “four cuts” to remove populations which could provide support for the ethnic armies. Indeed, one women's group has documented that more than 80% of rapes are led by military commanders. As a result of these practices, more than a million Burmese have been driven into exile.

We recently watched as the Burma government conducted elections, but the results were preordained. The military ensured that it ended up in control of more than 80% of the seats in parliament. The uniforms came off, but the same group of individuals remain in absolute control. Aung San Suu Kyi was released from years of house arrest, but more than 2,000 political prisoners languish in horrible conditions. Meanwhile, the armed conflicts in the border areas have if anything intensified, with new refugees telling of pillage, forced labor, murder and rape by government forces.

I was at the Thai-Burma border in January, speaking to refugees and the persons who are dealing with the humanitarian challenge. I asked them what the international community could do. Each of them, whether they were refugees who had left Burma 20 years ago or 20 days ago, whether they were doctors or aid workers, said that we should support an international commission of inquiry because it would signal to the Burmese military that the world was watching and it might lead some not to commit or permit the crimes against civilians. Those I met made it clear that it was not trials at the ICC that they were seeking, but a process that would reveal the truth and allow the people of Burma to develop their own approach to accountability.

US Secretary of State Hillary Rodham Clinton has underscored "the American commitment to seek accountability for the human rights violations that have occurred in Burma by working to establish an international commission of inquiry through close consultations with our friends, allies, and other partners at the United Nations."

I have been one of those engaged in these consultations. The views of the countries in the region will be very important in determining whether there will be a commission of inquiry for Burma. This is particularly the case because the issue is likely to be decided in the Human Rights Council in Geneva, to which the Philippines and Indonesia are certain to be elected later this month, to join their fellow ASEAN members, Thailand and Malaysia, providing a strong regional presence among the 47 countries on the Council. When commissions of inquiry were created for Guinea and Cote d'Ivoire, the unanimous support of the African Union and the Economic Community of West African States was the key to their creation. When the Human Rights Council created a commission of inquiry for Libya earlier this year, its creation had the unanimous support of the Arab League. The numbers of victims have been far greater in Burma than in all of these situations, but the rest of world will listen closely to the views of the governments and peoples of the ASEAN countries in deciding whether to establish a commission of inquiry.

In the last fifteen years, we have begun to achieve justice for the most serious crimes known to humankind. It has not been accomplished in every place where these crimes have been committed, but the successes achieved have raised the expectations of victims and the demand for justice. That demand will not be satisfied without international support for mechanisms that will make it happen--for independent investigations to find the truth, for national judicial systems strengthened so as to be able to hold the powerful to account, and if the will and the way cannot be established at the national level, for an international court to receive the cooperation and assistance necessary to bring the greatest perpetrators to trial.

We owe to it to the men, women and children who, after enduring savage crimes that we can hardly bear to imagine, have the right to demand justice. Finally, we owe it to all of humankind to make institutions of international and national justice so effective that individuals will be deterred from committing acts of genocide, war crimes, and crimes against humanity.

Thank you very much.