

REPORT OF A WORKSHOP ON INTERNATIONAL CRIMINAL COURT & INDIA

(Held on 3 July 2004 at YWCA, Fort, Mumbai)

A workshop on International Criminal Court and India was held on 3rd July 2004 from 10 a.m. to 6.30 p.m. in Mumbai, India. The workshop was organized by ICC-India, a project of Women's Research & Action Group (WRAG), Mumbai, in collaboration with India Centre for Human Rights and Law (ICHRL). *ICC-India* is a premier project started in 2000 for carrying out an awareness and advocacy campaign in India on the issue of International Criminal Court. It is an activity of Justice and Accountability Matters (JAM), a programme of Women's Research and Action Group (WRAG), Mumbai. ICHRL is a Mumbai-based organization engaged in research and advocacy activities on various human rights issues.

This workshop is a part of a series of programmes that ICC-India is organizing in various states, aimed at disseminating information on the ICC and its relevance to India. The objectives of the workshop were: a) to understand the concept, principles and functioning of the ICC; b) to understand its implications for human rights generally; c) to explore the specific relevance of ICC for human rights issues and campaigns within India; and d) to strategise on strengthening the ICC campaign within the country. The participants for this workshop included human rights activists, lawyers, law students and researchers, many of who were from Maharashtra and Gujarat.

The resource persons for the workshop were Ms. **Usha Ramanathan**, a law researcher from New Delhi; Ms. **Vahida Nainar**, Chair of Women's Initiatives for Gender Justice, The Hague & founder trustee of Women's Research & Action Group, Mumbai; Mr. **Mihir Desai**, Director, India Centre for Human Rights & Law, and Advocate, Bombay High Court; Ms. **Sandhya Gokhale**, member, Forum Against Oppression of Women and Insaaniyat, Mumbai; Ms. **Saumya Uma**, Coordinator, ICC-India and Co-Director, Women's Research & Action Group, Mumbai; and Ms. **Pouruchisti Wadia**, member, ICC-India and Coordinator, Legal Literacy and Human rights Awareness Project, Women's Research & Action Group, Mumbai

Justice H. Suresh, retired judge of Bombay High Court, inaugurated the workshop. In his speech, he highlighted the climate of impunity that exists within the country, and noted the relevance of the ICC in ending impunity for the most serious crimes under international law. He highlighted the Gujarat carnage as an instance of large-scale impunity in India. Though the recent judgment of the Supreme Court in the Best Bakery's case (transfer of the case from Gujarat to Maharashtra) was a step in the right direction, he drew attention to the connivance of the state administration in investigations and prosecutions, and wondered what justice could be provided to the victims. He also highlighted the fact that particularly in cases of large scale violations against a minority community, Indian history has shown that the police have identified with the majority community – as in the case of the communal riots in Mumbai in 1992-93, the Cauvery riots in Bangalore prior to that, and the attacks against dalits. He suggested the need for a National Crimes Tribunal with independent investigative powers. He also stated that the

ICC would contribute to strengthening the legal machinery within the country, as ultimately, it is the domestic legal system where justice would be delivered in a majority of cases.

Justice Suresh also chaired the next session where Usha Ramanathan traced the development of International Human Rights and Humanitarian Law in the last century and the ICC as a culmination of these developments. Vahida Nainar talked with particular reference to the jurisprudence of the International Crimes Tribunals for former Yugoslavia (ICTY) and Rwanda (ICTR) and how the Statute creating the ICC has drawn heavily from this jurisprudence, and developed concepts even further. In her presentation, she specifically focussed on the jurisprudence relating to proving genocidal intent, torture and the experiences of ICTY & ICTR in prosecuting for sexual violence in the absence of specific mention of the acts in the statutes of the tribunals.

In the next session, Saumya Uma talked about the fundamentals of the ICC, such as the underlying principles and philosophy behind creation of the ICC, crimes under the ICC, the trigger mechanisms, the structure of the court and the implementation mechanisms. In the following session, she talked about Global Dynamics, focusing on the international ratification campaign, and the response to the ICC from various regions in the world. She highlighted the responses of the Asian region to the ICC, particularly South Asia, and some impeding factors in Asia, as well as a detailed presentation on the present strategies used by the U.S. at the international, bilateral and domestic levels to undermine the ICC.

In the post-lunch session, Vahida Nainar talked about the unprecedented level of gender integration into the ICC Statute, and highlighted various provisions relating to the same, such as substantive provisions on crimes of gender violence, gender-just procedural and evidentiary provisions, and provisions that facilitate a high level of participation of women in the functioning of the ICC. In particular, she talked about the evolution of the definition of rape under international humanitarian law, jurisprudence of ICTR & ICTY and in the ICC statute. Sandhya Gokhale explored various means by which such provisions can be used to strengthen law reform campaigns within India, irrespective of the fact that India has not ratified the ICC Treaty. She gave examples of domestic initiatives in which the gender-just provisions in the ICC can be used: a) the definition of rape in the Sexual Assault Bill; b) the ICC provisions relating to 'reparations' could help strengthen the Scheme for Victim Trust Fund drawn up by the National Commission for Women in 1994 at the directions of the Supreme Court in Delhi Domestic Workers' case; c) the concept of victim participation in the legal process, that could particularly exclude the bias of the public prosecutor in cases of sexual assault; and d) protection of victims and witnesses.

In the following session, Mihir Desai talked about the relevance of ICC to India in the context of the existing climate of impunity within the country. He said that the existing laws could not respond to large-scale violations of human rights, such as crimes against humanity and genocide. He suggested the reasons for the near collapse of the Indian justice delivery system as follows: a) the general problems related to the system, such as backlogs of cases, huge time delays, poor investigation and corruption; b) an absence of

definition of grave crimes such as genocide and crimes against humanity under Indian law, leading to a situation where it is extremely difficult, if not impossible, to prosecute such crimes; c) immunity from prosecution for high-ranking government officials as well as non-state actors due to the requirement of government permission for such prosecutions; d) a lack of any policy of reparations by state for human rights violations caused by its officials, including the police. The ICC could be useful to overcome these situations, he said, adding that the ICC was the only hope to end impunity, and to ensure justice and accountability, and hence we had to dialogue with the Indian government for acceding to the ICC Treaty.

Usha Ramanathan talked about the Indian government's responses to the ICC, and pointed out that though India had been involved in the drafting of the Statute for several years prior to the Rome Conference in 1998, it had been complacent that the ICC would never see the light of the day. When Indian delegates went to Rome, they were shocked to see the overwhelming support of countries to the ICC, and thereafter, used several unconvincing arguments to disengage from the process. The Indian government was deeply concerned with provisions relating to inherent jurisdiction, role of Security Council, the role of Prosecutor, internal armed conflicts and the possibility of politically-motivated prosecutions. She said that the government continues to project the ICC as violative of Indian sovereignty, even though the ICC deals with heinous crimes, while India has been signing away Indian sovereignty with regard to workers' rights, patent rights, environment and so on. She also termed the Indian government's decision to enter into a bilateral non-surrender agreement with the U.S., as a shameful act. Such an agreement prevents either party from handing over a national to the ICC for prosecution.

In the session on Updates & Challenges, Pouruchisti Wadia spoke about two situations that the Prosecutor of ICC has been studying – Uganda and Democratic Republic of Congo. Discussing the scale of human rights violations in both the situations gave some indicators of the types of situations and gravity of violations that the ICC Prosecutor would take up in future, she said. Vahida Nainar highlighted some challenges before the ICC, including the independence and credibility of the Office of the Prosecutor.

In the last session of the workshop, Saumya Uma talked briefly about the ICC campaign in India and initiated discussion on ways to take the campaign forward. Participants suggested various strategies to strengthen the Indian campaign on the ICC, including formulating a national legislation on crimes against humanity and genocide, the need for a parallel effort to lobby for national legislations and for accession to the ICC treaty, publishing & disseminating widely a Q & A on ICC's relevance to India, translation of the Q & A into local languages, increased information dissemination through such workshops at the regional and state levels, dissemination of information relating to the ICC to Parliamentarians, writing and publishing articles on the ICC, coining simple slogans in local languages to take ICC to the people, organizing workshops for judges and lawyers in collaboration with bar councils and dialoguing with the new government. Some participants expressed interest in helping to organize ICC workshops in parts of Maharashtra and Gujarat, to undertake research and translation of educational material on the ICC.

The participants showed immense interest in the topic of the workshop, and lively discussion ensued after every session. Questions raised by participants included the applicability of ICC to non-state actors such as militant groups, Asian countries' position on the ICC, reasons for Indian government's opposition to the ICC, ICC's relevance for communal attacks, mass killings and hate crimes and details of BIAs signed by South Asian countries with the U.S.

Report prepared by ICC-India, 13 July 2004

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