

**ASSEMBLY OF STATES PARTIES TO THE ICC, 6<sup>th</sup> SESSION**  
30 NOV – 14 DEC 2007

**REPORT PREPARED BY ICC-INDIA CAMPAIGN**

**A. ABOUT THE ASSEMBLY OF STATES PARTIES (ASP)**

All countries that have ratified or acceded to the ICC Statute are members of the ASP. The ASP was established by Article 112 of the Rome Treaty. It is a body that serves to supervise and observe the work of the court. All states parties for whom the Rome Statute has entered into force have the right to participate and vote on issues discussed by the ASP. Other states that have signed the Statute are also invited to participate in the meeting as observers, without a right to vote. The mandate of the ASP includes

- a) overseeing the Court's administration and creating and voting on necessary texts to ensure the effective functioning of the court;
- b) making decisions on the court's budget;
- c) electing the court's judges and prosecutors;
- d) establishing necessary bodies to ensure optimal functioning of the court.

The ASP convenes once a year, with special sessions scheduled when necessary. The ASP met for the first time in 2002. It has met for its Sixth Session on 30 November to 14 December 2007 in the U.N. headquarters in New York. It meets in The Hague and in New York alternatively. The work done by the ASP so far includes:

- approval of texts on rules of procedure and evidence, elements of crimes, rules of procedure for the ASP, Agreement on Privileges and Immunity of the Court, rules of financial management
- adoption of a procedure to elect judges and prosecutor of the court, actual election of the judges, prosecutors, registrar, members of Committee on Budget and Finance, members of Victims Trust Fund etc.
- adoption of annual budgets for the ICC
- negotiations on the Crime of Aggression
- establishment of a secretariat for the Victims Trust Fund, adopted draft regulations of the Trust Fund

The Official records of the ASP sessions held so far can be found on the ICC's website at

<http://www.icc-cpi.int/asp.html>

NGOs play a crucial role in relation to the ASPs. NGOs are allowed to attend the ASP's working sessions, particularly during plenary and open sessions. They can receive official documents, and circulate their own publications to the delegations. During the ASP, NGOs meet with delegations, members of international organizations, members of civil society as well as individuals to discuss issues pertinent to the ASP agenda and other aspects of the campaign for an effective and independent ICC. NGOs also organize press briefings to inform the public of country developments. The Coalition for ICC (CICC) organizes regional meetings with delegates and interactions with officers of the ICC. In addition, it also organizes Working Group, Issue Team meetings and NGO strategy meetings throughout the ASP.

**B. AGENDA FOR SIXTH SESSION OF ASP**

The agenda includes:

- Election of members of the Committee on Budget and Finance (CBF)
- election to fill judicial vacancies
- consideration of reports including - on the activities of the court, of the audit reports, of Trust Fund for Victims, of the Special Working Group on the Crime of Aggression
- consideration and adoption of budget of the ICC for the year
- discussion on premises of the court, Review Conference, decisions on dates and venues of next sessions of the ASP

## C. CURRENT ISSUES UNDER DISCUSSION

### COOPERATION

With the court now in the judicial phase of its activities and having six outstanding public arrest warrants, the issue of cooperation has become an extremely crucial issue for the States Parties as it impacts on the effective and independent functioning of the court. Cooperation includes the following components:

- **Cooperation between the ICC and States Parties**, addressing issues including general legal mechanisms, diplomatic and public support, cooperation during analysis, investigations and prosecutions, arrest and surrender, witness protection and support;
- **Cooperation between the ICC and the UN**
- **Cooperation between the ICC and International and Regional Organizations**

In the situation of Darfur (Sudan), the ICC Prosecutor has issued arrest warrants against Ahmed Harun (current minister of state for humanitarian affairs) and Ali Kushayb. However, the government of Sudan has refused to cooperate with the ICC. Despite knowledge of the nature of cases against the two suspects, the government of Sudan has neither arrested and surrendered them to the ICC, nor prosecute them domestically. Not only has Ahmed Harun been maintained in his current position in the government, he has also been appointed to a Committee on human rights violations and breaches of the constitution in the South and North. The ICC Prosecutor, Luis Moreno-Ocampo, stated this in a strongly worded report to the Security Council on 5 December 2007 (in accordance with Security Council Resolution 1593 which referred the case to the court and which obligates the prosecutor to report to the Council every six months on the progress of the investigation).

In the situation of Uganda, the ICC Prosecutor has issued arrest warrants against suspects including LRA leader Joseph Kony. The Ugandan government has not executed the arrest warrants and has, instead, as part of its Juba peace process with the rebel group – Lord's Resistance Army (LRA), enacted a series of agreements that include amnesty for perpetrators. Referring to the case situation in Uganda, the UN Secretary-General Ban Ki-Moon, in his speech to the ASP on 3 December 2007, reiterated that peace and justice, accountability and reconciliation were not mutually exclusive but that they go hand in hand. He presented cooperation as "the determinant of success for any international tribunals," stressing the need for collective cooperation from States, the UN, International Organisations, civil society and the NGO community, and cooperation from victims, witnesses and other individuals.

During the general debate at the ASP on 4 and 5 December 2007, many states delegates made statements voicing concern over the outstanding warrants, and how if not executed, they could negatively affect the credibility of the Court and international justice at its core. Against the backdrop of these recent developments, cooperation has become an extremely crucial issue for the efficient functioning of the ICC, highlighting the need for the use of diplomatic and other channels to persuade states to cooperate with the ICC.

The full text of the Secretary-General's speech is available at <http://www.un.org/apps/sg/sgstats.asp?nid=2886> <<http://wfm-igp.net:81/exchweb/bin/redirect.asp?URL=http://www.un.org/apps/sg/sgstats.asp?nid=2886>>

The prosecutor's report to the Security Council is available at <http://www.iccnw.org/mod=darfur#14>

### DEFINITION OF THE CRIME OF AGGRESSION

As one of the crimes listed in Article 5 of the Rome Statute, the crime of aggression is already under the jurisdiction of the Court, but the Court cannot exercise jurisdiction over this crime because the Rome Conference did not reach an agreement on a definition and jurisdictional conditions for the crime. At its first session in September 2002, the ASP established a Special Working Group on the Crime of Aggression in order to arrive at a consensus on the definition and jurisdictional conditions for the crime. Ambassador Christian Wenawesar (Liechtenstein) was appointed to chair the Working Group. The Group is open to all states, both states parties and non-states parties. The Working Group has been meeting every year during the ASP as well as

holding inter-sessional meetings at Princeton University. The work on the crime of aggression has three major components:

- The crime of aggression: defining the individual's conduct;
- The act of aggression: defining the conduct of the state; and
- Conditions on the exercise of jurisdiction by the court

One of the questions considered by the Special Working Group was how to make use of the UN Resolution 3314, passed on December 14, 1974, in the definition of the state act of aggression, which is one of the elements of the crime of aggression. States looked in particular at the different roles of the Court and the Security Council. The "green light option," which would invite the Security Council to simply not object to the Court's exercise of its jurisdiction over the crime of aggression, did not secure sufficient support for further consideration at this time. The Working Group also examined the role of the ICC Pre-Trial Chamber in the authorization of the commencement of an investigation in respect to a crime of aggression. In addition, the Elements of the crime of aggression and the future roadmap of the Working Group were discussed. Five NGOs made interventions on the concluding day of the Working Group, 7 December 2007, voicing civil society concerns on the definition of the crime of aggression. These were the Union Internationale des Avocats, the CICC Secretariat, the Institute for Law and Peace (UK), Amnesty International, and Just War (in order of appearance)." For more details on this issue, see CICC fact sheet dated 1 May 2007, available at [http://www.iccnw.org/documents/CICCFS\\_Crime\\_of\\_Aggression\\_Factsheet\\_FINAL\\_eng\\_1May07.pdf](http://www.iccnw.org/documents/CICCFS_Crime_of_Aggression_Factsheet_FINAL_eng_1May07.pdf)

## GENDER JUSTICE

**Recruitment:** There is a 24% gap between the numbers of women and men appointed to professional posts in the Office of the Prosecutor (OTP), and an overall 10% gap in the numbers of women and men appointed to professional posts across the court as a whole. A move is being made to adopt and implement the recommendations related to gender balance as contained in the Report of the Bureau on Geographical Representation and Gender Balance.

**Outreach:** To date, there has only been one specific consultation of the OTP with women victims / survivors in any of the four situations under consideration by the ICC. This was with women from Darfur held in 2007. There is a need to encourage the court to hold, across all situational countries, consultations with women leaders and develop partnerships with local, national and international women's organizations and groups working with victims of gender based crimes, to determine the most appropriate and effective means to carry out outreach for women. A need is also felt for initiating the outreach activities as soon as the opening of an investigation is announced, so that the strategies for outreach run parallel to but are independent from the investigatory work of the court, and ensure that victims / survivors and their communities are aware of the functioning of the ICC and have opportunities for participation.

**Participation:** As of 27 September 2007, out of the over 500 applications received by the ICC from victims, only 38% are from women. Out of these, 17 victims have been recognized by the ICC as either victims of situations for cases in Uganda and the DRC, out of which only 4 are women. No victims of gender-based crimes have been recognized in the first case – Prosecutor v Thomas Lubanga Dyilo; no girl-child soldiers have been recognized as victims with the right to participate in the case. Recommendations are being made for the ICC to develop strategies focusing on women victims / survivors in the situations before the court, in order that they have the information and support necessary to apply to participate in the court's proceedings.

**Trust Fund for Victims:** The Trust Fund has received a contribution of 2.6 million Euros till date, which, according to experts, is inadequate to provide assistance to victims and at a later stage, for reparation. A need is felt for establishing guidelines, inclusive of gender specific considerations, to ensure that women victims / survivors equally benefit from the Trust Fund. A consultation with victims and their families, experts and expert organizations, including those working with women victims / survivors of gender-based crimes, is required to on the potential ways of assisting them.

**Structures and Institutional Development:** The Women's Initiative for Gender Justice has suggested that an oversight mechanism and staff rules be developed for addressing issues of sexual violence / abuse that could be committed in future by ICC staff in the course of their work in the field, including the waiving of immunity and strict disciplinary accountability for staff who violate these rules, including termination of employment. Training of ICC staff on such rules is also found imperative.

**Legal Aid & Legal Representation:** At present, there are 221 lawyers on the List of Legal Counsel, out of which 41 are women and 180 are men. There is a need for the court to address specific strategies to promote the List of Counsel and the List of Assistants to Counsel amongst women's organizations and networks, women lawyers associations and other judicial associations such as national bar associations, particularly in countries with situations before the ICC and countries that are under-represented in the ICC. The composition of the List is crucial to ensure that it includes Counsel with the necessary experience, expertise and skills to effectively represent the range of victims of crimes, including gender based crimes, within the jurisdiction of the court.

The Women's Initiatives for Gender Justice produced and released a Gender Report Card 2007. It has done so for the third consecutive year. The Report Card provides an assessment of the implementation by the ICC and the ASP of the gender mandates (with regard to the structures, substantive jurisdiction and the procedures) that the Rome Statute embodies. It also contains recommendations to address some of the areas of most concern and greatest urgency. The document can be found on its website at [www.iccwomen.org](http://www.iccwomen.org)

## VICTIMS

**Role of Victims:** The ICC initiated a process of developing a court wide strategy on victims, that would provide a vision on all aspects of the work of the court that relate to victims, in response to Resolution ASP/5/Res. 2 adopted by the 2006 ASP. The Resolution encouraged the court to focus on concrete implementation of issues such as the role of victims in the court's proceedings. The Victims' Rights Working Group (VRWG) has recommended that the goals of the court's strategic plan should include

- a) the quality of justice – where victims are able to participate effectively, safely, are well-represented and awarded adequate reparations;
- b) a well-recognized and supported institution – where victims understand the mandate of the court particularly with regard to rights of victims, and are informed of decisions that concern them; and
- c) a model administration – where the application process is clear, efficient, timely and victim-sensitive but not costly or cumbersome, and where victims are treated with dignity and respect.

**Information and Outreach:** The Rome Statute and Rules of Procedure and Evidence include instances in all phases of the proceedings where either the Prosecutor or the Registrar must inform or notify victims of key decisions. The VRWG has recommended that the court needs to go beyond simply notifying communities of certain decisions, and instead, a sustained capacity to respond and engage communities on new issues as they arise must be assured. As a result of the court's outreach strategy, situation-specific staff is now in place, local activities are being carried out and logistical support is generally available to engage with key audiences. Progress has been made in the DRC, Uganda and Sudan, while in the Central African Republic (CAR), outreach activities have not commenced. However, to make the outreach activities more effective, it has been suggested that the Outreach Unit relocate from The Hague closer to affected populations (e.g. Kampala), ensure that field offices are accessible as information points for the population and to continue to develop monitoring and evaluation mechanisms that are integrated into the outreach activities themselves.

**Participation in Proceedings:** Members of the VRWG voiced concerns over a newly published report on victim participation by the War Crimes Research Office of American University's Washington College of Law. This report recommended changes to the underlying design of the Court's victim participation framework and suggested limiting the right of victims to participate in the investigation phase as established by jurisprudence of Pre-Trial Chamber I through its decision of 17 January 2006. NGOs, however, felt that instead of limiting existing rights, it would be preferable finding ways how to make established rights more meaningful. Since genocide, war crimes and crimes against humanity presume inherently a large number of victims, the ICC

would have to deal with the challenge of large numbers. Serious concerns exist on the following issues: only 17 victims are presently participating in the 4 situations and 4 cases when victimization is massive; over 500 applications (to be recognized by the ICC as victims) have been received and are awaiting decisions, many since mid 2006; no decision has been taken on victim participation in the Lubanga case since October 2006, when 100s of pre-October 2006 applications are pending with regard to the case, with the trial due to start in March 2008; application forms are 17 pages long, confusing, not available in local languages and a separate form must be filled for each individual victim applicant, though the victims are represented collectively, and no assistance is being provided by the Court to victims in completing the forms; thresholds to prove identities and evidence of harm suffered are arguably too high (“beyond reasonable doubt” rather than “a balance of probabilities”). Recommendations are being made by VRWG and Redress, both to the ICC and to the States Parties, on the issue of participation.

**Legal Representation and Assistance:** Victims can be represented by a legal representative of their own choice or if they are indigent, the ICC may assign a ‘common legal representative’ to represent them, from a list of approved counsel or from the court’s Office of Public Counsel for Victims (OPCV), which is mandated to assist, support and represent victims. Problems currently being encountered include: no presumption of indigence for victims even if they are living in areas in which the average income is less than \$1 per day; victims’ counsel face challenges in contacting victims who are dispersed in remote areas, and require extensive logistical support and means through the ICC.

**Protective Measures for Victims at Risk:** The Registry’s Victims & Witnesses Unit has outlined 3 levels of protection: (1) prevention; (2) protective measures during proceedings; and (3) protection programme that includes the relocation of victims and witnesses that have been put at risk. Current issues related to victims’ protection include: victims whose applications to participate in proceedings are pending (many since mid 2006), who are often at risk merely by applying, are not offered any protection by the court; intermediaries who assist victims to participate are easily targeted in war affected regions and have no form of protection; application forms contain full identity of victims as well as their whereabouts, are forwarded to the Office of the Prosecutor and Public Counsel for the Defence as a matter of course, increasing potential risks for the victims, when full disclosure is not necessary in terms of fair trial requirements because there is no accused in situation proceedings; photo-identities are required in the Ugandan situation to prove victims’ identity, increasing the risk of attack from an accused or supporters of an accused.

**Victims Trust Fund:** Reparation proceedings may occur only after a final finding of guilt by the relevant Chamber of the Court. However, the Fund, in certain circumstances, has a wider scope of application. Its Board of Directors may authorize the disbursement of funds if it is considered “necessary to provide physical or psychological rehabilitation or material support for the benefit of victims or their families”. As a result of successful outreach, the Fund has received 39 project proposals from DRC and Uganda, and its Board has decided to fund a number of them. In particular, the Fund has been used recently for plastic surgeries for victims whose limbs, nose, lips, ears and other body parts were severed by the rebels in Northern Uganda. Currently the Fund is prevented from receiving earmarked funds from governments and can only receive earmarked funds for up to one third of the contribution for an activity or project. These restrictions do not coincide with the realities of fundraising today, when donors increasingly wish to see the impact of their contributions. However, a danger exists that more earmarking may result in unequal distribution of funds across projects. The Fund therefore needs to develop strategies to avoid unequal distribution of funds, while aiming at increasing its capacity to receive earmarked funds.

## **REVIEW CONFERENCE**

The first Review Conference of the Rome Statute is likely to take place in the first half of 2010. At this stage both substantive and procedural issues are of key concern. Rolf Fife of Norway, Focal Point for the Review Conference, acknowledged that there was broad agreement on a number of issues and on certain goals, one of which being the deep commitment by states parties to protect the integrity of the Rome Statute. Regarding duration, it should be held over five to ten working days. Amendments brought to the conference would only be

those with broad consensus. It was also thought that the review conference could be a good opportunity for stocktaking, by hearing authoritative speakers, considering lessons learned and continuing the peace and justice discussion.

- **Focus & Scope:** Whilst states parties are only legally obliged to review Article 124 of the Rome Statute – an optional protocol which allows states to not subject their nationals to the jurisdiction of the Court for seven years with regard to war crimes – there is a huge expectation by states to deal with the crime of aggression. However, strong opinion has been expressed that the success of the conference should not solely rely on amendments and that it should also be an opportunity for stocktaking, benchmarking and evaluating the work of the international justice system established by the Rome Statute.
- **Rules of Procedure:** The draft rules of procedure for the Review Conference have been discussed extensively in the Working Group in New York and will have to be adopted by the time of the Review Conference.
- **Venue of the Review Conference:** Choice of location could have a significant impact on the scope, influence and results of the Review Conference. Final criteria / requirements for selecting the venue have not been decided. Currently only Uganda has made a formal offer to host the Review Conference. The Minister of Justice and Constitutional Affairs, Attorney General Khiddu Makubuya, presented a slideshow to advocate for Uganda's bid to host the Review Conference in 2010. Many countries from the African continent have supported Uganda's proposal, particularly because of the impact on outreach, as all the four situational countries are from the continent. The ASP Secretariat has submitted a report estimating the approximate costs of holding the Conference in 3 different locations: The Hague, New York and a third state. Questions still exist as to the establishment of funds to ensure the participation of less developed countries, and as to whether the Review Conference should or should not be held in a situational country. More states are likely to make offers to host the Conference in the forthcoming year. According to a number of states parties, there may be a decision on the venue for the Review Conference as early as June 2008 at the inter-sessional ASP meeting. To view the Ugandan slideshow, visit: [http://www.iccnw.org/documents/ASP6\\_UgandaBidReviewConference\\_07Dec07.pdf](http://www.iccnw.org/documents/ASP6_UgandaBidReviewConference_07Dec07.pdf)

## **BUDGET AND FINANCE / LEGAL REPRESENTATION**

The Committee on Budget and Finance (CBF), in April 2007, endorsed the Court's proposal for amending the legal aid scheme, as an important basis for providing legal aid to defence teams and the legal representatives of victims. When the court requested a 16.6% increase to its budget in order to be able to implement the proposed amended scheme, the CBF noted that the Division of Victims and Counsel had spent only 29% of the situation-related resources available to it up to 31 July 2007, partially due to the delay in the commencement of a first trial. Hence the CBF did not approve the increase in budget. The CBF referred to the under spending in the previous year and believed that there would be sufficient resources in the existing budget level for the court to meet requirements of legal representation for victims. Civil society groups believe that full resources would be required in 2008 and that it is unlikely that the Division would have the flexibility to absorb the significant additional costs, as the CBF recommends.

The Office for Public Counsel for Defence (OPCD) has been relied on by the ICC to perform certain key functions in protecting the rights of the defence. In particular, the OPCD has been appointed as ad hoc counsel at the situation phase in the DRC and Darfur situations. Although the ICC Statute incorporates very high fair trial standards including the rights of the accused, in reality, there has been a tendency to view financing for defence counsel as a strain on the resources. The CBF believed that legal aid continued to represent an area with considerable financial and reputational risks for the court and emphasized the need to rigorously examine claims of indigence and to utilize its resources to search for assets. The CBF has not approved an increase in budget sought by the OPCD for the 2008 Budget. The CBF has also noted that the capacity of Court to recruit staff is not sufficient to reach the projected level of 555 posts by end of 2007. The CBF was very critical of the delays in recruitment and recommended the court to take urgent and strong action.

Civil society is engaged in efforts to persuade the ASP to review the recommendations of the CBF and approve the additional resources requested by the Court for legal aid and for public counsel for defence.

## OMNIBUS RESOLUTION

From 2003 to 2006, the ASP adopted what is called an “omnibus resolution”, formally titled ‘Strengthening the International Criminal Court and the Assembly of States Parties’. These resolutions usually call for ratification of the Rome Statute and other agreements, note developments linked to institution building and to each organ of the Court, deal with administrative issues as relevant, and include the date and location of the next ASP sessions. The ASP this year would be adopting a similar resolution this year, and is expected to include some matters of concerns to NGOs.

## ELECTIONS

- **Judicial elections** – replacement of three judges who have resigned prior to the end of their terms (Judge Maureen Harding Clark of Ireland, Judge Karl T. Hudson-Phillips of Trinidad and Tobago and Judge Claude Jorda of France). 6 candidates were nominated, one each from Uganda, Japan, Trinidad and Tobago, Panama, Nigeria and France. Candidates can be nominated on list A (criminal law and criminal trial experience) or list B (expertise in the field of international law) depending on their qualifications. The ICC statute requires States Parties to take into account regional representation, gender representation and representation of the principal legal systems of the world and the need for legal expertise on specific issues. At the end of the elections on 3 December 2007, the 3 judges who were selected are Fumiko Saiga of Japan, Bruno Cotte of France and Daniel David Nsereko of Uganda. More information about the elections at the sixth session of the Assembly of States Parties can be found on the CICC website: <http://www.iccnw.org/?mod=electionjudges>  
To read more about the elections, see <http://www.iccnw.org/?mod=electionjudges2007>
- **Elections of the Registrar** – the five year term of the first and current Registrar of the ICC, Mr. Bruno Cathala, expires on 3 July 2008. In order to fill this important post, the court has performed an initial selection process, resulting in a short list of 10 candidates. The Registrar will be elected by the judges for a term of five years, by an absolute majority by secret ballot.
- **Election of Members of the Committee on Budget & Finance (CBF)** - The election of members of the Sixth Committee on CBF took place on 7 December 2007. The ASP elected the six following candidates to serve in the Committee for a period of three years: David Banyanka (Burundi); Carolina Fernández Opazo (Mexico); Gilles Finkelstein (France); Juhani Lemmik (Estonia); Gerd Saupe (Germany); Ugo Sessi (Italy). The CBF consists of 12 members who are elected by the Assembly of States Parties (ASP) for a period of three years. At the first election in 2003, six members were elected for a period of two years and six for a period of three years, assuring in this way that for future elections only six members will be elected at a time. For more on the CBF elections, please visit <http://www.iccnw.org/?mod=electionasp2007>

## ICC PREMISES

The ICC is currently located in interim premises that the Host State, the Netherlands, provides free of charge until 2012. These interim premises have not previously been used for judicial purposes, so adjustments and improvements have been made in order that they meet the requirements of an international court. The interim premises have reached their maximum capacity and additional office space has been sought in another building in the centre of The Hague. Meanwhile steps are being taken towards the establishment of permanent premises of the court. The Registry prepared a functional brief and submitted to the CBF, spelling out all the functions that the court will need for its future premises and the user and security requirements reflecting scalability in staffing levels. Through an analysis of the functional brief and through a series of meetings with architectural /

building experts, a consensus has been reached on the area requirements and a preliminary estimate of 165 million euros for the construction costs. The issue of financing was not raised at this session of the ASP and discussions on the issue will be resumed in 2008.

#### **D. MEETINGS ORGANIZED BY CICC (SIMULTANEOUS WITH THE ASP)**

##### **CICC GLOBAL STRATEGY MEETING, 2 Dec 2007**

Participants for the full day CICC global strategy meeting consisted of civil society representatives campaigning on the ICC in their respective countries around the world. The meeting commenced with an introduction of participants and agenda, presentations by CICC personnel on overarching issues within ratification and implementation campaigns including existing tools for global ratifications, obstacles faced in achieving ratifications and strategies to overcome the same, position of the U.S. and ratification of Agreement on Privileges and Immunities (APIC). This was followed by a region-wise break up into smaller groups (Asia, Africa, Middle East & North Africa, Europe, Latin American countries) where participants discussed relevant ideas, obstacles, successes, strategies as well as set targets and priorities for accession to and implementation of the Rome Statute within each region. Following this, a plenary session was held where major findings / plans / conclusions of smaller group discussions were shared among all participants. The meeting ended with a short presentation by the CICC on the challenges of a global coalition with national and international priorities.

##### **SITUATIONS PANEL, 3 Dec 2007**

CICC sponsored a well-attended lunchtime panel on situation countries at which NGO representatives and government delegates of the four situations countries spoke and debated. The focus of the discussion was on challenges before the ICC with regard to prosecutions in the 4 situations before the court – Uganda, Democratic Republic of Congo (DRC), Darfur (Sudan) and Central African Republic (CAR). The challenges discussed included cooperation of States Parties with the ICC in executing arrest warrants (in the case of Sudan), balancing peace talks with cooperating with the ICC and the potential implications of Amnesty Act (in the context of Uganda), need to speeden the work on implementing legislation (in the case of DRC) and the need for outreach to victims as most victims know very little about the ICC (in the case of CAR).

##### **BRAINSTORMING SESSION ON WORLDWIDE COMMUNICATION, OUTREACH & MEDIA STRATEGIES, 4 Dec 2007**

CICC shared its tools for communications, including its website, listserves, publications (ICC monitor, ICC bulletins) and its media outreach, and sought feedback from all participants to improve the same. Strategies for media outreach and success stories / challenges from various regions such as the African, Asian, Middle East and North African and Caribbean regions were shared. Participants from Yemen, Nepal, St. Lucia, India and Uganda shared their experiences in working with the media on the ICC. Newer and innovative strategies were discussed to disseminate information about the ICC, including the use of comic strips, radio and promotional material.

##### **MEETING WITH DELEGATES FROM THE ASIA PACIFIC REGION, 4 Dec 2007**

Delegates from South Korea, Japan, Nepal, Australia and Samoa, and NGO representatives from China, Japan, Philippines, Indonesia, India, Nepal and Vietnam participated in this meeting. The Korean and Japanese delegates made a presentation on the implementing legislation on the ICC that has been prepared in their respective countries. The delegate from Nepal participated as an observer. NGO representatives shared with the participants, the position of their respective governments on the ICC as well as the activities of national campaigns / coalitions on the ICC in their respective countries.

##### **MEETING WITH AFRICAN DELEGATES, 4 Dec 2007**

The CICC sponsored a meeting with African delegates, where issues including cooperation with the court, outreach, accession to the Rome Treaty by countries that have not become states parties yet, and progress on implementing legislations were discussed.

#### **DISCUSSION ON U.S. & THE ICC, 4 Dec 2007**

This informal discussion on US & the ICC had three presentations by John Washburn of American Coalition for ICC, Francesca Varda of CICC and Golzar Kheiltash, Esq., Consultant on of International Law and Justice. The presentations stated that there is a gradual shift in the intensity of the Bilateral Immunity Agreements (BIA) campaign of the US government, but that there was a disjuncture between changes in policy in the US and information received by US diplomats in the countries concerned. US legislations related to the ICC, including Nethercutt amendments and American Servicemembers Protection Act, were also discussed. The shifts in U.S. position were discussed, ranging from the BIAs (an expression of hostility to the ICC) to very strong reaction from the US to countries that refused to sign the BIAs (loss of economic and military assistance) to the situation in Darfur where Americans sought US intervention resulting in the Security Council's referral of the situation to the ICC. It was said that now, because of Darfur, speeches of American government officials indicate a partial support to the ICC. The present official concerns of the US include: a) court's jurisdiction in particular circumstances over nationals of non-state parties; and b) absence of "outside control" (read control of Security Council) over Prosecutor. It was said that the Democrats indicate a willingness to observe and engage with the court, while the Republicans make hostile statements with regard to the ICC except in the case of Darfur. A distinction was made between the US government's position and the manner in which Americans think, with at least 60% Americans being supportive of the ICC albeit extending passive support. The American Coalition has been working with Presidential candidates on their position on the ICC. Experts opined that a change of government in the next elections could reinstate the signature of US to the Rome Treaty, though accession to the treaty is not likely before the second term of the new administration, if it takes power, in 2013.

During discussion, participants discussed country experiences from Uganda, Turkey, India and Democratic Republic of Congo to the US opposition to the ICC. It was emphatically stated by the presenters that US opposition to the ICC has nothing to do with what the ICC stands for or an objective assessment of the ICC itself, but has more to do with America's national identity, culture and ideology, hence it was important that US position on the ICC should be kept separate and not conflated with what the ICC is or the principles it stands for.

#### **REGIONAL MEETING WITH DELEGATES OF MIDDLE EAST & NORTH AFRICA (MENA), 5 Dec 2007**

The Coalition sponsored a MENA Regional lunch meeting that brought together representatives from Lebanon, Egypt, Algeria, Morocco, Sudan, Yemen and Iraq. Representatives stressed the need to strengthen the resolve of MENA country governments and civil societies to promote the ratification of the Rome Statute. Participants identified a number of obstacles affecting ratification efforts across countries in the region, particularly the lack of Arabic-language resources and tools; weak political will and the general lack of coordination among civil society organizations and the media with regard to ICC campaigns.

#### **ANNUAL MEETING WITH DELEGATES OF IBERO-AMERICAN STATES, 5 Dec 2007**

The CICC held its annual meeting with delegates of the Ibero-american states and NGO representatives from the region. The eleven delegates attending the meeting had the opportunity to exchange information on their national processes on ratification and implementation of the Rome Statute and the Agreement on Privileges and Immunities of the Court (APIC), as well as issues for discussion during the sixth ASP. Participants acknowledged the importance of the regional meeting and noted that the issues addressed are evolving as the national processes on ratification and implementation progress and now has become a more substantial discussion. Additionally, the importance for states to be well-prepared for the Review Conference was a shared concern addressed during the meeting.

### **MEETING ON IMPLEMENTATION OF THE ROME STATUTE, 6 Dec 2007**

At the Implementation of the Rome Statute meeting, participants raised their concerns over the general lack of technical support in numerous countries, particularly in Africa, at the legislation drafting stage. State delegations from Samoa, Gambia, Uganda, Namibia, CAR and Cameroon were in attendance as were NGOs such as ICRC, Amnesty International and Parliamentarians for Global Action. Gambia noted that if it received assistance, the country would be in a better position to accede to the Rome Statute by next year.

### **MEETING ON COOPERATION, 6 Dec 2007**

The Cooperation Meeting addressed common strategies used to lobby issues such as implementing legislation, arrest and surrender and regional relationship agreements with the Court. Participants emphasized the need to use the ASP Bureau report on cooperation in their lobbying efforts at the regional and national level.

### **MEETING ON STRATEGIES OF EUROPEAN UNION, 6 Dec 2007**

The Portuguese Presidency of the European Union convened a lunchtime meeting on EU strategy as regards the ICC generally for EU member states and NGOs. The EU Council presented their newly published booklet "The EU and the ICC."

### **REGIONAL MEETING FOR LATIN AMERICAN / CARIBBEAN REGION, 7 Dec 2007**

A regional lunch co-sponsored by CICC and Nottingham University for government representatives and NGOs from the Latin America/Caribbean region. Participants shared information on ICC-related developments in their respective countries, as well as strategies for collaboration and partnership within the framework of the principles and mandate of the Rome Statute.

### **ASP HEARING ON OUTREACH, 7 Dec 2007**

The ASP Hearing on Outreach, hosted by the Sierra Leone Delegation and sponsored by 30 states, was an opportunity for numerous state representatives and NGOs to share their views on ICC outreach. The discussion centered primarily on the Court's outreach efforts in 2007, a year one participant described as the "take-off" year. Some of the topics raised included the scope of outreach tools to reach communities; personnel issues; and the relationship between the Court's field offices with the Office of Outreach in The Hague. Several NGOs made strong statements and offered several recommendations that shall be addressed during a meeting next Tuesday with Court officials. To view this hearing, see [www.un.org/webcast](http://www.un.org/webcast)

### **MEETING OF REGISTRAR WITH NGOS, 7 Dec 2007**

Registrar of the International Criminal Court, Bruno Cathala, met with NGOs during an informal meeting. The Registrar spoke of the Registry's growth over the last few years and the opening of new field offices. He focused his remarks on the workings of the Field Operation Section of the Court, which serves as an interface between ICC headquarters in The Hague and field offices in situation countries and elsewhere.

### **MEETING ON ROLE OF VICTIMS IN FULFILLING ICC'S MANDATE, 7 Dec 2007**

"The Role of Victims in fulfilling the ICC's Mandate," sponsored by France and the Victims Rights Working Group of the CICC brought together numerous state representatives and NGOs around a discussion on victims' participation and rights. From the Court, Executive Director of the ICC's Victim's Trust Fund gave an overview of the Fund's strategy with regard to the role of victims; several NGOs presented including REDRESS, FIDH, Ugandan Victims Rights Working Group; CAR Coalition for the ICC; and LIPADHO of the DRC. The NGOs emphasized that justice to victims ought to be a way of measuring the success of the ICC and not as an annex that is sometimes remembered. They highlighted concerns of civil society with regard to victims' issues, stated

in more detail on pages 4-5 of this report. The Executive Director of ICC's Victims Trust Fund and his colleagues were receptive to the concerns raised, and assured that they would work in partnership with the NGOs to address some of the inadequacies in ICC fulfilling its mandate on role of victims.

### **STRATEGY MEETING AMONG ASIAN NGOS, 7 Dec 2007**

A strategy meeting was held among NGOs from Asian countries working on the ICC campaign, to evaluate the learnings from the ASP and to formulate a plan of activities in Asian countries for 2008. The meeting was facilitated by Evelyn Serrano of CICC's Asian chapter. Plan of activities discussed included

- preparation of promotional material for 17 July 2008 (10<sup>th</sup> anniversary of adoption of the Rome Statute);
- simultaneous events on the ICC in as many Asian countries as possible on 17 July;
- making of a film on ICC and the Asian context;
- assistance to formulating implementation legislations in countries where this was underway;
- starting of an ICC bulletin focusing on Asia on a quarterly basis;
- workshops / seminars / consultations scheduled for the year;
- advocacy missions to countries where accession to the Rome Treaty is likely; and
- planning for the annual Regional Meeting.

### **E. MEETING WITH THE INDIAN DELEGATE, 6 Dec 2007**

The coordinator of ICC-India had a meeting with the Indian delegate to the ASP, Ms. Neeru Chadha, Counsellor, Permanent Mission of India to the U.N. Please find below in brief the information obtained from her on India's official position on the ICC:

- India continues to remain concerned about the ICC. Its main concerns at the present point in time include: role of Security Council, ICC's jurisdiction over nationals of countries that are not states parties, exclusion of nuclear weapons and terrorism as ICC crimes.
- There is no move from the government of India (GOI) to review its position on the ICC.
- However, as an observer to the ASP, it is engaging with the issue of definition of aggression. It has been active in the Special Working Group on the Crime of Aggression, which had been meeting in Princeton University, and also here at the ASP in the past few days. Its specific concern is about the role of Security Council in determining state aggression, and wishes to keep the SC role to a bare minimum, unless the Security Council gets democratized.
- For the Review Conference, scheduled now for 2010 (and not 2009), India, Pakistan and Turkey may make a move on inclusion of terrorism as a crime. GOI is to make up its mind on this issue though. Since it has only an observer status, if it decides to do so, it will have to get its proposal in through other states parties.
- GOI is deeply concerned with the concept of crimes against humanity because its understanding is that the ICC has extended the concept from contexts of international armed conflict (as used in Tokyo and Nuremberg) to contexts of internal armed conflict and in peace times too.
- India's nuclear deal with the US has no impact on India's position on the ICC. There have been no discussions on the ICC in the context of the deal. No pressure from the US not to accede to the Rome Treaty.
- India entering into the Bilateral Immunity Agreement (BIA) with the US was motivated generally by the fact that ICC cannot assume powers to prosecute over nationals of any state that is not a party to the ICC Treaty, and also because of concern that India's peacekeepers deployed abroad maybe hauled up by the ICC (although admittedly Indian peacekeepers have never been known to have committed any serious violations so far).
- GOI sees the ICC, even today, as a European-dominated court. GOI would like to see the ICC make accountable perpetrators from the US and Europe.

*Report prepared by Saumya Uma, ICC-India campaign, 15 December 2007; Sources for this report include CICC's daily updates about the ASP, material produced by CICC and other NGOs / Caucuses in the context of the ASP, as well as official documents related to the ASP. For feedback / comments / queries, please write to [iccindiapaign@gmail.com](mailto:iccindiapaign@gmail.com)*