

REPORT OF A DISCUSSION-MEETING ON INTERNATIONAL CRIMINAL COURT & INDIA

(Held on 20 September 2005, New Delhi)

A discussion meeting on International Criminal Court & India was held on 20 September 2005 in New Delhi, India. The meeting was organized by ICC-India, a project of Women's Research & Action Group (WRAG), Mumbai, in collaboration with Amnesty International, India and was hosted by Partners for Law in Development (PLD), New Delhi. This was ICC-India's second meeting with Delhi-based human rights groups to discuss the ICC and related issues. (The first meeting was held on 28 July 2005). *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. Amnesty International - India is a human rights organization working on research, advocacy, training and campaigning on human rights issues. PLD is a legal resource group working on women's rights.

This meeting 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 participants for this workshop included human rights activists and lawyers. In addition to individual activists and lawyers, members of Delhi-based non-governmental organizations including Centre for Social Research, Haq Centre for Child Rights, Lawyers Collective, Common Wealth Human Rights Initiative (CHRI), Nirantar, Partners for Law in Development, participated in the meeting. The resource persons for the workshop were **Mr. Jitendra Sharma**, President International Association of Democratic Lawyers and Senior Advocate Supreme Court, **Dr. Usha Ramnathan**, Honorary Fellow, Centre for the Study of Developing Societies and law researcher, **Ms. Pouruchisti Wadia**, Assistant Coordinator, ICC-India and **Ms. Saumya Uma**, Coordinator, ICC-India.

Ms. Saumya Uma welcomed the participants and introduced the topic of ICC to them. Mr. Jitendra Sharma initiated his talk by tracing the history relating to the ICC and also outlined issues relating to geopolitics, including the role and position of United States. He elaborated on the bilateral immunity agreements (BIA) signed by the United States, including one with India. He also talked about the situations that the ICC has presently taken cognizance of – Uganda, Democratic Republic of Congo and Darfur (Sudan). He also said that the abstention of the United States to the Security Council referral of the Darfur situation to the ICC was very significant. Dr. Usha Ramanathan further elucidated on the history of the ICC sharing her own experiences during the Preparatory Commission meetings prior to the Rome Conference in 1998 and the role of NGOs during the drafting of the Rome Statute. She went on to explain the fundamentals of the ICC, such as the underlying principles, philosophy behind creation of the ICC, trigger mechanisms, structure of the court and crimes covered by the ICC. She also elaborated on the role of the Security Council to refer and defer situations, and reasons why these provisions could not be dispensed with totally at the time of the Rome Conference in 1998 when the statute was formulated. Ms. Pouruchisti Wadia highlighted to the participants the concerns of the Indian government, its role and position till date. Ms Saumya Uma outlined the activities of ICC-India along with a current update of activities in Delhi, future plans, and once again invited organizations to join and support the Indian campaign.

The presentations were followed by a discussion that included the following queries, comments and suggestions:

- What are the reasons for the speedy ratification of the ICC worldwide?
- What are the different types of BIAs and what type of agreement has India signed with the United States?
- If India had ratified the ICC, are there any situations within the country that could be covered by the ambit of ICC?

- How are mass crimes defined under the Rome Statute?
- How is the crime of enforced pregnancy defined under the Rome Statute?
- How would “unwillingness” and “inability” to prosecute by national legal systems be determined and who would determine the same?
- Are forced abortions covered under the Rome Statute under Gender Crimes? If not, why not?
- Could female feticide, which is rampant in India, be considered as attracting the definition of genocide?
- Future strategies for the ICC-India campaign and role of Delhi-based organizations
- The need to do research and share the information on the jurisprudence of International Criminal Tribunals for former Yugoslavia and Rwanda (ICTY and ICTR respectively) was discussed. Monika and Ashirbani from CHRI have volunteered to research on ICTR and ICTY respectively.
- A need to contextualise the ICC within the framework of Indian laws and Indian human rights situation, in order to make parts of the ICC relevant for various domestic human rights campaigns. The role of NGOs working on specific human rights issues in making such linkages was discussed.
- A need to build a public opinion within the country in favour of the ICC, and for increasing the support base to the campaign.
- It was suggested that we could draw up a table of changes in Indian laws brought about in trade-related laws and compare them with official position on human rights issues, to highlight the contradictions and dichotomies in the official Indian position on human rights issues, including the ICC. Amnesty International – India has volunteered to work on this document.
- A document stating broadly the changes in substantial, procedural and evidentiary laws that would be required to synthesize between the ICC and Indian laws is required, to better understand the ramifications of the ICC for India.
- Discussion around whether or not it is feasible to take the ICC campaign to the grassroots, in the form of an anti-impunity campaign.
- Feasible goals and objectives need to be worked out for the future campaign and small steps need to be planned.
- A discussion of interested persons’ participation in the conference organized by Indian Society of International Law, scheduled for December 2005, and other possible events during the Delhi visit of President Kirch of the ICC in December 2005.

As follow-up activities, it was decided that a) the meetings of Delhi-based groups and individuals to understand and discuss the ICC and its relevance to India would continue periodically (monthly) with a possible rotation of the venue; b) all participants would take back the information on the ICC to their respective organizations, and to discuss the prospect of joining as campaign partners.

Report prepared by ICC-India, 28 September, 2005

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