

WORKSHOP ON

THE INTERNATIONAL CRIMINAL COURT: RELEVANCE AND CHALLENGES FOR INDIA

25th November 2006, Chandigarh

REPORT

A workshop titled “The International Criminal Court: Relevance & Challenges for India” was held on 25 November 2006 at Chandigarh, Punjab. This workshop was organized by ICC- India campaign, a project of Women’s Research & Action Group (WRAG), Mumbai and the India chapter of Lawyers for Human Rights International (LHRI) based in Chandigarh.

The objectives of the workshop were to understand the concept, principles and functioning of the ICC, to understand its implications for human rights generally, to explore the specific relevance of ICC for human rights issues and campaigns within India and to forge links with individuals and organizations working on human rights issues. This was the first event on ICC scheduled by the organizers in Punjab, with a specific purpose of making linkages between Punjab's experiences with justice, accountability and impunity for mass crimes, and the ICC. The workshop had over 50 participants, hailing from the states of Punjab, Haryana and Uttar Pradesh. Apart from academics, law students and partners of ICC-India, a majority of the participants were human rights lawyers working on issues of state accountability for mass crimes.

Session 1: Impunity for Mass Crimes - the Punjab experience

Mr. **Navkiran Singh**, advocate, Supreme Court and General Secretary, LHRI, made the first presentation in the workshop on the issue of Punjab’s experience with justice and accountability during and subsequent to the years of militancy in the 1980s. He stated that political leaderships had made promises in the pre-independence and post-independence eras about religious and cultural freedom for the Sikhs, which were never kept, leading to resentment among members of the Sikh community. He highlighted the history of militancy, the massive human rights violations, including enforced disappearances, perpetrated by state agencies during this phase, and the illegal cremations’ case. He shared with the participants his personal experiences of providing legal aid to persons who had been detained in jails, allegedly for being militants. On the illegal cremations’ case, he outlined the role of Jaswant Singh Khalra, how he was “disappeared”, and the manner in which the Punjab High Court, Supreme Court and the National Human Rights Commission had failed to provide justice to the victims. He elaborated on the continuance of police impunity and concluded by saying that the state machinery today is being used as a tool for oppression on the poor and marginalized communities in the country.

The presentation was followed by discussion., in which the response of courts in Punjab between 1984 and 1994, role of state in shielding errant police officers through a secret fund, the state proposal for amnesties to police officers in order to prevent “demoralization” of the police force and pardons provided by Governors of Punjab and West Bengal to convicted police officers were deliberated upon.

Session 2: Fundamentals of ICC and Current Developments in the ICC

The second session, initiated by **Aditya Swarup**, student of NALSAR University of Law and **Pouruchisti Wadia**, consultant, human rights and law, focussed on the fundamentals of the ICC and its

current developments. Aditya highlighted aspects related to ICC's functioning, jurisdiction, types of crimes it handles, principles embodied in the Statute of the ICC and the nature of international Crimes. This was followed by a lengthy question-and-answer session, where participants posed several queries related to the principle of complementarity, how would "unwillingness to prosecute" be determined, who would determine such an unwillingness, whether terrorism was included as an ICC crime, enforcement mechanisms, whether provisions existed for pardon of convicted persons, time limit for decisions by the ICC and the relationship between Indian laws and the ICC. The relevance of ICC for situations of impunity within the country was also discussed. It was made clear that although the situation of Punjab could not be brought before the ICC as the crimes were committed several years prior to the coming into force of the ICC Statute, the relevance of ICC lay in preventing future crimes of such a nature.

Ms. Pouruchisti Wadia spoke about the current developments in the International Criminal Court. She explained the situations presently examined by the Prosecutor of the ICC - in Darfur, Democratic Republic of Congo, northern Uganda and Central African Republic. Her presentation demonstrated how cases could be taken to the ICC, the high threshold of crimes that would attract the jurisdiction of the ICC, and the challenges and dilemmas faced by the ICC in responding to these situations.

Session 3: Accountability for Mass Crimes in India & the Relevance of ICC

The session that followed was a panel discussion. Panelists were **Saumya Uma**, Coordinator, ICC-India, **Vrinda Grover**, advocate and human rights activist, New Delhi and **Dr. Usha Ramanathan**, law researcher, New Delhi.

In this session, Saumya Uma outlined the history of impunity for mass crimes that continues to exist in India, challenging the belief that Indian human rights record is near-perfect. In explaining this, she referred to various situations of mass crimes including religion-based attacks, caste-based attacks, attacks against adivasis and attacks on persons to crush political dissent, pointing out the difficulties involved in ensuring accountability of perpetrators. She cited the recommendations of Srikrishna Commission report that inquired into the religion-based attacks in Mumbai in 1992-93, and how there existed no political will to implement the same. She also referred to the Khairlanji violence on dalits (Maharashtra, September '06) and the Kalinga Nagar firing (Orissa, January '06) on adivasis, which indicated the complicity of state agencies in scuttling justice for the victims. Factors cited by her as obstructing the cause of justice in mass crimes includes: a lack of political will to prosecute perpetrators, inadequacy of laws and procedures to deal with mass crimes, lack of impartial investigation and efficient prosecution, lack of sensitivity to the needs of victims, the requirement of prior sanction of the government for prosecution of state officials and the non-binding nature of recommendations and findings of Commissions of Inquiry.

Adv. Vrinda Grover commented that many situations of mass crimes in India that were perpetuated by the police were related to one another and that the state had, over a period of time, developed a methodology to ensure impunity.. She emphasized that state complicity almost always existed in situations of mass crimes. The Indian Penal Code presumes that the state will represent the interests of the people; however, this does not hold true any longer, she said, as illustrated by Supreme Court's decision to transfer cases related to the Gujarat carnage 2002 from Gujarat to Maharashtra. She shared with the participants her study of 126 trial court judgments related to the 1984 anti-Sikh attacks in Delhi. In these attacks, about 2733 persons were killed, and convictions were secured only in 6 out of 126 cases. Reasons cited by the courts for acquittals included a) delay in registration of First Information Reports (FIR); b) names of accused persons not included in the FIR; c) Test Identification Parade not held; d) sole witness testimony; e) material contradictions in the testimony of witnesses. All these being issues over which the victim or the informant have no control, Vrinda opined that the benchmarks stated above, used for individual crimes were also sought to be applied to mass crimes, making convictions in such situations impossible.

She also highlighted the difficulties in making police officials accountable for crimes committed on Muslims in Hashimpura in 1987. Nineteen years after the incident, the victims were still struggling for justice, she said. She concluded with the relevance of the ICC for strengthening and influencing law reform initiatives within India, including on police reform and communal violence, and for incorporating concepts such as “crimes against humanity” and “command responsibility” within the Indian legal system.

Dr. Usha Ramanathan, in her presentation, explained the concepts of impunity and complicity which are important for an understanding the fundamentals of the ICC. She stated that the state today has control over two aspects - law-making and forms of violence. It could choose which forms of violence were lawful and which could be prohibited by law. She opined that the importance of ICC was in taking away the control of the government over how it would frame its laws to hold itself accountable. Usha highlighted the “missing crimes” from Indian penal law such as torture, enforced disappearances, fake encounters and the conscription of child soldiers. She also talked about the declining standards of fair trial and the collapse of the criminal justice system, the rampant misuse of laws relating to preventive detention, “fast track courts” and the manner in which extraordinary laws are routinely transformed into “normal” laws catering to all situations for times to come. She further discussed attempts at transitional justice for the Punjab situation, and the meaning and relevance of “culpable inaction” – where state and its agencies foresee violence but do not take action to prevent or stop the same.

In the concluding session of the workshop, Saumya Uma talked briefly about the ICC-India campaign, its long-term and short-term objectives as well as its activities. She emphasized that the campaign looked at the ICC as a standard-setting mechanism from which inspiration can be drawn to strengthen the domestic legal machinery. Navkiran Singh spoke about importance of information dissemination, dialoguing with Parliamentarians, having more workshops and holding such workshops in other states including in Kashmir. He also reiterated the importance of engaging with present law reform initiatives. The workshop ended with the participants showing a willingness to learn more about the issue, in order to become active members of the campaign.

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For feedback and responses, please write to iccindiacampaign@gmail.com