

SEMINAR ON INTERNATIONAL CRIMINAL COURT & INDIA
Conducted at ILS Law College, Pune, 18 December 2007

REPORT

At the invitation of ILS Law College, Pune, the ICC-India campaign conducted a three hour seminar on International Criminal Court & India, on 18 December 2007. The participants for the seminar were students of an undergraduate diploma course on human rights. The seminar was conducted by Ms. Saumya Uma, Co-ordinator, ICC-India.

The lecture started with a 90 second documentary produced by the Coalition for the International Criminal Court (CICC) on the issue of need for supporting the ICC. The film set the tone for the seminar. After eliciting responses from students as to their knowledge of the ICC, Saumya gave a brief overview of the ICC, including: the context of impunity in the global and Indian contexts, international attempts at creating accountability for mass crimes, advancements made through and criticisms to Nuremberg, Tokyo tribunals as well as Rwandan and Bosnian tribunals, and how the ICC was different from them, the differences between the ICC and International Court of Justice, the concept of individual criminal responsibility, the crimes within the jurisdiction of the ICC and the present global ratification status. She emphasized that the ICC was not a human rights court although its work was inextricably related to human rights concerns, and that the ICC Statute was not a perfect document but a negotiated document among states with a scope for periodic review. In response to a query from students about the requirement of exhaustion of local remedies, Saumya explained the principle of complementarity, and that the ICC was a court of last resort when a state was unwilling or unable to prosecute perpetrators. Unwillingness and inability to prosecute were explained with illustrations. After this brief introduction, the students were divided into five groups. Each group was given an article which had to be read, the questions formulated in relation to the article discussed, and make a presentation of their answers. The articles given to the five groups were:

Article 1: LIVING UP TO THE LEGACY OF NUREMBERG by *Siddharth Varadarajan, The Hindu, 12 Dec 2005* - It is an interview with Judge Philippe Kirsch, President of the International Criminal Court. In this article Judge Kirsch dispels the myths regarding the ICC, talks about ICC principles, its strengths and limitations and the present situations being studied by the court.

Article 2: SADDAM HANGING BOOSTS CASE FOR INTERNATIONAL CRIMINAL COURT by *Praful Bidwai, Inter Press Service, 6 January 2007*: The article discussing the hanging of Saddam Hussein, analyzes the inherent flaws in the trial, argues how some of these flaws could have been overcome had the trial taken place in the ICC, and talks about Indian responses (official as well as civil society's) to the ICC.

Article 3: COMMUNAL VIOLENCE: NEED FOR A ROBUST LAW ON GENOCIDE by *Siddharth Varadarajan, The Hindu, 25 August 2004*: This article discusses the issues/ concepts mentioned in the draft model law titled 'The Prevention of Genocide and Crimes Against Humanity Act 2004' drafted by civil society groups, the definition of genocide in the Genocide Convention, the need for an Indian law on genocide, the need for an expanded definition of genocide in the proposed law, against the backdrop of Gujarat carnage 2002.

Article 4: THE GUJARAT CARNAGE & THE ICC, by Saumya Uma, *The Hindu*, 14 May 2002: The article applies the definitions and elements of ‘crimes against humanity’ and ‘genocide’ from the ICC Statute to the Gujarat carnage, illustrating the gravity of crimes committed during the carnage from the standpoint of international law. It also highlights the potential for using international standards to end the culture of impunity within the country.

Article 5: NEEDED, A LAW ON GENOCIDE, by Dr. V.S. Mani, *The Hindu*, 10 April 2002: This article advocates the need for a law on genocide in India, and lays down reasons for the same. It also spells out obligations of the Indian government pursuant to ratifying the Genocide Convention.

The questions for the five articles mentioned above were framed in such a manner as to facilitate students to read, analyze and summarise the contents of the articles as well as discuss in smaller groups the issues arising from the articles. Aspects of the ICC discussed by the students through group presentations included: principle of complementarity, principle of non-retroactivity, scope and mandate of the ICC, myths, strengths and limitations of the ICC, manner in which ICC would help end impunity, relevance of ICC principles to the Indian context, and impunity for mass crimes in India.

Additional inputs given by the resource person in response to queries from participants included:

- Safeguards built into the ICC statute to prevent a politically-motivated prosecution;
- Reasons for time delay in ICC taking up the Darfur issue;
- Process by which American perpetrators could have been held accountable if Iraq had ratified the ICC treaty;
- Prison facilities for imprisoning persons convicted by the ICC;
- Lack of consensus on the definition of terrorism in international law and the process by which consensus-building efforts are under way;
- Reasons why ICC is not directly applicable to the Gujarat carnage;
- Indian government’s concerns with regard to the ICC and how these could be addressed;
- Activities and objectives of ICC-India campaign;
- Other situations of impunity for mass crimes in India (other than those spelt out by the participants);
- Relevance of ICC standards for strengthening domestic legal mechanisms; and
- India’s responsibilities under the Genocide Convention and the possibility of a wider definition of genocide under domestic law.

Concluding the seminar, Ms. Saumya said that although there were many queries that could not be addressed within a short span of three hours, both due to paucity of time as well as complexity of the issues, she hoped that the seminar had motivated students to engage with the topic further through research and other activities within college. She provided websites from which further resources on the ICC could be accessed. The students gave a vote of thanks, expressing their gratitude to the campaign for conducting the seminar in a participatory, interesting and thought-provoking manner.

Report prepared by ICC-India campaign, 26 December 2007

For further queries / feedback, please write to iccindiacampaign@gmail.com