

WORKSHOP ON

THE GLOBALIZATION OF JUSTICE: INTERNATIONAL CRIMINAL COURT

at the World Social Forum, Mumbai
20 January 2004

REPORT

A workshop titled “The Globalization of Justice: International Criminal Court” was held on 20 January 2004 in Mumbai under the auspices of the World Social Forum. This event was organized by the Paris-based International Federation for Human Rights (FIDH) in collaboration with Amnesty International, NGO Coalition for International Criminal Court (CICC), Women’s Initiatives for Gender Justice and ICC-India: project of Women’s Research & Action Group. Participants consisted of human rights activists, lawyers, students, social activists, academics and representatives of non-governmental organizations from within and outside India.

The event consisted of two sessions: the first was on the international perspective while the second session focused on the relevance to the Global South, particularly India. The present document is a report of the second session.

U.S. Opposition to the ICC: *Ian Gibson*, member of International Executive Committee of Amnesty International.

In presenting on the U.S. Opposition to the ICC, Ian Gibson enumerated five ways in which the U.S. has opposed and undermined the ICC, one of its main concerns being that ICC will have jurisdiction over American nationals, especially those operating outside the U.S. in other territories in capacities including that of peacekeepers. These included:

1. At the Rome Conference – U.S. was one of the seven countries that opposed. It wanted the Security Council to have a substantial control over the ICC. When this did not happen, the U.S. started criticizing the Rome Statute.
2. Attempted amendments to the Rome Statute – during the Preparatory Commission meetings for formulating Rules of Evidence and Elements Annex (rules supplementary to the Rome Statute), U.S. tried to bring in exceptions for American nationals. These were rejected as violative of the ICC statute.
3. Clinton signed the ICC statute on the last day that the ICC Statute was open to signatures, on 31 December 2000, but stated that the U.S. intention in signing was not to ratify but to ensure that its concerns were a part of the ICC negotiations. On 6 December 2002, the U.S. “unsigned” the ICC treaty.
4. Security Council resolution 1422 was brought it through U.S. efforts, granting exemption to peacekeepers from prosecution by the ICC for a renewable period of one year. The resolution was brought in on 12 July 2002 and was renewed a year later in 2003, and the U.S. would direct its efforts at obtaining annual renewals of the same.
5. Bilateral Immunity Agreements (BIAs) – through a contorted reading of Article 98(2) of the ICC Statute, it sought to undermine the ICC by entering into bilateral agreements with countries, guaranteeing non-surrender of the accused to the ICC. Some of these are to do

exclusively with American nationals on the soil of the other country signing the BIA, and some are reciprocal in nature.

He concluded by saying that the U.S. actions have affected the international community as a whole, and that the European Union has taken a position unequivocally on how states should be responding to the BIA.

Concerns & Responses of the Indian Government – *Dr. Usha Ramanathan*, law researcher & advisor, ICC-India

Usha Ramanathan commenced her presentation, commenting on the naivety that the Indian government showed throughout the process of negotiating and voting on the ICC treaty. One member of the International Law Commission was an Indian who worked on the first draft of the ICC treaty. So the government was well aware of its provisions. However, at the Rome Conference in 1998, the Indian government was genuinely astounded that so many countries were agreeable to the concept of inherent jurisdiction of the ICC and to give up a part of their state sovereignty. She enumerated the concerns of the Indian government as follows:

- a) Inherent jurisdiction to the ICC (prerogative of the ICC to decide if it can take up a case), which is outside the Indian territory is seen as undermining sovereignty. The argument advanced is that Indian courts are very good and can deal with any situation. The Gujarat carnage has shown that we have to go beyond the state at times. The Indian civil society too would like to have trials within the country, but looks at the ICC as a safety net over and above the Indian domestic system.
- b) Internal armed conflict – although the threshold set by the ICC is extremely high for perpetrators of violations committed in internal armed conflict to be prosecuted by it, the Indian government has ignored the high threshold and been concerned about the inclusion of such crimes.
- c) Role of Security Council – many of us have problems with the Security Council but the Indian government did not engage with this issue during the Rome Conference.

Subsequent to the Rome Conference in 1998, in 2002, India signed a bilateral immunity agreement with the United States. According to Indian law, treaties do not have to be ratified by the Parliament, so the Parliament and the civil society were not kept informed of the Indian government entering into this treaty. Usha pointed out other ways in which ICC would be relevant to India: that crimes such as genocide, disappearances, fake encounters do not feature in Indian laws and the systemic use of state power. She concluded by stating that cases coming up in other jurisdictions, with some leaders' impunity being torn off through the ICC and other mechanisms, will have a deterrent effect on India and Indians.

Need for an Indian Campaign on the ICC – *Mihir Desai*, Human Rights Advocate (India) & Director, India Centre for Human Rights & Law

In presenting his views on the need for an Indian campaign on the ICC, Mihir Desai began his presentation by posing two questions: (1) Has there ever been a war crime, crimes against humanity or genocide in Indian history? (2) Has there ever been an unwillingness to prosecute perpetrators of such crimes? He answered both the questions in the affirmative.

Mihir pointed out that in the last five decades of Indian independence, starting from the Partition violence when 500,000 – 600,000 people were killed and killed in torturous ways, India has witnessed many incidents of communal and anti-dalit violence, when a large number of people have been targeted and systematically tortured and / or killed. These include communal violence in Bhiwandi, anti-Sikh riots in Delhi, communal violence in Mumbai, Gujarat and so on. Mihir also talked about violence in the North Eastern states and said that civilians living in such states have suffered from crimes against humanity for the past 40-50 years, since the time of permanent occupation by the Indian army. Kashmir and Punjab are other instances where crimes against humanity are / were rampant.

In focussing on the unwillingness of the Indian state to prosecute perpetrators, Mihir pointed out that after the Partition violence, there was no investigation into the violence, no tribunal was set up. When enquiry commissions are set up after situations of communal violence, their findings are recommendatory and not mandatory. No automatic prosecutions follow. Justice Srikrishna Commission is a case in point. For these two reasons, Mihir concluded that the ICC is relevant to the human rights situation in India today and that a campaign is very much necessary in India.

Responses of Civil Society in India – Saumya Uma, Coordinator, ICC-India & Co-Director, Women’s Research & Action Group, Mumbai

Saumya said that the ICC-India campaign was initiated in the year 2000, based on the conviction of a small group of people that the ICC would be extremely relevant to end the climate of impunity presently persisting in India. It has a Board of Advisors consisting of Indian and international experts. It is a project of Justice and Accountability Matters, a programme of Women’s Research & Action Group. She said the focus areas of the campaign have been to disseminate information and create platforms for informed discussion on ICC and its relevance to India. Government accession to the ICC treaty is a long-term objective, she said. She outlined the major activities of the campaign, namely information dissemination, research and publication, campaign and advocacy, and network and outreach. She briefly spoke about some of the challenges faced by the Indian campaign, including countering the Indian mindset where anything “international” is looked at with resistance and suspicion, complexity of the ICC and related laws and rules, and the challenge of positively engaging with the media. She said the campaign’s efforts at present and in future were directed at collaborating with other human rights movements in India, to initiating and engaging in a dialogue with the Indian government and in doing sustained media outreach.

In the discussion that followed, participants raised issues relating to Indian sovereignty and how it is used as a screen by the state to protect itself from its people, and on the U.S. opposition to the ICC and its possible impact on the ICC itself.

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