

REPORT OF DISCUSSION MEETING ON INTERNATIONAL CRIMINAL COURT & INDIA

(Held on 7th November 2004 at George Bhavan, Kolkata)

A discussion meeting on International Criminal Court and India was held on 7th November 2004 in Calcutta, India. The meeting was organized by ICC-India, a project of Women's Research & Action Group (WRAG), Mumbai, in collaboration with Manabadhikar Suraksha Mancha (MASUM). *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. MASUM is a Kolkata-based organization, working actively on protection and promotion of human 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 meeting included human rights activists & lawyers attached with MASUM, academicians, students of law and other disciplines as well as human rights activists from Korea and Thailand who are currently doing their internship with MASUM. The resource persons for the meeting were Ms. **Vahida Nainar**, Chair of Women's Initiatives for Gender Justice, The Hague & founder trustee of Women's Research & Action Group, Mumbai; Ms. **Saumya Uma**, Coordinator, ICC-India and Co-Director, Women's Research & Action Group, Mumbai; and Ms. **Pouruchisti Wadia**, Assistant Co-ordinator, ICC-India and Coordinator, Legal Literacy and Human rights Awareness Project, Women's Research & Action Group, Mumbai.

Mr Kirti Roy, Secretary, MASUM, introduced the topic of ICC to the participants. He outlined a brief history of ICC and highlighted the fact that India and the United States had not become parties to the ICC. He also shared his experience of MASUM's work on the ICC some years ago, and his continued conviction in ICC's relevance for the Indian human rights situation. He mentioned that ICC- India and MASUM had planned to have a larger discussion-meeting spanning, but that the same could not be worked out due to unavoidable circumstances. Despite this, MASUM had felt the need to take advantage of the ICC-India team's presence in Kolkata on its way back from Gauhati (after an ICC workshop held there) and hence this meeting was hastily planned.

Ms Pouruchisti Wadia talked about the fundamentals of the ICC, such as the underlying principles and philosophy behind creation of the ICC, the trigger mechanisms, the structure of the court in detail and completed her presentation by highlighting the crimes covered under the ICC and the implementation mechanisms.

Ms Vahida then elaborated on the crimes covered under the ICC and how they are defined. She spoke about gender crimes and explained how the ICC was historic and unprecedented in its recognition of crimes against women, in the light of a historic neglect in prosecution of mass crimes against women prior to the drafting ICC Statute. She shared her personal experiences whilst the Rome Statute was being debated and the

role of women's rights activists who came together as Women's Caucus for Gender Justice and ensured that gender concerns were woven into the fabric of the ICC. Some of the procedural and evidentiary rules were also shared to elucidate how every effort was made at the preliminary stage itself to prevent gender discrimination in the administration of justice. Vahida also highlighted some of the challenges before the ICC and said that while the ICC was not a perfect system, it was a step in the right direction, and that it could be improved in the forthcoming years.

In the following session, Ms Saumya Uma talked about the Indian government's position on the ICC at the stages of drafting, voting and its current concerns and responses to the ICC. She highlighted some of its major concerns, including perceived interference with its sovereignty, inherent jurisdiction of the ICC, its discontentment with extending the principle of complementarity to situations of unwillingness to prosecute, doubts about independent functioning of the Prosecutor, inclusion of crimes committed in internal armed conflicts within crimes triable by the ICC and the role of U.N Security Council. She also outlined the position of USA and the role played by it in undermining ICC, with a special reference to the bilateral non-surrender agreements that it had pressurized several countries including India to sign.

The discussion following these three presentations was lively and interesting. The entire group was enthused with the subject and was particularly interested in how they could link ICC to their work. Questions revolved around the responses of other non-governmental organizations in India, position of four other permanent members to the Security Council and the National Human Rights Commission. Attempts were made to further understand the concerns of the Indian government. Discussion also ensued around whether or not campaigns on specific human rights issues – such as the campaign against torture – should be given priority over the ICC campaign in India. The resource persons said that it was difficult to prioritise between various human rights campaigns. Further, as the ICC is linked to various human rights issues, there was a need to work in tandem with other human rights campaigns to mutually strengthen each other. A participant shared the dilemmas that many human rights activists face, in critiquing the state and yet depending on the state's benevolence for ratification / accession to treaties, and in critiquing the law and yet using the law for human rights campaigns. She said that one faced similar dilemmas with regard to the ICC.

Discussion also ensued on various strategies to take the ICC campaign in India forward, including approaching the NHRC and forming a group to dialogue with the government. In conclusion, it was said that this was just the beginning of the collaboration between MASUM and ICC-India, and that a more comprehensive workshop was tentatively planned for next year.

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For comments and suggestions, please write to iccindia@indiainfo.com / wrag@vsnl.com