

# Campaign for the International Criminal Court in Bangladesh

Odhikar

## ICC campaign Activity Report

***Published by***

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## Foreword

Odhikar, a human rights organisation in Bangladesh, has been campaigning for the International Criminal Court (ICC) for last few years. This publication is an attempt to compile campaign reports, speeches made by distinguished personalities and articles on the ICC. The objective of this publication is to give relevant people an idea about the ICC campaign in Bangladesh.

The way the Rome Statute of the Court was adopted by the community of nations through intense negotiations during 1995-1998 was an astounding success of multilateral diplomacy. It was also great learning experience for lawyers and researchers on how international law can be developed through strategic cooperation of governments, international organisations and civil society NGOs. On the role of human rights NGOs in setting up of the ICC, UN Secretary General Kofi Anan commented, " NGOs helped make 1998 the year of the International Criminal Court....NGOs have helped give life to the idea of an international community...."

The setting up of the ICC in 2002 is a historic event in the new millennium. The Court is now in full operation with all judges and prosecutors appointed and several cases under its consideration. Two cases have already been referred by States (Rwanda and Democratic Republic of Congo) and the UN Security Council has referred the Darfur Case (Sudan) to the Court, which are signs of recognition and acceptance of the Court as functional forum of international criminal jurisdiction.

During the pre-1998 global campaign for the adoption of the Statute, Odhikar, along with Bangladesh Coalition for the ICC, was in the forefront of campaign for its adoption. Currently Odhikar is actively engaged in disseminating information on the ICC in Bangladesh, organizing awareness raising workshops and seminars, lobbying meetings and publishing write-ups in the newspapers. Odhikar is also working to build up a constituency of informed people in support of the ratification of the Statute by Bangladesh, which signed it in 1999 but is yet to ratify it. Odhikar is in touch with the Coalition for the International Criminal Court (CICC), Asian Forum for Human Rights and Development (Forum-Asia) and other international human rights networks on various human rights campaigns relevant to the ICC.

This publication has been possible, as part of an ICC campaign project, with support from Forum Asia. We wish to acknowledge Forum Asia's cooperation for undertaking this campaign. Odhikar looks forward to the effective functioning of the Court in protection of human rights in all regions of the world.

**Adilur Rahman Khan**

Member, Executive Committee of Odhikar  
and

Focal Point for the South Asian Campaign

## Odhikar and ICC Campaign in Bangladesh: An overview

Bangladesh is the first South Asian country to have expressed interest in the International Criminal Court by signing the Rome Statute in 1999. Since then civil societies have been making an effort to try to make people and concerned policymakers aware of the Rome Statute. Many campaign initiatives have taken place and Odhikar was one of the first organisations that have played active role from the very beginning of the campaign.

Odhikar prioritised its focus on the reinforcement of the Bangladesh Coalition for the ICC. It has been decided that the Coalition will have, in addition to a Steering Committee, organizational and individual members. Odhikar hosts the Coalition, coordinates its activities and extends necessary support for meetings and other activities. At South Asia level, Odhikar is working as focal point for ICC campaign.

Following is a summary of activities for ICC Campaign in Bangladesh:

- **Advocacy workshops:** During 2004-2005 Odhikar organised four advocacy workshops in capital city Dhaka and outside Dhaka. Of the four workshops, two were held in Dhaka, one in Chittagong and one in Rajshahi.
- **Regional conferences:** Two regional conferences were organised by Odhikar in 2004 and 2005. These conferences brought human rights activists and ICC advocates mainly from the South Asian region, Forum Asia and Asian Network for the ICC (ANICC). These were aimed at reviewing respective country ICC campaign and strategizing regional campaign initiatives.
- **Lobbying meetings:** Members of Bangladesh Coalition for International Criminal Court (BCICC) and Odhikar are meeting members of parliament, Law Commission and politicians in set-up meetings and on the sidelines of workshops. They are given materials and documents on ICC for awareness and lobbying for ratification.
- **Articles and write-ups:** Odhikar actively pursue writing articles on the Rome Statute and the Court with prominent legal and political commentators. In this respect, it identifies individuals, supply them with materials and information and, if necessary, answer all questions. It has attempted to publish at least one article a month in national newspapers. Several fact and information sheets on ICC received from external sources have also been published in local newspapers at the initiative of Odhikar.
- **Poster Campaign:** A poster has been developed under Odhikar's ICC campaign. The poster contains the message of ratification and the international crimes that are tried by ICC. The poster has been being distributed through workshops and through regular network distribution of Odhikar materials. Odhikar also displayed and disseminated the poster in the human rights fair held on December 10, 2004 in Dhaka and sent some posters to the International human rights networks. The poster on ICC has been being disseminated among the students, teachers, civil society organizations and other institutions.
- **Disseminating ICC activity reports to international and regional networks:** Odhikar, after every ICC related event taking place, has been distributing reports to members of its International networks such as Thailand based Forum Asia, New York based Coalition for International Criminal Court (CICC), Hong Kong based Asian Human Rights Commission (AHRC), Asian Network for ICC (ANICC), South Asian Network for Torture and Impunity (SANTI), Paris based International Federation for Human Rights (FIDH), Geneva based International Organization against Torture (OMCT) and Nepal based South Asia Forum for Human Rights (SAFHR).

- **Material distribution:** Odhikar has been regularly distributing copies of the Rome Statute, Core documents of ICC, fact sheets on the ICC and other related article to the universities, research institutions, civil societies, human rights NGOs and think tanks.
- **Observing International Justice Day or the ICC day:** On the occasion of the anniversary of adoption of the Rome Statute on 17 July, which is known as the International Justice Day, Odhikar on 17 July 2005 organised an orientation workshop on the ICC in the University of Rajshahi with its law students and teachers. Odhikar has plan to observe this day regularly by arranging campaign events.

### **Future activities**

Lessons from present ICC campaign in Bangladesh reveal that it will take some more time for inclusion of the ICC in the policy priority of the major political parties of Bangladesh. In such situation, Odhikar with BCICC base their campaign strategies on mass awareness to develop a broader constituency in support of the ICC in Bangladesh. Odhikar believes that strong mass awareness can act as a catalyst for the campaign and motivate the political parties to add it to their policy priorities. Odhikar has plan for its future activities, most of which obviously depend on the availability of financial support.

#### **1. Restoration of the List serve**

Email based List Serve to circulate the updates and latest development of the International Criminal Court. It is a very powerful means to reach people.

#### **2. Newsletter**

Odhikar/BCICC plans to print an ICC newsletter (in both Bangla and English), preferably on a quarterly basis. This was strongly suggested by many, essentially because of limited access to/ use of internet. An internet-only based campaign will not be effective in Bangladesh. It has to be supplemented by a newsletter as main source of news and information.

#### **3. Dialogues with the Political Parties**

Like other democratic countries, political parties here obviously play a vital role and it is true that there is a gap of information regarding the Rome Statute. To address this issue and to secure support, Odhikar will organize dialogues with the political parties, where representatives of the parties will be briefed on the ICC for their support and incorporation it in their party agenda. These dialogues may take place with leaders at different party levels.

#### **4. Standing Committee Hearings**

The Chair of Parliament's Standing Committee on Foreign Affairs discussed the possibility of holding a hearing on the ICC by Parliament's Standing Committees on Foreign Affairs and Law. The idea came when the Government's top legal advisor raised a number of questions on ratification. If organized, this will be the first such meeting in any Asian Parliament. Odhikar will intimately maintain liaison with the Chair of Parliament's Committee in this respect, and lobby for such a hearing.

#### **5. Roundtable**

Odhikar is planning to organize a roundtable discussion on the ICC and Bangladesh with a major national daily. Leading national newspapers hold such roundtable discussions on important national issues, in which experts and interested individuals and others are invited to analyze the pros and cons of an issue, followed by publication of the proceedings by the daily. This will also generate huge publicity for the ICC and work as public education on the Rome Statute.

#### **6. Dialogues with the Deans**

To reach out to the most interested constituencies of the ICC and to generate expertise and support, Odhikar will meet with the Deans of the Faculties of Law and Social Sciences, and Professors of State and Private Universities and Law Schools either individually or in groups. Odhikar will work with them to explore the possibilities with regards to incorporating the Rome Statute and international justice in academic curricula.

## **7. Lecture Series**

Odhikar will have a program of lectures given by local, regional and international experts at law schools, international relations departments and other relevant institutions to increase understanding of the Rome Statute and the Court.

## **8. Discussion on electronic media**

There are a number of discussions, analytical and rights related programs in private and state run television channels. Odhikar will brainstorm ideas with the producers and presenters of these programmes for arranging ICC specific programs for mass education and sensitisation. The ICC as a subject matter of a television debate will be productive.

## **9. Research**

Odhikar will coordinate a yearlong major research and study project on the Rome Statute and the Constitution of Bangladesh and its laws, primarily to analyze consequences and compatibility of the Statute with the major laws of Bangladesh. The study will ascertain what needs to be done for Bangladesh to fully implement the Rome Statute and to cooperate with the Court.

## **10. Meet the Lawyers & Journalists**

Odhikar will undertake regular programs to meet with lawyers and journalists to update them on the ICC and, at the same time, to try to secure maximum support from these two important sectors. This will include organized dialogues with various Bar Associations and Associations of the Journalists and Press.

## **11. Meeting the Institutions**

Odhikar will also have programs to reach out to other national institutions that deal with law, international law, foreign affairs, justice, human rights and other similar issues such as the Bangladesh Institute of Law and International Affairs, Bangladesh Institute of International and Strategic Studies, Centre for Policy Dialogue and the National Defence College.

## **12. Training**

Odhikar will develop its own training module on the ICC and, whenever possible, incorporate it into its other training programs. Its training will target the judges, lawyers, prosecutors, human rights activists, students, journalists and other segments of society.

## **13. Legal summit**

The technical experts of the Government of Bangladesh raised a number of constitutional and legal questions in the workshop. These questions and concerns have been known for some time, and on various occasions answers have been furnished to these questions. However, it still appears that Government experts are not fully satisfied or convinced. To address this issue, in the middle of the research on the ICC and Bangladesh Laws, a Legal Summit will be organized by Odhikar with top judges, jurists, lawyers, and professors to exhaustively deal with these questions and provisional findings of the study, in order to offer conclusive answers to any questions and concerns.

## **14. Networking with Sectors and Caucuses**

Odhikar will actively link with groups working on gender, victims, children, law reform and other issues closely related to the workings of the Court. It will supply information and materials on the Court, and invite them to join the BCICC.

## **15. Public Campaign**

As part of a public participation campaign, Odhikar will undertake a mass signature campaign in favour of the ICC and ratification of Bangladesh. It intends to collect signatures for submission to the Government of Bangladesh and the ICC.

## **16. National & Regional Seminars, Workshops and Conferences**

Odhikar will organize a series of national and regional seminars, workshops and conferences as part of its campaign for the ICC. These events will also offer opportunities to evaluate the campaign and adjust the

strategies. Odhikar and BCICC will actively participate in regional and international events on the ICC including meetings with the Court, and the Assembly of State Parties.

**17. Facilitating Visits, Missions & Campaigns**

Odhikar will facilitate visits related to the ICC and lobby missions and campaigns organized by the international organizations in Bangladesh.

**18. Production of Campaign Materials**

Odhikar will continue producing various campaign materials with ICC messages including posters, leaflets, bags, pens, caps, CDs and other audiovisual materials to use as campaign tools.

**19. Online information**

Odhikar will redesign its website ([www.odhikar.org](http://www.odhikar.org)) to include ICC activities and materials available in a user-friendly way. It will also provide links with other similar sites for making updated online information easily accessible.

**20. Publication**

In addition to a Newsletter, Odhikar will publish reports, studies, books, articles and relevant materials in Bangla and English on the ICC. These will also be published in national newspapers on regular basis.



## REPORT OF ICC WORKSHOP 1

**November 25, 2004**  
**Dhaka, Bangladesh**

Bangladesh is the first South Asian country to have signed the Rome Treaty of the International Criminal Court in 1999. It is yet to ratify the Statute and all efforts in this regard have been overtaken by political developments. Advocacy campaign has been going on for sometime. On November 25, 2004 Odhikar with BCICC organized a day long workshop with assistance from the Department of Foreign affairs and International Trade of the Government of Canada (DFAIT).

The objective of the workshop was to create a strong campaign and awareness raising about the Rome Treaty among the government officials, members of parliament, judges, human rights activists, lawyers, students, civil society, NGOs. It also focused on why the ratification of the ICC Statute is necessary for Bangladesh. It aimed to clarify the prospects of ratification, by inviting top government officials from the Ministry of Foreign Affairs, Law and the Attorney General's office.

### **Inaugural session:**

Dr. Saira Rahman Khan Member, Odhikar, chaired the opening session. In her introductory note, she took the opportunity to link the conference with the International Day for the Elimination of Violence against Women observed on November 25. This link is easily made as the ICC deals with specific crimes like, among others, enslavement, including trafficking, rape, sexual slavery, enforced prostitution or other forms of sexual violence. The new part of the International Criminal Court Statute is that also those who have not committed a crime can be held responsible as well for the crimes committed by those who work for him/her. She stresses also on the importance and the need for ratification of the statute as the Committees formed under the CEDAW and CAT have not proved to be effective in contain and stop violence against women.

Guest of Honour Mr. Muhammad Zamir, Former Ambassador and Secretary, who led the Bangladesh delegation in the Rome Conference, enlightened the audience by describing the historical steps that were necessary for the establishment of an International Criminal Court. He discussed the concept of complementarity of the ICC and its relation with/to the jurisdiction of Bangladesh. In his view the possibility of any conflict of jurisdiction may also be disregarded given the existing constitutional provisions within the Bangladeshi Constitution. He stresses on the alternative that the government has to opt out of some of the Statute provisions if the government feels that these are not in conformity with domestic law but it is important to ratify the Statute and to move forward.

Special Guest of the workshop, H.E. Mr. David Sproule, High Commissioner of Canada to Bangladesh suggested that the ICC could be the most important institution since the creation of the UN who help ensure that that no one escapes justice when genocide, crimes against humanity or war crimes are committed. That an institution like the ICC is needed has been proved by the failure of the States to deal with this matter through the years. Besides the creation of ad hoc tribunals is costly and not efficient because they do not provide a long-term answer. He dismissed some critiques against the jurisdiction of the ICC with the principle of complementarity, which places the responsibility on the countries first and he assured that the system of the ICC provides enough check and balances mechanism to prevent frivolous or political misuse of it.

**First working session:**

This session was presided by Mr. Fida. M. Kamal, Additional Attorney General for Bangladesh. In this session the history of the Rome Statute, summary of the Statute and its importance was discussed. Multi media presentation made the discussion interesting.

It was an interactive session and participants took active role by asking a good number questions to know further on the ICC mechanism. The Chair of the session discussed briefly about features of international treaties and the ICC Statute in that perspective. Participants, mainly the students had a lot of interest on this new mechanism and they expressed satisfaction for getting to know about Rome Statute and the ICC.

**Second working session:**

This session focused on Victims' forum and protection of women's rights through ICC. A paper titled 'Victims Rights and Gender integration in the Statute of the International Criminal Court' was presented. The paper briefed about the rights of the victims under ICC and a link was drawn on how gender has been integrated in the Rome Statute.

Different opinions came from the Discussants. Farida Akter from UBINIG, a human rights group, said ratification of the Statute by small countries of the world would not be fruitful unless it applies to the world's powerful countries. Speakers also discussed about the worldwide situation of violence against women, especially the sexual violence, situations in Iraq and Sudan and other places of the world. Ms. Shamsunnahar, Convenor, Naripokkho stated that victims protection should also be introduced in our domestic laws of the country.

**Closing session:**

This session was presided over by Mr. Shahiduzzaman, Senior Reporter, The New Age. He said that the ICC indeed an important mechanism in international arena. Bangladesh should ratify the treaty as soon as possible and obviously media can play a vital role on raising awareness on the ICC. Dr. Asif Nazrul summed up the whole session by criticizing the role of the USA in signing BIAs.

## REPORT OF ICC WORKSHOP 2

**December 23, 2004**  
**Dhaka, Bangladesh**

International Criminal Court is a permanent independent judicial body created by the international community of states, through the Rome Statute to prosecute the gravest crimes under international law including genocide, other crimes against humanity, war crimes and the crime of aggression. With this vision Odhikar with Bangladesh Coalition for the International Criminal Court (BCICC) arranged an advocacy workshop, at BRAC Centre Inn on December 23, 2004 Department of Foreign Affairs and International Trade of the Government of Canada facilitated the workshop.

The objective of the workshop was to disseminate information on the ICC mechanism and to campaign for the ICC in Bangladesh. At present Bangladesh struggles on some legal issues regarding whether parliamentary action is necessary for ratification, or if a Cabinet-level decision is enough to formalize ratification of the ICC. In this workshop, government officials, politicians, civil society people, journalists, members of parliament discussed relevant issues and created a momentum towards reviving the national ratification campaign.

### **Inaugural Session:**

The opening session was presided over by Dr. Tasneem Siddiqui, President, Odhikar. She said Odhikar is a part of a collation, which is working in favour in ratification of the Statute of the International Criminal Court by Bangladesh. The campaign for ratification is running nationwide and it is organizing a movement for implementation legislation following ratification of the Statute It is hoped that in near future the importance of international criminal court, its role in safeguarding the human rights of the citizens will be recognized by the members of the civil society, policy makers, students, lawyers, teachers and members of the judiciary. **In the welcome speech, member of Odhikar Dr. Saira Rahman Khan** stressed on the importance of the ICC on the ground that the International Criminal Court has the power to investigate, prosecute and convict individuals whether as part of, or in relation to the government, or of any group. Odhikar has organized these workshops for two main purposes. Firstly, to disseminate information on the International Criminal Court for creating a constituency of informed people in Bangladesh and secondly for mobilizing the civil society in support of ratification of the Statute. She added that a large number of victims and witnesses are women and children. The Rome statute provides specific norms by which victims and the witnesses are to be protected to ensure that justice is effectively served.

**Special Guest, Mr. Jesmul Hasan, Governance Adviser of Canadian International Development Agency (CIDA)** stated in his speech that the Canadian High Commission has felt honoured for being invited to this workshop on the International Criminal Court. He put some light on Canada's involvement with the ICC mechanism. Canada has been involved from the very beginning of the modern effort to establish the ICC and has been providing leadership, advocacy and resources in support of the ICC ever since. Canada chaired a coalition of States supportive of the ICC to push for an official diplomatic conference at which to adopt the Rome Statute. Canada also contributed to a United Nations Trust Fund that enabled least developed countries to participate in the negotiations. The Canadian Government through its ICC and Accountability campaign has supported this workshop. Canada considers that the ICC could well be one of the most important international institutions since the creation of the United Nations. It stands as a permanent judicial institution to help ensure that no one escapes justice when they commit genocide, crimes against humanity or war crimes. Throughout history, States have repeatedly failed to deal effectively with these serious international crimes. Without justice, there is no lasting peace and instead is a cycle of violence, leading to refugee flows, larger regional conflicts and the need for intervention and peacekeeping. In conclusion he thanked Odhikar and the Bangladesh Coalition for the International Criminal Court for organizing events like this.

**First Secretary of the Delegation of the European Commission in Bangladesh, Ms. Ann Marshal** was also present as special guest. She briefed the participants about the association of the EC with the ICC. European Commission is promoting international institution like the ICC as one of the major priorities of the European Initiative for Promotion Democracy and Human Rights. One of the key orientations of this initiative is that EC would promote a campaign that advance the public root of the international criminal jurisdiction and work for the universal abolition of death penalty. The same campaign would look into reinforcing the work of international mechanism, which monitor and report on respective HR and related treaty obligation. Therefore, in a nutshell, the objective of the EU campaign is to activate the ICC and other international mechanisms including the interaction of national justice systems.

**Mr. Fida M. Kamal, additional attorney general for Bangladesh** said that the people of Bangladesh experienced genocide during the liberation war. Therefore, they know the sufferings and what it takes. He expressed optimism that the participants would learn a lot about the ICC from workshop like this.

**Chief Guest, Dr. Abdul Moin Khan, Honourable Minister, Ministry of Science and Information and Communication technology** stated in his deliberation, "I have been to one such a session about six months ago where I have given a piece of my mind on this issue. I am glad that Odhikar has taken its interest on this issue and they have continued their efforts in educating us on this issue and furthermore to mobilize opinion and creating awareness. Perhaps this is leading to the process of ratification for Bangladesh. I wish their success on this issue. May I say that, as a member of parliamentarians for global action, which is an organization of 1500 parliamentarians from more than 100 countries of the world, which is one of the motive forces behind the exercises during the

Rome statute, we had been working towards a difficult task of not only trying to convince one particular country to ratify but the world as a whole to be convinced about this exercise. The big and the powerful of the world remain careless about whether or not ICC is being signed and its mechanisms are given the chance to function effectively. My concern is to make sure that violation of human rights does not occur in respect of any particular individual, whether he is rich or poor, whether he comes from the upper class of the society or from the lower class. Unfortunately Bangladesh Constitution does not spell out any mechanism for ratification of international treaties. I have been arguing for this for quite a long time. And during the last amendment of the Constitution, which was done about 3/ 4 months back, I worked hard and lobbied to include a clause specifying the mechanism for ratification of international treaties. The present mechanism is an international agreement is signed by a country upon authorization of the cabinet or the government of the country. Therefore, in case of the ratification, the proposal is taken back to the cabinet and therefore it is the same body, which is signing and ratifying the process. The principle should be, the government as the representative of the people should have the right to sign an international agreement but in case of ratification, it should be discussed in parliament.”

#### **First Working Session:**

In the working session, Dr. Asif Nazrul, Associate professor of the Department of Law, Dhaka University briefed the participants about the ICC mechanism and summed up the Rome Statute. He also informed about the misguided fierce of ICC, the role of the USA and bilateral immunity agreements. He also narrated the Security Council’s resolution and procedure for referring any situation to the ICC. Mr. Zahir Uddin Swapon, a Member of Parliament of the ruling Bangladesh Nationalist Party informed the participants about the updates on the ICC.

#### **Second Working Session:**

The theme of the second working session was protection of victims and witnesses. Sultana Razia presented a paper on, “Victim and witnesses protection under ICC”; the provisions relating victims and witnesses under the ICC Statute was discussed.

Advocate Z.I. Khan Panna, Chairperson, Legal Aid and Human Rights Committee, Bangladesh Bar Council briefed on the protection of victims and witnesses under Bangladesh laws. He said that laws of Bangladesh to some extent cover victim’s protection but main problem is that these are not properly implemented. Victim suffers for all the judicial complexities.

Naima Haider, Assistant Attorney General for Bangladesh presented a paper on gender violence and international laws. In her lively presentation she summed up the international norms and laws on the issue.

In the questions answer session, participants took part actively and it was a lively discussion.

**Closing Session:**

Closing session was presided by Dr. Iftekhar Zaman, Executive Director, Transparency International, Bangladesh. Summing up the whole session he stressed on the mass awareness for the ratification campaign. In that session Advocate Suranjit Senjupta, presidium member of Bangladesh Awami League was present as Chief Guest. He expressed his solidarity with the mechanism and added that they would give their full consent for its ratification. Special Guest of the session, Hasanul Huq Inu President of the Jatiyo Shomajtantrik Dol (JSD) said whenever this international criminal court concern first came many of our political leaders did not pay sufficient attention to this but now we know about it from this type of initiatives.

Mr. Masood Alam Ragib Ahsan, Director, Odhikar made the closing statement of the workshop. In his speech, he thanked all for being present and for active participation in this workshop. “This has fulfilled the purpose of disseminating information on the International Criminal Court for creating a constituency of informed people in Bangladesh in support of the ICC,” he added. He specially thanked again to the Department of Foreign Affairs and International Trade of the Government of Canada for extending support for the ICC campaign in Bangladesh.

## REPORT OF ICC WORKSHOP 3

**May 14, 2005**

**Premier University, Chittagong, Bangladesh**

“The establishment of the Court is still a gift of hope to future generations, and a giant step forward to in the march towards universal human rights and the rule of law,” commented UN Secretary General on the International Criminal Court. To make students and civil societies aware about the ICC mechanism, Odhikar, on 14 May, organized an advocacy workshop with Premier University, Chittagong, with assistance from the Asian Forum for Human Rights and Development (Forum-Asia), Thailand. It was actively participated by the law students and faculties from the University of Chittagong and the Primer University, members of the civil societies and media.

The objective of the workshop was to disseminate information on the ICC mechanism and to campaign for ratification of the ICC Statute by Bangladesh. Targeted participants were students, lawyers, teachers, civil society people, human rights activists.

### **Opening Session:**

The opening session was presided over by A. F. Hassan Ariff, Member, Executive Committee, Odhikar and former Attorney General for Bangladesh. In the opening remarks, he said that in 1999 the Government of Bangladesh signed the Statute of the ICC, with assurance of ratification. Bangladesh was the first country in South Asia to have signed the treaty. Bangladesh also took active part in the Rome negotiations. However, ratification of the Statute has yet to be done. Odhikar was one of the few human rights organizations that became involved with the issue of the ICC and the Rome Statute, since it was introduced. Since 2002 Odhikar has been campaigning in favour of ratification of the ICC Statute by Bangladesh. After a couple of awareness workshops in Dhaka with students, teachers, civil societies, law professionals, Odhikar has come to Chittagong to spread the message on the ICC mechanism to more grassroots people outside Dhaka.

Chief Guest, Professor Anwarul Azim, Vice- Chancellor of the Premier University, Chittagong commented on the importance of the ICC and hoped that Government should consider its value and go for ratification. “As a co-organizer of this workshop we feel proud and I hope this will help my students to know Rome Statute clearly.” he added.

### **First Working Session:**

In the first working session Dr. Asif Nazrul presented the ICC mechanism and Rome Statute in a very simple way. With a brief multi media presentation, he narrated the whole ICC mechanism to the participants. As an expert of international law he expressed his views on the international criminal justice system and made a comparative study on International Court of Justice and ICC. Role of the United States of America and the legal

status of Bilateral Immunity Agreement between USA and a few States also came up in his presentation. He also discussed the role of the UN Security Council and the procedures for referring incidents to the ICC.

The floor was opened for discussion. Students were the most active participants in this session. A lot of interesting questions came out from the floor. Dr. Asif Nazrul and A. F. Hassan Ariff were very prompt to answer those questions.

**Second working session:**

Second working session was conducted by, Professor Dr. Shah Alam, of the Law Faculty of the University of Chittagong. In this session he explained how important the ratification was for Bangladesh and the process of ratification of International instruments as per the Constitution of the country. In this session, Lecturer in Law, Md Shaheen Chowdhury was present as discussant. He concentrated on the importance of the ratification of the Rome Statute and its future consequences on the legal system of Bangladesh.

**Third working session:**

Third working session was on victims and witnesses under the Rome Statute. Sultana Razia, Project Assistant of Odhikar read out a paper on the protection of victims and witness under the ICC mechanism. Lecturers in Law Rakiba Nabi and Munirul Azam were present in this session as discussants. Rakiba Nabi traced out the condition and status of victims and witnesses in the criminal justice system of Bangladesh. Munirul Azam stressed on the importance of a victim protection system for Bangladesh legal system. He said, “ We can learn from this mechanism and should lobby for a victims protection code.”

**Closing session:**

In the closing session, Guest of Honor, Abul Momen, Chittagong Resident Editor of the Daily *Prothom Alo*, said, “As a journalist I felt that in this world the powerful states are getting powerful day by day.” To uphold humanity ICC could be a strong platform, we should make more people aware about this mechanism.

The Chairman of the Department of Law of the University of Chittagong, Zakir Hossain was also present as the guest of honour. In his speech he said that there was no legal limitation to ratify the Rome Statute by Bangladesh. Awareness could be the most powerful tool for ratification campaign.

A.F. Hassan Ariff summed up the workshop. In his closing speech he thanked all for being present and for active participation in the workshop. He specially thanked Professor Anwarul Azim Arif, Vice-Chancellor of the Premier University and his team to give Odhikar the necessary support.



## REPORT OF ICC WORKSHOP 4

**June 16, 2005**

**National Tennis Complex Auditorium  
Rajshahi, Bangladesh**

The International Criminal Court is, in today's world order, a much-needed institution for the protection of human rights and promotion of justice. A total of 139 countries have, to date signed the Rome Statute for the International Criminal Court and 97 have ratified it. ICC is a permanent independent judicial body created by the international community of states, through the Rome Statute to prosecute the gravest crimes under international law including genocide, other crimes against humanity, war crimes and the crime of aggression. To make the law professionals, media, civil society, students and teachers from the University of Rajshahi, Odhikar organized an advocacy workshop in Rajshahi Tennis Complex Auditorium, with assistance from the Asian Forum for Human Rights and Development (Forum-Asia), Thailand.

The objective of the workshop was to disseminate information on the ICC mechanism and strengthening the campaign for ratification of the Statute of the ICC by Bangladesh. Targeted participants were lawyers, teachers, journalists, civil society people, human rights activists.

### **Opening Session:**

The opening session was presided over by Adilur Rahman Khan, Advocate Bangladesh Supreme Court. In the opening speech he briefed Odhikar's activities regarding ICC and informed that as part of Odhikar's ICC awareness campaign, this workshop has been organized in Rajshahi. Since 2002 Odhikar has been working on this issue and doing advocacy and lobby with the policy makers. Before the Rajshahi workshop, Odhikar organised a couple of awareness workshops in Dhaka and Chittagong with students, teachers, civil societies, law professionals to disseminate information on ICC mechanism.

A. F. Hassan Ariff, Member, Executive Committee, Odhikar was the Chief Guest. In his speech he narrated the importance of the ICC. He said Bangladesh government and members of civil societies took active interest in the process that led to the signing of a historic international treaty, the Statute of the International Criminal Court in Rome in July 1998. The Court will have jurisdiction over individuals who commit most serious crimes of universal concern; namely, genocide, crimes against humanity, war crimes, and aggression. In 1971, the people of Bangladesh had to endure all of these international crimes. He also added that in 1999 the Government of Bangladesh signed the Statute of the ICC, which was the first country in South Asia to have signed the treaty. However,

ratification of the Statute has yet to be done. Odhikar was one of the human rights organizations that became involved with the issue of the ICC and the Rome Statute, since it was introduced.

Special Guest, Advocate Zillur Rahman pointed out the audience about the Bangladesh War Crime Tribunal Act-1973, which was passed but it was not effective. He said in the present world war crimes and genocide are taking place in some parts of the world and the ICC could be a safeguard for this. “Parliament should take necessary initiatives for the ratification of the Rome Statute and for that members of the parliament should raise their voice,” he added.

Dr. Asma Siddiqua, Dean and Chairman, Department of Law and Justice, University of Rajshahi was present as the Guest of Honor. She said normally International laws, treaties and conventions have no independent enforcement mechanism, these have to depend on the state parties for enforcement but the ICC can be a strong example on how state parties could help in enforcement of the provision of an international treaty. It would strengthen the claws of the enforceable measures of International treaties.

#### **First Working Session:**

Dr. Asma Siddiqua, Dean and Chairman, Department of Law and Justice, University of Rajshahi chaired the first working session. After her few words on the importance of the ICC, Dr. Asif Nazrul delivered as resource person. He briefed the participants about the ICC and elaborated the ICC mechanism and the Rome Statute in a very simple language. He expressed his views on International Criminal Justice system and the role of the ICC. Role of the United States and the legal status of the Bilateral Immunity Agreement signed between the UDA and a number of States were also discussed. In the question answer session, there was spontaneous participation from the participants. A lot of interesting questions came out from the floor. Dr. Asif Nazrul and A. F. Hassan Ariff tried to satisfy the questioners. Role of the UN Security Council and the procedure of referring situation to the ICC were also discussed in this session.

#### **Second working session:**

Second working session was chaired by, Adilur Rahman Khan. In this session, Sultana Razia, Project Assistant of Odhikar briefed the participants about the victims and witnesses protection under ICC. Md. Hamidul Huq, Secretary, District Bar Association, Rajshahi was present in this session as discussant. In the discussion he made some points on aggression and said for a small country like Bangladesh, security is a vital concern.

#### **Closing session:**

In the closing session, Guest of Honor, Kamrul Monir, Public Prosecutor District and Sessions Judge’s Court, Rajshahi, said we are living in a global village. People of the world are regularly becoming victims of war crimes, genocide and crimes against humanity. There is no bar and limitation in our legal system on ratification of the ICC Statute. He concluded that more people should be made aware about the ICC and raise voice for ratification.

A.F. Hassan Ariff, Member, Executive Committee, Odhikar summed up the workshop proceedings. He compared our victims' protection in Bangladesh legal regime with that of the ICC and narrated the ratification process under Constitution of Bangladesh.

In his closing speech Masood Alam Ragib Ahsan, Director, Odhikar thanked the participants for being present in the workshop and said, Odhikar was devoted in ratification campaign and after a couple of workshops in Dhaka it went to Chittagong and now in Rajshahi to disseminate information on the ICC. He thanked Forum Asia, for financial assistance and participants of the Rajshahi for their active participation.

## Report of the Regional Conference of ICC advocates, 2004

**April 30, 2004**  
**Dhaka, Bangladesh**

Odhikar, a human rights organisation in Bangladesh, and Bangladesh Coalition for the International Criminal Court (BCICC) organised a regional conference of ICC advocates in April 2004 in Dhaka, the capital city of Bangladesh. The objectives of the workshop were to review ICC campaign strategies, reflect on prospects of signing/ratification and develop a broad consensus on effective campaign strategy and implementation of the ICC Statute in countries of the South Asian region. It also focused on why ratification of the Statute is necessary for Bangladesh. It aimed to clarify the prospects of ratification, by inviting top government officials from the Ministry of Foreign Affairs, Justice and the Attorney General's office. Thailand based Asian Forum for Human Rights and Development (Forum Asia) facilitated the conference. The schedule of the conference was as follows:

09:00 am - 09:30 am:	Registration
09:30 am - 10:20 am:	Opening Session
Chair:	Barrister Mainul Hossain Former President of the Supreme Court Bar Association and Chairman of the Board of Editors, The Daily Ittefaq
Welcome Speech	Dr. Tasneem Siddiqui President, Odhikar
Chief Guest	Justice Syed J.R. Mudassir Hussain Chief Justice, Bangladesh Supreme Court
Special Guest	A.F. Hassan Ariff Attorney General for Bangladesh
10:20 am - 10:40 am:	Tea Break
	<b>1st Session</b>
Chair:	Mohammad Zamir Former Secretary and Ambassador
10:40 am - 11:30 am:	Overview of ICC Basics Dr. Asif Nazrul, Associate Professor Dept of Law, University of Dhaka
11:30 am - 12:00 pm:	Building up of the ICC: Updates Dr. Ahmed Ziauddin, Convenor Asian Network for the ICC (ANICC)

12:00 pm - 12:30 pm: Global Ratification Status/Discussion  
Ms. Niza Concepcion, Project Coordinator  
Forum Asia; Assistant Coordinator, CICC-Asia

12:30 pm - 02:00 pm: Lunch

02:00 pm - 04:00 pm: **2nd Session**  
Chair: Dr. Saira Rahman Khan  
Program Director, Acid Survivors Foundation

Sharing of Experiences from Afghanistan, India, Pakistan and the Philippines

Mr. Niamatulla, APAMR, Afghanistan  
Ms. Saumya Uma, ICC Coalition, India  
Mr. Iqbal Detho, ICC Coalition, Pakistan  
Ms. Niza Concepcion, ICC Coalition, the Philippines

04:00 pm - 05:00 pm: **3rd Session**  
Chair: Dr. Ahmed Ziauddin, Convenor  
Asian Network for the ICC (ANICC)

Prospects of Ratification by Bangladesh  
Barrister A.K.H. Morshed, Legal Counsel  
Ministry of Foreign Affairs  
The Government of the People's Republic of Bangladesh

Open Discussion

05:00 pm - 05:30 pm: **Closing Session**  
Chair: Dr. Abdul Moyeen Khan, MP  
Honourable Minister for Science and ICT,  
The Government of the People's Republic of Bangladesh

Closing Address: Barrister Ziaur Rahman Khan  
Member of Parliament  
& Chairman, Parliamentary Committee on Foreign Affairs,

Vote of Thanks  
Mr. Masood Alam Ragib Ahsan  
Director, Odhikar

**Inaugural session:**

Dr. Tasneem Siddiqui, president of Odhikar, chaired the inaugural session. In her welcome speech she pointed out the importance of the ICC in the context of current global geo-political situations.

The Chief Justice of Bangladesh Justice Syed J. R. Mudassir Hussain clarified the difference between the ICC and the ICJ: “The ICC is unique because it accounts individual criminal responsibility for international crimes.” He expressed satisfaction that lawyers, jurists, legal professionals have involved themselves in this conference. “There can be no peace without justice, no justice without law, and no meaningful law without a Court”. He hoped that ratification would follow soon especially from South Asian states who have not yet done so, as he considered the Court a great leap forward in attaining a higher level of human civilization which promised the establishment of justice and human rights worldwide.

Special Guest of the workshop Mr. A.F. Hassan Ariff, Attorney General for Bangladesh said signing of the ICC and its ratification is completely a policy making issue for the Government. Bangladesh has signed it, which means it agrees with the principles and intentions. “We are examining it. We have still time to ratify. The ratification is a matter of the government’s foreign policy,” he concluded.

**First working session:**

The first working session was presided over by Mohammad Zamir Former Secretary and Ambassador.

Dr. Asif Nazrul discussed about the basic structure of the ICC. He commented that traditional definition of international crime had been challenged by the creation of the ICC. Previously, any crime against humanity or war crimes was tried before a tribunal endorsed by the Security Council of the United Nations. Therefore, if any member used its veto, the Tribunal could not do anything. But the ICC has got a new and added importance, as it would not need Security Council endorsement to try international criminals.

In discussion, Dr. Ahmed Ziauddin stressed on severe under-representation of Asia in the Court, both in the professional field and staff positions. He says it is owed to the fact that despite relative expertise in the region, there is general lack of knowledge about the Court. The low ratification rate is also a factor although ratification is not a strict requirement for employment. An organizational chart showed that the Court has various Divisions under the Office of the Prosecutor, the Registrar and under general administrative services. Employment data also revealed a highly gender-stereotyped division of labour in the Court itself. Dr. Ahmed proposed that there is an urgent need for more involvement by civil society especially from the South Asian region, not only to increase ratifications but also to influence a more fair, effective and efficient International Criminal Court.

Ms. Niza Concepcion highlighted the status of ratification from the Asian region, and the threats to ICC, namely, US efforts to undermine the effective functioning of the Court by concluding bilateral immunity agreements, coercing exemptions for US peacekeepers, and by domestic legislation through the American Service members Protection Act or Bilateral Immunity Agreements (BIA).

**Second working session:**

In this session, delegates from South Asian countries expressed apprehensions over US' efforts to undermine the Court. They appealed to Bangladesh civil society, the academe and students to actively involve themselves in the ratification campaign and make Bangladesh lead South Asia in advancing international law. Bangladesh is considered to have the least legal obstacle in ratification, as well as the most advantage because it is a small country and would need the assistance and cooperation of the international community in enforcing justice for international crimes, especially when a national of the country is involved. It is seen as having the best political and moral position to ratify because it has led the region in adopting most other human rights instruments.

When sharing country experience, Saumya Uma, from India informed that ICC campaign in India was initiated in the year 2000, based on a conviction that the ICC would be extremely relevant to end the climate of impunity currently persisting in India. A research project was initiated by ICC- India in January 2004. The project focuses on a comparative study of ICC related laws and Indian laws and human rights situation. It was likely to be concluded by end of June 2004. The findings would be subsequently published in English and local languages, and disseminated widely. Their action plan for this campaign mainly focused on

- Research & Publication
- Information Dissemination
- campaigning

The representative of the Forum Asia, Niza Concepcion hoped that the Asian nations who did not ratify the treaty would soon do so. She said as Japan, Bangladesh, Thailand and the Philippines are considered most likely to become the next State Parties, Afghanistan and Cambodia continue to have urgent capacity needs to translate ICC procedures into implementation.

Mr. Iqbal Ahmed Detho, Coordinator of NGO Coalition for ICC, Pakistan said that the coalition of NGOs for ICC in Pakistan has continued its efforts since 2001 by caring out various lobbying and advocacy campaigns with various functionaries of Government. It has twice submitted National Plan of action of activities to CICC for support in terms of translation of the Rome Statute in Urdu and Sindhi and other promotional material in regional languages and orientation workshops in law colleges and faculties in universities and lawyers association at district and high court level.

Mr. Niamatulla of Afghan Professional Alliance for Minority Rights (APAMR) shared his country experience by informing that as a founding member of the Assembly of State Parties to the ICC, Afghanistan was in a process of drafting a new constitution and reformulating its criminal and procedural laws for the country. On January 20, 2004 Afghanistan Loya Jirga or grand council, adopted a new Constitution for the country, which endorsed Afghanistan's obligations under international conventions and instruments to which the country is a party. In the meantime, a judicial reform commission is currently revising the country's legal and procedural systems.

**Third working session:**

In the third Session, which was presided by Dr. Ahmed Ziauddin a detail paper on current developments of the ICC and Bangladesh's ratification campaign was presented.

Barrister A.K.H. Morshed, Legal Counsel of the Ministry of Foreign Affairs, Bangladesh stressed that for ratification of the ICC Statute, Bangladesh needs to amend its Constitution first because under Bangladesh Constitution, the President or the Head of State cannot be tried for any crime. But under the ICC Statute, an individual can be tried. He noted that ratification issues in Bangladesh faced practical difficulties, in particular, complimenting the ICC Statute with Bangladesh's own Genocide Statute of 1973.

Regarding immunity guaranteed for the President, Dr. Ahmed approached the issue using domestic law, noting that if a Head of State commits Genocide, he cannot escape Bangladeshi law that already penalizes Genocide. So it would not matter if he is accountable to the ICC because he would necessarily face the Courts of Bangladesh first. Discussions on other issues ranged from amendments to the Genocide law, to an addendum to the law stating additional liable parties to the crime.

**Closing session:**

Dr. Abdul Moyeen Khan, Member of Parliament and also the Minister for Science, Information and Communication Technology, explained that the reason for ratifying the ICC Treaty should be easy: "There is no need to protect people who commit crimes against humanity, on the contrary, states should prosecute or surrender these criminals". He added that no miscarriage of justice should be allowed in the present world and the ICC provisions have enormous check and balance while upholding national and international laws. "I do not understand why some governments protect violators of international laws. They (governments) should rather help bring the violators to justice," Dr. Khan said. He regretted that the United States wanted some shields against their nationals and reached bilateral agreements with many countries to protect her citizens from war crime convictions.

Barrister Ziaur Rahman Khan spoke at the closing session as special guest. He was vocal against West's current violation of human rights in the Middle East. He said that world was suffering from violations of human rights for a long time, which is mostly created by the big powers. Interesting thing is that they intend to teach us human rights being a gross violator of it. "They have been violating human rights for more than 500 years" he added.

He commented that human rights abuse galore since 1948 and UN stands as mere spectator. There must be some reasons behind US' non-signatory approach towards the ICC treaty. America, which claims a land of the free and land of the braves, are free to invade countries and kill innocent people whenever they want. Until the big power like USA signs the treaty complete peace will not come.

At the end Masood Alam Ragib Ahsan, Director Odhikar, delivered vote of thanks to the international and domestic participants. The Odhikar director stressed the need for working together to arrest heinous crimes and genocide and bring culprits to the justice.



He hoped that states would extend their full cooperation to the ICC so that it could function strongly and could serve justice to the victims' families.

**Highlights of the discussions:**

Asked why Bangladesh signed a Bilateral Agreement with the US, Attorney General Mr. A. F. Hassan Ariff replied that it is completely a government policy to advance what is best for Bangladesh's interest, and in the case of the BIA, government has decided that it is best for Bangladesh's interest to enter into this agreement with the United States. He did not elaborate. He denied any pressure from the United States not to ratify the ICC Statute and reiterated that government does not oppose ratification and it may be done after practical considerations have been resolved.

Majority of the questions centred on the role of the big countries in ensuring the effective implementation of the Court. Barrister Ziaur Rahman Khan commented on the common concern of the group—"the Court's policeman has withdrawn", meaning the United States. This concern was mostly answered by the organizers' appeals to the group's sense of justice and accountability on behalf of the victims of human rights violations and the martyrs of repression. "It is a historic struggle of victims to have a mechanism to give justice to human rights atrocities, a long battle fought for by those who have sacrificed their lives for peace, it is too big to give up just because one or two countries will not join. International justice will push ahead, even if others choose to be left behind", commented one participant.

Finally, it was recommended by the group that instead of being overwhelmed by problems that the Court will encounter such as the US' undermining efforts, Bangladesh should join the ICC and together with the international community, face the problems confronted by the Court, and count itself among the countries that are working hard to make universal justice a reality.

The conference clarified issues initially raised by government, relating to the ratification of the ICC Treaty. The workshop also clarified questions by participants, who are being targeted for lobbying and advocacy.

The workshop revealed an active interest of civil society, law professionals, and government officials in the Court, making them highly receptive to follow up activities of the ICC campaign. The event also brought out the experts in Bangladesh, such as Barrister A.K.H. Morshed, the legal counsel of the Ministry of Foreign Affairs who provides key legal suggestions on international treaty issue to the Government and who also was a delegate to the Rome Conference and also Mr. Mohammad Zamir, former ambassador and head of the Bangladesh delegation to the Rome conference who is also an expert on the Rome Statute.

## Report of the Regional Conference of ICC advocates, 2005

**February 12, 2005**  
**Dhaka, Bangladesh**

This was the second of the South Asian Regional conference of the ICC advocates, which Odhikar planned to organise annually. This was aimed at bring ICC advocates from South Asian region to review activities of research, campaign and ratification advocacy, to share experience and to further strategise the ICC campaign for South Asian region. ICC advocates from human rights organisations from Afghanistan, Pakistan, India, Nepal, host Bangladesh and Brussels based Convener of the Asian Network for the International Criminal Court (ANICC) participated in this conference. The Department of Foreign Affairs and International Trade (DFAIT) of the Government of Canada facilitated the conference. The schedule of the conference was as follows:

9.00 am-9.30 am	:	Registration
9.30 am-11.00 am	:	Opening Session
Chaired by President, Odhikar	:	Dr. Tasneem Siddiqui
Presentation	:	<i>Overview of Global and South Asian perspective of the ICC and Bangladesh Ratification issue</i> <b>Dr. Ahmed Ziauddin</b> Convener, Asian Network for the International Criminal Court (ANICC)
Guest of Honour	:	<b>Mr. David Sproule</b> Canadian High Commissioner to Bangladesh
Special Guest	:	<b>Advocate T. H. Khan</b> Judge, International Criminal Tribunal on Rwanda
Chief Guest	:	<b>Barrister Moudud Ahmed</b> Minister for Law, Justice and Parliamentary Affairs The Government of the People's Republic of Bangladesh
Tea Break	:	11.00 am-11.15 am
First working session	:	11.15 am-12.45 pm <i>Sharing of country experiences on national ICC campaign in Bangladesh, India, Pakistan, Nepal, Sri Lanka, Afghanistan</i>

- Chaired by : **Mohammad Zamir**  
Former Ambassador and Secretary
- Country Paper Presentation : Sayed Amanullah Abdali, APAMR, Afghanistan  
Anees Jillani, SPARC, Pakistan  
Subodh R. Pyakurel, INSEC, Nepal  
Ms. Saumya Uma, WRAG, India  
Ms. Sultana Razia, Odhikar, Bangladesh
- 12.45 pm-2 pm : Lunch  
12.45 pm-2 pm : Second working session  
Challenges of national campaigns
- Chaired by : **Adilur Rahman Khan**  
Advocate, Supreme Court of Bangladesh
- Discussants : Mr. Zahiruddin Swapon, MP  
Lt. Col. Muhammad Faruk Khan, MP  
Farida Akhter, Executive Director, UBINIG  
Mr. Monjurul Ahsan Bulbul, Secretary General, Bangladesh Federal Union of Journalists  
Dr. Asif Nazrul, Associate Professor, University of Dhaka
- 3.30 pm-5.00pm: Strategy session  
Chaired by: Dr. Ahmed Ziauddin  
Convenor, ANICC
- 5.00 pm- 5.10 pm: Closing session  
Vote of Thanks: Mr. Masood Alam Ragib Ahsan  
Director, Odhikar.
- 5.10 pm: Refreshment

### **Inaugural session:**

The conference was presided over by Dr. Tasneem Siddiqui, President of Odhikar. She welcomed all participants, foreign delegates, member of the civil societies in the conference. She briefed the participants about Odhikar's planned campaign activities on ICC. She thanked the Department of Foreign Affairs and International Trade of the Government of Canada for their support for this regional conference.

In the inaugural session, there was a presentation made by Dr. Ahmed Ziauddin, Convenor of the Asian Network for the International Criminal Court (ANICC) on overview of ICC campaign in global and South Asian perspective. He explained the present status of ICC ratifications. He said that the International Criminal Court (ICC) was no longer an abstract concept but a real entity. He informed that three situations under the Court's jurisdiction had been referred to by The Democratic Republic of Congo, Uganda and Sudan. The ICC Statute, popularly known as the Rome Statute was negotiated by 129 States in 1998 and it came into force in 2002. It is the court of last resort, which exercise criminal jurisdiction what the States should have done. It has the

nature of universality in terms of jurisdiction. It is a court based on Treaty so ratification is must to join in the treaty. It depends on co-operation of the States.

Bangladesh Government made positive decision for the ICC and Bangladesh has an active national coalition: Bangladesh Coalition for the ICC (BCICC). Odhikar and BCICC have initiated a good number of Government and Non-Government interactions on the ICC. Awareness is important not only for Government but also for mass people. Added to that, a South Asian campaign should be launched to gear up ICC campaign in the region. Dr. Ziauddin suggested that initiatives in six different fronts could take place in this regard:

- South Asian Parliamentarians for the ICC
- South Asian Lawyers for the ICC
- South Asian Women for the ICC
- South Asian Peoples Initiatives for the ICC
- South Asian Media for the ICC
- South Asian Victims Groups for the ICC

Mr. T. H. Khan (Judge of International Tribunal on Rwanda) was present as special guest. In his deliberation he said, from the moral point of view, he believed since Bangladesh had signed the treaty, the Government would today or tomorrow ratify it because mere signing of a treaty did not automatically give it the force of law without ratification. “I would expect that those in Government shall studiously scrutinize all the pros and cons of the treaty, and very carefully weigh the implications in all their ramifications, while proceeding with the process of its ratification.” he added.

Mr. David Sproule, High Commissioner of Canada to Bangladesh, was present as Guest of Honor. He stated that the ICC was a carefully designed institution, with the tools to do its job and to make a difference, but with safeguards to prevent abuse. The ICC has impressive and growing support, but people must strive for even wider support and ratification in order to protect potential victims everywhere. Ratifications and accessions must be accompanied by implementation that gives full legal effect to those principles in domestic law. “Only in this way will we ensure a strong and effective International Criminal Court,” he concluded.

Barrister Moudud Ahmed, Minister for Law, Justice and Parliamentary Affairs, thanked Odhikar for organising this regional conference. He said that Odhikar was very much active in various human rights issue especially on ICC. He said, “Bangladesh has always been in a leading role in taking part in International conventions. But our foreign policy making is influenced by neighbouring countries particularly India. So in case of ratification of the ICC Statute, we have to consider the position and analysis of our neighbouring countries,” he commented.

### **First Working Session:**

First working session was presided over by. Mohammad Zamir, former ambassador. In this session, status of country-wise ICC campaign were discussed by the participants from India, Pakistan, Afghanistan, Nepal and Bangladesh. For declaring emergency in

Nepal, participant from Nepal could not attend the conference. His paper was read out in the conference.

### **Second Working Session:**

In the second working session, there held extensive discussion on challenges of national campaigns. Lack of awareness/interest of government policymakers and civil societies and financial constraints were identified as key problems of national campaigns in the region. Role of USA in signing bilateral immunity agreements is another reason for lack of interest of the regional states in the ICC, it was gathered.

### **Third Working Session:**

Dr. Ahmed Ziauddin conducted third working session. Recommendations on effective campaign strategies came out from the human rights advocates from the South Asian region e an active campaign. Those can be summarized as following:

Recommendations:

- ICC could be a part of academic curricula
- People can be trained to act as experts on the ICC
- Comprehensive booklet on the ICC in respective country language
- Launching regional website on the ICC
- Comparative study on the Rome Statute and national laws of respective countries
- Identify important and influential people, like legal advisor of the Foreign Ministries, in the countries of the region who can play important role in signing and ratification.

### **Closing Session:**

In the closing session, Mr. Masood Alam Ragib Ahsan Director, Odhikar said, “I enjoyed spontaneous participation of so many knowledgeable persons on an important issue like the International Criminal Court. Through interaction among people from other countries of the South Asian region, we hope that a regional constituency in support of the ICC can be created.” He informed that Odhikar had planned to organise such regional conference annually. He thanked the Department of Foreign Affairs and International Trade of the Government of Canada for extending support for ICC campaign in Bangladesh.

## Selected Speeches of the Honourable delegates:

## **Regional Conference on ICC, April 30, 2004**

### **Dhaka, Bangladesh**

Justice Syed J.R. Mudassir Husain  
Chief Justice of Bangladesh.

#### **Bismillahir Rahmanir Rahim**

Mr. President of this function, Attorney General and the Special Guest of the occasion, Distinguished Guests and Participants, Ladies and gentlemen-**Assalamu-alai-kum.**

It is indeed a pleasure for me to be present at this inaugural session of the workshop on International Criminal Court (ICC) held under the auspices of Odhikar. So far I know, like some other non-government organizations- the Odhikar has been playing an effective role with a view to promoting human rights in both national and global arena. I appreciate the efforts undertaken by the members and activists of the organization, who have formed a coalition with civil society and other stakeholders for the purpose of networking and improving the human rights situation of the country.

#### **Ladies and Gentlemen**

At the fifty-second session of the United Nations' General Assembly, it was decided to convene a Diplomatic Conference of Plenipotentiaries on the International Criminal Court. On 17<sup>th</sup> July, 1998 the Rome Statute was adopted by the United Nations Diplomatic Conference of Plenipotentiaries held in Rome Italy on the Establishment of an International Criminal Court. I think, the said event has laid a splendid landmark in the history of the mankind. It is noted that the statute was opened for signature by all member States and like other countries Bangladesh also signed the same on 16 September, 1999. Bangladesh had welcomed the Rome statute with the belief that the International Criminal Court would be instrumental in deterring genocide, war crimes and crimes against humanity. We consider the said event of adopting the Rome statute of the International Criminal Court as a great leap forward in our path to a higher level of human civilization which promises establishment of justice and human rights in the World scale.

#### **Distinguished guests and Participants**

We believe in unfettered and non-discriminatory justice which cannot be denied under any pretext. So, we have interest in seeing progress in the establishment of the International Criminal Court, which would deter heinous crimes and acts of genocide and egregious violations of human rights. It is noted that the Rome Statute has discarded the age-old concept of impunity under the shield of state. The work on International Criminal Court is on process and has yet to be finished. The concept of the International Criminal Court may be considered as a missing link in the international legal system. The International Court of justice at The Hague deals with only the cases between the member States, not the individuals. In the International legal system, at all there is no such enforcement mechanism for dealing with the individuals responsible for crimes like genocide, war crimes and crimes against humanity. It is well settled that the criminal liabilities are the personal liabilities. The crimes of any descriptions are committed by a man not by any abstract entity. In such a position, we have to follow the principle of individual criminal accountability for all and that is the cornerstone of the modern theory of international criminal justice. We must not be happy seeing that war crimes and crimes against humanity have been quite largely committed and most of the perpetrators of those heinous crimes have gone unpunished. In order to address the above inhumane situation the international community must come forward and sit together to find out an effective mechanism for dealing with the perpetrators and other evil-doers having involvement with monstrous and heinous crimes against the humanity.

### **Ladies and Gentlemen**

It is our firm conviction that there can be no peace without justice, no justice without law and no meaningful law without a court. In other words we can say- there can be no peace in the national or international level without justice and the justice can be achieved only by establishing a substantial fact-finding mechanism and by eliminating the possibility of impunity of those involved with the crimes against humanity in home and abroad. The Rome Statute holds the promise of helping to establish International mechanism for the administration of justice for those crimes long acknowledged to be contrary to the interests of peace and justice.

### **Ladies and Gentlemen**

Odhikar is a Bengali word means Rights. Odhikar speaks about fundamental rights and human rights for the citizens. I think the main objective of this organization is to educate people on human rights and to build public awareness about them. I appreciate the activities of this organization, which has been making its holistic approach for the purpose of improving human rights situation in the national and international level. By hosting this workshop, as I understand, you have highlighted the need for dissemination of information of the Rome Statute and progress towards establishment of the International Criminal Court (ICC).

In this context I would like to pay my rich tributes to the enduring commitment and dedication of the human right activists and respected members of this organization. I hope your efforts will significantly contribute in increasing public awareness about the Rome Statute and establishment of the ICC.

### **Distinguished guests and participants**

I am confident, the learned participants will contribute in this workshop by exchanging their well-thought views and ideas about the broad spectrum of the matters relating to concept of the International Criminal Court (ICC).

I am happy to note that some eminent lawyers, jurists and professionals of this country have got themselves involved with the activities and network process of this organization.

Before I conclude, I express my heartfelt thanks to the organizer of this workshop for inviting me to be present here and to address this august assembly of the professionals and human right activists.

I wish you every success in your work and thank you all for giving me a patient hearing.

Thanking you. Allah Hafez.

Justice Syed J.R. Mudassir Husain  
Chief Justice of Bangladesh.

Regional Conference on ICC, April 30, 2004



## **Speech: 2**

### **Advocate T. H. Khan, Lawyer Supreme Court of Bangladesh**

Former Judge, International Criminal Tribunal on Rwanda  
Regional Conference February 12, 2005

Mr. Chairman, Distinguished Guests, Ladies and Gentlemen,

I would like to take this opportunity to thank Odhikar and the Bangladesh Coalition for the International Court, as well as the Canadian Department of Foreign Affairs and International Trade for organizing this workshop on South Asian Conference on the International Criminal Court- its prospects and challenges.

I would like to thank Dr. Ahmen Ziauddin for his presentation of an overview of the status of the campaign for the International Criminal Court, both worldwide and especially in the South Asian region. He has tried to make out a convincing case for the speedy ratification of the ICC Statute to which Bangladesh became a signatory some years ago. I am sure, during the course of this workshop, we shall come to learn more about the experiences of individual countries that have signed the Rome accord on the International Criminal Court, as envisaged by its statute.

Mr. Chairman, I realize that I have been invited to this workshop chiefly because of my association with the International Criminal Tribunal for Rawanda, where I served as one of its six judges from 1995 to 1999.

As you perhaps know, the International Criminal Tribunal for Rawanda which was set up by the United National General Assembly in 1042 in exercise of its power under the UN charter to try and bring to justice criminals who had perpetrated a most horrible genocide in the little African country in the early 90's. Tribal cleansing by the majority Hutus against the minority Tutsis resulted in the commission of most abominable crimes against humanity. The conscience of there free world was so moved that there was a unanimous outcry against the outrage. Based in the Tanzanian city of Arusha, the International Criminal Tribunal for Rawanda made history by successfully bringing to justice most of the perpetrators of the genocide, who are now serving time for various lengths.

International Criminal Tribunal for Rawanda, was preceded by another similar UN court—the International Criminal Tribunal for the former Yugoslavia, set up a year earlier by the General Assembly, with its headquarters at the Hague. It purpose was to

mete out justice to the mainly Serbs, who savaged the Croats and Bosnians during the civil war.

Distinguished guests, these two Criminal Tribunal were set up very much in conformity with the UN Charter, specially its provisions regarding the International Court of Justice, based at the Hague. Articles 92 to 96 of the UN Charter deal with the composition and functioning of the International Court of Justice, which is the judicial organ of the United Nations. It is the supreme body to which the General Assembly, the Security Council, and other organs of the UN turn for legal advice. Although the court is ready to listen to grievances brought to its notice by any individual member country, yet in the event of a dispute between two or more countries the plaintiffs and defendants have to agree in advance that they will accept the majority verdict of the fifteen learned judges.

Interestingly, while the UN Charter contains only five Articles relation to the ICJ, the Statute of the court itself comprises not less than 70 separate Articles. Ladies and Gentlemen, from my own humble understanding of those Articles, I am of the opinion that the provisions of those Articles, I am of the opinion that the provisions of those Articles are extensive enough to encompass almost all aspects that are being sought to be addressed by the proposed International Criminal Court. This is evident from the fact that when the need arose, as in the case of former Yugoslavia and Rawanda, the United Nations never felt impeded from taking necessary actions. This it accomplished very much under the aegis of its own charter and the Statute of the ICJ.

However Mr. Chairman, having said that, I do acknowledge that with increasing globalization, advancement of technology, and the ever increasing awareness around the world of the ideas enshrined in the Universal Declaration of Human Rights on the one hand, and unabated proliferation of sophisticated weapons and trans-border terrorism, a case can in fact be made out for the early establishment of an international criminal court. That precisely in the aim of the Rome agreement, which we are discussion here today.

From the moral point of view, I believe since Bangladesh has signed the treaty, the Government must today or tomorrow ensures its ratification. Since the mere signing of a treaty does not automatically give it in the force of law without proper ratification, I would expect that those in Government shall studiously scrutinize all the pros and cons of the treaty, and very carefully weigh the implications in all their ramifications, while proceeding with the process of its ratification. The question of national sovereignty must always be borne in mind. Ladies and Gentlemen, need I remind you that it wasn't so long ago that President George W Bush in one of his speeches categorically stated that he would never bear the countenance( allow) of American soldiers or civilians to be tried in any criminal court on charges of war crimes outside the United States. If that be so, then Bangladesh just because it is a very small and poor country can not afford to rush into any situation that could compromise its national sovereignty. And herein, Ladies and Gentlemen, lies the crux of the matter.

Thank you. Thank you all for listening patiently.

Speech:3

**David Sproule, High Commissioner for Canada**

Implementation of the Rome Statute of the International Criminal Court

Honourable Ministers, Your Excellencies, Diplomatic colleagues, ladies and gentlemen, friends,

**INTRODUCTION**

I would first like to thank our host, Odhikar, for organizing this regional workshop which is the third in a series of workshops that it has organized here in Bangladesh with the assistance of the Government of Canada. My government is pleased to support these workshops because it believes that the establishment of the International Criminal Court (ICC) is a monumental step by the international community establishing accountability and the rule of law as a basis for democratic development and friendly relations among states. Canada has been an advocate for the creation of the ICC, played an active role in bringing it about, and remains supporter We hope that this conference will encourage those states which have not yet signed, ratified, or acceded to the Statute to take these important steps in the near future.

When I offered remarks last November at the opening of the first workshop, my comments focussed on the significance of the ICC. My remarks today will focus on implementation of the Rome Statute. While this workshop is focussed on strategies for prompting the signing and ratification of the Rome Statute at the national level, every government contemplating these steps must consider what implementation would mean for their states and how they would go about it in the context of their own legal systems That is what I would like to address briefly this morning.

Before I go further, I would like to inform you that Canada's *Manual on Implementation of the Rome Statute* is available on the internet and can be downloaded free of charge from our web site [www.icc.gc.ca](http://www.icc.gc.ca). I believe it is a very useful guide to any state contemplating implementation of the Rome Statute.

**PURPOSE OF IMPLEMENTING LEGISLATION**

States contemplating implementation of the Rome Statute should consider two main purposes of their legislation:

1. to implement the Rome Statute in order to enable their authorities to cooperate with the ICC and to take advantage of the “complementarily” regime; and
2. to strengthen their laws for the prosecution of serious crimes, to ensure that their countries do not become safe havens for war criminals.

Common law states, which I believe are the kind represented at this workshop, require treaties to be incorporated into their national laws before they are considered binding. A treaty cannot be ratified until its provisions are incorporated into their domestic laws or the state is satisfied that its existing legislation allows it to comply with its obligations under the treaty.

There are two kinds of provisions in the Rome Statute that states must consider when they are writing their ICC legislation: the first kind are those that create *obligations* for states. The Rome Statute clearly sets out certain *obligations* that states must fulfil; such as: changing laws to allow for arrest and surrender to the ICC and criminalising acts that could negatively affect the ICC, such as bribery of judges and threatening witnesses. The second kind are those that provide *options* for states. I will begin by talking about second kind, what I call implementation options.

#### **A. IMPLEMENTATION OPTIONS**

The Rome Statute provides *options* for countries when implementing. For example, under the complementarity principle, states have the choice as to whether or not they want to investigate or prosecute a crime themselves. Therefore, it is up to each state to decide if it wants to incorporate the ICC crimes into its domestic laws in order to allow for such domestic prosecution. This is a key issue for all states which are parties for the treaty but who may have residual concerns regarding possible unwanted prosecutions of their nationals.

#### **Options regarding the definition of Crimes**

States have various choices in terms of how to incorporate the ICC crimes into their domestic laws. They can simply define the crimes by referring to the Rome Statute; can reproduce the wording of the ICC crimes in a new law, or can attach those crimes to their existing legislation.

#### **Options regarding penalties**

ICC crimes provide for **penalties** ranging up to, and including, life imprisonment. Keeping in mind that the Rome Statute only addresses the most heinous of crimes - crimes against humanity, war crimes, and genocide- states need to consider the severity of the punishments prescribed for these, including the use of mandatory minimum sentences.

#### **Options regarding jurisdiction**

States incorporating the ICC crimes into their domestic laws will also have determine what types of **jurisdiction** they will assert. These types include *territorial jurisdiction*, covering a crime which takes place in that country; *active and passive personality jurisdiction* covering crimes committed by or against a national or that country anywhere in the world; and, “*universal jurisdiction*”, covering crimes regardless of where or by whom they were committed.

### *Options regarding temporal scope*

The ICC itself will only be able to prosecute crimes committed *after* the entry force of the Rome Statute on July 1, 2002. When states implement the Rome Statute, they must decide whether they wish similarly to limit the jurisdiction of their national courts to ICC crimes which are committed after July 1, 2002; or whether they wish also to provide for domestic prosecutions of such crimes occurring prior to July 1, 2002.

### *Options regarding allowable defences*

During the ICC negotiations, there was quite a debate about whether or not to include a defence of superior orders- for example, when a soldier claims that he did something illegal because he was ordered to do so by his superior. Under the Rome Statute, the defence of superior orders is allowed in limited circumstances, involving war crimes that are not clearly illegal on their face. States need to consider how strongly they may wish to limit this defence.

For example, they may wish to state in their legislation that the defence of superior orders cannot be based on the belief that order was lawful, when that belief was based on information that encouraged the commission of inhumane acts or omissions against the group. For example, in a Rwanda-type situation, a person could not claim that he followed an order to kill because he heard hate information in the newspapers or heard on the radio a demonising of a certain group.

In accordance with the principle of complementarity of the ICC, special pleas of previous acquittal, previous conviction, or pardon should not be permitted to be pleaded when the person was tried in a foreign court and the proceedings were for the purpose of shielding the person from criminal responsibility. Basically, these please are not to be respected if they were the result of a sham trial.

## **B. IMPLEMENTING OBLIGATIONS**

I would like to turn not to the obligations contained in the Rome Statute that countries *must* implemented. It goes without saying that the ICC will only be effective States are able to fully cooperate with the Court.

### *Obligation to Arrest and Surrender*

As the ICC will not have its own police force, one of the most important forms of cooperation is for states to comply with a request to *arrest and surrender* a person to the Court. The ICC must rely on the cooperation of states for mattes other than arrest and surrender; for example, collection of evidence or location of potential witnesses. Indeed, states should think of this assistance in much the same way as they presently assist other states in criminal investigations and prosecutions.

### **Obligation regarding offences against the Administration of Justice**

The Rome Statute obliges states to extend their own criminal laws to cover certain offences against the administration of justice, where these offences are committed on their territory or by one of their nationals. Such offences include perjury, bribing a witness or court official, retaliating against witnesses or tampering with evidence. States may wish like Canada has, to use the implementation process as an opportunity to modernise provisions related to such offences such as perjury, bribing a witness or court official, retaliating against a witness, or tampering with evidence.

### ***Obligation regarding Privileges and Immunities***

Finally, the Rome Statute and the Separate Agreement on Privileges and Immunities (known as APIC) contain very important provisions providing privileges and immunities to the Court and certain people associated with the court. Since the ICC is an institution created by a separate treaty rather than under the UN Charter, the existing UN conventions on privileges and immunities do not apply and separate provisions had to be made. The purpose of these privileges and immunities is to guarantee the independence of the ICC from interference by states and should not be confused with agreements that provide immunity from prosecution before the ICC, such as those the United States has concluded with number countries.

It is crucial that the Court be able to carry out its work freely, particularly as it starts investigating cases. In order to provide this independence, the APIC protects the Court itself, whether sitting in The Hague or in another country; protects the court officials, including the judges; protects people like defence counsel, who may need to travel into countries to interview witnesses; and protects the witnesses themselves and other people required to be present at the seat of the Court.

### **Conclusion**

In conclusion, I would like to emphasize that the ICC is a carefully designed institution, with the tools to do its job and to make a difference, but with safeguards to prevent abuse. The ICC has impressive and growing support, but we must strive for even wider support and ratification in order to protect potential victims everywhere.

The progress made on establishing an International Criminal Court in less than ten years is remarkable. All of the Court's key officials have been selected and the Court is now fully functional and conducting its first two investigations. Ratification and implementation efforts are underway in numerous countries at a rapid pace. Ratifications and accessions must be accompanied by implementation that gives full legal effect to those principles in domestic law. Only in this way will we ensure a strong and effective International Criminal Court in a world free of "safe havens".

#### **Speech:4**

**Anne Marchal, First Secretary, Delegation of the European Commission**

Advocacy workshop on ICC, Dhaka, 23 December 2004

The European Commission has for year been actively supporting the idea of an international criminal jurisdiction, and after that the Rome Statute has entered into force, the prompt establishment of the Court, and now, the strengthening of the institution for an efficient system of international justice.

In line with the European Union's full commitment to the success of the International Criminal Court, reflected in EU Common Position 2003/444/CSFP, the European Commission is promoting international justice and ICC as one of the four major priorities of the European Initiative for Democracy and Human Rights (EIDHR).

Recently, a brochure titled "European Commission support for the International Criminal Court-Report on the experts Conference held in Naples 25-27 September 2003" that was organised under EIDHR has been published that reflects the Commission's engagement towards the implementation of the ICC. Copies of this brochure have just been distributed amongst key stakeholders in Bangladesh.

The Naples Conference provided guidelines for the forthcoming programming of the European Initiative for Democracy and Human Rights for 2005 and 2006. In broad lines, one key orientations of EIDHR in the next two year is promotion of justice and dignity. Under this heading, the Commission would promote that campaign that advances the "global public good" of the **international criminal justice system** and work for **the universal abolition of the death penalty**. It will also reinforce the work of international mechanisms which **monitor and report** on respect for human rights and related **treaty obligations**.

The overall objectives of the campaign are:

- the effective functioning of the International Criminal Court and other international criminal tribunals, including their interaction with national justice systems;
- the progressively restrictive use of the death penalty and its eventual universal abolition;
- the reinforcement of the work of international human rights mechanisms.

The international criminal justice system is a key vehicle for combating impunity for crimes of genocide, war crimes, crimes against humanity and other serious violations of international humanitarian law. Campaign 1 will support the effective functioning of **international criminal ad hoc tribunals** (such as the UN International Criminal Tribunal for the former Yugoslavia), the UN International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia) by raising public awareness of the activities of the tribunals, building bridges

between the jurisdiction of the tribunals and national judicial systems and providing technical assistance.

Following the successful establishment of the **International Criminal Court (ICC)**, support for the ICC will now concentrate on promoting universal adherence to the Rome Statute and enhancing public perception of the court's role. Activities in support of the ICC should match the emerging needs of the Court as a fully operational body of the international criminal justice system. In this respect, particular attention should be paid to securing the implementation of the complementarity principle, according to which national jurisdiction has primary competence to investigate and prosecute crimes under the Rome Statute of the ICC. On a country level, activities focusing on the implementation of the Rome Statute into national legislation may be supported in selected cases.

International justice has led the way in underlining the incompatibility of the death penalty with human rights and human dignity by declining to provide for the possibility of that punishment, even in response to the most atrocious crimes. As a reflection of the EU's long-standing commitment to the abolition of the death penalty, the same campaign will support activities promoting the **restrictive use and abolition of the death penalty**. This will include projects to raise awareness among the public and key opinion-makers on the principal arguments against the death penalty, the monitoring of the conditions of implementation of the death penalty and of the application of minimum international standards. The campaign may also promote the signature, ratification and implementation of the *Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)* and legal reform to limit or abolish the death penalty. In cases of particular concern, specialised legal assistance can be funded (*amicus curiae* briefs).

The human rights themes pursued under the four campaigns relate directly or indirectly to the fulfilment of a wide range of obligations set out in international human rights instruments. It is imperative that activities designed to **support international mechanisms charged with the monitoring and reporting** of such obligations continue to be eligible for funding. Campaign 1 accordingly also encompasses support relating to UN human rights Treaty Bodies, in particular awareness-raising with respect to the role of Treaty Bodies, input to those bodies and implementation of Treaty Body recommendations. Moreover, support may be granted for activities relating to UN special mechanisms, including Special Rapporteurs, focusing on facilitating the input of civil society actors into the work of the mechanisms and follow-up to concerns raised in their reports. In cases of particular concern ad hoc support may additionally be extended to legal assistance and the preparation and submission of legal arguments (*amicus curiae* briefs).

Besides promoting ICC and other measures that ensure dignity through campaigning under the EIDHR, the European Union carries out on a regular basis demarches, the so-called Troika demarches which include the representatives of the Commission, the



current Presidency and the forthcoming Presidency of the European Union, to local authorities. On 8 December 2004, such an “Ambassador” level Troika took place as Heads of Mission of the Netherlands, United Kingdom and the European Commission called on Advisor for External Affairs, Mr. Reaz Rahman to repeat EU’s commitment to ICC and its hope that Bangladesh could soon ratify the Rome Statute. The EU appreciates the commitment to ICC and its hope that Bangladesh to the advancement of the international legal order in general. Bangladesh is one of the few countries in Asia that signed the Statute and we hope it could soon strengthen that commitment by ratifying the Statute and contribute in that way to the shaping of the new institution.

Let me conclude here by thanking Odhikar to have invited me to participate actively in this seminar and congratulate them on their strong commitment and dedication towards the advocacy of ICC in Bangladesh.

I thank you for your attention and wish you a fruitful seminar.

## Selected Articles

**NATIONAL INTEREST ANALYSIS:  
QUESTIONS, CONCERNS AND DILEMMAS TO RATIFY THE  
ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT  
BY BANGLADESH**

**Ahmed Ziauddin**

The Bangladesh government and members of civil societies took active interest in the process that led to the signing of a historic international treaty, the Statute of the International Criminal Court in Rome in July 1998. The Court will have jurisdiction over individuals who commit most serious crimes of universal concern; namely, genocide, crimes against humanity, war crimes, and aggression. In 1971, Bangladesh endured all the four international crimes.

After the Holocaust, the world said in unison ‘never again’, but failed repeatedly to prevent subsequent acts of genocide, including the genocide in Bangladesh. Bangladesh obviously associated itself with the global endeavour to prevent genocide and other crimes and for the development of an international justice mechanism to end impunity. Bangladesh rightly voted in favour of adoption of the Statute of the International Criminal Court, while her immediate neighbours, India, Pakistan and Nepal abstained and Sri Lanka voted against.

Following its 60<sup>th</sup> ratification, the Statute came into force on 1 July 2002. As of today, 139 States have signed the Statute while 93 States have ratified it, thus making it historic as one of the fastest ratified international treaties. Many believed that it would take decades for the international community to ratify and establish the ICC, but in reality it was in force well before the fourth anniversary of its adoption. Countries all over the globe and from all regions have ratified the Statute, 23 African, 18 Latin American and Caribbean, 12 Asian and Pacific, 14 Eastern European, and 26 Western European and other States are State Parties today.

Since then, all senior officials of the Court have been elected including its 18 Judges, the Prosecutor and the Registrar. It has before it two situations referred to by Uganda and Democratic Republic of Congo (DRC).

The first situation, or the case, as it may well turn out to be, came before the ICC when the Ugandan President Yoweri Museveni referred, in January 2004, the situation in northern Uganda and in particular, the alleged crimes of Lord’s Resistance Army (LRA). The Prosecutor found sufficient basis to start planning for the first investigation of the ICC for the alleged crimes committed in the region that included conscription of children into the army, wilful killing, rape, sexual slavery, forced pregnancy, and forced displacement of civilians that constitute crimes against humanity under the Rome Statute.

On 11 April 2004, the Prosecutor received the second referral from the President of the Democratic Republic of Congo referring him the situation of crimes in DRC. Earlier in July 2003, Mr. Luis Moreno-Ocampo, ICC's Prosecutor, made public his intention to closely follow situation in Ituri in DRC, where according to his information, five thousand people were killed since the ICC Statute came into force, and resulting violence caused between 2.5 and 3.3 million deaths since 1998.

He said crimes committed there could amount to genocide, crimes against humanity or war crimes, where, he reported, massacre of civilians based on ethnicity, summary executions, disappearance, torture, ritual cannibalism, rape and sexual assaults, severe mutilation of female genitalia etc. He later confirmed his readiness to seek authorization from a Pre-Trial Chamber of ICC to start investigation under his *proprio motu* powers. The Statute authorized the Prosecutor to initiate proceedings on his own accord after necessary permission from three Judges of the Pre-Trial Chamber if the State concerned is unwilling or unable to investigate or prosecute.

#### **PRELUDE TO ICC:**

In 1998 the government of Bangladesh acceded to the 1948 Convention on the Prevention and Punishment of the Crime of genocide. An Inter-ministerial Committee considered the necessity for Bangladesh to accede to the Genocide convention. The Committee found that it was only appropriate that Bangladesh accedes to this Convention "*considering Bangladesh's history of liberation war and the genocide against Bangladeshis during the war of independence.*" The Committee did not accept suggestions that there was no need for accession to the Genocide Convention since the country don't anticipate or apprehend genocide in the country.

Instead, the Inter-Ministerial Committee put forward three strong arguments favouring accession; "*Firstly because, no one can guarantee that genocide could not take place in a given country. Secondly, the Convention aims at preventing any incident of genocide anywhere in the world. Finally, accession to the Convention would be a commitment to the international community, and make the country live in the comity of nations according to international standards.*" The Committee, after considering the advise of the Law Commission recommended Bangladesh's accession to the Convention "*on a priority basis.*"

#### **BANGLADESH SIGNED THE STATUTE:**

Bangladesh was one of the 120 countries that voted in favour of adoption of the Statute of the ICC in Rome in 1998, where 160 other nations joined the diplomatic conference convened by the United Nations. The Bangladesh delegation comprised of its Ambassador in Rome and a team from Dhaka actively participated in the negotiation, in particular in debates relating to gender and gender related crimes. A handful of Bangladeshi non-governmental organizations also made their presence felt in Rome. It took little over a year for Bangladesh to sign the Statute. At the time of signature, the Statute came under detail scrutiny. In this process, the fact that Bangladesh already enacted legislation in 1973 for the trial of the Pakistani war criminals on similar principles of international law as of the Statute facilitated the discourse.

Also, the Constitution was analyzed to examine compatibility along with the International Crimes (Tribunals) Act, 1973 to determine its impacts. It also tried to find out whether

Bangladesh has to give up its right to try and punish the international crimes, or whether Bangladesh has to abolish death penalty, provided under its law but not provided in the ICC statute, or whether this would have any impact on other existing Treaty obligations, or whether national legislation would be required to implement statute obligations and other related issues.

The government took very positive views in favour of Bangladesh's signature. The government concluded that signature of the Statute of the International Court may have Constitutional implications, though; existing constitutional and legal provisions already provided solid foundation for the development of international law that would facilitate acceptance of the Statute of the ICC with a minimum of amending legislation.

Regarding the jurisdiction of Bangladesh over the international crimes, it concluded that Bangladesh, following signature of the ICC statute, would not give up its jurisdiction to prosecute, try or punish for international crimes, as the International Criminal Court essentially would have jurisdiction complimentary to the national criminal jurisdictions.

About the consequences for the death penalty provisions in force in Bangladesh, it was viewed that the ICC Statute would not require abolition of death penalty by the signatory state. The Statute instead recognised that the Statute would not affect the penalties provided by the national laws. However, it was acknowledged that it would be necessary to enact an implementing legislation to give effect to the Statute.

After a careful analysis, Bangladesh became the third Asian country and the first in South Asia to sign this landmark treaty in September 1999. Bangladesh signature was widely acclaimed, especially, as an important Asian country that has shown leadership in international law and justice.

### **RATIFICATION:**

The next logical step for Bangladesh was to ratify the Statute of ICC, and in this respect, the government began detail and further appraisal of the Statute. Under the Vienna Convention on the Law of the Treaties, signature of international treaties require the States to refrain from adopting policies contrary to the treaty. This was one of the concerns raised by the experts as Bangladesh and others signed with United States the so-called immunity or bilateral non-surrender agreement, offering virtual immunities to US nationals.

Meanwhile, the Asian Network for the International Criminal Court (ANICC) conducted series of conference, workshop and missions in collaboration with Forum Asia and Coalition for the International Criminal Court (CICC) to increase awareness about the ICC and to impress the government on the significance of ratification by Bangladesh.

Since its signature in 1999, the Statute had been under consideration of the government. It is, however, legitimate for the government to analyze and understand the Statute and its ramifications that should be carried out keeping national interests of Bangladesh in mind.

In this regard, true purport of the Court should be the basis of all consideration; to end impunity and to prosecute and punish the perpetrators of the most serious crimes of international concern, only when States with jurisdictions are unable or unwilling to conduct serious investigations and prosecutions.

At this stage, it's important to highlight the obligations of the States that results from the ratification of the Statute. These obligations, however, are not specific to Bangladesh, but applicable to all State Parties without exception.

1. **Obligations under Articles 5 and 12:** Bangladesh must accept the jurisdiction of the International Criminal Court regarding the crimes enumerated in Article 5 of the Statute, namely, genocide, and crimes against humanity, war crimes and the crime of aggression. Under Article 12, as a result, the Court would be able to exercise jurisdiction if any crimes occur in Bangladesh or on board of a vessel or aircraft registered in Bangladesh; or if the person accused is a Bangladesh national. Bangladesh already has its national legislation for crimes similar to the Article 5 and also as a party to the Genocide Convention, Bangladesh should not have any concern to allow an international tribunal jurisdiction over crimes or over the alleged criminals, while the Statute recognizes primacy of Bangladesh's right to prosecute.
2. **Obligations under Part 9:** The Statute under its Part-9 enjoins the State Parties to cooperate with the International Criminal Court in its investigations and proceedings. The Court may seek assistance of the State to surrender the accused or convicted persons and other forms of cooperation that may include questioning of suspect, taking evidence, and freezing assets. The States are thus required to put in place necessary legal basis to offer such assistance. Bangladesh should have no conceivable reason not to cooperate with the Court and to offer required assistance, as Bangladesh supports establishment of international rule of law and justice.
3. **Obligations under Articles 72 and 73:** Under these articles, Bangladesh would have to follow specified procedures regarding disclosure of information having national security interests. In the event that supply of the information may prejudice national security, Bangladesh has to follow Article 72 to resolve the matter in a cooperative manner. If it still considers that disclosure would prejudice Bangladesh national interest, it must advise the Court, with reasons. If, however, the information is acquired from a third party, Bangladesh has to follow procedure laid down in Article 73.
4. **Obligations under Article 3:** The seat of the Court shall be at The Hague in the Netherlands, but according to Article 3, the Court may sit elsewhere, whenever it considers it desirable. This obligation, however, is subject to the agreement of the State Party where the Court can sit or hold sittings. In the event of such an eventuality, Bangladesh could agree to allow the International Criminal Court to sit in Bangladesh. Moreover, Bangladesh should have no problem for the Court's independent Prosecutor to carry out investigations in the territory of Bangladesh.

5. **Obligations under Article 70:** Under Article 70, the Statute has created a host of offences and Bangladesh would be obliged to create new offences in Bangladesh relating to the administration of justice to apply to offending that occurs in the course of the proceedings of the International Criminal Court. These would include offences like perjury, obstruction of justice etc. Already under Bangladesh laws, such offences are punishable, but its jurisdiction may have to be extended over Bangladesh nationals for offending elsewhere. As a matter of fact, Bangladesh Penal Code (Act No. XLV of 1860) already has extra-territoriality principle built-in. Under Section 3, “Any person liable, by any Bangladesh law, to be tried for an offence committed beyond Bangladesh shall be dealt with according to the provision of this Code for any act committed beyond Bangladesh in the same manner as if such act had been committed within Bangladesh.”
6. **Obligations under Article 109:** Bangladesh would be obliged to enact necessary procedures in its laws to enforce fines or forfeitures ordered by the Court and to recover the value of the proceeds, property or assets so ordered.
7. **Obligations under Article 103:** Under this provision Bangladesh could express its willingness to accept sentenced persons and at the time of its declaration, may attach conditions to its acceptance. Bangladesh could agree to hold convicted prisoners especially in the event if the sentenced person was a Bangladesh national or the victims were.
8. **Obligations under Part 11:** Under this part, the Statute established An Assembly of State Parties where each party shall have one representative to oversee the various organs of the Court, its budget, and reports and activities of the Bureau of the Assembly. Bangladesh, on ratification, as a State Party would have to ensure continuous participation in the Assembly.
9. **Obligations under Part 12:** Part 12 deals with the financing of the Court and that as a Party to the Statute, Bangladesh has to contribute to finance the Court. Under the provisions, funding of the Court would come from three sources; assessed contributions from the States Parties, funds provided by the United Nations, and voluntary contributions from governments, international organizations, individuals, and corporations and other entities.
10. **Obligations under Article 79:** Under this provision, a Trust Fund shall be established for the benefit of the victims of the crimes within the jurisdiction of the Court, and of the families of such victims.
11. **Obligations under Article 100 and Part 9:** Though the Court under Article 100 would bear the costs associated with the transport of person being surrendered to the seat of the Court, however, Bangladesh would have to pay the costs related to the request from the International court of assistance under Part 9.

### **QUESTIONS FOR BANGLADESH:**

According to the information received by the Coalition of the International Criminal Court, all ninety-three States that have so far ratified the Statute of the ICC, have undertaken serious studies. Some obviously have proceeded much faster than others depending on the capacities and political willingness, and in doing so, have raised and found answers to many questions, concerns and dilemmas.

Thus, it was very natural that Bangladeshi officials, while at home and abroad, as well as ICC activists and others, in formal and informal meetings, raised a number of issues on the Statute and its implications for Bangladesh. In all probability, some of these came up during analysis and consideration phase of the ratification process within the government.

So, an attempt will be made here to address all such questions that had been raised, over the years, by the officials and others, regarding ratification of the Statute by Bangladesh. By no means, however, these are exhaustive answers to some very complicated questions.

**Necessity for Ratification.** The government experts are clear about requirement of ratification of the Statute by Bangladesh to be a State Party. However, some argue that the Constitution of Bangladesh and the International Crimes (Tribunals) Act of 1973 that brought international crimes as conceived by the ICC under domestic jurisdiction for prosecution and trial, provide adequate legal basis to prosecute international crimes, and as such, ratification of the Rome Statute is not necessary for Bangladesh.

Even without a detailed analysis of the 1973 law, it can be said that the law has limited jurisdiction, and certainly could be a basis to build upon on, but cannot overcome the requirements of the Statute. The Rome Statute contains in Article 125 (2) necessary precondition, the Statute is subject to ratification and the instrument of ratification shall be deposited with the Secretary General of the United Nations for it to be applicable.

**Immunity:** Question on President's immunity and others were raised as an important issue for consideration. Under Article 27, it states that the Rome Statute "shall apply equally to all persons without distinction based on official capacity" and that the "Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person." This provision has often been found to contravene many national constitutions that provide various degrees of immunities to the kings, Queens, heads of the states, and others.

Though immunities are not homogenous, and they vary between states, and as between the different types of privilege they afford. In some cases, the scope of conduct are covered by immunity is limited, while in others; it is absolute on its face, apparently guaranteeing the inviolability of the person. The countries that have ratified so far have applied as many as seven different approaches to address this question. Most of the States have adopted interpretative approach, teleological approach, or purposive approach. No country has thus far amended the constitution to revoke Kings or Presidents immunity.

The Constitution of Bangladesh in Article 51 offers immunity to the President for acts "in the exercise or purported exercise of the functions of this office..", that appears to contradict Article 27 of the Statute. But further examination reveals that Bangladesh adopted functional approach to immunity essentially to prevent frivolous or politically motivated interference and to govern the country according to the Constitution. Article 52



that provides provision for impeachment of the President for violation of the Constitution has confirmed this approach.

More so, under Article 48, the President has very limited constitutional power. He acts in accordance with the advice of the Prime Minister. Therefore, the possibility of a Bangladesh President ever to come under the Court's jurisdiction is simply not possible. Also, the people of Bangladesh will never expect their president to involve in any crimes, let alone the crimes of such magnitudes, and that there are no conceivable way for a President to commit ICC crimes without violating rights and duties embedded in the Constitution.

**Saving Clause in the Constitution:** Arguments have been made based on Article 47(3) of the Constitution of Bangladesh on its possible conflict with the Rome Statute. This provision constitutionally protects the legislation, namely, the International Crimes (Tribunals) Act, 1973 that provides prosecution of members of armed or auxiliary forces for genocide, crimes against humanity or war crimes and other crimes under international law. Though the 1973 law may not have in its ambit civilians that the ICC has, there are no contradictions. This constitutional provision merely protects certain anomalies of law, but does not restrict or prohibit the government to ratify a treaty for the same or the other crimes with broader jurisdiction. Any new legislation expanding jurisdictional scope for such crimes cannot be in conflict with this provision. This legislation has no limiting effect.

**Extradition:** Extradition is not a constitutional issue in Bangladesh like in those countries that prohibit extradition of nationals to other jurisdictions. Mindful of this common constitutional problem, the delegates in Rome supplied specific characteristics to extradition under Article 102 of the Statute. It defined extradition for the purpose of the Statute as ‘the delivering up of a person by one State to another as provided by treaty, convention or national legislation’, while “delivering up of a person by a state to the Court” as transfer.

**Penalties:** In number of countries there are constitutional provisions prohibiting life imprisonment while under Article 77, the ICC may impose life term for extreme gravity of crimes. It will not impose death penalty. However, the Statute's penal provision, like life imprisonment or death sentence as practiced in Bangladesh, would not entail doing away with death penalty upon ratification. In fact, Article 80 of the Statute provides that penalty provisions of the Statute will not affect inclusion or prohibition of particular penalties in national laws. Therefore, there are no consequences in imposing death penalty, if Bangladesh ratifies. Nevertheless, as it sets the minimum standard of international norms, non-inclusion of death penalty reflect current trends of abolition of such form punishments.

**Definition of Crime of Aggression:** The Crime of Aggression found a place in the Statute but the governments in Rome could not agree to a common definition and exercise of its jurisdiction the Court. A Working Group on Crime of Aggression at the Preparatory Commission (PrepCom) meetings then continued the discussions but remained

inconclusive. Now, the Assembly of State Parties will take over the work on defining the crime of aggression, and once agreed by the States, the Court will exercise its jurisdiction over crime of aggression.

Non-inclusion of the Crime of Aggression as one of the crime for the Court to exercise jurisdiction cannot be a justification not to ratify the Statute. Such approach undermines other three serious crimes of international concern that the Court will deal with.

Moreover, those States who are concerned about crime of aggression, its definition and exercise of jurisdiction should rather ratify the treaty to join as full participant of the Assembly of State Parties. By ratifying the Statute, the States could then effectively contribute as a full voting member in the discussion on the crime of aggression. Staying out of the Court will offer States no opportunity to influence the course of event.

**Opt-out Provision:** Opting out by a State Party under Article 124 of the Statute from Court's jurisdiction over war crimes, was a compromise provision during negotiation in Rome. It was only availed by France out of 93 ratifying States. This provision should not be used to justify not ratifying the Statute on the ground of an imperfect treaty. There are controversies in France about its declaration under Article 124, and many believe, this will have no visible impact on the workings of the Court.

**Higher Threshold:** There are some concerns about higher threshold of crimes and its possible impacts on national legal order. It is true that the government delegates at the Rome negotiation were very careful to ensure that the Court only deals with the cases of major concerns to the international community. In this regard, the negotiators agreed that the crimes to be defined clearly included the elements of the crimes, and provided numerous safeguards against abuse of the process.

The thresholds of the crimes, therefore, are every high. Higher bars were put to protect frivolous or motivated cases ever to reach to the Court. However, as an international treaty, the Statute set the minimum standard of justice. Nevertheless, one can argue that not holding a trial to ICC standard may tantamount to inability on the part of the State, triggering ICC's jurisdiction.

This must be seen in the context of the principle of complementarity, where ICC will not interfere if a State Party carried out a genuine investigation or prosecution. Therefore, higher threshold of the crimes cannot be a ground for the State not to ratify the Statute, rather, ratification will likely to generate aspiration to improve, if needed, the national legal system to minimum international standard provided by the Statute.

**Mental Elements:** Some have expressed concerns about the mental element (*mens rea*), necessary for criminal responsibility in the ICC crimes, and whether it is different from the age-old concept applied in Bangladesh, and its possible consequences of ratification. If so, whether it would require re-writing of entire penal and procedural laws of Bangladesh.

Such arguments are patently unfounded. Under Article 30 of the Statute, “a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge”. It defines intent and knowledge. The Statute never intended to compel nations to change all the criminal provisions; rather, the principle of complementarity under Article 1, and in Preamble reinforces national systems. However, States have always been under obligations to bring domestic norms to internationally recognized standards.

This is illustrated by the fact that major Commonwealth countries including Canada, New Zealand, UK, South Africa, Ireland etc, with similar common law principles, did not find any contradictions with the mental element aspect of the ICC crimes and their legal systems. Ours, based on same principles, do not have to change because of mental element requirement of the ICC crimes.

**Bad Faith:** The argument that the Prosecutor may act hastily under Article 17 to initiate the process on the ground of the State’s inability or unwillingness to prosecute should be an overwhelming reason not to ratify is also entirely a misplaced view. The Prosecutor’s power to initiate an investigation is conditional upon approval of three members Pre-Trial Chamber of the Court. The Prosecutor will have to provide mountains of evidence to initiate such an investigation, as seen above; the thresholds are rather high for ICC crimes.

Moreover, the Statute defined clearly both inability and unwillingness, if the State acts to shield the person from criminal responsibility, or there had been total or substantial collapse of national judicial system for the Court to exercise jurisdiction. It is true that eventually the Court will determine on bad faith, inability or unwillingness of the State Parties. In this sense, an independent and competent Court representing all regions of the world will decide judiciously.

**Implementation Legislation and Reform of Criminal Law:** Some have argued to put in place necessary implementation legislation, and complete reform of criminal law before ratification. In some countries, these are constitutional and legal requirements.

In Bangladesh, prior implementation legislation is not necessary for ratification. Under Article 145A of Bangladesh Constitution, “treaties with foreign countries shall be submitted to the President who shall cause them to be laid before Parliament.” Internalizing the Rome Statute is a necessary requisite of the Statute, but not a pre-condition. Implementation legislation could be developed later. For example, in 1998 Bangladesh acceded to Genocide Convention, but has yet to enact implementation legislation. Equally, reforming the criminal law before ratification to rectify perceived differences and to bring into line our national legislations are also unwarranted.

**On jurisdiction:** Some have lingering doubts and questions about the Court’s jurisdiction on *ratione personae* with regard to cut-off dates for the Court to exercise its jurisdiction. The Statute is very clear in Article 24 where it states “No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.” In

other words, crimes committed prior to 1 July 2002 will not come under the jurisdiction of the Court.

**Financing and Financial Supports:** Under Article 115 of the Statute, the State Parties will finance the Court in addition to voluntary contributions and funds provided by the United Nations. The contributions will be assessed under UN scale. For the first Assembly of State Parties, Germany alone has committed to provide 23% of the total expenses. It should be noted, out of the ratifying countries, especially those in Asia and Africa and not particularly rich will pay very little amount. The figure indicates as low as \$40 a year has been assessed contribution of a State Party.

**Regional Considerations:** Bangladesh is the only South Asian country to have signed the treaty. It is, therefore, natural to inquire about the perceptions of its neighbours, and to weight any consequences. However, Bangladesh has always been ahead in fulfilling its international responsibilities compared to other countries in the region. On the one hand, regional situation appears bleak, though there are signs of hope. Nepal's government, before recent dissolution of parliament, all but decided to ratify the Statute to arm itself with additional weapon of law against the rebels. As peace process in Sri Lanka gets momentum, the government's earlier opposition has already changed, and in all probability, will dissipate further, while supports for the ICC has been rising in India and Pakistan.

Moreover, Bangladesh ratification is not likely to put the nation at any particular disadvantage vis-à-vis its neighbour. Rather, Bangladesh would gain substantial benefit from good wishes of the world community to stand-alone among neighbours in favour of international law.

**Wait for the others:** Bangladesh could easily succumb to the argument to wait and see the evolution of the Court and decide later, especially, to see which of the big countries join or stay away. Bangladesh should not be swayed by such thoughts, as it will not provide any particular advantage for the country, as a positive decision would.

**Security Council:** The Court will be independent of UN and the Security Council, but the Council would be able to refer a situation to the Court, and under Article 16, has the power to defer the process for 12 months and to renew it. Again, this was one of the many compromises made in Rome to get an agreed treaty. All permanent members must agree to any such resolution. This is not a perfect treaty but enormously better than the culture of impunity that now prevails.

**Existing and Bilateral Treaties:** After ratification, the States have to be careful about new bilateral treaties signed with another country. The Statute will not override the existing bilateral treaties, and the State Parties could rely on the existing treaties under Article 98. However, State Parties must regard new treaties in light of the Statute, and its various obligations. All new treaties must be consistent to obligations under the Statute.

**US Role:** US opposition to the Court is indicative of the Court's potential power, and its independence. The US opposed the Court to the extent of un-signing its signature, demonstrates that as far as the US is concerned, the Court will to be effective, and will exercise power independently, and will work and stay beyond its influence. The US would not have opposed the Court had it been certain about influencing its course. In addition, the US is unsure of its future activities that might attract the Court's jurisdiction.

To shield American nationals from the ICC's reach, US has aggressively campaigned and succeeded in securing bilateral non-surrender agreements with as many as 72 States, 33 of which are State Parties to the ICC. Typically, under such an agreement, US secures promise not to surrender a wanted American before the ICC or other international tribunal without agreement of the United States. The US applied unfair, illegal and immoral tactics including withholding of military aids, to obtain such agreements. Bangladesh is also one of the 15 Asian countries that have signed such an agreement.

These bilateral non-surrender agreements have no legal effects on the ICC, and States are free to ratify the Statute. It merely expects not to handover American nationals found on the territory of State Party. It however does not prevent the State to exercise judicial sovereignty to prosecute such a person for commission of international crimes and to fulfil the principles complementarity. As such, despite a signatory to a non-surrender agreement, Bangladesh still could ratify the Statute.

### **WHAT DOES BANGLADESH GAIN?**

Bangladesh has everything to gain from by expressing its commitment in building the institution to deal with justice after genocide and other international crimes, and establishment of the rule of international law. The Court will end the eternal immunity that had so far been enjoyed by the perpetrators of international crimes with positive impacts on the international peace and security. The permanent Court will be able to respond quickly in the event of necessity, unlike the *ad hoc*, that so far proved to be inadequate. Ratification will reaffirm commitment of Bangladesh to existing obligations under international law and those under the United Nations Charter.

Because of the principle of complementary, Bangladesh will have full jurisdiction to deal with such crimes under national laws, and in this regard, Bangladesh do not have to part with its rights of judicial sovereignty. The ratification will reinforce Bangladesh democracy and would deter adventurers from otherwise disturbing the stability of the country.

The Statute though did not include use of nuclear weapons as war crimes as many countries demanded, but for Bangladesh, this has special significance, since, in recent years, the region has gone nuclear. The Statute has enough provisions to make, in effect, illegal use of nuclear weapons. It has prohibited use of weapons that are of a nature to cause superfluous injury or unnecessary suffering, or that are inherently indiscriminate (Article 8). This would have sobering effects of the nuclear countries in the region.

Once ratified, Bangladesh would be placed at advantageous situation to contribute effectively at early days of the Court's formation and influence its development.

### **RATIFICATION PROCESS IN BANGLADESH:**

Unlike many countries, ratification of an international treaty, whether bilateral or multilateral, has simpler procedure in Bangladesh. Under Bangladesh Constitution, Article 145 A states that "All treaties with foreign countries shall be submitted to the President, who shall cause them to be laid before Parliament: Provided that any such treaty connected with national security shall be laid in a secret session of Parliament."

Thus, in Bangladesh, Parliament's prior acceptance or endorsement is not essential to ratify a treaty. However, after ratification, members of the Parliament should have the opportunity to deliberate. But as people's representative, prior consultation with the Members of Parliament will increase understanding of and support for the Statute.

### **DIFFERENT OPTIONS:**

The Statute of the ICC foresees a general cooperation agreement with the Court based on Part 9 of the Statute as the minimum necessary requirements following the ratification. The broad outline of the agreement has already been provided in Part 9 and as discussed, Bangladesh would have no difficulty in entering into such an agreement with the Court.

Other options include, adoption of the Statute of the ICC in its entirety as a stand-alone piece of national legislation to be followed when the Court requires assistance, invoke jurisdiction or Bangladesh does its part at ICC. However, in such an eventuality, relationship with the Supreme Court of Bangladesh and other jurisdictional issues has to be made transparent.

Yet another option could be to remold the law that already exists, the International Crimes (Tribunals) Act. Although enacted to try international crimes under domestic jurisdiction, the Act could well be amended suitably to serve both the purposes; domestic trials for international crimes and support the International Criminal Court by including all the obligations as stipulated by the Statute.

Finally, Bangladesh could opt for a law on ICC after reviewing its effects on all laws with comprehensive amendments, as appropriate, to various civil, criminal and procedural laws. This approach will be the best option for Bangladesh, since, in the process, the laws and the procedures will be assessed by the international standards.

### **CONCLUDING THOUGHTS:**

International system was chaotic for long, but at the same time, quietly the international law developed to the extent that today a person could be individually held criminally responsibly for committing international crimes. International law, until recently, was solely governmental affairs, but now; natural persons are too subject to international law.

In conclusion, it could be said that the ratification of the Statute are fully consistent to national interests of Bangladesh, and the country has all to gain from the good wishes of the international community. It is good for the country in every aspect, as Bangladesh will be placed on higher pedestal for its commitment to the rule of international law.

Following the ratification, Bangladesh still has to continue to work for accession by other Asian countries.

Bangladesh by then would be suitably placed on moral high ground to play leading role in Asia.

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# **Rome Statute and Summary of ICC Mechanism**

## **Dr. Asif Nazrul**

### ***1. Introduction***

The international criminal court was conceived as a response to the culture of impunity enjoyed by the powerful perpetrators of the offences of gravest nature. It was established through the adoption of the Rome Statute of the International Criminal Court by 120 states on 17 July 1998. The International Criminal Court (ICC) is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished.

The Rome Statute sets out the Court's jurisdiction, structure and functions and it provides for its entry into force 60 days after 60 States have ratified or acceded to it. The 60th instrument of ratification was deposited with the Secretary General on 11 April 2002, when 10 countries simultaneously deposited their instruments of ratification. Accordingly, the Statute entered into force on 1 July 2002. Anyone who commits any of the crimes under the Statute after this date will be liable for prosecution by the Court.

The efficiency of the International Criminal Court lies in its structural and procedural sustainability. Unlike the Tribunals for the former Yugoslavia and Rwanda which were created by the United Nations Security Council, the ICC is established by a global treaty. These tribunals were created in response to specific situations and will be in existence for a limited time period. Compared to that, the ICC is a permanent international criminal tribunal and therefore it would avoid the delays and costs of creating ad hoc tribunals.

The ICC also compromises the irrelevancy of the International Court of Justice (ICJ) that does not have any criminal jurisdiction to prosecute individuals. It is a civil tribunal that deals primarily with disputes between States. The ICJ is the principle judicial organ of the United Nations, whereas the ICC would act independently of the UN in dealing with most serious criminal offences.

After its establishment at the Hague of the Netherlands, the Office of the Prosecutor (OTP) of the ICC has currently opened two investigations in Africa. Two States Parties, the Republic of Uganda and the Democratic Republic of Congo, have referred situations to the Chief Prosecutor Mr. Luis Moreno-Ocampo. After rigorous analysis, the Prosecutor has decided to open investigations into both situations.

### **2. Jurisdiction of the Court**

Once a State becomes a party to the Statute, it accepts the Court's jurisdiction with respect to crimes under the Statute. For the Court to exercise its jurisdiction, the territorial State (the State on whose territory the situation which is being investigated has taken or is taking place), or the



State of nationality (the State whose nationality is possessed by the person who is being investigated) must be a party to the Statute.

### **2.1. Subject Matter**

Based in the Hague, The Netherlands, the ICC has jurisdiction to prosecute individuals responsible for the most serious crimes of international concern. It can therefore carry out trial of the following offences:

- Crimes of genocide,
- Crimes against humanity and
- War crimes
- Aggression (subject to agreements)

Even though the Court has jurisdiction over aggression, it will not exercise such jurisdiction until the crime has been further defined and conditions under which the Court will exercise its jurisdiction have been agreed upon. The First Session of the Assembly of States Parties created a subcommittee of its Bureau to continue work on the crime of aggression. A review conference will be held in 2009, seven years from the date that the Rome Statute entered into force, during which the matter will be discussed.

### **2.2. National Court**

The ICC will not replace national courts, but will be complementary to national criminal jurisdictions. The Court will only act when :

- countries themselves are unable: A country may be determined to be "unwilling" if it is clearly shielding someone from responsibility for ICC crimes.
- and/or
- unwilling to investigate or prosecute: A country may be "unable" when its legal system has collapsed.

The inability and unwillingness would be determined at the pre-trial chamber of the ICC.

### **2.3. Personnel**

The Court only has jurisdiction over natural persons aged 18 and above. Natural persons include Head of State or Government:

- A member of a Government or parliament,
- An elected representative or a government official
- Commanders and superiors, both civil and military

## **3. Organs of the Court**

The Court is composed of the following organs: the Presidency; the Chambers; the Office of the Prosecutor; the Registry.

### **3. 1. The Presidency**

The Presidency is responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor. However, the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern. On 11 March 2003, according to article 38 of the Rome Statute, the 18 judges of the Court elected the Presidency . It is composed of Judge Philippe Kirsch (Canada) as President, Judge Akua Kuenyehia (Ghana) as First Vice-President, and Judge Elizabeth Odio Benito (Costa Rica) as Second Vice-President of the Court.

### **3.2. Chambers**

The judicial functions of the Court are carried out by the following Chambers :

- The Appeals Chamber
- The Trial Chamber
- The Pre-Trial Chamber

During its first resumed session held in New York from 3 to 7 February 2003, the Assembly of States Parties elected the eighteen judges of the Court for a term of office of three, six, and nine years. The judges constitute a forum of international experts that represents the world's principal legal systems.

### **3.3. The Office of the Prosecutor**

The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. On 21 April 2003, the Assembly of States Parties to the Rome Statute of the International Criminal Court, meeting in its second resumed first session, unanimously elected Mr. Luis Moreno-Ocampo (Argentina) as the first Chief Prosecutor of the Court.

### **3.4. The Registry**

The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor.

On 24 June 2003, Mr. Bruno Cathala (France) was elected Registrar of the International Criminal Court by an absolute majority of the judges meeting in plenary session. He will hold office for a term of five years.

## **4. Procedural mechanism**

**Initiation of a case:** States Parties as well as the United Nation Security Council can refer situations to the Office of the Prosecutor for investigations. Keeping in mind the principle of complementarity, the Prosecutor also has power to initiate investigations on his/her own on the basis of information received from reliable sources (NGOs or Individuals) if, after examining the information, he/she determines that there is a reasonable basis to proceed with an investigation.

**Issue of Warrant:** In the case of proprio motu investigations, authorization of the Pre-Trial Chamber is required for the Prosecutor to proceed. Once they are completed, a warrant for the arrest of a person can only be issued by the Pre-Trial Chamber if the Prosecutor satisfies the Chamber that there are reasonable grounds to believe that the person has committed one of the crimes under the Statute.

**Trial:** All persons arrested pursuant to an arrest warrant issued by the Pre-Trial Chamber are entitled to be promptly brought before competent judicial authorities to determine the lawfulness of their arrest. At this time, they can also apply for release. Once a person is in the custody of the Court he/she is entitled to appear before the Trial Chamber within a reasonable time for confirmation of the charges.

The Trial Chamber bears the responsibility of ensuring that trials are fair and expeditious and that they are conducted with full respect for the rights of the accused and due regard for the protection of witnesses.

**Sentence:** The maximum specified term of imprisonment that can be imposed by the Court is 30 years. Imprisonment for life can be imposed if circumstances justify it. Sentences will be served in the States which have indicated their willingness to accept sentenced persons.

**Obligation of cooperation:** States Parties are obliged to fully cooperate with the Court in its investigations and prosecution of crimes under the Statute. To this end, States Parties should designate appropriate channels of communication with the Court, ensure that there are procedures available under their national law for all forms of cooperation and consultation with the Court whenever there are problems which could impede or prevent the execution of the Court's request for cooperation.

**Assembly of the States Parties:** Oversight management of the Court is provided by the Assembly of States Parties, a body composed of all parties to the Statute. To be assisted in the discharge of its responsibilities, the Assembly elected a Bureau, consisting of a President, two Vice-Presidents and eighteen members. All regions and principal legal systems of the world are represented on the Bureau.

### **5. Preconditions to the exercise of jurisdiction**

The Court may exercise its jurisdiction with respect to the crime of genocide, crimes against humanity and war crimes either when the situation is referred to the Prosecutor by a State Party or by the Security Council, or when the Prosecutor decides to initiate an investigation his or her own decision and on the basis of information received. However, in this last case, the Prosecutor must seek the authorization of the Pre-Trial Chamber before proceeding with the investigation.

When the situation is referred to the Prosecutor by the Security Council, the Court may exercise its jurisdiction in all cases and no preconditions are applicable.

However, in the two other cases, when the Prosecutor decides to initiate an investigation on his or her own decision with the authorization of the Pre-Trial Chamber, or when the situation is referred to the Prosecutor by a State Party, strict preconditions shall be met before the Court can exercise its jurisdiction. In those two cases:

- The Court may exercise its jurisdiction only if either the State on the territory of which the suspected crime occurred (State of territoriality), or the State of which the person suspected of having committed the crime is a national (State of nationality of the suspected person), is a State Party to the Statute.
- If neither of these two States is a State Party to the Statute, the Court will not be in a position to investigate the suspected crimes, except if either the State of territoriality or the State of nationality of the suspected person accepts the exercise of jurisdiction of the Court by declaration lodged with the Registrar. Such a declaration may be made for all suspected crimes committed after 1 July 2002.

Thus, if nationals of States Parties to the Statute are victims of suspected crimes within the jurisdiction of the Court in the territory of a State which is not a Party to the Statute committed by persons who are not nationals of a State Party, the Court wouldn't be in a position to investigate except if either the State of territoriality or the State of nationality of the suspected person accepts the jurisdiction of the Court, or if the situation is referred to the Court by the Security Council.

### **6. Relationship with United Nations**

The International Criminal Court is an independent international organisation. In accordance with article 2 of the Rome Statute, the relationship with the United Nations system is governed by an agreement that has been approved by the Assembly of States Parties during its first Session held

in New York from 3 to 10 September 2002. On 4 October 2004, this Negotiated Relationship Agreement between the International Criminal Court and the United Nations has been concluded by the President of the Court on its behalf. This agreement defines the institutional relation and form of cooperation between ICC and the UN. According to Article 13 of the agreement The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations shall be subject to separate arrangements.

Article 17 of the agreement deals with Cooperation between the Security Council of the United Nations and the Court. According to this Article:

- When the Security Council, decides to refer to the Prosecutor a situation, the Secretary-General shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other relevant materials. The Court undertakes to keep the Security Council informed in this regard.
- When the Security Council adopts a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted to the President of the Court and the Prosecutor. The Court shall inform the Security Council of its receipt of the above request and, as appropriate, inform the Council of actions, if any, taken by the Court in this regard.
- Where a matter has been referred to the Court by the Security Council and the Court makes a finding of a failure by a State to cooperate with the Court, the Court shall inform the Security Council or refer the matter to it, as the case may be. The Security Council shall inform the Court of action, if any, taken by it under the circumstances.

### *Supporting agreements*

Agreement on Privileges and Immunities of the International Criminal Court (APIC), designed to provide officials and staff of the ICC with certain privileges and immunities necessary for them to perform their duties in an independent and unconditional manner, came into effect on 22 July 2004 for those countries that have ratified the Agreement.

### *7. ICC and US*

Shortly before the entry into force of the Rome Statute in July 2002, the United States launched a full-scale multi-pronged campaign against the International Criminal Court, claiming that the ICC may initiate politically-motivated prosecutions against US nationals. This campaign is reflected, among other things, on the text of the following documents.

- Bilateral Immunity Agreements (BIAs)
- the American Servicemembers' Protection Act (ASPA); and
- ICC immunity resolutions in the Security Council

#### **a) Bilateral Immunity Agreements (BIAs)**

As part of its efforts, the Bush administration has been approaching countries around the world seeking to conclude Bilateral Immunity Agreements, purportedly based on Article 98 of the Rome Statute, excluding its citizens and military personnel from the jurisdiction of the Court. These agreements prohibit the surrender to the ICC of a broad scope of persons including current or former government officials, military personnel, and US employees (including contractors) and nationals. These agreements, which in some cases are reciprocal, do not include an obligation by the US to subject those persons to investigation and/or prosecution. These agreements are

alternately referred to as so-called "Article 98" agreements, bilateral immunity agreements, impunity agreements or bilateral non-surrender agreements.

Many governmental, legal and non-governmental experts have concluded that the bilateral agreements being sought by the U.S. government are contrary to international law and the Rome Statute.

**b) American Service member's Protection Act (ASPA)**

Another facet of this crusade against the Court is the adoption of US legislation known as the American Service members' Protection Act (ASPA). This law, passed by Congress in August 2002, contains provisions restricting US cooperation with the ICC; making US support of peacekeeping missions largely contingent on achieving impunity for all US personnel; and even granting the President permission to use "any means necessary" to free US citizens and allies from ICC custody (prompting the nickname "The Hague Invasion Act"). The legislation also contains waivers that make all of these provisions non-binding, however, the Bush administration has been using these waivers as bargaining chips to pressure countries around the world into concluding bilateral immunity agreements – or otherwise lose essential US military assistance.

**c) ICC immunity resolutions in the Security Council**

Security Council Resolution 1422 (first passed in July 2002 and renewed as Resolution 1487 in June 2003) grants immunity to personnel from ICC non-States Parties involved in United Nations established or authorized missions for a renewable twelve-month period. CICC members support the conclusions of legal experts from many nations that Security Council Resolution 1422 is incompatible with the Rome Statute, demonstrates the improper use of the Security Council, and contradicts the UN Charter and other international law. In response to these criticisms, this resolution was later withdrawn by another SC resolution.

**8. Conclusion**

The birth of ICC is widely acclaimed in view of its immense importance in contributing to the establishment of a just, fair and equitable world. ICC is needed to achieve justice for all, to end impunity, to help end conflicts, to remedy the deficiencies of ad hoc tribunals and to deter future war criminals

The necessity of ICC has been reaffirmed by the very fast entry into force of the Rome Statute and by the level of enthusiasm the world community has expressed in regard to the ICC. Failure or unwillingness of any State to ratify the Statute is being viewed as sponsoring the culture of impunity to be enjoyed by the perpetrators of concerned states and their allies.

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## The International Criminal Court: How it works

### Jesmul Hasan

The International Criminal Court is relatively new international organization set up by the community of nations. The very basis of its existence and operation is the Rome Statute, which was adopted on 17 July, 1998 in a UN organized diplomatic conference where representatives from 160 States participated. There were 120 votes in its favour of the adoption of the Statute, 7 against and 21 abstentions. The Statute came into effect on 1 July 2002 with required 60 ratifications by State Parties. The salient features of the Court are:

- It is first permanent international mechanism dealing with international crimes
- It is independent of the UN but has working relationship with it.
- It is the Court of last resort.
- It has jurisdiction over individuals.
- Its jurisdiction is non-retroactive
- It cannot impose death penalty.
- It does not allow impunity of any kind.
- It has international legal personality.
- It can issue arrest warrant.
- No reservation can be made to the Statute of the Court.
- The Statute has an elaborate Rule of Procedures and Evidence for effective functioning of the Court
- It has elaborately defined the elements of crime under its jurisdiction viz. genocide, war crimes, crimes against humanity

The sources of law for operation of the Court are the Statute, The Rule of Procedures and Evidence, Elements of crime, applicable treaties, principles and rules of international law including established principles of international law of armed conflict, general principles of law derived by the Court from national legal systems and its own decisions. The Court can apply general principles of criminal law, as mentioned in the statute, in exercising its jurisdiction. The Court has the authority to settle any dispute concerning judicial functions of the Court. In the following paragraphs, attempts have been made to summarize the modalities of operation of the Court as has been mentioned in the Statute and the Rules of Procedures and Evidence.

#### **Initiation of investigation**

Any investigation under the ICC is initiated by its Prosecutor on the basis of receipt of information of crimes within jurisdiction of the Court. The Prosecutor is responsible for analyzing seriousness of information received or for seeking additional information from other sources including organizations, States or UN bodies. He has been empowered to take written or verbal testimony of the fact. However he has to take authorization from Pre-Trial Chamber for initiating an investigation. The Prosecutor is responsible for keeping confidentiality of information received. In determining whether there is reasonable basis to proceed with an investigation, the Prosecutor shall consider if, on the basis of information received, a crime within jurisdiction of the Court has actually taken

place and the case is admissible under Article 17 of the Statute. Despite gravity of crime and interests of victims, if the Prosecutor believes that investigation would not serve the interest of justice, he may not proceed with that.

If the Prosecutor decides to initiate an investigation, he will provide a notice including reasons for such decision. In providing notice, he should be careful not to cause danger to safety, well-being and privacy of informants. He shall also inform victims or his representatives or victims and witnesses unit of the investigation without posing danger to safety of victims and witnesses or integrity of investigation. In providing authorization for investigation, the Pre-Trial Chamber may hold a hearing of the victims or may request for additional information from Prosecutor and victims. Victims may also provide additional information to Pre-Trial Chamber after getting notified of the investigation from the Prosecutor. In providing authorization, the Pre-Trial Chamber shall issue its decisions including reasons and whether the authorization is for all or any part of the request by the Prosecutor. Victims shall also be informed of the authorization of investigation. However, according to Article 16 of the Statute, if the UN Security Council, by a resolution, requests the Court not to commence an investigation, no investigation may be commenced for a period of 12 months after the resolution.

According to Article 18 of the Statute, when a situation is referred to the Court and the Prosecutor decides to commence an investigation, all State parties including States having jurisdiction over the crimes shall be notified. The notification should contain information about acts that may constitute crimes under the ICC Statute. Within one month of the receipt of the notification, a State may inform the Court that it is investigating or has investigated the crimes concerned. At the request of that State, Prosecutor may defer investigation unless authorized by Pre-Trial Chamber. Such deferral may be reviewed by the Prosecutor after six months or at any time when there is substantial change of circumstances based on concerned State's unwillingness or inability to carry out the investigation.

### **Jurisdiction and admissibility**

A case is not admissible in Court if it is being investigated or prosecuted by a State having jurisdiction over it and the person concerned has already been tried. The Court may consider any information provided by the concerned State that its Courts meet internationally recognised norms and standards for independent and impartial prosecution of similar conduct. But in case of genuine unwillingness or inability of the State concerned to investigate or prosecute, the case will be admissible in Court. The Court will determine unwillingness of the State concerned if proceedings are undertaken for shielding the accused concerned, there is inordinate delay in proceedings and the proceedings are not conducted independently or impartially. Substantial collapse or unavailability of national judicial system leading to failure in catching the accused or obtaining evidence is treated as inability of the State concerned in investigation or prosecution of the accused.

Jurisdiction or admissibility of a case in Court may be challenged by an accused or a State having jurisdiction over the case on the ground that it is investigating or prosecuting

the case or a State from which acceptance of jurisdiction is required under Article 12 of the Statute. The Prosecutor may seek a ruling from the Court on jurisdiction or admissibility. The admissibility or jurisdiction may be challenged only once by any person or State. It should be made prior to or at the commencement of the trial. In exceptional circumstances, the Court may grant leave for a challenge to be brought more than once or later than the commencement of the trial. If admissibility or jurisdiction of Court is challenged prior to confirmation of charge, it is referred to Pre-Trial Chamber and if admissibility or jurisdiction is challenged after confirmation of charge, it is referred to trial Court. If a challenge to jurisdiction or admissibility of Court is made after confirmation of charges but before constitution or designation of trial Court, it shall be addressed by the Presidency, which shall refer it to Trial Court as soon as the latter is constituted or designated. If admissibility is challenged at the commencement of the trial or subsequently with the leave of the Court, the Presiding Judge and the Trial Chamber shall deal it with. Decision on admissibility or jurisdiction may be appealed in appeal Court. If admissibility or jurisdiction of Court is challenged by a State, the Prosecutor shall suspend the investigation until such time as determined by Court. When a Court receives a request or application challenging admissibility or jurisdiction, it shall decide procedure to be followed and may take appropriate measures for conduct of proceedings. It may hold a hearing on it. The Court shall rule on any challenge or question of jurisdiction first and then on any challenge or question of admissibility. The registrar shall inform about challenging Court's admissibility or jurisdiction to those who have referred a situation pursuant to Article 13 for exercise of Court's jurisdiction and victims or their legal representatives who have communicated with the Court in relation to that case.

### **Evidence**

The parties may submit relevant evidence and the Court may also request for submission of evidence. The Court shall have the authority to assess admissibility or relevance of such evidence taking into account probative value of evidence and any prejudice that such evidence may cause to fair trial. Issue of relevance or admissibility of evidence must be raised when it is submitted. It may be raised subsequently if it is not known when submitted. The Court shall give reasons for any rulings it makes on evidentiary matters. Evidence ruled irrelevant or inadmissible shall not be considered by a Court. Uncontested fact, evidence, witness shall be taken as proven unless the Court thinks that a more complete presentation of fact is required.

The Court shall respect and observe privileges on confidentiality of evidence. The Court shall not require proof of facts of common knowledge but may take judicial notice of them. Evidence obtained by violation of Statute or internationally recognized human rights norms shall not be admissible if it casts substantial doubt on reliability of evidence and if it seriously damage integrity of proceedings. The Court shall not apply national laws governing evidence except in accordance with Article 21.

A witness shall be informed of the offence before testifying. A witness can give his testimony only in person. The Court may permit him to give written testimony or recorded testimony or the Prosecutor, defence or Court can examine testimony by audio



or video technology provided such witness during testimony. In case of recorded testimony, Prosecutor or Court or defence should have opportunity to examine such witness during recording.

A witness who appears before Court is compellable by Court to provide testimony. Every witness shall have to make solemn undertaking about truthfulness of testimony. A minor or a person whose judgment has been impaired and who does not understand nature of solemn undertaking may be allowed to testify without such undertaking if Court considers that the person has particular knowledge on the matter, he can describe that and he understands importance of truth.

A witness may object to making any statement that might tend to incriminate him or her. However, the Court may provide assurance to witness that evidence provided by him will be kept confidential or will not be used against him. Before giving such assurance, the Court shall seek views of Prosecutor if assurance should be given. If the Court determines that it would not provide such assurance to witness, it shall not require the witness to make any statement. A witness who may be relative of an accused shall not require to make any statement that might incriminate that accused. However, the witness may choose to make such statement.

### **Disclosure**

The Prosecutor shall provide the defence with names of witnesses and additional witnesses whom he intends to call to testify and copies of any prior statements made by those witnesses. The Prosecutor shall permit the defence to inspect any books, documents, photographs and other materials, which can be used as evidence. The defence shall also permit the Prosecutor to inspect any books, documents, photographs and other materials, which can be used as evidence. Reports or other internal documents prepared by a party in connection with investigation or preparation of a case are not subject to disclosure. If disclosure is compulsory but it might prejudice investigation, the Prosecutor may apply to Court for a ruling on disclosure. If confidentiality of information is maintained for protection of witnesses and victims, such information shall not be disclosed except in accordance with relevant provisions. The Prosecutor cannot use any materials or information in his possession into evidence without prior consent of provider and disclosure to accused. To facilitate fair trial, Court may order, in accordance with provisions of the Statute, for disclosure of documents or information or additional evidence.

When a request from Court or the Prosecutor for disclosure of information or documents prejudices the interest of any State, it shall have right to intervene in order to obtain resolution of the issue. The matter may be resolved by modification or clarification of the request, a determination by the Court regarding the relevance of the information or documents or whether it can be obtained from other source or an agreement on conditions under which assistance could be provided. Despite such resolution, if the State concerned refuses to provide requested information or documents, the Court may refer the matter to Assembly of State Parties or the Security Council. If a third party (state or international

organization) is requested for such information or documents, it shall seek the consent of the originator State to disclose that information or documents.

### **Providing protection to victims and witnesses**

The victims are those natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court. It may include organizations or institutions that have sustained direct harm or to any of its properties. In providing protection to victims and witnesses under Article 68 of the Statute, needs of all victims and witnesses particularly children, elderly persons, disable persons and victims of sexual or gender violence are taken into account. The Court may order to provide protection to victims and witnesses upon motion of Prosecutor, or defence or request of witness or victim or his/her legal representative. However, in providing any such protection order, the Court must hold a camera hearing to determine measures to prevent release to the public or press the identity or location of the victim or witness or other person at risk. Where the personal interests of the victims are affected, their views and concerns may be presented, by themselves or by their legal representatives, before the Court at several stages of the proceedings. The Court has power to order special measures to facilitate testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence. The Court may hold a hearing to determine whether a counsel, a legal representative, a psychologist or a family member be permitted to attend during testimony of victim or witness. However, the Court shall be vigilant in controlling manner of questioning a witness or victim to avoid any harassment or intimidation, which may violate privacy of victim or witness creating risk to security. The Victims and Witnesses Unit may advise the Prosecutor and the Court about security and counselling assistance for the victims. In case of grave endangerment of security of witness or his/her families, the Prosecutor may withhold producing evidence and instead submit a summary thereof.

### **Participation of victims in proceedings**

Victims can present their views in proceedings in Court on approval of Court. The relevant Court shall notify, through registrar, victims and their legal representatives about their participation in proceedings. However, the Court may not allow a victim to participate in proceedings if it considers that the person is not a victim. Legal representative of victim may take part in proceedings to present victim's views. However, the Court may confine representative's intervention to written observation or submission. In case of more than one victim, one legal representative may present views of all of them. The registry may help them in selecting common representative from a list of counsels maintained by the registry. Victims unable to pay for legal representative may receive assistance from registry. After participation in certain stage of proceedings, the Registrar shall notify the victims the decisions of Court in those proceedings.

### **Providing reparation to victims**

The Court has power to order a convicted person to pay for reparation, restitution, compensation and rehabilitation under Article 75 of the Statute. The Court shall establish principles for awarding these. A victim's request for reparation must include identity and address, description of injury, location and date of incident, identity of accused,

description of property in case of claim for restitution, claims for compensation, claims for rehabilitation and other forms of remedies and supporting documentation. On its own motion, the Court may notify, through registrar, the concerned accused and other interested persons about reparation. But if a victim does not make request for reparation after such notification, the Court shall not proceed with reparation issue. In awarding reparations, the Court shall take into account scope and extent of damage, loss or injury. In assessing reparation and in determining its types and modalities, the Court may, either at the request of the victim or on its own motion, take assistance of experts. Individual award for reparation can be made directly against a convict. However, if it becomes impossible or impracticable to make such award directly to victims, the Court may order the reparation to be deposited with a Trust Fund created under Article 79 of the Statute. Pre-trial Court or Trial Court may order forfeiture measures for reparation.

### **Investigation and prosecution**

Before initiating an investigation, the Prosecutor shall evaluate information available to him to analyze seriousness of information received. He may seek additional information to do so. He can initiate an investigation if there is reasonable basis that a crime within the jurisdiction of the Court has taken place or is being taking place or the case would be admissible under Article 17. If he decides not to initiate investigation, he will inform the State or States concerned or the Security Council and the Pre-Trial Chamber mentioning the reasons for not initiating the investigation. The Pre-Trial Chamber may, at its own initiative or at the request of a State or the Security Council making referral, review (on the basis of information available) the decision of the Prosecutor not to initiate an investigation and request to reconsider the decision. Majority judges of the Pre-Trial Chamber should make such decision. On such request, the Prosecutor shall reconsider the decision as soon as possible. Based on newly available information, the Prosecutor may at anytime reconsider a decision whether to initiate an investigation or not.

The Prosecutor shall take all necessary measures to ensure effective investigation and prosecution. During investigation, the Prosecutor shall cover all facts and evidence to assess criminal responsibility of the crime committed. The Prosecutor may, on getting authorization from the Pre-Trial Chamber, collect evidence in the territory of a state Party. During investigation, he may collect and examine evidence; question relevant persons seek cooperation from State or organizations and shall ensure confidentiality of information and evidence received.

A person questioned shall not be compelled to incriminate him/herself to confess guilt, shall not be subject to any coercion or threat, shall not be subject to arbitrary arrest or detention and shall be provided with translation service in appropriate cases. When a person involved in a crime is questioned, he/she shall be informed in advance of such questioning. He/she shall have right to remain silent, to have legal assistance and to have counsel present. If necessary, medical or psychological examination of a person to be questioned can also be done. A record shall be made of formal statements made and signed by any person and his/her counsel who is questioned in connection with an investigation or with proceedings. The questioning person shall also sign it.

The Pre-Trial Chamber may issue warrant of arrest of a person if there are reasonable grounds to believe that a crime within the jurisdiction of the Court has been committed and the arrest of the person concerned is necessary to ensure appearance at trial, to prevent obstruction in investigation or court proceedings by him and to prevent such person from continuing with such crime. The Court may request any State for cooperation in arresting or surrendering any person for prosecution. A person arrested at the request of the Court for prosecution must be given a copy of arrest warrant (in his/her own language) issued by the Pre-Trial Chamber. The arrested person may request for a counsel to assist in proceedings. The propriety of an arrest warrant can be challenged and the Pre-Trial Chamber shall decide on it, on having views of the Prosecutor, without delay. The Pre-Trial Chamber may recommend to the custodial country for interim release of an arrested person at his/her request and request for periodic status report from that country. The Pre-Trial Chamber may give conditional release to an arrested person.

A person arrested or summoned shall appear before the Pre-Trial Chamber in presence of the Prosecutor. Then a date will be set for hearing on confirmation of charge. The hearing may be held in absence of the accused (if cannot be found despite all reasonable measures to secure appearance or the accused has waived right to be present) or with representation of his/her counsel. Before hearing, the accused shall be informed of the charges and the evidences. Before hearing, the Prosecutor may continue investigation and amend charges. At the hearing, the Prosecutor shall support each charge with evidence to establish substantial grounds of crime committed. In this hearing, the accused may object to the charges, challenge the evidence presented or may present own evidence. On the basis of hearing, the Pre-Trial Chamber shall determine whether there is sufficient evidence that accused committed each of the crimes charged. Based on this determination, the Pre-Trial chamber shall either confirm the charges or decline to confirm the charges on the basis of available evidence. The hearing can be adjourned and the Prosecutor may be requested to provide further evidence or conduct further investigation or amend the charge due to inadequate evidence. After confirmation of charges and before trial, the Prosecutor may amend charges with permission from the Pre-Trial Chamber. For Additional charges or substituting more serious charges, similar hearing must take place for confirmation of charges. However, after commencement of trial, the Prosecutor may, with permission of the Trial chamber, withdraw the charges. The confirmation of charges and committal of the accused to the Trial chamber shall be notified to the Prosecutor, the accused and his/her counsel. After confirmation of charges by the Pre-Trial Chamber, the Presidency shall constitute a Trial Chamber for conduct of subsequent proceedings and transmit decision of the Pre-Trial chamber and record of the proceedings to the Trial Chamber.

### **Trial**

After a Trial Chamber is formed, it will hold a status conference to set the date of trial and notify all concerned. It may postpone the date either on its own motion or at the request of the Prosecutor or the defence. Trial takes place in the seat of the Court i.e. the City of Hague in the Netherlands. The Registrar shall take measures to record and preserve fully and accurately all proceedings and shall act as custody of all evidence and other materials. Before commencement of the trial, the Trial Chamber shall either on its

own motion or at the request of the Prosecutor or the defence, may rule on any issue concerning conduct of the proceedings. It shall invite any objection or observation from the Prosecutor and the defence on conduct of proceedings. It may order medical examination of the accused, by one or more of the listed experts, mentioning reasons in the record. In case of accused not fit for trial, the Trial Chamber can adjourn the trial.

The accused remains present during trial. If the accused disrupts trial, he can be removed by the Trial Chamber, shall be allowed to observe from outside courtroom and instruct his counsel from outside the courtroom through communication technology. The Trial Chamber ensure complete recording of the trial to be maintained and preserved by the Registrar. Persons accused jointly shall be tried together unless the Trial chamber, on its own motion or at the request of the Prosecutor or the defence, orders separate trials to avoid serious prejudice to accused and to protect interest of justice.

After commencement of the trial, it may, either on its own motion or at the request of the Prosecutor or the defence, rule on any issue arisen during the course of trial. The Trial chamber shall ensure free and expeditious trial with full respect for rights of the accused equally and regards for protection of victims and witnesses. It shall confer with the parties and adopt necessary procedures, determine language to be used, provide for disclosure of documents or information in advance of the commencement of the trial. If necessary, it may refer preliminary issues to the Pre-Trial Chamber. It may direct for joinder or severance of charges. It may exercise functions of the Pre-Trial chamber. It has authority to require attendance and testimony of witnesses and production of documents and other evidence, provide for protection of confidential information, order production of additional evidence, provide for protection of accused, witnesses and victims and rule on any other relevant matters. It has the authority to rule on admissibility or relevance of evidence and to take all necessary measures to maintain order in the course of hearing.

The presiding Judge may give direction for conduct of proceedings and submission of evidence. If that is not available, the Prosecutor and defence shall agree on order and manner for submission of evidence. If no agreement can be reached, the Presiding Judge shall issue directions. The Prosecutor, the defence, the Trial Chamber and a party that submits evidence may question a witness. Unless otherwise ordered by the Trial Chamber, when a witness gives testimony, another witness shall not be allowed to remain present there. The Presiding Judge shall declare closure of submission of evidence and shall invite the Prosecutor and the defence to make their closing statements.

Trial usually takes place in public except in exceptional circumstances when it may take place in closed sessions. Decisions of the Trial Chamber concerning admissibility of a case, jurisdiction of the Court, criminal responsibility of the accused, sentence and reparations shall be pronounced in public and in presence of the Prosecutor, accused, defence, victims or their legal representatives and the representatives of the states concerned. At the commencement of the trial, the Trial Chamber reads to the accused the charges confirmed by the Pre-Trial chamber and satisfies it that the accused understands the nature of the charges. The accused is provided with opportunity to admit guilt or plead not guilty.

If an accused admits guilt, the Trial chamber shall determine whether he/she understands the nature and consequences of the admission of guilt, whether it is supported by facts contained in charges, supplementing materials, other evidences and testimony of witnesses. If it is satisfied that guilt has been established to prove the crime, it may convict the accused of the crime. If it is not satisfied as to establishment of guilt, it may order continuation of trial and may remit the case to another Trial Chamber. If more complete presentation of facts is necessary in the interest of justice, particularly that of victims, the Trial Chamber may request the Prosecutor to present additional evidence including testimony of witnesses. It may invite views of the Prosecutor and the defence in this regard. Any discussion between the Prosecutor and the defence regarding modification of the charges, the admission of guilt or the penalty shall not be binding on the Court.

The Court follows the principles of presumption of innocence until proved guilty in accordance with law, onus of the Prosecutor to prove the guilt of the accused and proving guilt beyond doubt to convict the accused.

In determination of charges, the accused shall be entitled to public, fair and impartial hearing. The accused shall have right to be informed of nature, cause and content of charge in a language he understands and speaks, to have adequate time and facilities for preparation of defence and to communicate freely with counsel, to be tried without delay, to be present in trial and conduct defence in person or through representative, to examine or have examined the witnesses against him/her, to obtain attendance and examination of witnesses on his/her behalf, to present other evidence, to have free interpretation and translation service, not to be compelled to testify or to confess guilt and to remain silent and not to have any burden of proof or onus of rebuttal imposed.

At each stage of the trial, all the judges of the Trial Chamber shall remain present. The Presidency may, on case-by-case basis, designate, one or more alternate judges to be present at each stage of the trial. The Trial Chamber's decision shall be based on evaluation of the evidence and proceedings and shall not go beyond facts and circumstance described in the charges. The judges shall attempt to achieve unanimity in their decision failing which the decision shall be taken by a majority of the judges. The deliberation of the Trial Chamber shall remain secret in camera but the decision or a summary thereof shall be delivered in open court. The decision shall be in writing with full and reasoned statement of findings on the evidence and conclusions. In case of divided opinion, views of the majority and the minority should be in the decision. The Trial Chamber shall inform all concerned the date on which it will pronounce its decision. It should be within a reasonable period of time after the trial ends. When there is more than one charge and more than one accused, the Trial Chamber shall decide separately on each charge and against each accused. Copies of all decisions of the Trial Chamber concerning admissibility of a case, jurisdiction of the Court, criminal responsibility of the accused, sentence and reparations shall be provided to all concerned in the proceedings.

### **Penalties and determination of sentence**

The penalties that the Court may impose on a convicted person includes:

- (a) Imprisonment not exceeding maximum 30 years
- (b) Life imprisonment
- (c) Fine
- (d) Forfeiture of property

According to Article 78 of the Statute, the Court is supposed to take into account the gravity of the crime and individual circumstance of the convicted person in determining sentence. The Court has been instructed, by rules, to bear in mind that the totality of any sentence of imprisonment and fine must reflect the culpability of convicted person. In doing so, the Court should balance all relevant factors, including any mitigating and aggravating factors. The extent of damage caused including particular harm to victims and families, nature of unlawful behaviour and means employed to execute crime, degree of participation of convicted person, degree of intent, circumstances of manner, time and location, age, education, social and economic condition of convicted person should also be given consideration in determining sentence. In determining imposition of fine, the Court should determine whether imprisonment is sufficient penalty. It is because; fine has been suggested as penalty additional to imprisonment in Article 77 of the Statute. In determining amount of fine, consideration should be given to financial capacity of convicted person (should not exceed 75% of value of property of convicted person after deducting amount to satisfy financial needs of convicted person), degree of personal financial gain behind the crime, damage and injuries caused as well as proportionate gains derived from the crime by the perpetrator etc. Forfeiture of property, assets or proceeds from such properties derived directly or indirectly from crime is another form of penalty prescribed in the ICC Rules of Procedure.

In the event of conviction, the Trial Chamber shall consider the appropriate sentence to be imposed, evidence presented and submission made. Before sentencing and completion of the trial, it may on its own motion or at the request of the Prosecutor of the accused, hold further hearing to hear any additional evidence or submission. The sentence shall be pronounced in public and wherever possible, in presence of the accused.

Under Article 79 of the Statute, there is provision for creation of a Trust Fund by the assembly of the State Parties for benefit of victims. The Court may order money or other property collected through fine or forfeiture to be transferred to this Trust Fund.

### **Appeal and revision**

Appeal against decision of acquittal or conviction or sentence can be filed on grounds of

- (a) Procedural error,
- (b) Error of fact,
- (c) Error of law,
- (d) Any other ground that affects fairness or reliability of proceedings or decision,
- (e) Disproportion between crime and sentence

If the Court considers that there are grounds on which a conviction may set aside, it may invite the Prosecutor and the convicted person to submit grounds and may render a decision.

Unless the Trial Chamber orders otherwise, a convicted person shall remain in custody pending appeal. When a convicted person's time in custody exceeds the sentence of imprisonment, that person shall be released. In case of an acquittal, the accused shall be released immediately. However, in case of seriousness of offence charged and probability of success on appeal, the Trial Chamber may, at the request of the Prosecutor, maintain detention of the accused pending appeal.

Either party may appeal against

- (a) A decision on jurisdiction or admissibility
- (b) A decision granting or denying release of person being investigated or prosecuted
- (c) A decision on an issue that significantly affects fair and expeditious conduct of proceedings

The Prosecutor or a State party may appeal against an authorization for the Prosecutor to take investigative steps in the territory of a State party without ensuring cooperation from that State party or. An appeal shall not have suspensive effect unless the Appeals Chamber so orders. For appeal proceedings, the Appeals Chamber shall have all the powers of the Trial Chamber. If the Appeals Chamber finds that the trial proceedings were unfair that affected the reliability of the decision or sentence or the decision or sentence was materially affected by error of fact or law or procedure, it may reverse or amend the decision or sentence or order a new trial before a different Trial Chamber. It may also remand a factual issue to the original Trial Chamber to determine the issue or may itself call evidence to determine the issue. In case of disproportionate sentence, the Appeals Chamber can vary it. It will take decision by majority of the judges and deliver it, mentioning the reasons, in open court. In case of lack of unanimity among the judges, both vies of majority and minority judges are to be included in the Appeal decision. It can be delivered in absence of the person acquitted or convicted.

Generally an appeal against decision of conviction, acquittal, and sentence or reparation order may be filed with the Registrar within 30 days from the date on which the appellant has been notified of the decision. This time period varies in case of other decisions as specified in the Rule of Procedures. The Appeals Chamber may extend this time limit for good cause upon application of the appellant. If an appeal is not filed following rule mentioned above, the decision of the Trial Chamber shall become final. When an appeal is filed, the Registrar shall transmit the trial records to the Appeals Chamber and shall notify all concerned parties about appeal. Any party who has filed an appeal my discontinue it, by giving the Registrar a written notice of discontinuance, any time before judgment is delivered. The appeal proceedings shall be in writing unless the Appeals Chamber decides to convene a hearing. The appeal shall be heard as expeditiously as possible.



Application of revision of any sentence or conviction can be filed if new evidence has been available, which was not available during trial or which is important for different verdict or decisive evidence used in trial was false or forged or one or more of the trial judges committed an act of serious misconduct or breach of duty justifying removal. The Appeals Chamber shall reject revision application if it considers it to be unfounded. If the revision application has some merit, the Appeals Chamber may reconvene the original Trial Chamber, or constitute a new Trial Chamber or retain jurisdiction over the matter for hearing the parties and determine on whether the judgment should be revised. An application for revision shall be in writing setting out the grounds and accompanied by supporting materials. Majority of the judges of the Appeals Chamber shall determine, supported by reasons in writing, merit of revision application. Notification of decision shall be sent to all concerned parties. For revision hearing, the appeals Chamber shall provide advance order for transfer of the sentenced person to the seat of the Court. On specified date, the Appeals Chamber shall hold hearing to determine whether the conviction or sentence should be revised. For such hearing, it shall have all powers of the Trial Chamber.

### **Offence and misconduct against the Court**

The Court shall have jurisdiction over offences committed intentionally against its administration of justice. The offences include giving false testimony, presenting false or forged evidence, corruptly influencing or obstructing or interfering with attendance or retaliating against a witness for giving testimony, destroying, tampering with or interfering with collection of evidence, impeding, intimidating or corruptly influencing a Court official for persuading not to perform or to perform improperly, retaliating against a Court official and soliciting or accepting bribe by a Court official. The Prosecutor may, on own initiative or at request of concerned Chamber, investigate an offence against the Court. The Prosecutor may verbally request the concerned Chamber for immediate arrest of the person concerned. Any such offence shall have to be tried within a period of five years from the date on which the offence was committed, provided that no investigation or prosecution has been initiated against that offence during the period. However, no person shall be tried for an offence against the Court if that person has already been convicted or acquitted by the Court or another Court for the same conduct.

In case of conviction for offence against administration of justice by the Court, a sentence of imprisonment not exceeding five years or a fine in accordance with the Rule of Procedures or both can be imposed. Such sanctions shall have to be imposed within 10 years from the date on which the sanction has become final. Upon request by the Court, a State party shall extend criminal laws and use its own judicial process for penalizing offences committed on its territory or by its citizens against administration of justice by the Court.

Before deciding whether to exercise jurisdiction, the Court may consult with State Parties that may have jurisdiction over the offence. In deciding so, the Court shall consider availability and effectiveness of prosecution in a state Party, the seriousness of offence, the possible joinder of charges, the need to expedite proceedings, links with an ongoing investigation or trial, evidentiary considerations etc. In case of a request from the host

Sate for a waiver of the power of the Court to exercise this jurisdiction, the Court shall give favourable consideration.

For misconduct including disruption of proceedings or deliberate non-compliance with its directions in the Court, the Court may impose sanction such as temporary (period not exceeding 30 days) removal from the courtroom, permanent interdiction from attending the proceedings, fine (not exceeding 2000 Euro or equivalent in any currency), cumulative fine (for continuing misconduct) or other measures against persons committing such misconduct before it. If a longer period of interdiction is necessary, the matter shall be referred to the Presidency, which shall hold a hearing to determine it. The person concerned shall be given an opportunity to be heard before and sanction for misconduct is imposed.

### **Compensation to wrongfully arrested or convicted person**

Article 85 of the Statute has provision for providing compensation to victim of unlawful arrest or detention or miscarriage of justice by the Court upon newly discovered facts showing miscarriage of justice. Upon such request, the Presidency shall designate a Court composed of three judges (who have not participated in the judgment of the person making the request) to consider the request. Such request shall be transmitted to the Prosecutor for his opinion. The Court may decide the matter on the basis of the request and opinion of the Prosecutor or after a hearing. In determining amount of compensation, consequences of grave miscarriage on personal, family, social and professional situation of the person filing the request are to be taken into consideration.

### **International cooperation and judicial assistance**

The International Criminal Court cannot operate without cooperation and assistance from the State Parties. For securing cooperation and assistance for the Court from States, the Registrar is the key person responsible for all communications and coordination. The Court has the authority to request to State Parties for cooperation either through diplomatic channel or Interpol or any appropriate regional organization. However, the State Parties have to ensure national legal procedures for extending cooperation to the Court. Non-State party can also be requested by the Court for assistance under an ad hoc arrangement. The Court may seek information or documents from other intergovernmental organizations or other forms of assistance as may be agreed upon with such organization. In case of failure of State or non-State party to provide assistance requested for, the Court shall inform it to the Assembly of State Parties or the UN Security Council when a matter is referred to it by the Security Council. A State Party may deny to provide document or evidence on grounds of national security. If a request for assistance is denied, the requested State Party shall promptly inform the Court or the Prosecutor of the reasons for such denial.

If immediate execution of a request would interfere with an ongoing investigation or prosecution of a case different from that to which the request relates, the requested state may postpone the execution of the request for a period of time agreed upon with the Court.

The matters of cooperation include:

- Arrest and surrender of persons to the Court
- Identification and whereabouts of persons or location of items
- Taking and production of evidence, testimony under oath, expert opinion and reports
- Questioning of any person being investigated or prosecuted
- Service of documents including judicial documents
- Facilitating voluntary appearance of persons as witnesses or experts before the Court
- Temporary transfer of persons
- Examination of places or sites
- Execution of searches and seizures
- Providing records and documents including official records and documents
- Protection of victims and witnesses and preservation of evidence
- Any other assistance, not prohibited by law of the requested State, to facilitate investigation and prosecution

In case of request for surrender of persons, it should be supported by relevant materials. If the person sought for surrender challenges it before a national court, the requested State shall inform it to the ICC to rule on admissibility. If the case is admissible, the requested State shall proceed with execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of request for surrender. In case of competing request both from the Court and any other State for surrender of particular person, the requested shall notify both the Court and the other State. Irrespective of the other State being a party or non-Party to the Rome Statute, Court's request for surrender will get preference if admissibility of case is already determined by the Court. If admissibility of case is not determined, the requested State shall consider request from other State for surrender. In making decision, the requested State shall consider respective dates of requests, interest of requesting state, possibility of subsequent surrender between the Court and the other requesting State.

A request for arrest and surrender shall be made in writing with information describing the person sought and sufficient to identify and locate the person, a copy of warrant of arrest and other relevant documents. In case of request for arrest and surrender of a person already convicted, the request shall be supported by a copy warrant of arrest, a copy of judgement of conviction, other relevant information and in case of sentenced person, a copy of the sentence. In urgent cases, the Court may request for provisional arrest of the person sought pending presentation of the request for surrender and the supporting documents. The request for provisional arrest shall contain a description of the person sought, a concise statement of crimes, a statement of the existence of a warrant of arrest or a judgement of conviction and a statement that a request for surrender will follow. A provisionally arrested person may be released from custody if the request for surrender and supporting documents do not reach the requested State within 60 days of request for provisional arrest.

A request for other assistance, except arrest and surrender, shall be accompanied by a statement of purpose including legal basis and grounds, detail information about identification or location of any person or place, a concise statement of essential facts,

reasons for and details of procedures or requirements to be followed, information necessary under the law of the requested State and other relevant information.

A requested State-facing problem in executing any request for assistance shall immediately consult with the Court to resolve the matter. The Court shall not make request for surrender or assistance that would require the requested State to act inconsistently with its international obligations regarding a State or diplomatic immunity of a person or property of a third State unless the Court can first obtain the cooperation of that third State for waiver of immunity. Execution of requests for assistance shall be done in accordance with national law of the requested State and in the manner, unless prohibited by such law, specified in the request.

### ***Enforcement***

The ICC has to depend on States for enforcement of sentences. All functions related to enforcement of sentences are done by the Presidency of the Court. Maintained by the Registrar, there is a list of States, which have indicated their willingness, conditional or unconditional, to accept sentenced persons. In designating State for enforcement, the Court takes into account equitable distribution of responsibility of enforcement, application of international treaty standards governing treatment of prisoners, nationality and views of sentenced persons and other circumstantial factors. The Court may, either at its own or at the application of a sentenced person, change the State of enforcement. The sentence of the Court shall be binding on the enforcing state, which shall not modify it. The Court shall supervise enforcement of sentence but the conditions of imprisonment shall be governed by the law of the State of enforcement and consistent with international treaty standards governing treatment of prisoners, there shall not be any discrepancy between such standards provided to prisoners of that particular State and prisoners of the Court. The enforcing State shall ensure unimpeded and confidential communication between the Court and the sentenced person. Following completion of sentence, a person who is not national of enforcing state may be transferred to a state, which is obliged or willing to receive him/her. Cost of such transfer shall be borne by the Court if no State bears the cost. The enforcing State may surrender or extradite such person if requested by another State for further trial or enforcement of sentence. A sentenced person in the custody of the enforcing State shall not be subject to prosecution or punishment or extradition to a third state for any conduct engaged in prior to that person's delivery to the enforcing State unless authorized by the Court at the request of the enforcing State.

State parties shall also give effect to fines or forfeitures as ordered by the court without prejudice to the rights of bona fide third parties and according to national law. If it fails to do so, it shall recover the value of the proceeds, property or assets ordered by the Court to be forfeited. Property or proceeds of selling such property shall be transferred to the Court. Only the Court has the authority to decide reduction of sentence and the enforcing State has no authority to do so, it will not release any sentenced person before expiry of sentence period. The Court shall review the sentence to determine whether it should be reduced only after the sentenced person has served two-thirds of sentence. The Court may reduce the sentence in case of willingness of the person to cooperate with the Court in

investigations and prosecutions, voluntary assistance of the sentenced person in enforcement of judgements and orders of the Court in other cases and significant changes in circumstance sufficiently justifying reduction of sentence. If a convicted person escapes from the custody and flees, the enforcing state may after consultation with the Court request the person's surrender from the State where the sentenced person is hiding.

### **Funding**

All expenses of the court are paid from the fund of the Court. The sources of fund are assessed contributions made by State Parties and funds provided by the United Nations particularly in cases referred by the United Nations Security Council. The Court may receive funds from voluntary contributions from governments, individuals, international organizations, corporations and other entities following criteria adopted by the assembly of State Parties. The contributions of State Parties are assessed according to agreed scale of the United Nations. An independent auditor audits all accounts of the court annually.

*\* The writer is a human rights activist.*

## ***INTERNATIONAL CRIMINAL COURT***

*Shield for victims and witnesses....*

**Sultana Razia\***

*"Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity."*<sup>1</sup>

In the struggle towards International Justice, participation of the victims in the criminal proceedings is a very innovative approach and it breaks the age-old tradition of judicial process. It makes justice more accessible and at the same time victims have a control over the whole process and, undoubtedly, participation of the victims strengthens the cases.

The Rome Statute deals with delicate process regarding victim and witness protection, as previous experiences from International Criminal Tribunals for Rwanda ("ICTR") and the former Yugoslavia ("ICTY") showed that victims faced lack of security and other physical and psychological challenges and that witness refused to take part in the court's proceedings for the fear of reprisals.

The Rome Statute can be treated as the most effective mechanism to date, that acknowledges the rights of the victims and treats victims not only as witnesses of the crimes within the jurisdiction but also as persons who have a valid interest in the outcome.

### **Who is the victim?**

For the purpose of the court the word 'victim' is defined by the Rules of Procedure and Evidence. As per it,

(a) "Victims" means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;

(b) Victims may include organizations or institutions that have sustained direct harm to any of their property, which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.<sup>2</sup>

So a victim before the ICC may be individual person or organisation or institution, and the harm that a victim suffers may take different forms. It can be

- physical harm to a person's body or
- psychological harm, by which a person's mind is affected because of what she or he has had to do or see: or
- material harm, by which goods or property has been damaged or lost as the result of crime.

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<sup>1</sup> Preamble of the Rome Statute of the International Criminal Court

<sup>2</sup> Rule 85, Rules of Procedure and Evidence

A person can also be a victim though s/he has not suffered directly. S/he can be a member of a victim's family who has been killed or suffered harm as a result of crime.

**Participation of victim and witness:**

*"Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm they have suffered."*<sup>3</sup>

According to the Rome Statute, victim will be able to participate in stages of the Court's proceedings determined to be appropriate by the court and in a manner, which is not prejudicial or inconsistent with either the rights of the accused on a fair and impartial trial. A legal representative may also present the views and concerns of the victim at stages where the court considers it appropriate. The ICC may provide financial assistance to assist victims in securing legal representation if necessary.

The victim may make the following presentations:

- explain why s/he thinks a case falls within the jurisdiction of the Court;
- present views and concerns where her or his personal interests are affected at different stages of the proceedings;
- participate in the oral proceedings of the court, for example making opening and closing statements;
- may question witnesses;
- or ask the Court to take special gender sensitive measures, especially if she or he is a victim of sexual violence.

**Victims and Witnesses Unit:**

The Victims Participations and Reparation Unit and the Victims and Witness Unit of the court deal primarily with victims' rights where a person will be considered to be a victim by the court when her or his personal interests have been affected because of the commission of a crime falling within the jurisdiction of the ICC.

According to the Statute, a Victims and Witnesses Unit (VWU), which is to be established under the Registry, is to provide directly, or to advise the Prosecutor and Court on, protective measures and security arrangements, counselling, and other appropriate assistance for victims and witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence. <sup>4</sup>This unit also informs victims about court appearances and the limits of confidentiality.

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<sup>3</sup> United Nations Declaration of Basic Principles of justice for Victims of Crime and Abuse of power, Principle 4

<sup>4</sup> Rome Statute, art. 43(6) and 68(4)

### **Functions of the Victims and Witnesses Unit**

The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate<sup>5</sup>:

(a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:

(i) Providing them with adequate protective and security measures and formulating long- and short-term plans for their protection;

(ii) Recommending to the organs of the Court the adoption of protection measures and also advising relevant States of such measures;

(iii) Assisting them in obtaining medical, psychological and other appropriate assistance;

(iv) Making available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;

(v) Recommending, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasising the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental and non-governmental organisations acting at the request of the Court, as appropriate;

(vi) Co-operating with States, where necessary, in providing any of the measures stipulated in this rule;

(b) With respect to witnesses:

(i) Advising them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;

(ii) Assisting them when they are called to testify before the Court;

(iii) Taking gender-sensitive measures to facilitate the testimony of victims of sexual violence at all stages of the proceedings.

3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or the legal guardian, a child-support person to assist a child through all stages of the proceedings.

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<sup>5</sup> Rule 17,



Article 68 of the Rome Statute is the main article laying out the procedural provisions relating to victims and witnesses. Along with that article some other provisions found elsewhere in the Statute require or allow the organs of the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses, having regard to all factors, particularly where the crime involves sexual or gender violence.

These measures may include:

- *In camera* proceedings or any other means to present evidence by using electronic or other techniques;
- Participation of victims at appropriate stages of the proceedings; and
- Withholding of evidence or information that would gravely endanger the security of a witness.<sup>6</sup>

The Statute also includes a provision enabling the Court to award reparations to or for victims.<sup>7</sup>

Under the Rome Statute and the ICC Rules, victims have the opportunity to participate in criminal proceedings at the Court in a number of ways.

1. Victims or their legal representatives may make submissions to the Court on the authorisation of an investigation.
2. Victims or their legal representatives may submit observations to the Court regarding challenges to the admissibility or jurisdiction of a case.
3. Victims or their legal representatives may, at the discretion of the Chambers, make representations to the Court including opening and closing statements.<sup>8</sup>

In short, by keeping victim's interest, concerns and rights among its primary objectives, the ICC Statute is poised to do "justice" with a human face and help in the healing process and the recovery of the victims, which is - and ought to be - the ultimate goal. However, the efficacy of the Victim and Witness Protection Program (VWPP) will actually get tested on ground only when the ICC hears its first case and when its Witness and Victim Protection Program (WVPP) starts being implemented.

#### **Functions of the Participation and Reparation Unit:**

The Participation and Reparation Unit's work will specifically encompass responsibilities concerning outreach, the processing of applications for participation, legal representatives, and nongovernmental organisations in relation to victim participants, all of which involve significant protection issues. Additionally, victims' legal representatives are entitled to attend and participate in hearings and, at the discretion of the Chambers, may question the accused, a witness, or an expert.

Victim participants and their legal representatives may consult the trial record and, where possible, be present for announcements of decisions on admissibility, jurisdiction,

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<sup>6</sup> Rome Statute, arts. 54(1)(b), 57(3)(c), 64(2) and 68.

<sup>7</sup> Rome Statute, art. 75.

<sup>8</sup> *Rome Statute, Art. 68(3); ICC Rules, Rules 89(1)-(2), 90.*

criminal responsibility, sentencing, and reparations. A Chamber may also seek the views of victims or their legal representatives on any issue.

As a result, effective consultation, coordination, and collaboration between the Protection Unit and the Participation and Reparation Unit will be essential for ensuring adequate protection.

Similarly, coordination between the Protection Unit and ICC field offices, which are envisioned once investigations are commenced, will be important to ensuring adequate protection. These field offices should be closely monitoring the security situation in the territory where the crimes were committed.

### **Responsibilities of the Unit**

For the efficient and effective performance of its work, the Victims and Witnesses Unit shall:<sup>9</sup> ensure that the staff in the Unit maintain confidentiality at all times and recognising the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services provided to the prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers.

The unit also have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, during all stages of the proceedings and thereafter, as reasonably appropriate;

The unit makes sure the training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity and if necessary cooperate with intergovernmental and non-governmental organisations.

### **Expertise in the Unit**

In addition to the staff mentioned in article 43, 44 of the Rome the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas.<sup>10</sup> Some of these are:

- Witness protection and security;
- Legal and administrative matters, including areas of humanitarian and criminal law;
- Psychology in criminal proceedings;
- Gender and cultural diversity;
- Children, in particular traumatized children;
- Elderly persons, in particular in connection with armed conflict and exile trauma;

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<sup>9</sup> Rule 18

<sup>10</sup> Rule 19

- Persons with disabilities;
- Social work and counselling;

### **Responsibility of the Registrar**

The Registrar will provide notice or notification to victims or their legal representatives and assist them in obtaining legal advice and organising their legal representation, and providing their legal representatives with adequate support, assistance and information, including such facilities as may be necessary for the direct performance of their duty, for the purpose of protecting their rights during all stages of the proceedings.<sup>11</sup>

It also takes gender-sensitive measures to facilitate the participation of victims of sexual violence at all stages of the proceedings.

In relation to victims, witnesses and others who are at risk on account of testimony given by such witnesses, the Registrar

- Will inform the victims about their rights under the Statute and the Rules, and of the existence, functions and availability of the VWU. &
- Ensures that they are aware, in a timely manner, of the relevant decisions of the Court that may have an impact on their interests, subject to provisions on confidentiality.

For the fulfilment of his or her functions, the Registrar may keep a special register for victims who have expressed their intention to participate in relation to a specific case.

Registrar on behalf of the Court may also negotiate with the States in some special cases. Especially when the victims are traumatised or threatened for support services on their territory and certainly these agreements will be confidential.

### **Role of victims in challenges to admissibility and to jurisdiction**

Victims, their families or their representatives should have notice of all proceedings concerning preliminary rulings regarding admissibility<sup>12</sup> and an opportunity to present their views at each stage of these proceedings and to have them considered. And when the personal interests of victims are affected, the Court shall permit their views and concerns to be presented at any stage it determines to be appropriate “in accordance with the Rules of Procedure and Evidence”

### **Working with Legal Representatives**

An important feature of victims' participation involves the legal representative. A victim participant may choose a legal representative to act on his or her behalf.<sup>13</sup> Alternatively, the Chamber may request, "victims or particular groups of victims, if necessary with the assistance of the Registry, [may] choose a common legal representative or representatives."<sup>14</sup> A legal representative of a victim participant may conduct a range of

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<sup>11</sup> Rules 89 to 91

<sup>12</sup> Article 18

<sup>13</sup> ICC Rule 90(1),

<sup>14</sup> ICC Rule 90(2)

activities on behalf of victims, including attending proceedings, making written submissions, and questioning witnesses, accused, and experts. S/he may play a positive role in protection of participants.

### **Right to reparation under ICC**

The reparation procedures revolve around a series of measures. After issuing an arrest warrant or summons, the Pre-trial chamber may make an order for protective measures to ensure that any assets which might be the subject of future reparations order are maintained.<sup>15</sup>

These provisions may well be of critical importance to the realisation of reparation awards, in those instances where there are assets and they are traceable. Upon finding of guilt, the court may proceed to a determination of reparations of victims.

Article 75 of the Rome Statute and rules 94-98 deals with the provisions regarding reparation.

Art 75(1) provides that the court shall “ establish principles relating to reparations to, or in respect of, victims” and, based on these principles, the court may “determine the scope

A victim may also apply to receive reparations from the ICC. Reparation means that a victim may be entitled to receive compensation, rehabilitation and /or restitution for the harm suffered as a result of the crime, which was committed against her or him.

Thus, while it is impossible to value a price on how much victim has suffered, the ICC may give victim money to compensate for what the victim has lost as a result of a crime, and to compensate for her or his suffering. The ICC can order that the person convicted of a crime against a victim pay the victim these reparations. A Trust Fund has also been established to gather funds that will be used to provide victims with reparations.

Restitution involves returning to a victim her or his property where it was illegally taken away, while rehabilitation is intended to allow the victim to continue his or her life as normally as is possible. This can take the form of money to pay for legal, medical, psychological and other care, and can even include apologies from perpetrators of crimes to the victims.

### **Conclusion**

In a nutshell ICC has following provisions for the victims and witnesses:

- Victims and witnesses of sexual violence may testify in closed hearings or through special means to protect their privacy.
- They can also have a special helper (such as a psychologist or family member) present while giving testimony.
- The Victims and Witnesses Unit will include experts on trauma related to sexual violence. These experts will be available to counsel victims and advocate appropriate treatment in the courtroom.

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<sup>15</sup> Art: 57.3

- Victims of sexual violence will not be "put on trial" when they give testimony, and their privacy will be protected.
- The confidentiality of victims and witnesses will be protected throughout the proceedings and in published court documents.
- Victims do not need corroboration to prove crimes of sexual violence, and their personal sexual conduct cannot be considered as evidence.
- The definition of "consent" in cases of sexual violence is strictly limited to protect victims.
- Judges must prevent the harassment or intimidation of victims and witnesses during questioning, particularly in cases of sexual violence.

To strengthen the evocative participation of the victims and witnesses, they must receive both adequate protection as provided for under the Statute and physical and emotional protection. Protection must commence from the investigation stage through trial and post-trial stages, because without appropriate and adequate protection, victim's co-operation cannot be achieved and their active participation is not possible in the whole proceedings.

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