



SOS Village

## ON TRACK TO PAKISTAN'S RATIFICATION OF THE INTERNATIONAL CRIMINAL COURT STATUTE

On July 17, 1998, in Rome, the Statute of the International Criminal Court was adopted at a UN-sponsored conference by an overwhelming majority, following intense deliberations. On this day, 120 States, including Pakistan, voted in favor of adopting the final text, seeking to establish the first, permanent, independent International Criminal Court (ICC), while 21 States abstained, and seven voted against it. By the established deadline of December 31, 2000, 139 countries had signed the Rome Statute. In a record four years, the required 60 States ratified the ICC Treaty by April 11, 2002, and it entered into force on July 1, 2002.

To date, there have been 99 ratifications of the Rome Statute. In Asia, the Republic of Korea, Mongolia, Timor l'este, Cambodia, Afghanistan and Tajikistan have ratified, while Thailand, the Philippines and Bangladesh count amongst the signatories.

Unfortunately, Pakistan has so far failed to sign the ICC Treaty.

### **The World's First Human Rights Court**

The Rome Treaty establishes world's first, permanent, independent court, called the ICC (the International Criminal Court), seated in The Hague, The Netherlands. The Court has jurisdiction over the most serious crimes

committed by individuals, which include:

- Genocide
- Crimes against humanity
- War crimes
- Once defined, aggression

The first three crimes are carefully defined in the Statute to avoid ambiguity or vagueness. The definition of aggression and the conditions under which the Court is to exercise jurisdiction in this regard will be finalized when the Assembly of States Parties meet seven years after the Court's entry into force, i.e., in 2009, to review the Statute. The Rome Statute does not identify any new categories of crimes, but rather reflects existing conventional and customary international law.

**Genocide** covers those specifically listed prohibited acts (for example, killing, causing serious harm) committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group (like the mass murder of Jews during the Holocaust and of Tutsis in Rwanda in 1994).

**Crimes Against Humanity** cover specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population. Such acts include murder, extermination, rape, sexual slavery, the enforced disappearance of persons and the crime of apartheid (like the "ethnic cleansing" of Bosnia and Herzegovina and of

Kosovo in the 1990s).

Genocide and Crimes Against Humanity are punishable irrespective of whether they are committed in times of peace or war.

**War Crimes** cover grave breaches of the Geneva Conventions of 1949 and other serious violations of the laws of war, committed on a large scale in international and internal armed conflicts (like the targeting of civilians in Sarajevo by snipers during the Bosnian conflict).

The inclusion of internal conflicts is consistent with customary international law and reflects the reality that in the past 50 years, the most serious violations of human rights have occurred not in international conflicts but within States.

## Why is the International Criminal Court needed?

Over the past century, the world has witnessed the worst violence in the history of humankind. According to a fact sheet by the NGO Coalition for the ICC (CICC), in the

past 50 years alone, more than 250 conflicts have erupted around the world; more than 86 million civilians, mostly women and children, died in these conflicts; and over 170 million people were stripped of their rights, property and dignity. Most of these victims have been simply forgotten and few perpetrators have been brought to justice.

The United Nations General Assembly first recognized the need for a permanent

mechanism to prosecute mass murderers and war criminals in 1948, following the Nuremberg and Tokyo trials after the Second World War. Since that time, numerous laws, treaties, conventions and protocols have defined and forbidden everything from war crimes to poison gas and chemical weapons. Yet no system was proposed to enforce these norms, and breaches have continued throughout history. By holding *individuals* criminally responsible for the most serious violations of international law, the Rome Statute makes it possible to prevent heads of State and armed leaders escaping justice for international crimes. In addition to bringing justice to victims of such atrocities, the ICC hopes to serve as a deterrent to crimes of serious international nature.

The ICC has often been described as the *missing link* in international human rights law enforcement.



Despite the existence of domestic legislation and several multilateral treaties dealing with some of the crimes included in the Rome Statute, no permanent enforcement mechanism with jurisdiction over individual

criminal liabilities, regardless of their official political, social or economic position, had existed prior to the ICC at the international level.

Such a system, if universally supported, would ensure an end to the horrific trend repeated throughout the last century where people were allowed to plan and commit these crimes knowing that they would not be held

# Characteristics of the ICC

## *Trial of Individuals*

The main distinctive feature of the ICC is that, unlike the ICJ (International Court of Justice), which deals with States, the ICC has the power to investigate, prosecute and convict individuals. The ICC, therefore, is the forum for the redress of crimes committed by individuals, whether as part of or in relation to the government in power, or of groups rebelling or aiming to change a government.

## *Permanent Judiciary Body*

The ICC, unlike the ad hoc Tribunals for Rwanda and Yugoslavia, is a permanent body. This status provides for efficiency, immediate action and consistency in resolving issues involving criminal acts worldwide, at any given time henceforth.

## *International Jurisdiction*

Unlike domestic or national courts, the ICC exercises international jurisdiction over criminals. This addresses the problem of prosecuting dictators, warlords, and other criminals who may have escaped from the national jurisdiction in which they committed war crimes, crimes against humanity, genocide and aggression.

accountable for their heinous acts.

It is also hoped that the ICC could bypass the corrupt criminal justice systems in some countries in cases where there is excessive intimidation or bribery.

## **What is the Extent of the ICC's Jurisdiction?**

The ICC has jurisdiction over crimes committed in the territories of ratifying States, and over crimes perpetrated by nationals of ratified States, or crimes committed against nationals of ratified States.

In cases where the crime or complaint was referred by a State or initiated by the Prosecutor, the ICC may exercise its jurisdiction if one or more of the following States are Parties to the Statute or have accepted ICC's jurisdiction:

- The State in whose territory the alleged crime was occurred.

- The State of which the person accused of the crime is a national
- States that did not sign or ratify the Statute, although not under the Court's jurisdiction, may accept the jurisdiction of the ICC. These States, and all State Parties, must cooperate with the Court's investigations and prosecutions.

The UN Security Council also has power to refer cases to the ICC, as they did in the case of Darfur, Sudan. In cases referred by the Security Council, the ICC will have jurisdiction regardless of whether the State concerned is a party to the ICC treaty.

## *Principle of Complementarity*

States that have ratified the Rome Statute have committed themselves to a new system of international justice in which their national courts have the primary obligation to investigate and prosecute people accused of crimes under international law. However, if States are unwilling or unable to genuinely investigate and prosecute these crimes, the ICC can intervene. The Court thus only acts in cases



where States are unwilling or unable to do so, under the principle of complementarity.

### **How is a Case Brought Before the ICC?**

**T**here are three ways that cases can be brought to the ICC. Both a State that has joined the Treaty and the United Nations Security Council can refer a situation to the Court for investigation.

In addition, the ICC Prosecutor can start an investigation based on information that she or he receives from victims, NGOs, or any other reliable source.

The ICC will not have its own police force, and will work side by side with national authorities.

### **International Criminal Court and Children**

**W**hile the creation of the ICC is of tremendous relevance to human rights advocates, it impacts those who work on a wide variety of causes, such as women's issues, children's rights, the non-proliferation of

weapons, environmental issues and many others.

Children below 18 years of age are exempted from prosecution by the ICC. Article 26 expressly states that the ICC shall have no jurisdiction over any person who was under the age of 18 at the time the crime was committed. However, this provision does not prevent any State from prosecuting persons for genocide, other crimes against humanity or war crimes who were under the age of 18 at the time of the crime.

The Preamble to the Rome Statute recognizes that during the twentieth century “millions of children ... have been victims of unimaginable atrocities that deeply shock the conscience of humanity.” The Statute has included provisions to account for crimes committed against children, and protection of child victims and witnesses during prosecutions before the ICC.

Additionally, the Statute gives the ICC jurisdiction over three crimes that are of particular concern to children: genocide by transferring children, the crime against humanity of trafficking in children, and the recruitment or use of child soldiers in armed

conflict.

The definition of **genocide** in Article 6 expressly includes “forcibly transferring children of the group to another group” if committed with the intention to destroy all or part of a national, ethnical, racial or religious group.

While defining the **crime against humanity** of enslavement in Article 7(2)(c), the Statute recognizes that children are a group particularly at risk of being subject to this crime, and includes in the definition the exercise of the power of ownership over a person in the course of trafficking in children.

The ICC provides a powerful deterrent to the conscription, enlistment, or use in hostilities of children under the age of 15 years. This conduct is defined as a war crime in the ICC Statute. The inclusion of the conscription, enlistment and use of **child soldiers** is considered as part of a war crime under Article 8(2)(b)(xxvi). Article 8(2)(e)(vii) contains a similar prohibition even during non-international armed conflict. Although the age limit set by the adopting States in the Statutes is 15 years, lower than the age of 18 called for by

Amnesty International and other sections of civil society, its inclusion has been a major contributing factor towards further progress on the issue that has been made since the Statute’s adoption.

The Statute also includes other important measures to protect children in armed conflict: it recognizes intentional attacks on educational institutions as a war crime, and provides special arrangements for children as victims and witnesses.

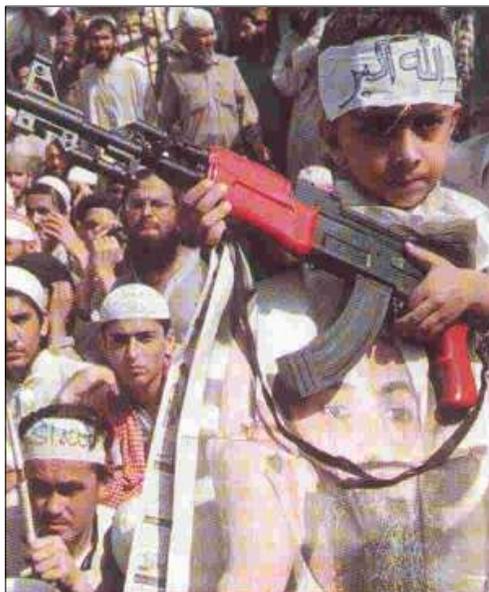
Article 68(1) requires the Court to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of all victims and witnesses. In so doing, the Court must have regard to all relevant factors, including age and the nature of the crime, in particular, violence against children.

Additionally, Article 36(8)(b) requires States Parties to take into account the need for judges to have legal expertise on violence against children. The Prosecutor is required under Article 42(9) to appoint advisers with legal expertise on violence against children. In addition, both the Prosecutor and Registrar must, under Article 44(1), have regard to the

## What are the Principles Governing the ICC?

The ICC does not recognize any period of limitation in filing cases, any form of amnesties, pardons, immunity for officials, or any similar measures of impunity.

- All trials in the ICC must be fair, and should observe due process.
- The ICC cannot impose the death penalty.
- The ICC can order compensation or reparation to the victims.
- The victims and witnesses before the ICC will be given full protection.
- The ICC shall have no jurisdiction over child perpetrators under the age of 18.
- Only crimes committed after the Statute came into force will be cognizable before the ICC.



# **International & National Civil Society Supporting the ICC**

## **Coalition for the International Criminal Court (CICC)**

**T**he NGO Coalition for the ICC, based in New York, has played a pivotal role in getting the Rome Statute formulated as international law, and for getting a sizeable number of countries to sign and ratify the Treaty. This International Coalition has grown to include over 2,000 NGOs from all regions of the world and many sectors of global civil society, including human rights, the rights of women and children, peace, international law, humanitarian assistance, the rights of victims, and religion. These groups are united in their support for a fair, effective and independent ICC.

Following the entry into force of the Rome Statute, the Coalition has developed the following goals for its work in this phase:

- Obtaining worldwide ratification of the Rome Statute;
- Ensuring the development of strong implementing legislation in all ratifying countries;
- Ensuring that the appropriate mechanisms are in place for the Court to begin functioning effectively as early as possible;
- Monitoring and supporting the work of the Assembly of States Parties;
- Generating international public support for the Court;
- Providing information to key stakeholders at the national and international level about the Court, the Rome Statute and the supporting documents;
- Monitoring and supporting the work of the functioning Court;
- Building the Coalition and its networks.

## **Forum-Asia**

**T**he Asian Forum for Human Rights and Development (FORUM-ASIA) serves as the Coalition's focal organization for its Asian campaign. It facilitated the formation of national ICC Coalitions and working groups in 15 countries in East, Southeast and South Asia, conducted annual regional ICC Campaign consultations, supported the translation of the Rome Statute into six Asian languages, and lobbied Asian governments for early ratification. It continues to provide support for the implementation of the ICC in Asian countries that have ratified the Rome Statute.

## Pakistan Coalition for the ICC

PCICC (Pakistan Coalition of NGOs on ICC) has been operating as a loose network of like-minded and interested NGOs since 2001. In October 2004, SPARC in consultation with FORUM-ASIA and Amnesty International following a national level consultation, agreed to act as the National Secretariat of the PCICC.

The Coalition has held several national level consultations to urge the Government of Pakistan to sign and ratify the Rome Statute and other human rights covenants.

Apart from lobbying Parliamentarians, it has also succeeded in raising the issue in the Parliament by getting them to put questions to the Government, and then following up through the print media.

Since 2002, the Coalition has undertaken various awareness raising activities with advocates through their Bar Associations, print media, NGOs, and legal experts. It is also now producing various publications to raise awareness about the issue, and to enable it to lobby the concerned authorities.

requirement of expertise on violence against children in the appointment of their staff.

Article 68(1) says that the Prosecutor must take appropriate measures during the effective investigation and prosecution of crimes to respect the interests and personal circumstances of victims and witnesses, including age, and take into account the nature of the crime, in particular where it involves violence against children.

Article 68(2) permits the ICC to conduct any part of the proceedings “*in camera*, allowing the presentation of evidence by electronic or other special means,” to protect child victims and witnesses, unless otherwise ordered by the ICC, having regard to all the circumstances, particularly the views of the victim or witness.

### What Happens if a Country Does Not Ratify the ICC Treaty?

The International Criminal Court brings the most serious international criminals to justice, and challenges the impunity that they have so often enjoyed in the past. Until now, those who commit atrocities have gotten away with it and their victims were left with nothing. The ICC can provide redress and reparations for the victims and survivors of these atrocities,

which is a vital step towards accountability and lasting justice.

The ICC is expected to provide a forum for victims seeking justice against violators of human rights and international humanitarian law; help end impunity; help end the current conflict or at the very least “humanize” its conduct; and take jurisdiction over cases which courts are unwilling or unable to prosecute, and to serve as a deterrent to violators.

The Rome Statute of the ICC sets out international legal standards, and provides for an important mechanism to implement these standards, in order to ensure that the perpetrators are brought to justice before the ICC when national courts are unable or unwilling to do so. Equally important is the impact on national laws as ratifying nations fulfill their obligation to ensure that these crimes can be tried within their own borders. While the Court's jurisdiction is not retroactive, the future Hitlers, Pinochets, Pol Pots, and Idi Amins will hopefully have little opportunity to escape justice.

Countries like Pakistan that fail to ratify the ICC Treaty cannot participate in the nomination of the Court's judges and Prosecutor. They also lose the privilege of



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