

ASIA UPDATE

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TOGETHER FOR JUSTICE

ISSUE 4

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ASIAN PERSPECTIVES ON ICC EXAMINED AT TOKYO CONFERENCE

The lack of Asian ratifications of the Rome Statute “has less to do with what is seen as a weak normative commitment to human rights or humanitarian law, and more to do with hesitations about the ICC (International Criminal Court) as an enforcement regime.”

This statement was made by Professor Raul Pangalangan at the Second Biennial General Conference of the Asian Society of International Law (AsianSIL) meeting in Tokyo on the theme “International Law in a Multi-Polar and Multi-Civilizational World: Asian Perspectives, Challenges and Contributions” last August 1-2, 2009.

Former Law Dean at the University of the Philippines and a Philippine delegate to the Rome Conference, Pangalangan was the main speaker on a panel entitled “Asian Perspectives on the International Criminal Court.” The panel was chaired by Professor Nisuke Ando, currently Director of the Kyoto Human Rights Research Institute and former chair of the UN Human Rights Committee.

Pangalangan examined why Asian countries have



PROFESSOR RAUL PANGALANGAN (LEFTMOST) AT THE SECOND BIENNIAL GENERAL CONFERENCE OF THE ASIAN SOCIETY OF INTERNATIONAL LAW MEETING IN TOKYO

lagged behind other regions of the world in ratifying the Rome Statute, despite Asia’s history of having institutions against impunity. He recalled that several international criminal trials have in fact been held in Asia: the wholly international *ad hoc* tribunal in Tokyo, various national level prosecutions after the Second World War, and the mixed tribunals in Cambodia for the Khmer Rouge and in East Timor for the period of Indonesian occupation.

He applied the classic distinction in public international law between primary rules and secondary rules, and construed non-ratification *not* necessarily as the rejection of the norms of human dignity

but merely as residual resistance to international mechanisms to advance these norms. Indeed, many non-ICC signatories in Asia have in fact signed other human rights and humanitarian law treaties, and remain bound by those substantive obligations and compliance regimes. “By [ICC] non-ratification, they merely opt-out of a specific enforcement mechanism, one that entails doctrinal exceptions (e.g., no head-of-state immunity) and institutional constraints (e.g., international oversight over domestic judicial systems).”

He also emphasized that treaty ratification is hostage to the domestic political processes that privi-

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Together for Justice: Civil society in
150 countries advocating for a fair,
effective and independent ICC.

The Coalition for the International Criminal Court includes 2,500 organizations around the world working in partnership to strengthen international cooperation with the ICC; ensure that the Court is fair, effective and independent; make justice both visible and universal; and advance stronger national laws that deliver justice to victims of war crimes, crimes against humanity and genocide.

ICC PRESIDENT VISITS THAILAND AND INDONESIA



JUDGE SANG-HYUN SONG. CREDIT: THE JAKARTA POST/R. BERTO WEDHATAMA

Judge Sang-hyun Song headed to Thailand and Indonesia in his first official overseas visit after he was elected President of the International Criminal Court (ICC) on 11 March 2009.

On April 27, Judge Song addressed the Asia Regional Conference on “Fighting Impunity and Promoting International Justice” sponsored by the International Institute of Higher Studies in Criminal Sciences at the Pullman Bangkok King Power in Bangkok.

The ICC President observed that the region suffers from too few mechanisms that can be utilized in the fight against impunity, which has led to the victimization of millions and the prolongation of conflict. He said that Asia cannot afford to be left behind

in the work of the International Criminal Court.

The conference was attended by academics from institutions including Vietnam National University, Seoul National University, the University of Hong Kong, Hosei University, University of Padjadjaran, University of the Philippines, National Islamic University, Beijing Normal University, and Thammasat University. Representatives of international organizations, commissions, non-governmental organizations and foreign embassies in Thailand were also represented, including the European Commission, the International Commission of Jurists, the Asian Human Rights Commission and the Asian Institute for Human Rights.

In Jakarta, Judge Song attended three fora between

April 28 and 29. Foreign Ministry spokesperson Teuku Faizasyah told the Jakarta Post at that time that Indonesia was committed to ratifying the accord, but that “there are a few elements [in the treaty] that need to be discussed.”

The Indonesian Civil Society Coalition for the ICC urged the government to facilitate the process. Coalition member Simon warned that the government’s inaction violates a presidential decree issued in 2004 mandating the ratification of the Rome Statute by 2008 in the Human Rights National Action Plan.

Song is the first Asian President of the ICC. He has extensive practical and academic experience in court management, criminal procedure and evidence law.

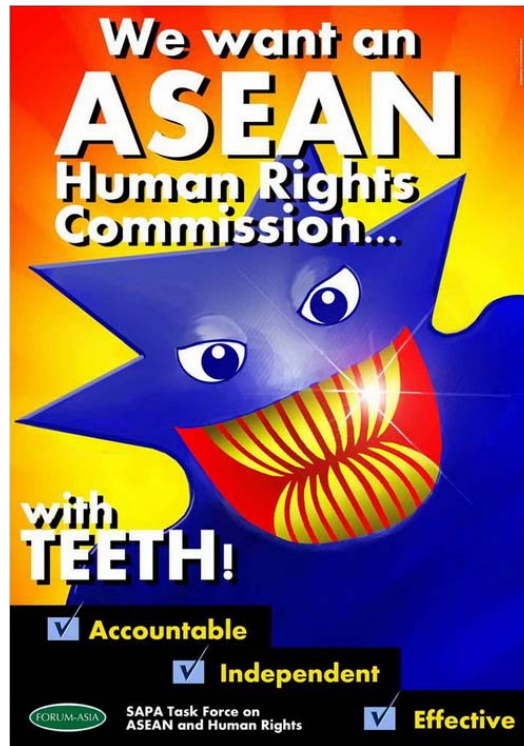
ASEAN CHALLENGED TO DEVELOP HUMAN RIGHTS PROTECTION MECHANISMS

Evelyn Balais-Serrano, CICC regional coordinator for Asia and the Pacific, called on the Association of Southeast Asian Nations (ASEAN) to strengthen a guiding principle stated in the Charter of its upcoming human rights body in the Political Declaration of the body's Terms of Reference (TOR).

In a letter addressed to ASEAN secretary general Dr. Surin Pitsuwan dated 7 October 2009, she highlighted that the ASEAN Intergovernmental Commission on Human Rights (AICHR) Charter upholds as a guiding principle "the Charter of the United Nations and international law, including international law, subscribed to by ASEAN Member States."

Serrano said the Political Declaration must address the consequences of conflict in the region and work to build protection mechanisms and the commitment to prosecute the most heinous international crimes— war crimes, crimes against humanity and genocide. "We believe that ASEAN, as part of its concern for the prosperity of the region, needs to progress in this direction. While impunity reigns, transgressions of human rights and international humanitarian law will go on

threatening and victimizing human security and peace," she said.



The Geneva Conventions of 1949, a landmark in the development of international humanitarian law, have been rati-

fied by all ASEAN member states.

Civil society groups in the region are battling for a clear development plan for the AICHR. "The Political Declaration must recognize that the lack of independence and protection mandates in the AICHR are some of the biggest flaws in the TOR. As a long-term guiding document for the AICHR, the Declaration must set a direction for the Commission to be independent and have protection mandates which will eventually establish a full fledged regional human rights mechanism, complete with conventions, commissions and a human rights court that are in line with international standards in a reasonable time frame," says Yap Swee Seng, executive director of Asian Forum for Human Rights and Development, based in Bangkok.

The TOR of the AICHR was adopted 20 July 2009 at the 42nd ASEAN Ministers Meeting in Phuket, Thailand. The presentation of the Political Declaration and appointment of representatives to the AICHR took place during the 15th ASEAN Summit on 23-25 October 2009 in Hua-Hin, Thailand.

ASIAN PERSPECTIVES ON ICC EXAMINED AT TOKYO CONFERENCE

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lege certain constituencies while silencing other voices. The military will typically resist being subjected to ICC jurisdiction and present the most pragmatic opposition. The politicians will be either sympathetic to the military (or to a militaristic tradition), or simply indifferent if the ICC engages no genuine domestic debate. The bureaucracy will usually see the difficulties arising from domestic implemen-

tation. On the other hand, the diplomats will typically be more attuned to global attitudes, and together with local activists and international NGOs, may articulate the larger normative concerns. "Whose voice is heard will in the end depend upon the structure of each nation's domestic politics, whether it is democratic or undemocratic, rule-bound or not."

On the other hand, Pangalangan recognized that we can still find normative implications in states' objections to the ICC. We can construe the arguments against sovereignty and complementarity, the waiver of head-of-state immunity, and the risk of politicized prosecutions not merely as procedural objections, but rather as "doctrinal proxies" for the true agenda of shielding impunity.

In this regard, the global campaign for ICC membership can serve as a vehicle to expose the real debate underlying a treaty that aspires to universal coverage, to ascertain for ourselves whether that universality is artificial or contrived, and "to bring us face to face with the true impulses that lie beneath the ICC's institutional form."

IMPLEMENTATION MOVES FORWARD IN CAMBODIA



"ROME STATUTE AND CAMBODIA -IMPLEMENTATION OF INTERNATIONAL STANDARDS IN CAMBODIA" INTERNATIONAL WORKSHOP

Judge Kim Sophorn of the Ministry of Justice in Cambodia reports that crimes under the jurisdiction of the International Criminal Court have been incorporated in the penal code that is expected to be adopted soon by the National Assembly. "As far as Cambodia is concerned, we have already complied with our obligation to adopt the Rome Statute provisions into our domestic law," Judge Kim Sophorn told partici-

pants in a workshop on the ICC in Phnom Penh on October 2.

The international workshop, entitled the "Rome Statute and Cambodia – Implementation of International Standards in Cambodia," was organized by the Cambodian Human Rights Association (ADHOC), in cooperation with the Konrad Adenauer

Stiftung and supported by the European Commission and OXFAM Novib. It gathered some 150 participants from relevant government agencies such as the Ministries of Justice, Foreign Affairs, the Legal Judicial Reform Council and the Senate; judges and officials of the Extraordinary Chambers in the Courts of Cambo-

dia (ECCC); members of the diplomatic community; representatives of human rights networks in the country; and a representative of the Victims' Participation and Reparations Unit of the ICC.

Fiona McKay of the ICC shared lessons learned by the ICC regarding victims' participation that could be useful for the ECCC, while Dr. Helen Jarvis shared ECCC's experiences with civil party participation. Franziska Eckelmans, legal advisor to the Trial Chamber of the ECCC elaborated on the ICC and Victims' Participation. Anees Ahmed discussed the overall impact of the ICC and the ECCC on Cambodian law and jurisdiction. The conference was opened by H.E. Yang Sem, vice-chairperson of Commission 6 (Commission on Judiciary and Justice) of the Senate and Dr. Prom Sidhra,

Secretary of State of the Ministry of Justice.

Dr. Prom Sidhra said that Cambodia, as the first and only country in the ASEAN region that has so far ratified the Rome treaty, is planning to organize a regional meeting that aims to encourage other member countries of ASEAN to join the Court.

CICC's Evelyn Balais-Serrano shared thoughts on civil society initiatives in Asia while Harry Roque of the University of the Philippines spoke on the region's contributions to the development of ICC and international law. Dr. Jorg Menzel, senior legal advisor to the Senate, chaired the sessions while Thun Saray, president of ADHOC presided over the opening and closing sessions.

LAO PDR PREPARES TO RATIFY ROME STATUTE

The Coordinating Committee to Study the ICC composed of representatives from various line agencies of the Lao PDR government has put together an action plan to prepare itself to ratify the Rome Statute. The Ministry of Foreign Affairs, which serves as the focal point of the Committee, has submitted a proposal based on the action plan to prospective partners for implementation.

The six-month project proposal includes holding a regional workshop on the ICC at the end of November 2009, translating and publishing ICC documents in Lao, disseminating information about the ICC in three major parts of the country and integrating an ICC component into their law and political science universities' curriculum. The project also includes participation of Lao officials in the 8th session of the Assembly of States Parties of the ICC

in The Hague in November 2009 as part of their capacity building.

The Swedish International Development Agency has committed to support half of the total cost of the project while other partners are being sought out to cover the remaining half. The CICC has also committed support to the project.

In 2005 during the Assembly of States Parties meeting, the Lao PDR announced that it was committed to ratifying the Rome Statute. Since then, a number of ICC workshops have been conducted among relevant government agen-



EVELYN BALAIS-SERRANO MEETS WITH MR. KHAMKHEUANG BOUTEUM, DIRECTOR GENERAL OF THE DEPARTMENT OF TREATIES AND LAW OF THE MINISTRY OF FOREIGN AFFAIRS

cies and a study tour to the ICC was organized by the German government in 2006.

PHILIPPINE IHL SUMMIT SEES NEED FOR HARMONIZATION OF LAWS, RATIFICATION OF ROME STATUTE

A summit on international humanitarian law (IHL) in the Philippines called on the Philippine government to ensure the harmonization of the international and domestic legislation on IHL.

Summit participants pushed for the ratification of the following signed agreements: the 1998 Rome Statute on the International Criminal Court; the 1977 First Protocol Additional to the Geneva Conventions relating to the protection of victims of international armed conflict; the 1954 Hague Convention for the Protection of Cultural Property and its 1999 protocol; and, the Optional Protocol on the Convention Against Torture. They also pushed for the signing and ratification of the Convention against Enforced Disappearance.

The National Summit on IHL held on August 12, on the occasion of the 60th anniversary of the Geneva Conventions at the Seameo-Innotech in Quezon City was sponsored by the

Commission on Human Rights in the Philippines, EO 134 National Committee (led by the Department of Foreign Affairs and the Department of National Defense) and the Civil Society Initiatives for IHL (CSI-IHL).

The Executive was “urgently requested to certify the IHL Bill as priority legislation and the Legislature [was requested] to enact an IHL Bill as well as pending domestic legislations on torture, internal displacement and disappearance to augment remedies to address IHL violations and unresolved cases.”



CREDIT: PCICC FILE PHOTO

Participants also called on major parties to the armed conflicts in the Philippines “to bring into force, by means of special agreements in the context of the peace process, the Geneva Conventions of 1949 to the extent appropriate to their respective armed conflicts.”

During the Summit, the Philippine Coalition for the ICC (PCICC), a founding member of the CSI-IHL, released a statement to the media saying that internal armed conflicts had exacerbated the incidences of extrajudicial executions and disappearances in past years. Hundreds of instances of said crimes have been recorded between 2001-2007 without a single conviction of alleged perpetrators.

“As we mark the 60th anniversary of the Geneva Conventions, we remember our own internal armed conflict that remains unresolved and the victims that have suffered

the consequences in its wake,” said Loretta Ann Rosales, PCICC co-chairperson. “The on-going war against armed insurgent groups such as the National Democratic Front of the Philippines and the Moro Islamic Liberation Front has resulted in thousands of internally displaced persons caught in the crossfire, many of them deprived of their security and basic rights to food, education and health. Something must be done to end this situation.”

The Summit was the culmination of a variety of activities, including a kite-flying activity on July 3, held to commemorate the 60th anniversary of the Geneva Conventions. Participants of the Summit and other activities included government representatives and humanitarian organizations, academics and other civil society groups.



LAUNCHING EVENT FOR COMMEMORATIVE ACTIVITIES FOR THE 60TH ANNIVERSARY OF THE GENEVA CONVENTIONS
CREDIT: PCICC FILE PHOTO

ASIA GROUPS CALL FOR ROME STATUTE RATIFICATION IN WORLD DAY OF JUSTICE CELEBRATIONS

Asia groups supporting the International Criminal Court (ICC) celebrated with justice advocates around the globe on 17 July 2009, International Justice Day, commemorating the day on which the Rome Statute of the ICC was adopted by diplomatic representatives of 120 states in 1998. The coming into force of the treaty four years later created the ICC, the first independent judicial body that would prosecute crimes of the most serious nature — war crimes, crimes against humanity, and genocide.

In Nepal, the human rights community staged a peaceful sit-in at the Shantibatika of Ratnapark at the heart of Kathmandu City. Various organizations and individuals joined the 45-minute sit-in rally organized by the Citizen's Task Force to Combat Impunity.

Speakers criticized the government for inaction on the Rome Statute even three years after the then reinstated parliament passed on 25 July 2006 a resolution to accede to the treaty. They demanded that the government accede to the Rome Statute as an important step

to establishing a just society.

Birendra Prasad Thapaliya, chairperson of the human rights group FOHRID, said the rising impunity in the country could be addressed by acceding to the Rome treaty. He called on those present to exert pressure to ensure a legal remedy against impunity and human rights violations as provided for in the criminal justice provisions of the new Nepalese constitution. Thapaliya lambasted the government for ignoring the directive of the parliament to accede to the treaty and expressed the fear that war crimes

may yet be committed in the country.

Human rights defender Charan Prasai stressed that accession to the Rome Statute is necessary to end the mentality that there is no punishment for crime and to establish sustainable peace in the country.

Thanking all who took part in the public action, Nutan Thapaliya, convener of the Citizen's Task Force to Combat Impunity, said impunity would be controlled and the prestige of Nepal would rise in the international arena when it accedes to the Rome Statute.

DEBATING RATIFICATION IN MALAYSIA

The Malaysian Bar Council's Human Rights Committee (HRC) held a debate on 15 July on the following motion: "This House believes that Malaysia's continuing reluctance to ratify the Rome Statute makes her complicit in crimes against humanity."

Both teams presented spirited and in-

formed arguments despite being given the motion only 30 minutes prior to the debate. Those arguing in favor of the motion contended that the ability of the ICC to operate effectively depends on the support it receives from states parties to the Rome Statute. The team said Malaysia's denunciation of genocide and crimes against humanity ring hollow in the face of her continuing reluctance to ratify the treaty. They said ratification would affirm Malaysia's claim that it believes in human rights and is an important step to signify Malaysia's stance against humanitarian crimes.

The opposition, a team from the University Teknologi Mara (UiTM), took the position that although ratification of the Rome Statute is desirable, Malaysia has the right to decide whether to join the [then] 109 States Parties to the treaty or to prioritize its sovereignty. They argued that the prohibition to crimes against humanity could be demonstrated in several ways, and that non-ratification, in and of itself, was not definitive. The

UiTM team drew support from their examination of the legitimacy of the reasons other countries have not ratified the Statute. Finally, they noted the harm caused if a country were to ratify this international instrument merely to avoid being accused of being complicit in crimes against humanity.

The adjudicators, Fiona Barnaby, legal counsel on international humanitarian law at the International Committee of the Red Cross, Bertrand Xavier-Asselin, second secretary at the High Commission of Canada, and Datuk N. Sivananthan, member of the Bar and ICC list counsel and chief adjudicator, unanimously named the opposition team as the winner. The team's lucid arguments were clearly the deciding factor, seeing as the crowd's sentiments strongly favored Malaysia ratifying the treaty without delay.

Datuk Sivananthan gave a historical overview of international criminal tribunals after the debate.



DATUK SIVANANTHAN WITH THE WINNING TEAM. CREDIT: MBC WEBSITE

BANGLADESH MEETING

Odhikar, a human rights NGO in Bangladesh and CICC's focal point for South Asia, held a discussion meeting presided over by Ahmed Ziauddin on July 17 in Dhaka. "As a signatory to the ICC treaty, Bangladesh has an obligation to ratify the Rome Statute. Ratifying the treaty would demonstrate the commitment of the Government of Bangladesh to uphold human rights as it is enshrined in our Constitution and is exemplified by our troop contributions to UN peacekeeping missions. Ratification would improve the image of this government in the eyes of the international community," said Ziauddin.

Bangladesh was the first South Asian country to sign the Rome Statute on 16 September 1999.

CAFÉ LE CRIMINAL

In the Philippines, the Philippine Coalition for the International Criminal Court (PCICC) urged President Gloria Macapagal-Arroyo to immediately take action on the Rome Statute to prevent the country from becoming a safe haven for war criminals.

At a public action on July 16, PCICC spokesperson and Amnesty International-Pilipinas Director Dr. Aurora Parong said, "We have long been waiting for a justice mechanism that will hold accountable the perpetrators of systematic and widespread atrocities that fall within the crimes of genocide, war crimes and crimes against humanity. An example of such war crimes was the Japanese military's condemnable sexual slavery of Filipinas during the World War II. We do not want the Philippines to be a safe haven for war criminals and dictators."

Members of the coalition staged a "Café Le Criminal" in Manila to reflect the possibility of war criminals and dictators seeking refuge in a country, such as the Philippines, which has yet to ratify the Rome Statute.

Once it is a states party to the Rome Statute, the Philippines should undergo a

review of national legislation ensuring that all of the treaty's crimes and standards are incorporated under Philippine law. That way it can ensure its ability to investigate and prosecute these crimes nationally, as is its responsibility first and foremost. The Philippines should also put in place legislation to facilitate cooperation with the Court in its investigations, including in the matter of arrest suspects. If the Philippines has not ratified the Rome Statute, the Court's reach does not cover the Philippine territory, affecting the Court's ability to do justice and the Philippines' commitment to end impunity.

On the same day, the PCICC submitted a research study on enhancing remedies for victims of extrajudicial executions and enforced disappearances by integrating some of the principles of the Rome Statute regarding command responsibility. The study, called "Uphold the Sanctity of Life," was submitted to the Presidential Human Rights Committee.

The Philippines signed the Rome Statute on December 28, 2000. With the signing of the treaty, the Philippine Constitution mandates the



MEMBERS OF THE COALITION STAGED A "CAFÉ LE CRIMINAL" IN MANILA
CREDIT: PCICC FILE PHOTO

President to transmit the treaty to the Philippine Senate for concurrence. Civil society has repeatedly urged her to do so.

(With reports from FOHRID Human Rights and Democratic Forum; the Philippine Coalition for the ICC; Chin Oy Sim of the Malaysia Bar Council and Danial Abdul Rahman, law student at the International Islamic University Malaysia; and Odhikar)

"WE HAVE LONG BEEN
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ICC-INDIA HOLDS TRAINING FOR ACADEMIA



PARTICIPANTS OF THE TRAINING OF TRAINERS PROGRAMME ON INTERNATIONAL CRIMINAL LAW, HELD IN PUNJAB. CREDIT: ICC-INDIA CAMPAIGN

A Training of Trainers Programme on International Criminal Law was jointly organized by ICC-India: the Indian Campaign on International Criminal Court, in collaboration with the Centre for Advanced Study in International Humanitarian Law (CASH) at Rajiv Gandhi National University of Law (RGNUL), Punjab, 27 February - 1 March 1, 2009.

Over 40 persons -- professors, lecturers and research scholars with expertise in international law, international relations, political science, social sciences and social work from universities in northern states -- participated in the program. The training aimed to share perspectives and strengthen the capacity of the participants to integrate principles and aspects of international criminal law in their respective areas of work.

Dr. Gurjeet Singh, RGNUL vice chancellor; Ms. Vahida Nainar, independent consultant on gender, conflict and international law; Dr.

Sitharamam Kakarala, director of the Centre for Study of Culture and Society in Bangalore; and Ms. Saumya Uma, coordinator of the ICC-India campaign and director of the Women's Research & Action Group were resource persons for the training.

The program covered the following topics: historical development, concepts and general principles of international criminal law; crimes within the jurisdiction of the ICC; principles and milestones: jurisdiction, gender and victims' rights; geopolitics on the ICC; status of cases before the ICC; transitional justice; and the relevance of international criminal law to India.

If Hope Were Enough, Duty to Protect and *In Search of International Justice* were some of the films screened during the training program, each of which were followed by a discussion. The training program also consisted of group activities, including case studies on ICC crimes, on the inade-

quacy of Indian laws to deal with situations of crimes against humanity, and on possible application of ICC standards for domestic law reform initiatives to combat torture and communal (religion-based) violence.

The program culminated in a quiz, where the participants, divided into four groups, answered questions and issues covered during the training program. Participants expressed the need for more such training and showed an interest in incorporating the information into their areas of work. The Indian campaign, as well as RGNUL, look forward to jointly organizing such events in the forthcoming years.

The three day training program was preceded by a conventional debate for the students of RGNUL, where about 20 students participated and spoke on any one of the three topics:

- Can the crime of terrorism be prosecuted at the ICC?
- Can the chain of trafficking of women from Nepal and other parts of India to the brothels of Mumbai be a crime against humanity (as defined by the ICC)?
- Is systematic discrimination of a group or collectivity a crime against humanity in the ICC?

Ms. Vahida Nainar and Ms. Saumya Uma judged the debate, and presented cash prizes to the winners.

ICC-India is an eight year anti-impunity campaign and a project of a Mumbai-based non-profit organization - Women's Research and Action Group.

Saumya Uma, Coordinator, ICC-India campaign - iccindiacampaign@gmail.com

INTERVIEW: BANGLADESH TRIALS WOULD “BEGIN TO END CULTURE OF IMPUNITY”

In this interview, Dr. Ahmed Ziauddin provides the context around efforts to investigate and prosecute crimes against humanity and other serious violations of humanitarian law committed in 1971 during the War of Liberation. An expert in international law, Dr. Ziauddin has been campaigning for the government of Bangladesh to initiate such trials based on both Bangladeshi and international humanitarian law.



DR. AHMED ZIAUDDIN

AU: What are the provisions of the International Crimes (Tribunals) Act, 1973 and the International Crimes (Tribunals) (Amendment), 2009?

AZ: The International Crimes (Tribunals) Act 1973 was enacted on 20 July 1973 by the Bangladesh Parliament and was amended by the Parliament on 14 July 2009.

The original legislation introduced a new and complete legal order to investigate and prosecute international crimes that included crimes against humanity, crimes against peace, genocide, war crimes, violations of Geneva Conventions and "any other crimes under international law." It established a national tribunal to exercise jurisdiction to try and punish "any person irrespective of nationality" who were members of armed, defense and auxiliary forces for crimes committed in the territory of Bangladesh "whether before or after the commencement of the Act."

It was, in fact, one of the earliest complete domestic laws against international crimes that incorporated the Nuremberg princi-

ples, genocide and the Geneva Conventions. It was discussed amongst international jurists back then but it remained largely unnoticed until recently when the government elected in December 2008 after receiving an overwhelming electoral mandate in which war crimes trials was an important issue, decided to take up the cause.

As the Act is almost 40 years old but not tested (there have been no trials utilizing the law to date), it again received international attention and the government, after receiving many comments from home and abroad, decided to amend it to accommodate some concerns.

The amendment expanded jurisdiction of the Tribunal to cover not only members of armed forces but "any individual or group of individuals." It removed a provision that could assign a case to a military judge and, most significantly, inserted an express provision that "the Tribunal shall be independent in the exercise of its judicial functions and shall ensure fair trial." Bangla was added as a language of the Tribunal along with English and allowed the government the right to appeal, which in the original law was given only to defendant/accused, against acquittal. The amendment has made the Tribunal called for under the law more complete with a duty to ensure fair trials.

AU: What are the current moves to bring to trial those responsible for atrocities committed during the War of Liberation in 1971?

AZ: Even though Bangladesh enacted a code to try international crimes, no investigation or prosecution ever took place, thereby allowing impunity to develop as a norm and a culture. Since 1971, serious atrocities were committed without any accountability. However, human rights and justice campaigners never gave up. The campaign against war

crimes and alleged war criminals continued throughout. After the December 2008 election, the new government, pursuant to its pre-election commitment, decided to proceed. The Parliament unanimously resolved that war crimes committed in 1971 should be tried. This was the first time since 1973 that the Parliament adopted a resolution on the prosecution of international crimes.

It is hoped that with these trials, Bangladesh, at last, would begin to erode its engrained culture of impunity and investigation and prosecution of other atrocities would also be addressed.

AU: What is the status of these initiatives now?

AZ: The process has gained considerable momentum and has reached a point of no return. After Parliament's Resolution and amendment of the 1973 Act, it set aside an initial fund of 100 million Taka, roughly about 1.5 million US dollars. The government has selected a building, which, according to the Law Minister, is in the process of being renovated so that it can host the Tribunal's judges and prosecutors. Once all logistics are in place, the Tribunal would start functioning with the appointment of an investigating agency, chief prosecutor and other officials including judges.

AU: What can people/ civil society do to ensure that justice is served in the trials?

AZ: Human rights and justice activists and other members of civil society have more onerous responsibilities now than when they campaigned for the Tribunals, to monitor and engage every step of the way, to see that justice is indeed done. In fact, the international community should come forward to assist the process. Only through civil society vigilance can the

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NCICC FOLLOWS UP ON NEPAL'S COMMITMENT TO STOP IMPUNITY



AI DELEGATION MEETS WITH MINISTER OF FOREIGN AFFAIRS SUJATA KOIRALA. CREDIT: AI WEB

On July 31, the Nepalese National Coalition for the International Criminal Court (NCICC) submitted a memo to the Office of the Prime Minister on the implementation of the working list presented by the human rights defenders on June 22 to put an end to the prevailing culture of impunity. The memo advised Nepal to

2009 and in the government's policy and program made public on July 9, Prime Minister Madhav Kumar Nepal expressed his government's commitment to put an end to impunity through constitutional supremacy, rule of law and good governance.

On July 26, Minister of Foreign Affairs

accede to the Rome Statute without delay, establishing commissions on disappeared persons and truth and reconciliation, and take steps to endorse a criminal code that would greatly improve prosecution methods.

In his address to parliament on July 6,

Sujata Koirala expressed her commitment to ratify the Rome Statute in a meeting with a delegation of Amnesty International (AI) Nepal, led by its chairperson, Hem Kumar Khadka. AI's June-July 2009 Nepal campaign resulted in 13,801 appeal letters from within Nepal and overseas calling on the government to ratify the Rome Statute. Mr. Madhav Kumar Nepal, the second prime minister of the young republic and a leader of the Communist Party of Nepal-Unified Marxist-Leninist (CPN-UML), was elected the prime minister on May 23 following the resignation earlier in the month of the Maoist Prime Minister Pushpa Kamal Dahal.

A parliamentarian from CPN-UML advanced the proposal for the accession to the Rome Statute that resulted in a directional order to the government on July 25, 2006 stating that "Nepali people want the end the impunity on any kind of crime. Therefore, the Nepal government should accede to Rome Statute on International Criminal Court for gaining access to international process to get justice by ensuring that the criminals and perpetrators do not get impunity."

INTERVIEW: BANGLADESH TRIALS WOULD "BEGIN TO END CULTURE OF IMPUNITY"

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trials proceed smoothly. In this regard, the Tribunal has a role to play to act transparently and interact with all stakeholders with independence and integrity.

AU: How will the trials impact advancing international humanitarian law in the country and ratification of the Rome Statute?

AZ: These prosecutions of international crimes will be the first ever in Bangladesh.

Bangladesh has ratified a number of international human rights and humanitarian law instruments but other than the 1973 Act, these have not been internalized. These trials, in addition to dispensing justice, would also make aware and educate people about international norms, which will help to advance other laws and standards.

Moreover, by addressing the past through these trials,

Bangladesh would have no reason not to secure its future by joining the international mechanism of the ICC. Bangladesh was the first country in the sub-continent to sign the Rome Statute and actively participated in Rome Conference, but has yet to ratify. Here, activists and civil society actors should take the lead in urging ratification of the Statute that established the first permanent mechanism of international criminal justice.

Dr. Ahmed Ziauddin is founder of the Bangladesh-based human rights group Odhikar and director of the Center for Bangladesh Genocide Studies in Belgium. Odhikar is the focal point of the campaign for the ratification of the Rome Statute in Bangladesh.

SCHEDULE OF UPCOMING EVENTS

NOVEMBER

EIGHTH MEETING OF THE ASSEMBLY OF STATES PARTIES (ASP) TO THE ROME STATUTE

NOVEMBER 18-26, 2009, WORLD FORUM CONVENTION CENTRE, THE HAGUE. SOME OF OUR MEMBERS FROM THE ASIA-PACIFIC REGION WILL BE PARTICIPATING.

DECEMBER

NATIONAL WORKSHOP ON THE ICC AND LAO PDR

DECEMBER 3-4, 2009, VIENTIANNE, LAOS, ORGANIZED BY THE MINISTRY OF FOREIGN AFFAIRS, SUPPORTED BY CICC AND SIDA OF THE SWEDISH EMBASSY OF BANGKOK.

NATIONAL WORKSHOP ON THE ICC AND BANGLADESH

DECEMBER 6-7, 2009, DHAKA, BANGLADESH SUPPORTED BY THE CICC

PRESENTATION OF RESULTS OF BUILDING BRIDGES OF PEACE PROJECT

DECEMBER 16, 2009, MANILA, ORGANIZED BY THE PHILIPPINE COALITION FOR THE INTERNATIONAL CRIMINAL COURT



A Consultative Meeting on Afghanistan's Obligations Under International Criminal Court was organized on October 24, 2009 in Kabul by Afghanistan Watch in cooperation with other NGOs and the Afghanistan Independent Human Rights Commission with the support of the CICC.

(FROM LEFT) DR SIMA SAMAR, CHAIRPERSON OF THE AFGHANISTAN INDEPENDENT HUMAN RIGHTS COMMISSION, AMBASSADOR SWANTE KILANDER OF SWEDEN, AND NIAMATULLAH IBRAHIMI AND JALIL BENISH OF AFGHANISTAN WATCH.

LETTER FROM REGIONAL COORDINATOR

EVELYN BALAIS-SERRANO



EVELYN BALAIS-SERRANO MEETS WITH H.E. JOAO FREITAS DE CAMARA, TIMOR LESTE AMBASSADOR TO THAILAND DURING HER RECENT MISSION IN BANGKOK

This period has witnessed important developments in national and international justice initiatives in the Asian region. The ASEAN Inter-Governmental Human Rights Commission (AIHRC) has finally been launched, along with two other mechanisms, the Commission on Women and the Commission on Chil-

dren. After more than a decade of intensive lobbying by civil society groups, this landmark in the development of human rights in the region represents an achievement of all the stakeholders involved in the process: the ten member countries, their partners in the region and the international community, and the people who struggled to defend their rights amidst repression and all forms of human rights violations.

These developments signify a major advance in the global campaign to end impunity and render justice to victims –the spirit behind the establishment of the International Criminal Court. While support for ratification of the ICC treaty has been slow to develop in this part of the world, there have been consistent efforts to integrate the Rome Statute's provisions in national legislation. Indonesia and Timor Leste have adopted the ICC crimes into their domestic laws, while Cambodia and the Philippines are in the final stages of completing similar processes. Other initiatives are ongoing in the region: for example, Cambodia's Extraordinary Court is trying the Khmer Rouge leaders responsible for the geno-

cide committed in the 1970s; Malaysia is proceeding with the development of its war crimes tribunal and some civil society organizations in Burma are pushing to have domestic human rights violations investigated by the ICC through a UN Security Council referral.

As civil society groups, we work in partnership with governments and other players in developing new mechanisms and making them work effectively. We look forward to continuing to pursue our goal of obtaining justice and peace for our people.



WORLD DAY OF JUSTICE PUBLIC ACTION IN NEPAL

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