

ICC UPDATES

Editor's note: As you read this, the Conference of Plenipotentiaries for an International Criminal Court has already ended (it was held in Rome from 15 June to 17 July 1998) and the statute for establishing the Court already been signed.

An international criminal court will have jurisdiction over war crimes, crimes against humanity and genocide. It has the power to prosecute and punish perpetrators of these most serious violations of human rights and humanitarian law. It can also provide for reparations for victims and their survivors. Women's groups around the world recognise the potential significance of this court and are demanding that gender concerns relating to the statute and the court be addressed. We are printing the following articles to inform readers on the processes and some of the contentious issues that women's groups have raised.

URGENT CALL TO ACTION

Friday, July 10, 1998 (Rome)

TO: Affiliates, Pressure Groups & Civil Society Members

FROM: The Alliance of the Three Continents-NGOs from Latin America and the Caribbean, Africa, the Middle East and Asia, for a Just, Effective and Independent International Criminal Court

THIS ACTION ALERT CONCERNS MATTERS OF UTMOST IMPORTANCE AND URGENCY

The situation here at the UN Conference of Plenipotentiaries for an International Criminal Court (ICC) is becoming critical. There are only five days left before the conference concludes. Many issues remain to be resolved.

The delegates will seek final instructions from their governments, and will keep in close contact with their respective capitals during the final Conference days. **THIS IS THE LAST OPPORTUNITY TO MOBILISE SUPPORT AMONGST OUR GOVERNMENTS FOR PROGRESSIVE POSITIONS.** Hesitation will result in action taken too late. Compromises will be inevitable, and no further action will be possible. We, NGO representatives of the Alliance for the Three Continents present here in Rome, urge you to take immediate action. We need your help by:

(1) Contacting members of your government at home

(2) Mobilising members of the press

(3) Sending letters and local news clippings to your delegations in Rome

The Bureau Chair convened about 30 selected countries to draft a "Bureau discussion paper" to use as a basis for negotiation and compromise. This Bureau discussion paper focuses on Part 2 of the Statute, which contains some of the most controversial and important elements related to the Court's function, as follows: (1) definition of crimes, (2) jurisdiction of the Court, (3) trigger mechanisms, (4) powers of the prosecutor, (5) admissibility of cases before the Court, and (6) conditions of state consent.

You may access and review the Bureau discussion paper on the Coalition's web page at: <http://www.igc.apc.org/icc>. Following is our initial analysis of the Bureau discussion paper, and our recommended changes.

Definition of Crimes (Art. 5):

What the Bureau discussion paper provides: The definition of crimes in the Bureau discussion paper emphasises the element of intention, which makes it much more difficult to prove that a crime has been committed. For example, "enforced disappearance of persons" is defined as "the arrest, detention or abduction of persons by...with the intention of removing them from the protection of the law for a prolonged period of time."

Also of concern is that debate has been deferred on all sexual crimes and crimes against

women, including sexual violence, sexual slavery and enforced pregnancy.

What we recommend: We believe that it is better to refer to pre-existing and accepted definitions, such as those already found in international instruments against enforced disappearance and torture.

Trigger Mechanisms (Art. 6)

What the Bureau paper provides: The Court may be activated by cases referred by the Security Council, by a State party, or by the prosecutor's own initiative upon receipt of reliable information from any source.

What we recommend: We want an independent prosecutor, and no state consent to trigger prosecution. However, this option remains in question due to United States' opposition. We must mount an intense effort in support of this point.

Preconditions to the exercise of Jurisdiction (Art. 7)

What the Bureau paper provides: The Bureau's discussion paper does not contemplate universal jurisdiction.

What we recommend: We want universal jurisdiction. Short of that, we want the consent by one of either the custodial, territorial, victims', or suspects' state. However, it fails to consider instances where the four conditions for consent converge in one and the same state. For example, the internal conflicts in Liberia, Somalia and Sierra Leone are situations where: the structure of the state may have broken down, therefore rendering it impossible to obtain state consent; the state is not or may not be party to the statute; or the state does not or may not give ad hoc consent to the statute. Other cases, like the military dictatorships in Latin America, are also illustrative.

Role of the Security Council (Art. 10)

What the Bureau paper provides: There is virtually no support for allowing the Security Council to have veto power over prosecutions. Some States propose that the Security Council be able to request deferral of a case. According to the "discussion paper," 12-month deferrals may be renewed indefinitely.

What we recommend: We want the Security Council to refer cases to the Court, but have no power to veto a prosecution. We support a proposal that if the Security Council requires

a deferral, it will request that deferral from the Court. The Court will then consider the matter and decide upon a deferral of no more than 12 months, only open to a single renewal period, with guarantees of witnesses', victims' and evidence protection during that period.

Rulings Regarding Admissibility (Art. 16)

What the Bureau discussion paper provides: This United States proposal enjoys the support of only the United States and a few allies, but is faced with overwhelming opposition. This article proposes that when the prosecutor considers that she/he has adequate basis to open an investigation, the prosecutor must notify the State that may otherwise have jurisdiction over the case, whether that State is or is not a party to the Statute. Within 30 days of notification, the States involved may announce that they will proceed or have proceeded with the case within their national judicial systems, at which point the Court must submit to the jurisdiction of the said States. The prosecutor may override the jurisdiction of the State only in exceptional cases, in which it is clear that the State in question has no intention of conducting fair trials.

This article proposes exceptions to individual States' jurisdiction as the norm, and radically reduces powers of the Court.

What we recommend: We want an independent prosecutor who is not bound to defer to a state's decision to conduct a national investigation of prosecution.

Applicable Law (Art. 20)

What the Bureau discussion paper provides: This article is a largely positive one. In particular, we call attention to the final paragraph which proposes that the "application and interpretation" of applicable law by the Court must be "consistent with internationally recognised human rights, which include the prohibition on any adverse distinction founded on gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status, or on any other similar criteria."

However, some countries have begun to challenge the language.

What we recommend: We want applicable law to be consistent with existing language contained in recognised human rights instruments.