Brief report of interaction program on
Need of accession to the Rome Statute of ICC by Nepal

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FOHRID
HUMAN मानव अधिकार तथा प्रजातात्त्विक मन्त्र
RIGHTS AND DEMOCRATIC FORUM

428 Gyaneshwor Marga, Gyaneshwor, Kathmandu
Postal Address: P.O. Box 19186, Kathmandu, Nepal
Tel: +977-1-44 23 125, Fax: +977-1-44 38 812
E-mail: fohrid@wlink.com.np
Website: www.fohrid.org.np,
www.fohridnetwork.org

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Background

Four years ago, the then House of Representatives issued a commitment proposal directing the government to accede to the Rome Statute of ICC. However, Nepal has not acceded to the ICC till now. Negative attitude of some political parties on ICC and impunity due to lack of adequate awareness on the issue has barred the accession into the Rome Statute. The civil society is continuously creating pressure and lobbying for the last one decade to succeed this campaign. In this context, an interaction program entitled "Importance of accession to the Rome Statute of ICC by Nepal" was organized with the law enforcing agencies and government representatives and international community jointly by Human Rights and Democratic Forum (FOHRID) and Informal Sector Service Center (INSEC) in Kathmandu on 31 August 2010. As a continuation of this, an interaction program entitled "Need of accession to the Rome Statute of ICC by Nepal" was organized for a direct consultation between the political leaders/CA Members and international community on 7 October 2010. The program was supported by the Federal Republic of Germany.

Objectives of the program

To sensitize CA members and political party leaders through direct interaction with the international community on the need of accession to the Rome Statute of ICC by Nepal and exert pressure in this regard at the national level.

Program proceedings and participation

The program was held with the round table interaction method that commenced with a warm up presentation by Dr. Trilochan Upreti, Secretary, Office of Prime Minister and Council of Ministers entitled "International Criminal Court: Significance of its Accession for Nepal". Floor was opened for distinguished participants to share their ideas after presentation and speech from dignitaries. Among others, CA Members, political party leaders, Ambassadors of the Federal Republic of Germany and Britain, Head of Delegation of ICRC, representatives of OHCHR, civil society leaders, advocates expressed their views and suggestions on the occasion (See Annex 1 for brief account of views expressed by participants). The program was chaired by
Conclusion and suggestions

Adopted in 1998 to punish genocide, crimes against humanity, war crimes and the crime of aggression, the International Criminal Court is a great achievement of international jurisdiction. This court is attracted only when the domestic court gives up prosecution or fails to ensure justice in the serious violations. It does not replace the national court, rather it works as complementary to it. By virtue of the principle of complementarity, the jurisdiction of the ICC is intended to come into play only when a State is genuinely unable or unwilling to prosecute alleged criminals over which it has jurisdiction. To benefit from this principle, States need to have adequate legislation enabling them to prosecute such criminals.

Nepal can get multiple benefits from accession to the Rome Statute, for instance, 1. Nepal can address serious international and national crimes through this instrument; 2. The ICC would support Nepal to create framework to avoid these kinds of crimes in future; 3. The accession of Nepal would be a tangible commitment to oppose human rights violations and to combat impunity.

Leaders of all the political parties know about the benefits of acceding to the ICC, but they are not committed for its implementation. There are no constitutional or legal problems in Nepal for ratifying the Rome Statute. Therefore, Nepalese politicians should come to a consensus, and take a bold step for guaranteeing fair justice standards for all.

Though Nepal is a small country, its diplomatic relations with other countries was strong in the past. But, the image and prestige of the country has been tarnished due to political instability now. We can regain this prestige through accession to the Rome Statute of ICC. It is useless to expect foreign aid till the state protects and promotes human rights for the citizens. In the present context, commitment to human rights is the key element for foreign aid.

Nepal is still dependent to the age old legal system, which we need to reform. Such issues should not be taken as burden, rather they should be made national agenda. We can take advantage of the Rome Statute of ICC before its accession if we include some of its provisions in our national legal framework. This is essential for ensuring transitional justice also.

There are differences in the political parties regarding whether or not to ratify the Rome Statute. Some of them believe that, if ratified, it can be used against them. Therefore, there is problem in accession and it may take some more time to clear this situation. The issue of ICC is also linked with whether or not to adopt a retroactive provision against impunity in the new constitution. We can either directly ratify to the ICC or make legal provisions through new constitution.

UCPN-Maoist agrees that the ICC should be acceded by Nepal. But, they take the possibility of its misuse in the future as a big question. They are not sure that ratification shall resolve all problems. They suspect that accession might decrease the country's image rather than increasing it. They believe that seeking justice in the international court is acknowledging weak justice system of our country before others.

Nepali Congress is explicitly committed to democracy and human rights, and to protect human rights and oppose impunity. The CPN-UML is also in favour of accession to the Rome Statute. However, the commitment of political parties for ICC accession seems to be just their lip service. Such an indecisive situation has created problem. ICC cannot be ratified till the political parties believe that crime and
impunity are the steps towards victory for them. In such circumstances, even the ratification shall not bring any positive outcome.

The leaders of present Nepal are revolutionary. The government officers are also more knowledgeable than before. But, they fear from ratifying the ICC. This has compelled people to suspect that there might be an unholy alliance between the parties to the past conflict for not ratifying the ICC. We reach this conclusion because action speaks louder than words.

Rome Statute cannot be acceded by the individual will of the government, civil society or a particular political party. It should be acceded through consensus among all. The accession can contribute to promote human rights and democracy, control impunity and apply rule of law.

Civil society is fed up with the double standard role of the political leaders. They say one thing with the civil society and human rights community, whereas make decisions in a different way. No one should play such tricks with the people. People expect concrete commitments and visible actions from our CA Members and political leaders.
Annex 1: Views expressed by participants

Dr. Trilochan Upreti, Secretary, Office of Prime Minister and Council of Ministers

We all know how and where the issue of accession to the Rome Statute of ICC is stuck. Commitment proposal for accession to the Rome Statute was passed by the parliament on 2063 Shrawan. Speaking from the legal and moral ground it should have been implemented by this time. Various task forces formed in the past have recommended to accede to it without any hesitation. The world community is also expecting that Nepal shall accede to the ICC. It cannot be acceded by the individual will of the government, civil society or a particular political party. It should be acceded through consensus among all. The accession can contribute to promote human rights and democracy, control impunity and apply rule of law.

This court is attracted only when the domestic court gives up prosecution or fails to ensure justice in the serious violations. It does not replace the national court, rather it works as complementary to it. Many prisons established during the Rana regime are not improved. They have very poor infrastructure and facility. Child improvement centers should be established in all the 75 districts, but we have only one such facility in Bhaktapur. We need intensive reform and reconstruction of infrastructure. It shall cost almost two hundred billion Rupees. The state cannot bear such a huge expenditure. It will be a matter of shame for us if we ratify to the Rome Statute without re-construction of the infrastructure. We need large amount of money to ensure rule of law and stop impunity. We require assistance from international community for this.

ICC was established with the efforts of the international community. By now, 113 countries have acceded to it. Bangladesh is the latest South Asian country to accede to it. Accession to the court is important for Nepal as it opens door for reform the justice system. We must change our policy and law. We must monitor the possible misuse of authority and protection to the criminals from the people in power. The accession to the Rome Statute helps to ensure rule of law. Therefore, this is beneficial for us.

Dinesh Tripathi, Advocate

ICC is a landmark achievement in the international criminal law system. This court is attracted only in the serious crimes such as war crimes, crimes against humanity, genocide and crime of aggression. It does not replace the national court. It cannot be effective for the incidents before its enforcement. Its jurisdiction is for incidents before 2002 only. It is enforceable for a country only after the date of ratification.

It has no retroactive effect. According to Article 11(2), the jurisdiction of the International Criminal Court is applied only after the date of enforcement. But, the Security Council can make intervention at any time for collective security according to the Article 7 of the UN Charter, if it is found necessary. Such an intervention may be beyond control. Resource is not a big issue if there is political will power for ICC accession. We are still dependent to the legal system of 1869. We need reform on that. Such issues should not be taken as burden, rather they should be made national agenda.

Patrick Vial, Head of Delegation, ICRC

As promoter and custodian of IHL, The ICRC has always supported the creation of an international tribunal with jurisdiction over the serious violations of international humanitarian law. For the ICRC, an international tribunal has the capacity to act as a catalyst and as an incentive for national courts to fulfil their obligation to prosecute those who commit war crimes. The ICRC does not get involved in the activities of the ICC and
cannot testify before international tribunals. That is because the work of the ICC and that of the ICRC constitute alternative approaches to preventing IHL violations, approaches we see as complementary. While the ultimate objectives are similar, the tools are quite different. The ICC prosecutes and sanctions, whereas the ICRC promotes respect for IHL through confidential dialogue and persuasion with those who have the power to improve the situation.

While raising the prospect of Nepal adopting and implementing effective domestic measures for the prosecution of war crimes, I would like to highlight an important principle of the Rome Statute, which is the system of complementarity. By virtue of the principle of complementarity, the jurisdiction of the ICC is intended to come into play only when a State is genuinely unable or unwilling to prosecute alleged war criminals over which it has jurisdiction. To benefit from this principle, States need to have adequate legislation enabling them to prosecute such criminals.

The ICRC would gladly support Nepal in starting the procedures of ratification of the Rome Statute of the ICC, perhaps in a not too distant future, as I understand that some commitments have already been made in this regard by the government and the Legislature Parliament. We encourage Nepal to seize the opportunity, when adapting its national legislation, to include provisions that will allow for effective national implementation of IHL.

H.E. Verena Gräfin von Roedern, Ambassador of the Federal Republic of Germany to Nepal
Since the House of Representatives unanimously adopted a Commitment Proposal directing the government to accede to the Rome Statute, multiple endeavors have been made to realize this goal. The Federal Republic of Germany supports these efforts as we strongly support Nepal's accession to the Rome Statute of ICC. Adopted in 1998 to punish genocide, crimes against humanity, war crimes and the crime of aggression, this permanent tribunal is a great achievement of international jurisdiction. The Federal Republic of Germany has played an active role in drawing up the statute. Together with a group of "like-minded" countries, it has worked hard for an effective, functional independent and thus credible International Criminal Court. We are proud that until now 113 states have already joined the Rome Statute, but rather few in Asia. This encourages us in our efforts to expand this group of countries and we will not abate to call upon all states to join this circle.

An accession to the statute comes with multiple benefits for Nepal:

Nepal can address serious international and national crimes through this instrument. The ICC would support Nepal to create the framework to avoid these kinds of crimes in future. The accession of Nepal would be a tangible commitment to oppose human rights violations and to combat impunity. Therefore, it would be considered as a strong signal, on the one hand to the international community and on the other to the Nepalese people.

As there are no constitutional or legal problems in Nepal for ratifying the Rome Statute, I encourage Nepalese politicians to come to a consensus and take this important step in guaranteeing fair justice standards for all in their country. The Federal Republic of Germany, and its European partners, who already offered technical support for this matter, as well as the international community, donor organizations, human rights and civil society organizations support Nepal on this way to promote peace, rule of law and human rights.

H.E. John Tucknott, British Ambassador to Nepal
There are many challenges in the post conflict situation of Nepal. The politics has reached a complex situation. Britain gives great importance to the ICC ratification by countries around the world. United Kingdom adopted ICC Act in 2001, and became party to the ICC in October 2001. By now, 113 states have become party to this
the ICC. The Rome Statute does not have retroactive effect. It becomes effective only after the date of its ratification and enforcement. We are concerned on the widespread violation of human rights during the 10 years long conflict of the past. The accession to this instrument shall avoid possibility of violations of human rights in the future.

Hon. Pratibha Rana, CA Member, Rastriya Prajatantra Party
There is stalemate everywhere in the country due to the current political imbroglio. The only achievement of the parliament is it has passed a bill relating to domestic violence. The parliament is deadlocked for a long time. Leaders of all the political parties know about the benefits of acceding to the ICC, but they are not committed for its implementation. We are ahead in being state party to many international conventions and agreements, but there are weaknesses in their enforcement. The ten years long armed conflict has ended now, but violence has not stopped. It is being surfaced in new forms. Impunity has increased alarmingly. The law of the land is not followed in a proper way. We shall forward this campaign from our side. For this, I express commitment on behalf of my party to go hand in hand with you.

Hon. Sita Paudel, CA Member, CPN-UML
Why is Nepal not a member state to the Rome Statute of ICC despite directive from the parliament and recommendations from various task forces? I want to hear answer to this question from the senior party leaders and experts present here.

Madhavji Shrestha, Diplomat and columnist
Though Nepal is a small country, its diplomatic relations with other countries was strong in the past. But the image and prestige of the country has degraded due to political instability now. We can regain this prestige through accession to the Rome Statute of ICC. Nepal was the first nation to abolish death penalty in Asia. The European countries were very happy when this news was disclosed. We all have commitment for accession to the ICC. However, the accession has not happened till now. The situation of governance and economic condition is fragile in Nepal. We need a lot of resources to implement Rome Statute after its accession. We can expect additional foreign aid after accession. Till now, Afghanistan and Bangladesh have ratified ICC from South Asia. Lets stand third in this row through accession.

Raju Chapagain, OHCHR
OHCHR takes ICC ratification as an important step towards promotion of human rights. We can take advantage of the Rome Statute of ICC before its accession also, if we link some of its provisions in our national legal framework. This is essential for ensuring transitional justice also. We must take the present situation as an opportunity for Constitutional and criminal law reform.

Charan Prasai, senior human rights defender
Voice demanding ICC accession is being raised in Nepal for a long time, but it has not yielded any positive result till now. The government should accede to the ICC as soon as possible for protection of human rights and ending impunity. We must give up the idea that we can get more foreign aid after ICC accession. We must learn to be self reliant. The government should not refrain from accession in the name of lack of adequate resources.

Shobhakar Budathoki, Human rights activist
It is a wrong concept that ICC accession should happen after reconstruction of physical infrastructure and attainment of economic prosperity. Civil society is conscious about its role and duty. The intellectual circle should sensitize the political parties and leaders about the benefits of ICC accession. Nepal should accede to ICC immediately. We can think about how to handle it in the future. It is useless to expect foreign aid till the state protects and promotes human rights for the citizens. In the present context, commitment to human rights is the key element for foreign aid.

Bishnu Pukar Shrestha, Chairperson, CAHURAST
It is a positive symptom for us that there is political consensus on the need to accede to the ICC. If the developed countries have helped other post conflict countries for their reconstruction, we can expect similar cooperation for Nepal also. It is said that politics guides everything in a country. Political stability is necessary for overall development of a nation.
Tirtha Basaula, Advocate

Impunity has increased due to favoring "our people" rather than "good people". This trend is dominant in all sectors including in political parties. The political parties must give up their narrow concepts to end impunity. Ensuring law and justice are the traditional and basic duty of a state. Now, the nation is heading towards federalism. We have Newar, Magar, Tamang, Madhesi, Chhetri, Bahun, Dalit in our country, but there is no Nepali. People suspect that this situation will be deteriorated after the country becomes a truly federal state. It is wrong to postpone joining to the ICC till formulating a new law. The state can accede to and implement Rome Statute if it has strong will power.

Dr. Keshav Jha, former Ambassador

Nepal had a prestige of one level in the past. We were independent and self reliant in the eyes of foreigners. Now, we do not have satisfactory prestige at the international level. Our presence is very week among the SAARC countries also. The ICC accession shall help to recover our lost prestige. Commitment of the state to human rights is very important. Commitment of political parties for ICC accession seems to be just their lip service. They are not honestly committed to this. Such an indecisive situation has created problem.

Hon. Kali Bahadur Malla, CA Member, Unified CPN-Maoist

Is it Rome Statute or disease diagnosis we are discussing here? We must know about the disease to diagnose it successfully. We have been talking a lot about human rights and impunity. But, we do not try to identify cause for occurrence of serious crimes. We cannot reach to the cause and diagnosis by one sided talk. It is the right of tiger to eat a goat. It is the right of the goat to protect its life. We must pay attention to protect rights of both sides while advocating for rights. When a man physically exploits a woman, does the punishment to the culprit re-establish the dignity of the woman? We can agree that the ICC should be acceded by Nepal. But the possibility of its misuse in the future comes before us as a big question. For instance, the great scientist Einstein invented formula of Atom Bomb for peace in the world, but USA utilized it for war. We must be conscious about such opportunists and possibility of misuse.

Hon. Lalbabu Pandit, CA Member, CPN-UML

Though the then reinstated House of Representatives passed unanimously the proposal to accede to the Rome Statute, its implementation is still at large due to lack of political consensus. It cannot be ratified till the political parties believe that impunity is the step towards victory for them. In such circumstances, the ratification shall not bring any positive outcome. The mentality that everything is fair in love and war is responsible for increased impunity. We cannot ratify to the Rome Statute of ICC till the political parties believe that they can go upward through the way of impunity.

Prof. Kapil Shrestha, Tribhuvan University

After the success of first Jana Andolan and formation of new government, we had gone to meet the then Prime Minister Krishna Prasad Bhattarai with a delegation of human rights community led by senior human rights defender Nutan Thapaliya. Only 4 human rights conventions were ratified during 30 years of Panchayat regime. We pleaded that the remaining instruments must be ratified by the new democratic government. After that effort, 7 conventions were ratified at the same time. The government officials of that time were not much aware of human rights, therefore, there was no problem in ratifying those conventions. The Convention to abolish death penalty, which was not ratified by any other Asian nation was ratified by Nepal at that time. The leaders of present Nepal are revolutionary. The government officers are also more knowledgeable. But, why they still fear from ratifying the ICC? This has compelled us to suspect that there might be an unholy alliance between the parties to conflict of the past not to ratify the ICC. We reach this conclusion because action speaks louder than words.
Hon. Ekraj Bhandari, CA Member, Unified CPN-Maoist

Currently, we are in the constitution making process. We have reached a new place after the coalition between the republicans and monarchists after the 12 points agreement. Now, there are three major responsibilities before us, viz., formulation of new constitution, leading the peace process to a logical end and state restructuring. The 12 points agreement is important for us now and our attention is towards it. There is the issue of army reintegration. There cannot be two army in a country for a long time. Such a situation can push us into more problems. The parliament had given directive to the Interim Government to ratify to the Rome Statute in 2063 Shrawan (July 2006). It was to be accomplished in Kartik (within next 3 months), but its implementation was disrupted. Till now, Nepal has failed to accede to the Rome Statute. Rome Statute must be acceded and it should be accomplished, but it is not sure that immediate ratification shall resolve all the problems. This debate on accession is contextual, but the accession shall decrease the country's image rather than increasing it. How can we improve the image of our country by seeking justice in the international court acknowledging that we failed and by disclosing weak justice system of our country before others? We must reform our national law. Lets strengthen national justice system, we do not need to ratify the Rome Statute.

Hon. Ramesh Lekhak, CA Member, Nepali Congress

As Nepali Congress believes in democracy and human rights, our party is committed to protect human rights and oppose impunity. It is true that the government is not working in a proactive way to ratify the Rome Statute. All of us have weaknesses in this regard, we failed to create pressure from our respective levels. The civil society has also failed to exert adequate pressure. There are differences in the political parties regarding whether or not to ratify the Rome Statute. Some of them believe that it can be used against them, if ratified. Therefore, there is problem in accession and it may take some more time. The issue of ICC is linked with whether or not to adopt a retroactive provision against impunity in the new constitution. We can either directly ratify to the ICC or make legal provisions through new constitution. There is no necessity to doubt that ICC ratification helps to end impunity.

Nutan Thapaliya, Chairperson, FOHRID – Chair of the program

We shall continue this campaign against impunity on behalf of FOHRID. This initiative of the civil society is without any hidden interest. ICC is not ratified in Nepal due to lack of political will power. The image of not only political parties but of all the civilians has decreased due to political instability. After accession to the Rome Statute by Nepal, any Nepalese citizen can go to the International Criminal Court against violation of economic, social and cultural rights if the national court fails to ensure justice. Our leaders must have statesmanship to strengthen justice system in Nepal. We are fed up with the double role of the leaders. They say one thing with the civil society and human rights community, whereas make decisions in a different way. No one should play such tricks with the people. We want concrete commitments and visible actions from our CA Members and political leaders.

Further information please contacts:
Raj Kumar Siwakoti
Secretary General
FOHRID, Human Rights and Democratic Forum
GPO Box: 19186,
Radhe Marga (Opposite Sai Shiksha Niketan)
Dillibazar, Kathmandu
Tel: + 977 1 44 23 125,
Cell: +977 9841842008
Fax: + 977 1 44 38 812
Email: fohrid@wlink.com.np
Website: www.fohrid.org.np