

Initiative for accession of Rome Statute to combat impunity in Nepal
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Final Project Execution Report

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Initiative for accession of Rome Statute to combat impunity in Nepal

1. Introduction / Project Summary

1. 1. Key information about the project

Project title	Initiative for accession of Rome Statute to combat impunity in Nepal
Implementing agency	Human Rights and Democratic Forum (FOHRID) Citizen's Taskforce to Combat Impunity (CTCI) & National Coalition for the ICC, Secretariat INSEC
Execution location	Kathmandu
Project duration	June 2010 to November 2010 / (Till February 2011 according to an Agreement of Dated 03 December 2010 between Embassy of the Federal Republic of Germany, Kathmandu and FOHRID)

1.2 Objectives

To initiate public advocacy and sensitize target groups for accession / ratification of the Rome Statute of the ICC in Nepal.

To attain above-mentioned objectives, this action shall build public awareness on ICC and promote accession campaign of the Rome Statute in Nepal. Target groups, civil society actors, journalists and general people will be sensitized on the existence of Rome Statute system. It will make the mandate, jurisdiction and activities of Rome Statute system and ICC effective by expanding the sphere of knowledge and capacity building of the stakeholders. This shall exert pressure to the Nepal governments to accede the Rome Statute through advocacy and lobbying at national level.

1.3 Target groups and final beneficiaries

Final / ultimate beneficiaries shall be all the Nepalese people. Based on the nature of activities, three levels of target groups have been identified.

Political level: Members of CA / Parliament, political parties including their sister organizations.

International community: International community including diplomatic mission, OHCHR Nepal, ICJ, EU, SAARC and Amnesty international Nepal

Government level: Law enforcing agencies, Nepal Army, Nepal police, Armed Police Force and their human rights cells, Foreign Ministry, Ministry of Home Affairs, Ministry of Defense, Ministry of Law, Justice and Parliamentary Affairs, Parliament Secretariat, Speaker, Law Reform Commission, judiciary, Office of the Attorney General, policy makers, National Human Rights Commission.

Non-government level: Nepal Bar Association, lawyers, journalists, organizations of women, dalits and ethnic communities, trade unions, human rights organizations, student leaders and occupational groups.

1.4. Activities / and quantify output

Particulars activity	Responsible organization
1. Interaction with target group - 3 events 2. Coordination meeting between civil society actors - 4 meetings 3. Translation (Event /activity proceeding report) 4. Production and Dissemination of Campaign Flyer on ICC to end Impunity	Human Rights and Democratic Forum (FOHRID)
1. Meeting with Key political leaders and international community 2. Mobilization of media Publication of appeals 3. Public Hearing 1. Talk Program on Kantipur Television 2. Documentary on the ICC	National Coalition for the ICC, Secretariat INSEC

2. Execution status of project activities

2.1 Activity Execution Status of FOHRID

Brief account of the activities executed by Human Rights and Democratic Forum (FOHRID) under this project is as follows:

2.1.1 Advocacy

Interaction with target group

Total 3 events interaction sessions were held at national level with the objective "To initiate public advocacy and sensitize target groups and create pressure for accession / ratification of the Rome Statute of the ICC in Nepal." The interaction sessions were held with the participation of the representatives CA/Members of Legislature-Parliament, political leaders, Ministry of Foreign Affairs, Office of Prime Minister, Ministry of Home, Ministry of Defense, law enforcing agency including judiciary, Attorney General, security agencies, Law Reform Commission, diplomatic missions/embassies, EU, SAARC Secretariat, donor agencies, international organizations including ICJ, OHCHR Nepal, human rights and civil society and journalists. Brief reports of the events are given below:

The First event interaction entitled "Importance of accession to the Rome Statute of ICC by Nepal" was held on 31 August 2010 at Hotel Malla, Kathmandu. The interaction was held with the round table method that commenced with a warm up presentation by Advocate Gobinda Sharma 'Bandi' on the issue of the day. Floor was opened for participants to share their ideas after presentation and speech from dignitaries. Among others, Commissioner of NHRC, Secretary of Office of the Prime Minister and Council of Ministers, Attorney General of Nepal, Ambassadors of the European Union and Bangladesh, representatives of German Embassy, OHCHR, SAARC Secretariat, Amnesty International, ICJ, civil society leaders, Advocates expressed their views and suggestions on the occasion (**See event report in Annex 1 for brief account of views expressed by participants and Conclusion of program**). There was significant presence of representatives from the law enforcing agencies including judiciary, Attorney General, security agencies, law reform commission, international community, human rights and civil society and journalists. The programme was chaired by Nutan Thapaliya, Chairperson of FOHRID and Prof. Kapil Shrestha conducted the program as Moderator. The program was conducted mainly in English language and the speech in Nepali language was summarized by the Moderator in English language. The number of participants was around 65.

Second Event interaction with target group

Second event interaction entitled "Need of accession to the Rome Statute of ICC by Nepal" was held on 7 October 2010 at Hotel Himalaya, Lalitpur. 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 Event Report in Annex 2 for brief account of views expressed by participants and Conclusion of program**). The program was chaired by Nutan Thapaliya, Chairperson of FOHRID and Advocate Birendra Thapaliya conducted the program as Moderator. The number of participants was around 50.

Similarly, the **third event interaction** entitled "Article 98(2) of Rome Statute and jurisdiction of ICC" was held on 29 November 2010 at Hotel Himalaya, Lalitpur. In the beginning of this program conducted as round table discussion, Advocate Dinesh Tripathi threw light on the subject matter presenting his discussion paper entitled "International Criminal Court, Article 98 (2) and Bilateral Immunity Agreement". After that, the statement of Mr. William R. Pace, Convener of the Coalition for the International Court (CICC) was read out by Advocate Kamal Pokhrel. Similarly, the unofficial Nepali translation of the "Agreement Between His Majesty's Government of Nepal and the Government of United States of America Regarding the Surrender of Persons to The International Criminal Court" was read by Advocate Tirtha Basaula Hon.

Kedarnath Upadhyaya, Chairman of the National Human Rights Commission (NHRC) addressed the program as the Chief Guest. **(See Event Report in Annex 3 for the brief notes of the address by guest speakers and participants)** Sushil Pyakurel, Former Member, NHRC, Ms. Andrea Arslan, Consul of the Embassy of the Federal Republic of Germany in Kathmandu, human rights defenders Subodh Pyakurel, Charan Prasai also addressed the program. Nutan Thapaliya, Convener of the Citizen's Task Force to Combat Impunity chaired the program conducted by Advocate Raj Kumar Siwakoti, Secretary General of FOHRID as Master of ceremony. Total 95 people representing rights activists, lawyers, journalists, civil society participated the program and expressed their views on the jurisdiction of the Rome Statute and BIAs. A feature of the event was prepared and pasted in the website by Nepalnews.com. It can be viewed at <www.nepalnews.com/main/index.php/photo-gallery/gallery/1726.html> and <www.youtube.com/?v=7SI-fNWIsV0>

2.1.2 Coordination Meeting

Total 4 event coordination meetings were scheduled to be held during the whole project period. Out of these, the first meeting was held in the beginning with the stakeholders to prepare action plan for intervention on the issue. The second event coordination meeting was held on 30 June 2010. This meeting pointed out the need to organize a public event demanding ICC ratification, interaction and submission of memoranda. The third event was held on 4 October 2010. Agenda for the meeting was why delay in the ICC accession by Nepal. It determined that the delay was caused by the unwillingness to support ICC ratification within UCPN-Maoist, Nepali Congress and Nepal Army as they bear the false belief that the ratification of the Rome Statute may address the past violations. Similarly, fourth event coordination meeting was held on 10 November 2010 at FOHRID office, Dillibazar. Main agenda for discussion in the meeting was "Rome Statute article 98(2) and jurisdiction of ICC and addressing transactional justice mark exercise on TRC and disappearance commission." Minute of these **coordination meetings is presented in the Annex 4** Brief Minute of Coordination meeting under intensive campaign for the ratification of the Rome Statute in Nepal.

2.1.3 Translation for international community

The resource materials relating to the Rome Statute, event reports have been translated from Nepali to English language under this activity. These documents are attached as Annex 1, 2 and 3 of this report. The discussion paper entitled "International Criminal Court, Article 98(2) and Bilateral Immunity Agreement" prepared for presentation in the interaction with target groups is translated into English.

2.1.4 Production and dissemination of Campaign Flyer on ICC to end Impunity

A campaign flyer entitled "International Criminal Court: An introduction" (may be change) has been prepared under this activity. The flyer has incorporated information on the topics such as What is democracy and rule of law? What is law, humanitarian law and human rights law? What is criminal offence or crime? What is international criminal justice? What is international criminal justice system like? including – Concept, Evolution, History e.g., Nuremberg, Tokyo Trial, International Military tribunal, Examples- ICC What is the Rome Statute of International Criminal Court?, What types of cases does ICC handle? and what cases it does not handle?, What is happening according to Rome Statute now?, Why should Nepal accede to the Rome Statute?, What can the citizens do? How to start? With the kind permission from the Nuremberg Human Right Centre, Federal Foreign Office, Goethe Institute, the flyer has incorporated materials of its publication entitled "From Nuremberg to The Hague" with two photographs. Besides, some photos from Nepalese context such as Madi incident, Doramba incident, incidents of extrajudicial killings in Nepal, ICC campaign in Nepal, activities relating to the project etc. have been included in the flyer. The flyer has been published 2000 copies and being distributed among law enforcement agencies, political parties, Members of Constituent Assembly, legislative organs, executive agencies, civil society actors and journalists.

2.2 Activity Execution Status of National Coalition for the ICC, Secretariat INSEC

Brief outline of the activities executed by the National Coalition for the ICC (NCICC), Secretariat INSEC are as follows:

Activities

2.2.1 Meeting with Key political leaders and international community

NCICC, secretariat INSEC, on the occasion of International Justice Day celebrated 12th Anniversary of the adoption of Rome Statute, founding treaty of International Criminal Court (ICC). The celebration comprised of the discussion as to the progresses and the significant steps taken by Nepalese Government for the accession of Rome Statute to incorporate Nepal in the New Global System to End Impunity. The discussion was held at Everest Hotel from 5:30 onwards followed by a cocktail dinner. The program was made successful by the presence of various dignitaries comprising of Governmental authorities, Political leaders, Diplomatic Missions, representatives from various INGOs and NGOs, lawyers and so forth. The number of representatives was around 75. The main objective behind the celebration was to provide a glimpse as to the progresses made towards accession of Rome Statute by Nepalese Government and the role played by NCICC in such progresses. Moreover, the aim of the program was to provoke a sense of urgency amongst all with regards to accession in order to end the culture of impunity in Nepal.



The program was facilitated by Bijay Raj Gautam, Executive Director, INSEC by providing a brief welcome note followed by a short power point presentation regarding the significant steps taken towards the accession of Rome Statute. The major highlights were provided on the initiations taken by NCICC since 2001 in campaigning of Rome Statute for accession.

The concluding remarks in the program were provided by Subodh Pyakurel, Chairperson, INSEC. He briefly again highlighted the various steps taken towards the Statute ratification. He as well stressed on the importance of Rome Statute ratification, which comprised of the urgent needs of ending impunity culture in Nepal and modification of domestic judicial system to make it compatible with the international standards. As the final words, he thanked the entire representatives for being the part of the program and making it a success.

2.2. 2 Mobilization of media

Publication of appeals

An appeal raising concern over non implementation of the unanimous parliamentary motion adopted by the then House of Representatives on 25 July 2006 directing the Government to accede to the Statute was published in national dailies on 25 July 2010. The appeal also demanded immediately acceding to the Rome Statute for ending rampant impunity in the country and to protect human rights of the people from possible armed conflict in the future. The appeal was published in 4 Nepali and 2 English national dailies which are Nagarik, Annapurna post, Samacharpatra, Kathmandu Post, Republica, and The Himalayan Times.

The appeal was published in INFORMAL, INSEC's quarterly publication issued in July 2010. It can be observed at vol. 30, N0.2 April-June 2010.

2.2.3. Public Hearing

1. Talk Program on Kantipur Television

A talk program on the ICC was broadcasted in Kantipur Television on 31 August 2010 with the objectives to share the progress on the accession to the Rome Statute. INSEC Chairperson, Subodh Raj Pyakurel, CPN-UML Constituent Assembly Member Pradeep Gnyawali and UCPN-Maoist Constituent Assembly Member Khimlal Devkota were the speakers in the discussion

program. The program was focused around the delays on the implementation of the unanimous resolution passed by the reinstated house of representatives in 2006.

2. Documentary on the ICC

INSEC jointly with the Nepal Forum for Environmental Journalists produced a 21 minutes documentary on the ICC under a them "Accede Rome Statute: End Impunity". The documentary was produced to campaign for the accession of the Rome Statute. The documentary gives the background of human rights violations committed during the decade long conflict by the state and the Maoists. It also provides some information on the nature of crimes including war crimes committed in the history of the world.

It was developed with the view to give message that the perpetrators of gross human rights violations can't escape. There is an international mechanism to bring perpetrators into the book of justice.

The documentary incorporates the message from Judges, lawyers, human rights defenders and victim groups. It specifically covers the version of the leading parties that have already expressed commitment for the accession of the treaty.

Original version of the documentary is in Nepali. Targeting international community the documentary has sub-titles in English language. The documentary was aired on 28 December in Aankhijhyal, a weekly program of NEFEJ through Nepal Television at 5.05 and re-telecasted at 11 pm on the same day. The documentary was also aired through Avenues Television (28 December 6.30 pm and 29 December 3 pm), Beso Channel, Chitwan (30 December 7 pm and 31 December 7am). It was also aired through M TV, Hetauda; Lumbini Television, Butwal; Worldview Network PVT, LTD, Nawalparasi; Rara Television, Surkhet; Makalu Television Itahari; Himalayan Television, Kathmandu and Nepal Television London.

3. Assignment of outcome/results

- a. All the 3 events of interaction session were held with the target groups determined by this project. These interactions held with the participation of the international community and national stakeholders on the need of Nepal's accession to the ICC created synergy to the efforts of Nepali civil society and human rights community.
- b. The activities have been accomplished as planned in the project proposal. It is a positive output that the program events were accomplished within the forecasted timeframe despite unfavourable political situation.
- c. Bringing the international community, government representatives and other stakeholders at a forum to discuss on the single issue of ICC is a significant achievement of this project. Engaging the target group on the issue of ICC has created synergy in the ongoing efforts to accede to the ICC by Nepal. This effort can facilitate future intervention for domestication and implementation of ICC after its ratification by Nepal.
- d. This project organized discussion on the Bilateral Immunity Agreement (BIA) signed by Nepal with the government of the USA. This issue is linked to the universal effectiveness and jurisdiction of ICC. The efforts of this project has pointed the need to continuously raise the issue by exploring significance of such effort. The project has drawn the attention of the stakeholders towards the hurdles that the BIA can create in the implementation of ICC after its accession by Nepal. It has also encouraged the stakeholders to find solution to the problems created by BIA.
- e. Production and dissemination of Campaign Flyer on ICC to end impunity under this project shall sensitize the key stakeholders on the issue of ICC. This flyer shall assist to clarify the misunderstanding and misinterpretation of ICC providing relevant information in the simple Nepali language. It shall help to build positive perspective of the stakeholders about need of accession to ICC.
- f. The meeting held between the key political leaders and international community helped to explore the current status of Nepal in the campaign to accede to the ICC. The activities including mobilization of media, Publication of appeals, Public Hearing, Talk Program on Kantipur Television, Documentary on the ICC helped to disseminate information about ICC at the public level.

4. Risk

Despite the campaign of the civil society and directive verdict of the then reinstated ICC House of Representatives on July 2006 for accession to the ICC Nepal has not acceded to the ICC till now. Major reason behind this is the government, political parties including UCPN-Maoist and Nepali Congress have not been accountable to accede to the Rome Statute. The political parties have the wrong belief that they will have to bear the accountability for the violations of the past conflict in the ICC if Nepal accedes to the Rome Statute. This risk has played role of a deterrent to obstruct the accession by Nepal.

Annex 1:

Brief Event report of Interaction program on Importance of accession to the Rome Statute of ICC by Nepal

Background

In July 2006, the then House of Representatives issued a directive to the government to accede to the Rome Statute of ICC. Since then, there has been little progress toward Nepali accession to the Statute. On 11 February 2009 the then Minister of Foreign Affairs tabled ICC accession motion to the Cabinet. However, Nepal has not acceded to the ICC till now. The poor awareness level of the people, government authority and political parties on ICC and impunity are the hurdles hindering way towards accession into the Rome Statute. We have to develop political will power and continue pressure from the civil society to succeed this campaign. Adequate public opinion needs to be formed against impunity and in favour of ICC. In this context, an interaction program entitled "**Importance of accession to the Rome Statute of ICC by Nepal**" was organized jointly by FOHRID and INSEC in Kathmandu at Hotel Malla, on 31 August 2010. The program was supported by the Federal Republic of Germany.



Objectives of the program

To sensitize stakeholders through direct interaction with the international community on the importance of accession to the Rome Statute of ICC by Nepal and create pressure in this regard at the national level.

Program proceedings and participation

The interaction was held with the round table method that commenced with a warm up presentation by Advocate Gobinda Sharma 'Bandi' on the issue of the day. Floor was opened for participants to share their ideas after presentation and speech from dignitaries. Among others, Commissioner of NHRC, Secretary of Office of the Prime Minister and Council of Ministers, Attorney General of Nepal, Ambassadors of the European Union and Bangladesh, representatives of German Embassy, OHCHR, SAARC Secretariat, Amnesty International, ICJ, civil society leaders, Advocates expressed their views and suggestions on the occasion (**See Bellow for Views expressed by dignitaries and participants**). There was significant presence of representatives from the law enforcing agencies including judiciary, Attorney General, security agencies, law reform commission, international community, human rights and civil society and journalists. The programme was chaired by Nutan Thapaliya, Chairperson of FOHRID and Prof. Kapil Shrestha conducted the program as Moderator. The program was conducted mainly in English language and the speech in Nepali language was summarized by the Moderator in English language. The number of participants was around 65.

Conclusion and suggestions

- Situation of impunity in Nepal:** During the period of armed conflict in Nepal (1996-2006), more than 13,000 people were killed and many were disappeared. Nepal Army, Nepal Police and the Maoists were equally responsible for atrocities with the people in the name of political ideology or assisting the other party in conflict. Now, the war is over and the nation is in the process to institutionalize peace and democracy. However, the state is not being accountable to answer to the families of the victims who are in big trouble awaiting justice. Not a single perpetrator of the conflict period is prosecuted in a proper way. Many identified and hidden forces are working to fulfill their individual interests at the cost of justice to the people. To control impunity, Nepal should immediately ratify ICC. This plays a very important role to strengthen international as well as national justice system.
- Nepal's commitments towards human rights:** Nepal is state party to a significant number of international instruments pertaining to human rights. However, we have not acceded to the Rome Statute of ICC. This makes us feel humiliated in case of human rights commitments from our country. The image of Nepal was very positive in the international community before the days of conflict, but now it is deteriorating. For a long time, efforts have been made to ensure ratification of the ICC by Nepal. There is no disagreement about the need to accede to the ICC. Various task forces formed by the government in the past have pointed out this need. The civil society is continuously exerting pressure to the government. The government and the political parties have expressed their commitments, but nothing significant has happened till now.
- Benefits of accession to ICC:** Accession to the Rome Statute of ICC has a multiplier benefit for Nepal. We can address international and national serious crimes through this instrument. ICC may help us to recover from these kinds of problems. We need to establish principles then go for action creating tools. Accession of Nepal will be a commitment to oppose human rights violations and to combat impunity. Being state party to the ICC helps us to avert possibilities of future violence and violation of human rights. To manage transitional justice process also, it is important for Nepal to accede to the ICC. No doubt, there are good characteristics of the court that can ensure justice for the victims of past conflict. This court does not replace or intervene the jurisdiction of the national courts; rather it is a complementary mechanism. ICC becomes active on the request of concerned individuals or institutions, only if national judicial system is unwilling or unsuccessful to deal with a case related to serious human rights violation.
- Obstacles must be removed:** There are no constitutional or legal problems in Nepal for ratifying ICC. However, there is lack of consensus among political parties about acceding to the Rome Statute of ICC. UCPN-Maoist Chairman Pushpa Kamal Dahal has expressed commitment to cooperate, but his party has not taken any concrete step to this effect. There are 3 major causes hindering ratification of ICC, viz., unfavourable attitude of party leadership, backward syndrome and fear of retrospective effect. The political parties are still not convinced about the benefits of ratifying the Rome Statute of ICC. We must work to narrow down the misunderstanding about this international mechanism. It will have no value of crying to ratify ICC by Nepal



until Maoists commit for "not to go for violence in the future." Besides, Nepal has signed a bilateral immunity agreement with the government of USA. According to this agreement, none of the signatory parties can transfer the convicted person to a third country to present to the ICC. It is a big obstacle for Nepal to implement Rome Statute.

- **Further measures:** We need a new criminal justice system for new Nepal, and the accession to ICC can help us in this regard. We require additional resources, training and infrastructure for domestication of Rome Statute. With the help of international community and donor agencies, the national human rights and civil society organizations can work for law reform and knowledge transfer required before and after the accession. The knowledge sharing can help to eliminate doubt of the political leaders about retroactive effect which is hindering the accession process. But, this is not the only cause behind delay in accession. We should invite political leaders to hear the voice of civil society and human rights community about how to restore the image of the country through explicit commitment against impunity.

Views expressed by dignitaries and participants

Govinda Sharma 'Bandi', Advocate – warm up presentation entitled "Accession to the Statute of the International Criminal Court" on behalf of organizers

Many cases of serious violation of human rights have failed to yield fruitful results due to lack of witness protection in Nepal. We cannot say how long we should cry for accession of Nepal to the ICC? The Rome Statute covers the genocide, crimes against humanity, war crimes and crime of aggression. The recent Kampala review conference has defined crime of aggression but it still needs to be adopted by the state parties. The ICC does not weaken domestic justice mechanism. We must ensure active participation of victims for administration of effective justice. The accession to the Rome Statute shall help us as we can check future atrocities if acceded earlier. The cases of disappearance would not soar up if had we criminalized it in time. By this time, 133 countries around the world have become state party to the Rome Statute, out of which 8 are from Asia and Bangladesh has recently acceded to it. In February 2009, the then Foreign Minister Upendra Yadav proposed in the cabinet to become state party to the ICC, but it was not passed. There is disagreement among political parties about acceding to the Rome Statute. UCPN-Maoist Chairman Pushpa Kamal Dahal has committed to cooperate in this direction, but he has not taken any concrete initiatives. We need a new criminal justice system for new Nepal, and the accession to ICC can help us in this regard.

H.E. Dr. Alexander Spachis, Ambassador, Delegation of the European Union in Nepal

All EU member states have ratified all human rights instruments including Rome Statute. The principles of statute are fully in line with the principles and objectives of the Union. It has legal value. EU position is advancing urgent planning to ratify Rome Statute. EU is concerned with the delay in ratifying the Rome Statute by Nepal. Nepal's ratification to the ICC could express its ongoing support for justice and human rights. EU Delegation has urged to ratify not only in words but with concrete support of the EU in his regard. EU has helped with technical support to Bangladesh for its recent ratification. We support the campaigns on human rights through EIDHR. EU is in favour of Universal ratification of the ICC. EU is supporting the issue as a part of strengthening international framework for the protection of human rights, justice and the rule of law. We shall help to advancing your lobbying for this cause. EU provides financial supports for the activities like awareness rising on ICC. It is one of the big interests of EU. USA is also now interested to go along. Accession of Nepal will be a commitment. There are no constitutional or legal problems in Nepal for ratifying ICC. EU has offered Nepal technical assistance for domestication of ICC. EU expresses its solidarity against impunity.

Anthony Cardon, Head of Coordination and Reporting Unit, OHCHR-Nepal

This remarkable gathering signifies the good steps towards ratification of the Rome Statute of ICC. Being state party to the ICC helps to avoid possibilities of future violence and violation of human rights. Every year, we celebrate international day against disappearance to reiterate our commitments for the justice to the victims. Such programs help us to create awareness and sensitize people to discourage crimes. There is importance of ratifying the ICC by Nepal. This

court does not replace the jurisdiction of the national court; rather it is just a complementary mechanism. Only if national judicial system is unwilling or unsuccessful to solve any case related with human rights violation, then the ICC helps in request of relevant institutions. I would like to congratulate organizers for holding this interaction and wish that this effort shall become successful in the future.

Robert Godden, Regional Campaign Coordinator/Asia –Pacific, International Secretariat, Amnesty International

Amnesty International is committed to work for universal ratification of Rome Statute. During the period of civil war in Nepal more than 13,000 people were killed, many were disappeared by Nepal Army, Nepal Police and the Maoists. Now, after the war is over, the government is not being accountable to answer the families of the Disappeared. The families of war victims are in big trouble now. Not a single perpetrator of the period 1996-2006 is prosecuted in a proper way. Since the World War II, few cases of serious human rights violation have been prosecuted in the world. Nepal has lack of effective law against domestic violence (gender inequality, domination, torture etc). Nepal is still suffering from these kinds of violence and is not trying to get away from them. The ICC does not have any authority to investigate the past crimes but past must be addressed. We must set in place the broader judicial mechanism to address serious crimes effectively.

Henning Hansen, Charge d' affairs, German Embassy

Rome Statute is a comprehensive instrument to deal with the serious crimes of international concern. Federal Republic of Germany is a strong supporter of ICC. ICC does not replace national court but it compliments national jurisdiction. No doubt, there are good characteristics of the court that can help us to guarantee justice for the victims of serious violation of human rights. For a long time, efforts have been made to ensure ratification of the ICC by Nepal. It is now the responsibility of Nepal government to ratify to it. Germany is committed to work in line of EU to support the ratification process.

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

Impunity is a big problem before us and we are aware of how to address impunity. There is no controversy that the ICC should be ratified by Nepal. The task forces formed time to time have also pointed out this need. The government and the political parties have expressed their commitments but nothing has happened. Lets do home work of what we must do in our justice system to adapt to the ICC. There is no doubt that impunity is deeply rooted in the society and it needs to be addressed. Commitments to address impunity have been expressed in the 12 point agreements, CPA and Interim Constitution. Accordingly, Bills have been prepared. After passing them from the legislature parliament, TRC and Disappearance Commission shall be formed and they shall start working. We may require additional resources, training and infrastructure for domestication of Rome Statute. We can request our human rights and civil society organizations for law reform and knowledge transfer that is required after the accession. The knowledge sharing can clarify the doubt of the political leaders about retroactive effect which is hindering the accession process. But this is not the only cause behind delay in accession.

H.E. Dr. Neem Chandra Bhowmik, Ambassador of Bangladesh to Nepal

Bangladesh government is committed to the protection and promotion of rule of law. Therefore, Bangladesh has recently become state party to the Rome Statute of ICC. We express our solidarity to the campaign for ICC accession in Nepal.

Azizuddin Ahmadzada Panjshiri, Director, Afghanistan, SAARC Secretariat

I am Director at SAARC Secretariat, but here I want to speak as an Afghan citizen. On 10 February 2010, Afghanistan ratified the ICC. The armed conflict Afghanistan faced is a recent history now. Afghanistan has explicit commitment for peace, democracy and justice. Altogether, 12 Asian countries have ratified to the ICC till now. Two people from Afghanistan had participated the Rome conference, and as stated by their report Afghan government decided to be a member of it. Afghanistan has suffered a lot from the crime against Afghan people. Transitional justice is still pending in Afghanistan due to pressure from some interest group.

Hon. Gauri Pradhan, Commissioner/Spokesperson, National Human Rights Commission of Nepal

Nepali civil societies as well as the international friends are working tirelessly for the ICC accession campaign. Through this campaign something is happening. The Supreme Court has made a historic judgment showing a strong commitment for ICC ratification. Legislature-parliament has passed a resolution directing the government to become state party to the ICC. NHRC can make recommendation to the government about the need to ratify ICC. Now, there is a positive environment and a very unique opportunity to ratify ICC. Government has made serious commitments for protection and promotion of human rights. The political parties have expressed commitment to combat impunity in the CPA. But, almost nothing is happening. People are questioning, why CA is not able to promulgate new constitution within time and will it be possible in the extended time? Many commitments are not materialized as the political stalemate prevails. Government and political party leaders give lip service to accede to the ICC soon, but they never make any positive effort. Ratification of ICC will contribute to improve justice system. What are the main causes for not addressing current problems of the country? Many identified and unidentified forces are working on their individual interests and because of their illegal activities impunity is growing. To control impunity, Nepal should immediately ratify ICC. ICC has played a very important role to strengthen international as well as national judiciary. For creating pressure over government to ratify ICC, we need to continue our campaign collectively. Nepal cannot deviate from it at any circumstances. We have made so many national commitments which help us to ratify ICC. NHRC is exerting pressure on the government to ratify ICC. We can hope that the government will ratify it very soon.

Prof. Dr. Bharat Bahadur Karki, Attorney General of Nepal

ICC is an important mechanism to combat impunity. Rome Statute of ICC is an instrument against those who commit serious crimes. Nepal has signed a bilateral immunity agreement with the government of USA. According to this agreement, none of the signatory parties can transfer the culprit to a third country to present to the ICC. It can be a big obstacle for Nepal to implement Rome Statute. If we put reservations, how is it possible to ratify and implement it effectively? It is a big question before us. We cannot effectively implement the ICC when there is already a law against it. This has blocked the accession process. We must discuss at length on this situation. It is a sad fact that the United States has not ratified all the human rights conventions. ICC statute has been subservient to UN General Assembly and Security Council. I support ICC as an important institution for Nepal to promote peace, rule of law and human rights. Nepal is like a sandwich between two big countries. Nepal must accede to the ICC for its existence and safe future. Accession to ICC has a multiplier benefit for Nepal. We can address international and national serious crimes through this instrument. ICC may help us to recover from these kinds of problems. If our related government agencies such as police and court neglect, fail or are unable to resolve crimes then there is ICC to help us. more countries becoming its members.

Subodhraj Pyakurel, Chairperson, INSEC/NCICC

The political parties do not want to share political achievements with others. Politicians have worst psychology. They believe that ICC has retroactive effect. On the context of ratifying ICC, Prime Minister Madhav Kumar Nepal said that it cannot be passed from the legislature parliament because the Maoists will oppose it. I advised him to take it to the parliament to reveal their real intention before the public. But after resignation, Prime Minister accepted that he did not complete a big task of ratifying ICC. I am quarrelling with all the political leaders in this regard. We are trying to convince that it comes from horse's mouth. In 2001, we worked with our colleagues in Bangladesh for ICC ratification. Negative examples are very popular in Nepal. People say, India, USA and China have not ratified ICC, why do we need? In 2006, the then legislature-parliament had passed a resolution in favour of ICC, but till now we are not able to get accession. First, we need to establish principles then go for action creating tools. It will have no value of crying to ratify ICC by Nepal until Maoists commit for "not to go for violence in the future."

Dr. Gopal Siwakoti, INHURED International

There are 3 major causes hindering ratification of ICC, viz., unfavorable attitude of party leadership, backward syndrome and fear of retrospective effect. The political parties are not

convinced about the benefits of ratifying the Rome Statute of ICC. We must work to narrow down the misunderstanding about this international mechanism. Human Rights community should come with a broader plan. For the last one decade, we have conducted more than 1100 events from civil society in favor of ICC, but nothing significant has happened.

Madhavji Shrestha, retired diplomat of Nepal government

We have heard about the commitments of the political leadership to accede to the ICC. There are positive arguments from different corners. Rampant impunity and extremely weak government are the root cause for not ratifying the ICC. During my assignment in Brussels as Foreign Service officer, an agreement was signed by the government to respect human rights and Democracy. I can recall that 14 years ago the image of Nepal was high in the international community, but now it is deteriorating. What is the barrier to obstruct ratification of ICC? We should invite political leaders to hear the voice of civil society and human rights community about how to combat impunity.



Dinesh Tripathy, Advocate

ICC is the landmark step of the international community against impunity. Nepal has signed a bilateral immunity agreement with the USA which hinders our way towards accession of ICC. Collective effort of the Nepalese civil society and international community is required to realize the goal of combating impunity. It is commonly understood that no treaty can be made against international law. However, USA is signing bilateral immunity agreements with many countries in the world. This violates the general norm of international law. It is unfortunate that Nepal has signed it.

Tirtha Basaula, Advocate

Root cause for creating a situation for no accession of ICC is that the political parties are not thoroughly aware of the characteristics of ICC. They are not aware of the fact that it does not have any retrospective affect. We must make them clear on this issue.

Prof. Kapil Shrestha, former Commissioner of NHRC – Moderator of the program

Nepal has become state party to the significant number of international instruments pertaining to human rights. However, we have not acceded to the ICC. This makes us feel humiliated in case of human rights commitments from our country. Still US has not ratified most of the human right conventions including ICC. In this sense Nepal is far ahead from USA, India and China in expressing commitments to human rights.

Nutan Thapaliya, Chairperson of FOHRID – Chair of the program

The accession of the ICC can create positive image of Nepal in the international level. We all have to try to convince the government in this regard. On behalf of the organizers, I thank all the dignitaries from international community, government representatives and members of civil society for their solidarity in the campaign for Nepal's accession to the Rome Statute.

Annex 2 :

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

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 INSEC) in Kathmandu at Hotel Himalaya, Lalitpur on 2067 Asoj 21 (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 below for brief account of views expressed by participants**). The program was chaired by Nutan Thapaliya, Chairperson of FOHRID and Advocate Birendra Thapaliya conducted the program as Moderator. The number of participants was around 50.



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 Budhathoki, 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 weak 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 (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.