

## 1. General Background

History is witness to two world wars that observed the worst atrocities ever committed in the record of humanity. Following the end of Second World War, establishment of a mechanism in the form of the United Nations was agreed, to prevent people all over the world from the scourge of war and its atrocities. Nevertheless, atrocities against humanity continued unabated in many parts of the world. In many of the cases, such crimes have been committed with impunity that has only encouraged others to flout the laws of humanity. For these reasons, realizing the need for immediate eradication of this syndrome from the universe, States' representatives of the international community met in order to negotiate and agree upon the establishment of a treaty based international institution to help end impunity and gross violations of international humanitarian law. The outcome is the Rome Statute of the International Criminal Court.

The United Nations Diplomatic Conference of Plenipotentiaries held on 17th July 1998 in Rome, Italy, adopted Rome Statute. This Conference participated by various countries of the world adopted the Rome Statute with 120 countries in favor of the Statute. Nepal also participated in the Conference through its commitment to respect urgent need of protecting humanity and ending impunity. The Statute entered into force on 1<sup>st</sup> July, 2002 once 60 states became parties to the Statute. At the moment 105 States have become parties to the statute.

We all are aware that ICC has the jurisdiction over genocide, crimes against humanity, war crimes and crime of aggression. We also have no misunderstanding about the complementary nature of court's jurisdiction. ICC does not encroach the jurisdiction of the national courts. In general, a case will be inadmissible if it has been or is being investigated or prosecuted by a State with jurisdiction. The court shall only come into action when the respective countries themselves are unable or unwilling to investigate or prosecute the offenders for the

atrocities committed as enlisted by the Statute. It is also worth mentioning here that the ICC shall not have retroactive Jurisdiction and therefore will not apply to crimes committed before 1<sup>st</sup> July, 2002 when the Statute entered into force. The Rome Statute has explicitly maintained this basic principle of modern criminal jurisprudence. ICC also has provided for strong protections for due process; procedural safeguards to protect it from abuse and furthers victim's rights and gender justice under international law.

## **2.Our Initiatives towards the ratification of Rome Statute**

After the restoration of democracy in 1990, Nepal entered into the new era of developing Treaty Jurisprudence. Nepal Treaty Act, 2047 under Article 9 provides for the supremacy of international treaties over domestic laws. Nepal to this date has ratified 19 major treaties relating to international human rights law, Four Geneva Conventions relating to international humanitarian Law and eight different ILO conventions. In respect to the Rome Statute, since its inception, Nepal has expressed strong commitment in favor of ICC. Invaluable discussions have taken place in the Nepalese Parliament. Human Rights Organizations and activists at both national and international level, have also been lobbying for the ratification of Rome Statute.

Following the restoration of the then dissolved House of Representatives democracy was also restored in Nepal. In the course of institutional development of democratic system, political parties and members of the then House of Representatives have time and again expressed their strong commitment to end impunity and atrocities against humanity. As a consequence, the reinstated House of Representatives unanimously passed a Resolution on 25<sup>th</sup> July 2006 that directed the government of Nepal to immediately initiate process for the ratification of Rome Statute.

Legislature-Parliament has regularly insisted the government in this regard and has expressed serious concern on the subject. Members of Parliament have also actively participated in the PGA Asian Parliamentarians consultation meetings held in Philippines and Japan. We hope that level of understanding about the subject have been strengthened through such participation.

The full text of Resolution reads as follows;

"Expressing full commitments towards people's aspiration including end to impunity, atrocities, respect of rule of law and easy access to international legal system, this meeting of the House directs the government of Nepal to immediately initiate process for the ratification of Rome Statute of International Criminal Court."

I would like to recall the fact that Government has a mandatory obligation to execute Resolutions passed by the Parliament, as per the present Rules of Procedure.

After the passage of above-mentioned Resolution, Nepal Government has taken several initiatives to execute it. Nepal Government formed a high-level taskforce to study the pros and cons of Rome Statute and obligation to be fulfilled by the Government following the ratification of the Statute. The taskforce has already submitted its report to the Ministry of Foreign affairs. Currently the report is under consideration of the Council of Ministers. Similarly, Nepal Government constituted a delegation to visit the headquarters of ICC for the purpose of gathering necessary information. The delegation visited the headquarters of ICC located at The Hague and had several consultations with officials of the ICC including its President. The delegation was very much impressed with activities of the ICC.

In other areas pertaining to human rights, the National Human Rights Commission is given the status of constitutional body by The Interim Constitution of Nepal, 2007. The main constitutional responsibility of NHRC is to ensure respect, protection and promotion of human rights and its effective implementation. In addition, it is under a duty to recommend with basis to the government of Nepal to become a party to any international treaties and instruments on human rights, if it is required to do so, and to monitor the implementation of such treaties to which Nepal is a party and if it is found that the treaties are not being implemented, forward necessary recommendations to the government of Nepal for effective implementation. Constitution not only restricts discrimination on the ground of caste, race, religion, community or occupation but also restricts establishment of political party based only on definite caste, tribe, religion, language or sex. On the basis of these provisions, it can be concluded that adequate precautionary measures

have been adopted by the present Constitution to check atrocities against humanity.

### **3. Opportunities:**

- a. After the promulgation of Interim Constitution, 2007, Nepal entered a new era of Rule of Law. No one is above the law and nobody can attain immunity from criminal liabilities. Every individual, including the then king is subject to general law of the land. Nepal is sincerely committed towards the values of Rule of law. Impunity in any case is not acceptable. Ratification of Rome Statute will culminate our commitment in international communities.
- b. Nepal has already ratified 19 major international treaties relating to Human Rights. In such a situation there is no reason on the part of the Government to refrain from ratifying this important instrument.
- c. Provision of any bilateral treaty could not be the reason of obstructing ratification process of Rome Statute as implementation of Rome Statute would have no adverse impact on any bilateral relationship.
- d. After ratification of Rome Statute, Nepal's image within the international communities on Human Rights shall be enhanced.

### **4. Challenges**

From the above-mentioned observations, it may be submitted that conducive environment has already been created in Nepal for the ratification of Rome Statute. I think it is not a matter of far concern. However, the process is yet to be materialized. Yet there are some challenges that can further delay the process. It may be listed as follows;

- a. Lack of adequate interaction and sensitization among the stakeholders,
- b. Besides the democratic environment, conservative mindset still prevails on diverse sections of the nation,
- c. Past authoritarian regime and present transitional situation may be another setback,

- d. At present the topmost priority of the country and political parties has been to hold election of the Constituent Assembly.
- e. Political instability is equally responsible.

## 5. Conclusion:

ICC is a treaty based independent and permanent legal institution. The Court, though not part of the United Nations maintains coordinated and cooperative relationship with the U.N. The ICC is a court of last resort. Since the Rome Statute entered into force on 1<sup>st</sup> July 2002, the Court has developed into a fully functioning institution. Nepalese Politicians and legal luminaries are well known about the need and importance of the institution like ICC. Since the Parliament has already passed the Resolution unanimously that has directed the Nepal Government for immediate ratification, I am optimistic that Nepal shall become a State party to the Rome Statute in the near future.

Thank you.

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