Rome Statute and impunity

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Ratification to the Rome Statute is the commitment to the rule of law, and courage to stand against impunity. This shall be a declaration to punish at any cost the perpetrators involved in the genocide, crimes against humanity and war crime that are the black spots in the human civilization.

Concerns are being raised from various corners about escalating impunity in the country. It is heard, at this time, that the government is preparing to withdraw several criminal charges and allow blanket amnesty. Before formation of the current government, the ruling party Maoist and the coalition members from Unified Democratic Madhesi Front had reached an agreement to withdraw the criminal charges of the past conflict and other various movements. Attention of the general public, civil society and media has been drawn by this. Protests are being raised against such policy of the government. We are now in the process to formulate a new constitution for a federal democratic republic through some innovative political practice. Rule of law is the first and foremost factor for the democratic ruling system. The ruling system should be directed by law and not the individual will, ambition or desire. Rule of law cannot be established without ending impunity. Civilized and prosperous democratic society cannot be established without rule of law.

We have the recent history of decade long armed conflict and its impact in all spheres of the nation. The wounds of armed conflict are yet to be cured. It is necessary to go forward by addressing the issue of transitional justice. Thousands of people were killed during armed conflict, and a large number of people either disappeared or lost their physical and mental integrity. Tens of thousands of people were displaced internally and externally. Property of hundreds of people was abducted and it is yet to be returned. The incidents of attack, aggression, abduction, torture, rape were common. The incidents of human rights violation, crime against humanity and other serious crimes were common during the armed conflict. Even the civilian population not involved in the conflict was victim of serious crimes. But the perpetrators involved in these crimes are not brought into justice system. The victims of different crimes have not been able to feel justice till now. It has led to a deplorable situation of impunity. The Comprehensive Peace Accord signed by the then Nepal Government and the CPN Maoist on 23 November 2006 had proposed to form high level Truth and Reconciliation Commission (TRC) and National Peace and Rehabilitation Commission. The bills relating to disappearance and TRC are still under consideration in the legislature parliament. These laws should be promulgated immediately and the commissions should be formed to end impunity through transitional justice. It is our primary
responsibility to ensure future of our next generation through effective criminal justice system in the new constitution to establish rule of law in the country.

Nepal requires ensuring international access for seeking justice avoiding emancipation to the persons involved in the criminal charges of serious nature and wider implication. For this, Nepal should accede to the Rome Statute and adopt the jurisprudence of the International Criminal Court (ICC). The reinstated House of Representatives passed a resolution on 25 July 2006 to ratify the Rome Statute. The resolution tabled by the then MP Parshuram Meghi Gurung was passed unanimously by all the political parties. However, the Statute has not been ratified till now. The misunderstanding of some of the political parties regarding the statute is the major obstacle hindering ratification process. During a visit to the President of ICC by a Nepali delegation including this author, it was found that the international community too has the feeling that such misunderstanding prevails in Nepal. President Sang-Hyun Song of ICC discussed with us about his visit to Nepal, and particularly the meeting with UCPN-Maoist leaders.

While ratifying Rome Statute and accepting the jurisdiction of ICC, we have to be clear on the crimes prosecuted by Rome Statute, its impact and jurisdiction. The Rome Statute has defined the crime of genocide, crime against humanity, war crime and crime of aggression as the crimes under Court’s jurisdiction. The Statute provides that the Court will not exercise its jurisdiction over the crime of aggression until such time as the states parties agree on a definition of the crime and set out the conditions under which it may be prosecuted. It will be allowed to prosecute after few years.

Second vital issue is that as Rome Statute is a prospective law, it does not have retroactive effect. The ICC cannot assume its jurisdiction to the crimes that occurred before enforcement of the Rome Statute. As it was enforced on 1 July 2002, its jurisdiction is applicable only after that date. When a state becomes state party to the Statute after its enforcement, the Statute is applicable for such country only from the first day of the next month after completion of 60 days of ratification, approval or accession. The Articles 11, 24 and 126 have the provision that the Statute shall be applicable for a state concerned only after such ratification or accession. We should be clear that the Court does not assume its jurisdiction in the crimes that occurred before that.

The Court assumes its jurisdiction in only three circumstances - the person involved in the crime is a citizen of the state party, the crime mentioned in the Statute occurred within the territory of state party, or the UN Security Council writes to the Court with the decision to prosecute. In the event of decision by the UN Security Council, case can be filed against a state that has not ratified the Rome Statute or a citizen of such state. Any state party can prosecute against crimes defined in the Rome Statute in accordance with the domestic judicial system. The ICC intervenes only when the state mechanism are not effective or incapable.

There are positive dimensions of the ongoing peace process of Nepal. Nevertheless, the decade long armed conflict has given a negative message that power can be achieved in a short cut way through weapons. It has motivated the politics of weapons and encouraged persons with criminal attitude. Consequently, weapons are being dominant in the name of politics. There is politicization of crime and criminalization of politics. The politics of weapons may expands and the serious crimes against humanity may increase when the state is weak. Such perpetrators should not go unpunished. Even if the national mechanism is not capable, the perpetrators should be punished and justice guaranteed through international mechanism. ICC is the appropriate and capable institution in this regard. The Rome Statute
was ratified by 70 countries when our parliament passed unanimous resolution to ratify it five years ago. By now, 116 countries have ratified to it, and on 1 November 2011, this number shall reach 117. This shows increasing trust of people to this Court when killings, violence, abuse of power and weapons are dominant in the world politics. Ratification to the Rome Statute is the commitment to the rule of law, and courage to stand against impunity. This shall be a declaration to punish at any cost the perpetrators involved in the genocide, crimes against humanity and war crime that are the black spots in the human civilization.

Therefore, the ratification of Rome Statute can contribute to the formation of peaceful, civilized and well cultured society. We must immediately fulfill the needs of transitional justice, arrangement of effective justice system in the new constitution and access to international mechanism for crimes against humanity. This can create a concrete ground to end impunity.