



FOHRID HUMAN मानव अधिकार तथा प्रजातान्त्रिक मञ्च RIGHTS AND DEMOCRATIC FORUM

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International Justice Day-2016: Act To Make Justice Visible

FOHRID Urges Government of Nepal to ratify the Rome Statute of ICC

Every year on 17 July the world celebrates International Justice Day (IJD) to commemorate the historic adoption of the Rome Statute on 17 July 1998, and marks the importance of continuing the fight against impunity and bringing justice for the victims of war crimes, crimes against

humanity, and genocide. IJD is a reminder of the urgency for all States committed to ensure continued support for the Rome Statute's international justice system. It demonstrates the crucial role of civil society members in ensuring that ICC member states live up to



their obligations. On this occasion, FOHRID urges Nepal to reaffirm its commitment to end impunity and take necessary steps to ratify / accede to the Rome Statute of The International Criminal Court (ICC). The International Criminal Court (ICC) is the first permanent international judicial body capable of trying individuals for genocide, crimes against humanity and war crimes when national courts are unable or unwilling to do so.

On July 24th, 2006 the Nepalese Parliament unanimously issued a commitment resolution directing the government to ratify the Rome Statute. Since then, there was little progress toward Nepali accession to the Statute until 11 February 2009 when the then Minister of Foreign

Affairs tabled to the Cabinet an agenda item for ratification of the Rome Statute. Cabinet, however, decided that they would discuss it at a later stage. In April 2010 the Office of the Prime Minister held a discussion on accession to the Rome Statute. However, Nepal has not acceded to the ICC till now. On this occasion, we recall the eagerness and positive commitments demonstrated by the government, political parties and the then HoR towards the ICC.

IJD is an opportunity for the world community to celebrate the historic advances in ending impunity for the worst crimes in international law as 18 years ago on this date; the Rome Statute was adopted by an overwhelming vote of 120 states. Today, 124 states have ratified the Court and 139 countries have signed the ICC treaty as well as the number keeps growing. FOHRID is celebrating this day in solidarity with victims of crimes against humanity, genocide and war crimes.

Out of the 24 countries in Asia, only 9 (Afghanistan, Bangladesh, Cambodia, Maldives, Mongolia, the Philippines, the Republic of Korea and Timor-Leste and Japan) have ratified the Rome Statute. Asia is a region that remains significantly under-represented at the Court, although civil society has been strong in advocating for international justice and the rule of law across the continent. Of these States Parties, only the Republic of Korea has enacted ICC implementing legislation.

Afghanistan is taking appropriate steps in coordination with civil society groups to initiate their implementing legislation process and Mongolia set up a working group on the ICC to discuss and follow up on ICC



implementation some years ago, but the process has been stalled for some time. Cambodia and Timor-Leste have similarly moved slowly in effectively carrying out their emergent obligations under the Rome Statute. Only the Republic of Korea has ratified the Agreement on the Privileges and Immunities of the Court (APIC) in the region. Although Mongolia is a signatory, it still needs to move forward and ratify this important instrument that will ensure the independent and effective operation of the ICC in practice.

Australia and New Zealand assumed a leadership role in the region by promptly ratifying the Rome Statute and implementing their obligations under the International Criminal Court's (ICC) treaty into their national law. With 16 States in the Pacific, and only 6 other ratifications or accessions to the Rome Statute in the region (Cook Islands, Fiji, Marshall Islands, Nauru, Samoa and Vanuatu), much work remains to be conducted to propel the ICC issue back into the political agenda of many of these Island States and encourage them to become States Parties to this historic human rights mechanism. Nevertheless, some important strides have been made

in relation to implementation. In late 2007 Samoa enacted its ICC implementation Act. Fiji also has a draft ICC implementation bill.

This year, on occasion of the IJD, FOHRID has released the Bill Relating to the Prohibition of Impunity, 2012 as a model for domestication of the Rome Statute once Nepal becomes party to it. The directives of the then HoR in 2006 had created a favorable environment for ratification of the Rome Statute.

This made the general Nepali people hopeful that Nepal's commitment towards international criminal justice system would be fulfilled. Due to this encouraging environment, FOHRID forwarded initiative to conduct research and drafting this model



bill for domestication of the Rome Statute. It is unfortunate that Nepal has not ratified the Rome Statute till now. Therefore, FOHRID calls on the government of Nepal to recall the directive resolution passed by then HoR and ratify to the Rome Statute.

We would like to recall commitments by the political parties, and the Government for providing

guarantee to justice of victim of serious crime under the human rights law, ending impunity, establishing democratic norms and values, and governance based on principles of the rule of law expressed through formal documents

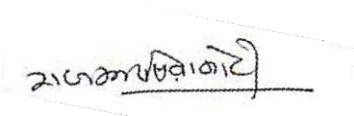


like the Comprehensive Peace Accord-2006, Constitution of Nepal-2072. For effective implementation of such commitments, Nepal's involvement in the ICC is a must and for which the HoR restored with the mandate of Popular Uprising had unanimously endorsed the

resolution. Immediate implementation of that resolution is the way to establish political stance to those commitments.

Therefore, FOHRID urges the Prime Minister and Ministers to coordinate among ministries, to hold discussion in the meeting of the Council of Ministers and to forward the process for accession to the Rome Statute. Considering that the parliamentary direction to this effect still remains unrealized, we request all the stakeholders to stir and exert more intensive pressure on the executive to accede to the Rome Statute of the ICC. We call on the political parties to prioritize the issue at political level to speed up the accession process.

Further information, please contact:

A handwritten signature in black ink, appearing to read 'Raj Kumar Siwakoti', is written over a horizontal line. The signature is slanted to the right.

Raj Kumar Siwakoti
Executive Director

Annex- 1: Bill Relating to the Prohibition of Impunity, 2012

Bill Relating to the Prohibition of Impunity, 2012

Preamble: Whereas, it is expedient to end impunity by taking action against suspects involved in human rights and humanitarian crimes for effective enforcement, protection and promotion of human rights guaranteed by the Constitution and international human rights and humanitarian laws to which Nepal is a party;

Be it enacted by the Parliament.

Chapter - 1

Preliminary

1. **Short Title and Commencement** : (1) This Act shall be called as "Act Relating to the Prohibition of Impunity 2012".
(2) This Act shall come into force immediately.
2. **Extra-Territorial Application of the Act** : Even if the crime or offence defined under this Act has been committed by residing outside the country of Nepal, the suspects involved shall be deemed to have committed the crime from within the country of Nepal and subjected to action and punishment under this Act.
3. **Prohibited Acts** : All acts against human rights and humanitarian laws occurred at any time or places, whether within or outside the country against any citizen shall be prohibited.
4. **Definitions** : In this Act, unless the subject or the context otherwise requires;
 - (a) "Impunity" shall denote the condition of impossibility or failure or unintended or unsuccessful to carry out an investigation, prosecution, trial and action against a person who violates human rights and humanitarian laws.
 - (b) "Crime against Human rights and humanitarian laws" shall denote genocide, crimes against humanity, war crimes and the act against human rights guaranteed by international instruments on human rights and humanitarian laws.
 - (c) "Genocide" shall denote the act of killing members of any caste, ethnic or religious group or community; the act of causing serious bodily or mental harm to the members of a group or community; the act of preventing the birth within members of a group or community; or the act of forcibly transferring children belonging to one group or community to another group or community.
 - (d) "Crime against humanity" shall denote mass killings, enslavement, torture, extermination, taking of hostages, forceful transfer or displacement of population, rape, sexual exploitation, forced prostitution, forced pregnancy or enforced sterilization, any form of sexual violence, the act of disappearance, repression based on political, religious, gender or on any other basis or any other inhumane acts.
 - (e) "War crime" shall denote the offences committed against the international humanitarian laws and related customary laws; which include killing; torture and inhuman treatment; great suffering, or serious injury to body or health; extensive destruction and appropriation of property, not justified by military necessity; compelling a prisoner of war or other protected person to serve in the forces of a hostile power; depriving a prisoner of war or other protected person of the rights of fair and regular trial; forceful deportation or transfer or confinement; taking of hostages; attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; attacks against civilian objects, that is, objects which are not military objectives; or attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives.
 - (f) "Victim" shall denote persons affected directly or indirectly by the act of a violation or crime of human rights and humanitarian law and his/her relatives in case the affected person is dead or handicapped or his/her whereabouts is unknown.

(g) "Court" shall denote the National Criminal Court constituted in accordance with the Section 17 of this Act with the purpose of prosecuting and making trial against suspects involved in offences or crimes defined under this Act.

(h) "Chairperson" shall denote the Chairperson of the National Criminal Court established under this Act.

(i) "Members" shall denote the Members of the National Criminal Court constituted under this Act.

(j) "Prosecutor" shall denote the person designated under this Act to conduct inquiries or investigations into the crimes or allegations under this Act.

(k) "Prescribed or as prescribed" shall denote prescribed or as prescribed in the rules framed under this Act.

Chapter - 2

Rights of the victim

5. **Right to Know the Truth** : If any kind of damage is caused to any individual as a result of negligence by the government agencies or its officials or by any kind of illegal act, the victim shall have the right to know about the past incident, the suspect involved in the incident and the remedy guaranteed to him/her.
6. **Right to Reparation** : (1) If any kind of damage is caused to any person as a result of negligence, an illegal act or non-compliance of law by any law enforcement officials, government employees, armed person or group, rescue and measures of rehabilitation including appropriate and adequate compensation shall be guaranteed to the victim. The dependants of victim shall also be entitled to receive such compensation, rescue, rehabilitation or remedy in the event of victim's death.
(2) In case a conviction against a person under this Act is reversed by appeal or review, except in circumstances wherein the accused is involved fully or partially in the failure to divulge substantive facts on time, a person affected as a result of the conviction shall be entitled to receive compensation in accordance with the law.
7. **Right to Fair Hearing and Remedy** : Persons who have been victims of impunity shall have the right to remedy and to fair hearing before a competent, independent and impartial judicial body or competent official.
8. **Right to Legal Assistance** : Persons who have been victims of offence or crime under this Act shall have the right to receive free legal assistance.
9. **Right to Security** : The victims suffering from offence or crime under this Act, his/her family members and respective witnesses shall have the right to receive necessary security.

Chapter - 3

Principles of Criminal Justice System on Impunity

10. **Presumption of Innocence until Proved Guilty** : (1) No person accused of any offence shall be assumed as an offender until the guilty is proved according to law.
(2) Notwithstanding anything mentioned in this Act and in current Nepali laws, in case of the offence committed by any inferior person or personnel under this Act the superior authority shall, holding the legal responsibility of supervision and control over such person or personnel, have burden to prove that he\she did not issue any direction for such act or he\she was not informed of the act.
11. **No Punishment without Law** : (1) No person shall be punished for an act which was not punishable by law when the act was committed, nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offence.
(2) Notwithstanding anything mentioned in sub-section (1), there shall be no obstruction to prosecute and try against any person or officials under this Act for once in the case of involvement of such person or officials in any offences defined in this Act even prior to the enforcement of this Act

12. **Double Jeopardize** : No person shall be prosecuted or punished for the same offence in a court of law more than once.
13. **No Compulsion to be a Witness against Oneself** : No person accused of any offence shall be compelled to be a witness against oneself.
14. **Duty to Furnish Information on Charge** : Anyone who is arrested shall be informed in a language he/she understands of the nature and cause of the charge against him/her. The accused person shall not be kept in detention without a warrant slip and without full abiding by the procedure established by law.
15. **No Torture or Inhuman Treatment** : No person who is arrested during investigation, or for trial or for any other reason shall be subjected to torture, nor shall be given any inhuman or degrading treatment.
16. **Consultation and Meeting with Family Members, Relatives and Legal Practitioners** : The person who is arrested shall not be deprived of the right in meeting his/her family members, relatives and consulting a legal practitioner of his/her choice at the time of the arrest.

Chapter - 4

Establishment of the Court

17. **Establishment and Composition of Court** : (1) A separate National Criminal Court shall, for the purpose of proceeding and finalizing the cases in a speedy and effective manner under this Act, be established.
 - (2) The National Criminal Court shall comprise the following Chairperson and Members attaining 45 years of age and having no conviction by a court for a criminal offence involving moral turpitude:
 - (a) A person holding a Masters degree in related subject of law and have worked for at least 15 years in the field of law or justice and has also acquired a reputation at the national or international level - Chairperson
 - (b) A person who is qualified to become a judge of an Appellate Court – Member
 - (c) A person who is qualified to become a member of the National Human Rights Commission- Member
 - (3) A separate Recommendation Committee, as follows, shall be formed for the appointment of the Chairperson and members:
 - (a) Speaker of the Legislature parliament - Chairperson
 - (b) One senior most judge of the Supreme Court - Member
 - (c) One member of National Human Rights Commission designated by the Chairperson of the National Human Rights Commission – Member
 - (d) Leader of the main opposition party in parliament- Member
 - (e) The senior advocate or advocate nominated by Nepal Bar Association who has held the distinguished position in the field of law and justice- Member
 - (4) The terms of office of the Chairperson and Members shall be three years from the date of appointment. They shall be eligible for re-appointment.
 - (5) The position of the Chairperson and Members shall be considered vacant in case of the death of the Chairperson and Members of the court, or in case of the submission of a written resignation by them or in case of the resolution passed against them for reasons of incompetence, misbehavior or failure to discharge the duties of his office in good faith.
18. **Jurisdiction of Court** : (1) The National Criminal Court shall have the power to prosecute and finalize the case filed against any person involved in crimes against human rights and humanitarian laws or any person responsible for such crimes or any person qualified to be tried with adequate evidences based on the inquiries and investigations of Truth and Reconciliation Commission.

(2) Notwithstanding anything mentioned in Sub-section (1), the Court established in accordance with this Act shall have no power to intervene the prosecution or trial initiated by the Military Court into the military offences.

(3) The Court established under this Act may, upon a request of parties and depending on the nature of case, trial the case both in open and in camera bench.

(4) In case the dispute brought before the National Criminal Court is, during the judicial proceeding, proved as being not the offence of human rights and humanitarian laws, the Court may refer such dispute to the general court of the land.

19. **Addition of the Cases** : Nepal Government may, by publishing the notification in Nepal Gazette, depute the additional cases on human rights and humanitarian laws to the National Criminal Court established under section 17.

Chapter - 5

Powers and Procedures of National Criminal Court

20. **Recording the Statement or Imposing Tarekh or Deposit** : The National Criminal Court shall have powers to record the evidence of persons other than the witnesses of petitioner or respondents concerned and required for the case; or to record the statements of the respondents or witnesses by arresting them if they are not produced before a court within a specific time limit as prescribed; to trial the party on *tarekh* or impose the condition to such party to be present in a given date or order the party for deposit.
21. **Freezing the Property or Banning to Issue Passport** : The National Criminal Court may, based on the seriousness of accusation, personal profile of the accused and degree and nature of crime, issue order to the concerned agency for freezing the property or for not issuing passport to such accused or freezing it in case it has already been issued.
22. **Additional Complaint be Lodged** : (1) Notwithstanding anything mentioned in current laws, the prosecutor may, even if the complaint has already been lodged in the National Criminal Court, submit the application to the National Criminal Court for seeking permission to have further investigation or inquiries or to have additional claim against the accused person on the ground that he/she has found new evidences relevant to the case.
(2) The National Criminal Court may, in reference to the application under sub-section (1), issue order for the permission as deemed necessary and once such order has been issued the additional penalties or additional complaint on additional accusation can be lodged against the accused person already charged.
23. **Other Powers and Procedure** : The National Criminal Court shall, in course of proceeding and finalizing the case, exercise the powers of this Act as have they been written and in other cases it shall have all powers equivalent to district courts according to the existing laws.
24. **Power of Contempt** : The National Criminal Court shall have power to take action on its own contempt and it can impose fine up to Rs. Five thousand or imprisonment up to six months or both in case the proved contempt.
Provided that, the National Criminal Court may issue order to give amnesty to the accused person or to excuse or reduce the fine against him or issue order for not implementing the fine by keeping the case in pending for six months on specified conditions to be followed by the guilty.
25. **Time Frame of the Finalization of Case** : The National Criminal Court shall normally finalize the case within six months from the date of registration of such case.
26. **Execution of the Verdict** : Except the mention of particular institution in the judgment or final verdict liable for the execution of such judgment or verdict of the National Criminal Court, the concerned District Court shall execute the judgment or final order of the National Criminal Court.
27. **Provision of Employees** : Nepal Government shall provide employees necessary to the National Criminal Court.

Chapter - 6

Inquiries and Investigation of Cases

28. **Appointment of Prosecutor** : (1) An independent prosecutor shall, on the recommendation of Judicial Council, be appointed to make inquiries and investigations of the offences or crimes defined under this Act and for the purpose of filing a charge-sheet.
(2) The terms of office and other facilities of the prosecutor shall be as prescribed.
29. **Office of the Prosecutor** : (1) The office of the prosecutor shall be established as an independent body. Its main responsibility shall be to make inquiries and investigations to the offences under this Act and prosecute them before the court.
(2) The jurisdiction of the prosecutor shall begin once the victim or his/her relatives or any other concerned institutions register a complaint at the office of the prosecutor.
(3) Notwithstanding anything mentioned in sub-clause (2), there shall be no obstruction to the prosecutor to inquire and investigate the offences under this Act and suit the cases against the person involved in such offences or crimes in his/her soumoto.
(4) It shall be the duty of state and concerned person to cooperate with the prosecutor in the course of investigations.
30. **Prosecution and Investigation** : The procedure for investigation and prosecution of the cases under this Act shall be as prescribed in Rules.
31. **Punishment** : In case the impunity is promoted for not taking action against the perpetrator due to the negligent inquiry or investigation of the prosecutor, such prosecutor may be punished with necessary action as recommend by Judicial Council. The detailed procedure for action shall be as prescribed.

Chapter - 7

Provisions Relating to Penalties

32. **Penalties** : The sentence of life imprisonment shall be imposed to the major guilty proved under this Act. Depending on the degree of offences, the court may impose sentences from five years to fifteen years to the person who has passed order or implemented such order or who has solicited or induced the commission of such offence.
33. **Reparation** : (1) The court shall make the convicted person pay compensation including reparation to the persons affected directly or indirectly by the act of a violation or crime of human rights and humanitarian law and his/her relatives in case the affected person is dead or handicapped or his/her whereabouts is unknown. In cases where compensation or reparation cannot be realized through the income source or the property of the convicted person or if it is insufficient, compensation and reparation shall be paid to the victim from the State's funds.
(2) The court shall, while imposing the sentence to the convicted person, take seriousness of the crime and also the personal details of such person in accordance with the standards of national and international laws into consideration.
34. **The Procedure to be as Prescribed** : The procedure relating to determination and payment of compensation or reparation shall be as prescribed.
35. **Effect** : Notwithstanding any provisions of this Chapter, nothing shall affect the penalties or their implementation against a convicted person in accordance with other existing laws.

Chapter - 8

Provisions Relating to Appeal and Review

36. **Appeal** : The prosecutor or the person convicted under this Act may, on the basis of error in procedure, error of facts or error of law, appeal before the Supreme Court. Such appeal shall be submitted to at least three member special bench of the Supreme Court.
37. **Limitation of Appeal** : Any party who is not satisfied with the verdict of the National Criminal Court shall appeal before the Supreme Court within thirty five days of the decision.

- 38. Review** : The decision of the Supreme Court on appeal shall be considered a final decision. Provided that, in the following conditions, the Supreme Court may review its decision or final order:
- (a) In case any evidence or fact is found which may have a substantive effect on the decision after the decision or the same becomes known to the concerned parties.
 - (b) If it appears that the decision is against the precedent or principles of laws established on human rights or humanitarian laws.
- 39. Limitation of Review** : The application for review may be filed within sixteen days of the final decision by the Supreme Court.

Chapter - 9

Miscellaneous

- 40. Use of the Act** : (1) This Act shall be effective into any person or official of the state or non-state party or institution involved in the offences defined by this Act.
- (2) There shall not be any compromise of any kind from both the state and non-state parties which may cause an adverse impact on the protection, promotion and implementation of the rights of the victims of human rights and humanitarian law crimes defined in this Act.
- (3) A state of war, any kind of exceptional situation, internal political instability or public crisis shall not be considered as exceptions for impunity.
- 41. Obligation of the State** : It shall be the obligation of the State not to allow a situation of impunity or if such situation arises, to take the necessary steps timely and to protect and promote the rights of the victim guaranteed by this Act.
- 42. Trial of the Case** : The accused under the offences of this Act shall, generally be trialed in detention.
- 43. Burden of Proof** : The concerned respondents shall have burden to prove the factual evidences concerning with his\her accusation.
- 44. Framing of Rules** : The Nepal Government may frame necessary Rules for fulfilling the objectives of this Act.
- 45. In Case of Conflict** : Notwithstanding anything mentioned in any other current Nepali laws, the provisions mentioned in this Act and Rules shall prevail accordingly and in other cases, shall prevail as mentioned in other laws.

