



Situation Update VIII

Ratification of International Criminal Court to Just Peace

September 15, 2006

Intro

ICC, also known as Rome Statute, is a permanent treaty based international court located at Hague in Netherlands, has been established on July 17, 1998 by 120 countries. Altogether 139 countries have signed the treaty of which 73% have acceded to or ratified it as of August 2006. The treaty entered into force on July 1, 2002. The purpose of the ICC is to promote the rule of law, to achieve justice for all, to end impunity, to assist end conflicts, to remedy the deficiencies of ad-hoc tribunals, to deter future war criminals, etc. It acts following the principle of complementarity, i.e. in cases where states are reluctant or incapable to do so. Eighteen judges and a prosecutor are elected by the countries ratifying the treaty to lead investigations and try cases.

The ICC investigates and takes to court not states but individuals for serious international crimes such as genocide, crimes against humanity, war crimes and aggression. Its jurisdiction covers crimes committed in the geo-political landscape of ratifying states and crimes committed anywhere by nationals of ratifying states. The States that have not endorsed the treaty could choose to allow its jurisdiction in particular cases. All states parties, including those agreeing for particular cases, are required to cooperate with the court.

Cases could be brought to the ICC through three ways: (i) a case could be referred by the state party to ICC, (ii) the UN Security Council could refer a case, and (iii) the ICC prosecutor could start an investigation based on information received from victims, NGOs, or any other reliable source. If the Security Council submits a case, the ICC has jurisdiction over any State despite the fact that the State concerned is not a party to the ICC treaty.

History

In 1872, Gustav Moynier¹ proposed a permanent court in response to the crimes of the Franco-Prussian War. The drafters of the 1919 Treaty of Versailles, envisaged an ad hoc international court to try the criminals of World War I. After World War II, the Allies set up the Nuremberg and Tokyo tribunals to try war criminals. The UN General Assembly (GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in 1948 that urged for international penal invited the (ILC) to draft a Security Council tribunals to hold atrocities, crimes and genocide during the conflicts in Bosnia-Herzegovina and Croatia and in Rwanda in the early 1990s. In 1994, the ILC presented its draft statute for an ICC to the GA.

Child soldier charges in the first ICC case

Aug 28, 2006. Thomas Lubanga Dyilo, a former leader of a militia group at war in the North Eastern Ituri district of the Democratic Republic of the Congo, was formally charged by the Prosecutor of the ICC for enlisting, conscripting and using children below 15 years of age to participate actively in fighting.
(Source: <http://www.icc-cpi.int/home.html&l=en>)

criminals to be tried by tribunals with jurisdiction and International Law Commission statute in the early 1950s. UN established two separate ad-hoc individuals accountable for the against humanity, war crimes,

The GA created the Preparatory Committee on the Establishment of the ICC. It decided to convene the UN Conference of Plenipotentiaries at its 52nd session to finalize and adopt a convention to establish an ICC. The Rome Conference took place from June 15 to July 17, 1998 in Italy, with 160 countries participating in the negotiations and monitored by more than 200 NGO Coalition. After 15 days, 120 nations voted in favor of the adoption of the Rome Statute, with seven nations namely [United States](#), [Israel](#), [China](#), [Iraq](#), [Libya](#), [Qatar](#) and [Yemen](#) voted against and 21 states refraining. The Assembly of States Parties met for the first time in September 2002. The ICC is currently conducting three investigations following state referrals by the Democratic Republic of the Congo (DRC) and Uganda, and a UN Security Council referral of the situation of Darfur, Sudan to the Court. In addition to these the ICC is reportedly analyzing a number of other situations on different continents including the Central African Republic and Côte d'Ivoire.

Nepal: A Country of Impunity²

- During the popular movement I, dozens of people were extrajudicially killed and hundreds were injured. The interim government formed a high level Investigation Committee under the Supreme Court Justice Janardhan Mallik. This

¹ One of the founders of the International Committee of the Red Cross

² Many parts of this section are extracted from Politics of People's War and Human Rights in Nepal, written by Bishnu Pathak.

was the first public committee made after the restoration of democracy. The principal aim of the committee was to investigate the concerned authorities responsible for the loss of life and security and damage of public or private property during the period of February 17 to mid-April 1990. The committee submitted a 1,100-page report to the interim government on December 31, 1990. The report found over one hundred persons in high offices, including two former prime ministers Marich Man Shrestha and Lokendra Bahadur Chand, responsible for extrajudicial killings, arbitrary arrests and detentions, cruel and inhuman or degrading treatment and recommended for further action on them. The Mallik Commission reports, “45 ordinary people were killed and 2,300 citizens were injured during the popular movement I”.

- The Ministry of Foreign Affairs seized the passports of the members of the council of ministers formed on June 16, 1986 under Marich Man Singh, the succeeding Prime Minister Lokendra Bahadur Chanda, some members of his council of ministers. Likewise, Ministry for Home Affairs issued an order prohibiting them going abroad without the permission of the government. The Commission also mentioned the names of the security and administrative personnel who were responsible for use of excessive force. The ex-Inspector General of Police Achyut Krishna Kharel was on top of the hit list in the report among the circle of police. He was at the time Acting Deputy Inspector General of Police, Central Region, which included the capital of Nepal during the people’s movement I.
- The first elected government of NC presented the report in the House along with the decision of the interim government and the advice of Attorney General. Out of 265 members of both the houses, an absolute majority with 67 percent of the parliamentarians was in favor of taking action on the perpetrators. Moreover, the government and parliamentarians were considerably pressured by the civil society, human rights organizations and party activists to act. Despite such huge support from public and parliamentarians, the government kept the action pending and sent

Investigation into arbitrary detention, torture and disappearances at Maharajgunj RNA Barracks

On May 26, 2006, OHCHR submitted to the Prime Minister, in his capacity as Minister of Defense, as well as to the Chief of Army Staff, a report of its investigations into the arrest, detention, torture and continuing disappearance of individuals arrested by the then Royal Nepalese Army (RNA, now the Nepalese Army) and held in Maharajgunj barracks in Kathmandu in 2003 on suspicion of being linked to the Communist Party of Nepal (Maoist)

“...most of the hundreds of individuals who were arrested by the RNA in 2003 and detained for varying periods in Maharajgunj barracks were subjected to severe and prolonged ill-treatment and torture, with a principal role played by the Bhairabnath battalion. ... at least 49 persons, and probably a significantly higher number, remain disappeared.”

“In spite of national and international norms governing detentions of suspected insurgents, including in times of internal armed conflict, these detentions were consistently denied by the RNA and those detained were disappeared. National and international appeals for information and clarification were ignored. Detainees were hidden from inspection. The fundamental guarantee of judicial control over detentions was denied. The only official documentation available regarding any of these detentions was prepared when some of the detainees were eventually transferred to civilian custody following *habeas corpus* proceedings.”

“...description of torture and cruel, inhuman or degrading conditions of detention to which detainees were subject deeply shocking. OHCHR has documented a sufficient number of cases to conclude that a significant number of detainees were subjected to various methods of torture, including beating with plastic pipes on the lower back, legs, and soles of the feet, submersion in water, and electric shocks. In almost all cases, victims of this torture, including women, were made first to remove their clothing, and were subjected to continuous abusive and degrading language. In addition, there were acts of torture involving sexual humiliation of both male and female detainees. Detainees were repeatedly threatened with execution.”

“All of the witnesses interviewed by OHCHR consistently describe the cruel, inhuman or degrading conditions in which the detainees were held for up to 18 months, permanently handcuffed and blindfolded. Some victims described these general conditions to have been cumulatively worse than the ‘formal’ torture and threat of execution. OHCHR received credible reports of at least three deaths due to, or aggravated by, these conditions. Former detainees continue to suffer the psychological and physical consequences of torture and ill-treatment.”

“The Bhairabnath battalion now acknowledges responsibility for the arrest and detention of 137 people during the period concerned and claims that these individuals were released or transferred after short periods of detention. However, absent from this list are at least 49 additional individuals known to OHCHR to have been held in the custody of the Bhairabnath or Yuddha Bhairab battalions (both part of RNA’s 10th Brigade) between September and December 2003 and who remain disappeared. Many of these were removed from their place of detention during the last week of December 2003 and never seen again. During subsequent interrogations, officers stopped asking questions related to any of these former detainees. Most former detainees interviewed by OHCHR believe that these detainees were executed.”

The NHRC on Aug 27, 2006 stated that 66 individuals, including 5 women have gone missing from the Bairabnath Battalion between 2002 to early 2005.

the report packing into the *daraj* (filing cabinet) where hundreds of other reports were kept. The government did not act on the pretext that there were some difficulties pertaining to legitimacy. But, it did not bother to disclose the nature of difficulty through parliament. Due to increasing criminalization in politics and vested interests of the political parties and their leaders, especially the ruling party NC, most of the well known perpetrators such as Achyut Krishna Kharel, Kamal Thapa, etc. were eventually awarded with very senior public posts. Moreover, the last prime minister of Panchayat era, Lokendra Bahadur Chand, whose passport was seized, became Prime Minister in 1997 and again in 2002 after the restoration of democracy. Kamal Thapa, Rabindra Nath Sharma, Dr. Prakash Chandra Lohani, and a few other ministers of RPP had cast their votes against their own council of ministers during the no-confidence motion in 1997 without even resigning from the posts of ministers. The former Inspector General of Police D.B. Lama, who had got life sentence during the last months of the Panchayat regime, became free a few years later and eventually a dignified member of parliament on behalf of the ruling party NC.

- While atrocities of Operation *Romeo* were condemned throughout the nation from street to the parliament, it exerted pressure to set up a parliamentary investigation commission. On December 11, 1995, an eleven-member All Party Parliamentary Committee (APPC) was formed to investigate impartially the incidents of human rights violations and abuses in Rolpa during Operation *Romeo*. Except three, eight other parliamentarians namely Shankar Pokhrel, Nava Raj Subedi, Asha Kaji Basukala, Dal Bahadur Rana, Mahesh Chaudhary, Indu Rana, Man Bahadur Biswokarma, and Bashudev Bhatta visited the operation area in Rolpa and submitted a report to the House of Representatives and National Assembly. The report stated that the operation *Romeo* was unjustified which had only created terror among the local people. It further illustrated that many innocent people were kept in jail and many girls and women were sexually harassed. It had also recommended for strong action against the perpetrators. Similarly, the main opposition party UML also demanded to take strong action against those who were responsible for creating such types of incidents.

Three members of APPC, namely Ananda Prasad Dhungana, Bishnu Bikram Thapa and Anis Ansari, neither visited Rolpa nor concurred with the report, nor tendered their resignation from the Committee. While the ruling party had nominated them, they tried to raise a lot of impediments over the report. Without a field visit, they said that Operation *Romeo* was justified because the UPF cadres had terrorized the local people. However, these ruling party members did accept that the crisis had developed after 1992 when the Chief District Officer (CDO) of Rolpa Abdul Rais Khan had adopted very severe repressive policies against the opposition political parties, especially the activists of UPF. It is intriguing that Rais Khan was neither suspended nor any action was taken against him.

- Prime Minister Man Mohan Adhikari, the leader of CPN (UML), had commissioned the Dang-Rolpa *Ghatana Chhanbin Samiti* (Incident Investigation Committee) to impartially investigate the murder cases in the two districts under the leadership of human rights activist Birendra Kesari Pokhrel with two other members in January 1995. Narayan Chaudhary of Dhikpur, Dang district had been killed on the spot in a gathering when the NC leader and Minister Khum Bahadur Khadka had ordered to shoot them. Twenty-nine persons had sustained bullet injuries in the incident. In another incident, two supporters of UPF, Lok Bahadur Gharti, a local inhabitant of Rangsi VDC-9 and Man Bahadur Pun of Iriwang VDC-1 were killed and many were injured when the police opened fire indiscriminately at a *mela* (public fair or festival) in Rolpa district on November 25, 1994 in the command of the Sub-inspector of Liwang. The report was duly submitted in time with recommendations to take stern action against the perpetrators, but no action was ever taken.

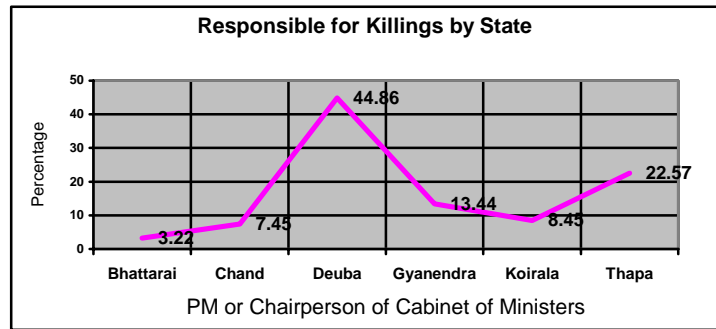
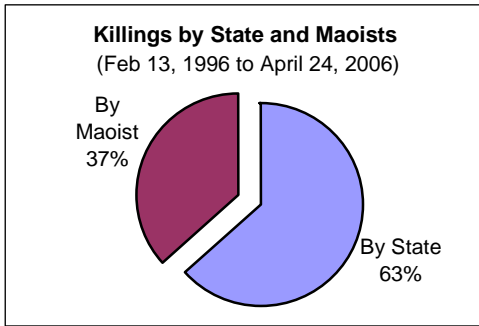
Number of individuals killed during the tenure of PM or Chairman of Council of Ministers

(February 13, 1996 to April 24, 2006)

	Premier	From	To	Months	by State	by Maoists	Total	Percent
1	K. P. Bhattarai	19 Apr 1990	25 May 1991	13.2	-	-	-	-
2	G. P. Koirala	26 May 1991	28 Nov 1994	42.07	-	-	-	-
3	M. M. Adhikari	29 Nov 1994	10 Sept 1995	9.34	-	-	-	-
4	S. B. Deuba	11 Sept 1995	11 Mar 1997	18	71	31	102	0.78
5	L. B. Chand	12 Mar 1997	5 Oct 1997	6.77	1	18	19	0.15
6	S. B. Thapa	6 Oct 1997	1 Apr 1998	5.84	18	16	34	0.26
7	G. P. Koirala	2 Apr 1998	26 May 1999	12.8	457	139	596	4.57
8	K. P. Bhattarai	27 May 1999	19 Mar 2000	9.74	279	141	420	3.22
9	G. P. Koirala	20 Mar 2000	22 Jul 2001	16.07	151	354	505	3.88
10	S. B. Deuba	23 Jul 2001	10 Oct 2002	14.57	2,974	1,248	4,222	32.41
11	L. B. Chand	11 Oct 2002	3 Jun 2003	7.74	607	344	951	7.30
12	S. B. Thapa	4 Jun 2003	1 Jun 2004	11.9	1,902	1,005	2,907	22.31
13	S. B. Deuba	2 Jun 2004	31 Jan 2005	19	819	702	1,521	11.67
14	Gyanendra BBS	1 Feb 2005	24 Apr 2006	15	959	792	1,751	13.44
Total					8,238	4,790	13,028	100.00

Source: INSEC and Politics of People's War and Human Rights in Nepal: 2006

- Maoists had unilaterally announced four-months ceasefire from Sept 3, 2005 to January 2, 2006 on the request of civil society during the reign of Chairperson Gyanendra. The government outrightly rejected the ceasefire. As a result, the government killed 85 individuals whereas the Maoists 24. The number could have been higher if there was no unilateral ceasefire from the Maoist side.
- On Sept 9, 2006, Maoist Supremo Prachanda while giving an exclusive interview to Kantipur TV pledged to disclose the status of the abductees within a month if sought. Following his announcement, the National Human Rights Commission (NHRC) submitted on September 11 a list of 152 individuals abducted by Maoist in various occasions.



- Two Supreme Court Justices, namely Arjun Prasad Singh and Badri Kumar Basnet, gave a verdict in favor of Mahaluxmi Sugar Mills, out of 1470 defaulters blacklisted by Nepal Rastra Bank, the State Bank. The Mills had to pay a total of 1,220 millions Nepali Currency to Nepal Bank Ltd., Rastriya Banijya Bank, Himalaya Bank, Karmachari Sanchaya Kosh, Nepal Industrial Development Corporation. On August 19, 2006, the five Banks requested to the incumbent House of Representative to impeach both of them and had also appealed to the Supreme Court. Even the Supreme Court Chief Justice, who was then abroad, had expressed his opposition to the verdict to remove the Mills from the blacklist. He had instructed not to conduct hearings of the case until he returned. The governor of Nepal Rastra Bank, in front of the Public Account Committee, said that the Supreme Court order removing certain business houses from the Bank Defaulter Blacklist would have a long-term impact on the economic and financial systems of the country. This is an illustrative instance of the money and muscle game, which is not new to Nepal, for example in Nepal attorneys show fingers to the judges to influence verdicts in favor of his/her client, one finger indicates one hundred thousands Nepali Currency.

- Families affected killings by decade of armed lodge complaints instance, on of Hari Prasad by security District Police Nepali Army Thapa and Thapa for their detention and NGO) is case to try in a

Pinnacle of Atrocity

On August 23, 2006, the Maoists abducted Phulo Devi Yadav, inhabitant of Hardiya VDC 7 of Saptari district. She was the second wife to Kisun Dev Mahato of the same village. The Maoists had also fined Nepali Rupees 3,000 three years ago on the charge of illicit relation between them. The couple were staying in India and returned three weeks ago to celebrate *Krishnaastami*, a Hindu festival. On August 22, local Maoist leaders namely Badri Nath Adhikary and Subhash Narayan Yadav called a social gathering and passed the verdict to separate them deciding that their marriage was injustice to society. But Phulo refused to abide the Maoist verdict. The Maoists thrashed both of them in a variety of inhuman ways including electric shock. The Maoists handed over Kisun to the villagers and took Phulo away to undisclosed place. Kisun left for treatment to India. Three days later, the Maoists declared that Phulo had committed suicide by poison, but did not let anyone see her dead body. Later villagers, human rights defenders and journalists pressured the Maoists and dug out her corpse from a riverbank. The Maoists had publicly announced to punish the culprits.

Source: Kathmandu Post, August 31, 2006

due to extrajudicial Security Forces in the conflict have started to to NHRC and Courts. For September 9, 2006, family Bolakhe, allegedly killed forces, filed a case at the Office at Kavre against Major Krishna Dhoj Lieutenant Babu Ram involvement in Bolakhe's killing. Rights Group (an coordinating to bring this civilian court.

- OHCHR current Army the standards (see situation update VII). A majority of the House members are against the Bill, but it is wonder that the House has not done anything about it yet.
- The government promoted Lt. General Rukmangat Katwal to Chief of the Army Staff on September 5, 2006 despite protests from major factions in SPA, House and civil society in Nepal, who has been documented for gross human rights and humanitarian law violations in the past.

- On August 17, 2006, soldiers allegedly beat their Commander Major Himendra Thapa and Captain Yadav Silwal on charging of cruel Tripura Company (Western HQ has them, detained soldiers and The detained voiced strongly organizations and taking the case
- There is a huge from the streets the property of

Cruelty to a young working girl at an Army Officer's House

Laxmi Pun of Surkhet (Mid-Western Hills of Nepal) aged 12-years was a housemaid at Army colonel Romeo Jung Rana's house at Khumaltar of Lalitpur Metropolis since a year.

Mrs. Siddhartha Rana, the colonel's wife, and his orderly used to give severe cruel, inhuman and degrading treatment and punishment to her. The neighbors informed to an NGO (CWIN) about the atrocities.

On September 3, 2006 Mrs. Rana abused and returned the CWIN representative saying that there was no child labor at hers. The following day CWIN went there with police and rescued her. Laxmi said, "Mrs. Rana and the orderly used to beat and pinch so that she had bruises all over her body. I was living and eating at the kennel of five dogs." She further said, "I was studying at grade two and I was promised to schooling, but I had to work from 5 am to 11 pm."

(Source: Kantipur Daily, September 4 and 5, 2006)

demanding to revise the Bill to meet human rights

treatment to them at in Pokhara Region). The Army suspended both of almost three dozen initiated a probe. soldiers have at the human rights agencies for not seriously.

political hullabaloo to the House about the rich King

Gyanendra of the paupers. In preliminary investigations billions of US Dollars have been identified to be invested in different industries and lands in Nepal; no one has any idea of his property in foreign land.

- The High Level Investigation Commission formed to investigate the loss of life and property during the Popular Movement II, interrogated Pashupati Bhakta Maharjan on his alleged role in suppression of the demonstrations, who is the Principal Secretary of King Gyanendra. He declined the allegations but claimed that he had only played the role to bridge between Royal Palace and other concerned Government Authorities. The Commission has strongly declared that it has decided to summon the King Gyanendra as he worked as the Chairperson of the Council of Ministers.
- By the end of August 2006, CPN (Maoist) stopped the Department of International Development (DFID), UK to continue its programs in Parbat district in Western Region of Nepal and they withdrew from the district accordingly.

Conclusions

- Asia's representation at ICC is pitiable. Presently only six Asian States are Parties to the ICC, i.e., Cambodia, East Timor, Republic of Korea, Mongolia, Afghanistan and Tajikistan, while Thailand, Philippines and Bangladesh have signed the Rome Statute but yet to ratify. Greater Asian participation is required to ensure diverse cultures in ICC. The need to support the ICC in Asia is crucial for the growing global fight against impunity and for the defense of fundamental human rights.
- Nepal's accession to the Rome Statute would further strengthen the peace process in Nepal. The challenges facing Nepal in the context of its transition to democracy and its strengthening of the democratic order are crucial. By joining the ICC, Nepal will further consolidate the rule of law and the commitment to uphold the highest international human rights standards. On July 24, 2006, the House of Representatives unanimously endorsed a proposal to accede to the Rome Statute of ICC, and the government affirmed that Nepal will take the necessary measures to accede very soon.
- Because of the influence of power, politics, and property (3Ps) along with nepotism, favoritism, and sycophancy, the reports remain without implementation, no matter how important they are. But, only the poor, disadvantaged, marginalized, and rural people are compelled to obey the rules and regulations in Nepal even for minor offenses.
- These are but a few examples of the culture of impunity. In recent years, especially after the restoration of democracy, impunity has highly increased due to the polarization of people in political parties. The 3Ps are influencing the courts and state apparatus even more vigorously. As a result, more and more people are getting dissatisfied with the present democracy, which subsequently fuels the conflict.
- Culture of impunity is expanding in a very fast pace. The incumbent PM Girija Prasad Koirala does not see any Grand Design now to Royal Massacre in June 2001 who claimed such a Design when he was not in government. However, it is remarkable that he was the PM then and Defense Minister simultaneously, whose major responsibility was to look after the Palace affairs, including security.
- Nepali people look upon ICC with high hopes and expectations to end impunities and bring the perpetrators into court of gross human rights violations. The ICC focuses its actions particularly to the line of command rather than implementers. Accession and ratification to Rome Statute of ICC and its genuine compliance is a milestone to sustainable peace in Nepal.

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CS Center, established recently in 2006, is an academic, policy oriented and research based non-government, non-partisan and non-profit making autonomous institution registered with the Government of Nepal. Its purpose is to promote peace, respect human rights, enhance democratic process, and protect the poor, marginalized, disadvantaged and vulnerable (PMDV) people and endorse social justice and dignity through education, training, action research, action advocacy, capacity building and networking as a Think Tank, Center for Excellence.