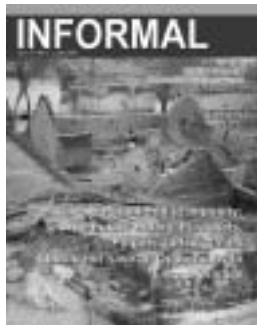
INSEC's Quarterly Publication on Human Rights & Social Justice

INFORMAL

South Asian Human Rights Solidarity

Special ISSUE on ICC, Vol. 18, No.1, June 2005



Cover Photo
Burnt houses and casualties of the arson and killings by the Village Defense Groups and Maoists in Kapilbastu and Nawalparasi districts.

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Price
Nepali : NRs 25
South Asia : US$ 15 (equivalent)
Rest of the World : US$ 25

Published By
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Special ISSUE on ICC

Put an end to impunity:
The future Hitlers, Pinochets, Polpots and Idi Amins should not have an opportunity to escape justice

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Editorial

Relevance of International Criminal Court in Nepali Context

"The best defense against evil will be a Court in which every country plays its part. And let me repeat, the best defense against evil will be a Court in which every country plays its part."

Kofi Annan, the Secretary General of UN

No doubt, the International Criminal Court (ICC) is the best defense against evil in contemporary world. It is one of the greatest achievements in the field of international law since the founding of the United Nations. And in a country like Nepal that has been trapped in violent conflict for more than a decade, it is a ray of hope for the defense of humanity. Now we have the International Criminal Court, which is not only an independent and permanent judiciary body, but also has capability of trying individuals and serving as a deterrent to the Hitlers, Pinochets, PolPots and Milosevichs of the future.

Impunity is widespread and it has resulted in the failure of the rule of law in Nepal. Both conflicting parties (the government and the Maoists) have been caught up in the violation of human rights and humanitarian law with growing impunity. As a consequence, there has been a prevalence of anarchy within the State authority.

The violent conflict that began in 1996 has been steadily increasing in its brutality. Either in the name of the 'people's war' or of maintaining law and order, civilians have been victimized the most. To overcome this severe injustice, effective implementation of the International Humanitarian Law is an imperative, as is the ratification of the ICC.

In order to put an end to impunity against crimes against humanity as defined by the Geneva Conventions, the primary need in Nepal is to ratify the ICC. It is noteworthy that both conflicting parties have been paying regards to International Criminal Court in public. Moreover, the Royal Nepal Army has claimed that Maoists would be prosecuted under the ICC in the future.

As a permanent institution the ICC, has the power to exercise its jurisdiction over individuals for the most serious crimes of international concern. It is complementary to national criminal jurisdictions that are developed in accordance with international human rights laws. Since the Nepali government made a high-profile commitment to respect human rights and humanitarian laws in March 2004 in Geneva and by signing the Memorandum of Understanding (MoU) with UNCHR this year, it is it's duty to move forward on the ratification of the Rome Statute of the ICC.

The most serious crimes of concern to the international community must not go unpunished and their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. This applies especially to Nepal, as it has lost 12,294 citizens in the course of nine years of violent conflict with widespread impunity.

Unlike the International Court of Justice, whose jurisdiction is restricted to states, the ICC will consider cases against individuals. Unlike the Rwandan and Yugoslavian War Crime Tribunals, created to consider crimes committed during particular conflicts, its jurisdiction will not be situation specific. We need the ICC to put an end to atrocities committed by individual perpetrators. We need the ICC to pave the way to end the culture of impunity.

Human Rights Situation in Nepal: Long Term ICC Campaign

(National Coalition of International Criminal Court (NCICC), Coordinator INSEC)

Background

Seventeenth July is a historic event for advocates of peace, humanity and justice. On this day, the Rome Statute of International Criminal Court (ICC) was enacted in 1998. It took four years for the Rome Statute of the International Criminal Court to be enforced into practice. The historic significance of the Rome Statute lies in the fact that for the first time in history, a truly international court representing the major legal systems and all geographic regions of the world was established to hold individuals accountable for crimes against humanity, war crimes, genocide and crimes of aggression.

The Rome Statute entered into force on 1 July 2002 after the continuous effort of United Nations, non-overnmental organisations, women groups, students, parliamentarians, lawyers and other active members of the society. As of 15 June 2005, 99 states have ratified the Statute and 139 States have signed it.

The establishment of the ICC is a step towards victory against the state of impunity and grave violations of human rights in the world. The Court is the best and probably the only alternative means to address the inherent culture of impunity plaguing the world.

The ICC is considered as the most advanced international legal mechanism. It could render effective redress for victims of grave human atrocities.

The international community is actively involved in efforts to establish a permanent international criminal court. Nepal also was at the Rome Conference of 17 July 1998 for the establishment of the ICC. The Conference approved the Rome Statute of ICC with 120 votes. However, 21 countries, including Nepal, abstained and seven delegations opposed the statute, including USA.

The Need for an International Criminal Court

Through the Treaty of Rome, the international community tried to put an end to impunity of perpetrators of the most serious crimes of international concern. The crimes brought under the jurisdiction of the Court are not new crimes. From the day of Nuremberg, crimes such as genocide, war crimes, crimes against humanity and aggressive war (crimes against peace) were brought under the mandate of international tribunals. By being party to the Geneva Conventions, Nepal has recognized war crimes as crimes of international concern. The core crimes covered by the ICC are crimes of universal jurisdiction.

Considering the continuous widespread violations of human rights and humanitarian law as well as the growing internal conflict and prevailing impunity, Nepal should join the ICC for the protection and promotion of human rights.

In 1990 democracy was restored in Nepal. Six years later on 13 Feb. 1996, the CPN (Maoists) declared the 'Peoples War.' Since then, nearly 13,000 people have been killed. The frequency of the extra judicial killings, mass killings, murders, forced disappearances, torture, arbitrary arrests and rape have been on the rise since.

The situation seems to have taken a turn for the worse. The Royal Palace Massacre on 1 June 2001 was on top of simmering political unrest emanating the ongoing Maoist insurgency and trenchant anti-monarchist sentiment.

Innocent civilians are being killed by the State and the insurgents as victims caught between attacks and counter attacks. Innocent people disappear and are abducted by both sides indiscriminately. Since the commencement of the Maoist's insurgency in 1996, approximately 8,112 people have been killed by the State and 4,444 by Maoists; around 26,144 were tortured by the State and as of June 2005, 1,232 peoples have been disappeared due to acts of the State. In April 2004, Maoists forced 300 captives to join the military. In that same period, Dalit youth were abducted and forced to partake in military training by the Maoists.

Children have been subjected to killing, maiming and other violations of their rights, committed with impunity by the Maoists and government personnel, including police and military forces. From the start of the "People's War" in 1996 through June 2005, INSEC has recorded 338 children under the age of 17 killed, including 172 children killed by government (115 boys, 57 girls), and 166 children killed by the Maoists (126 boys, 40 girls). In September 2004 alone 4,000 students were abducted.

Other destabilizing factors, such as the presence in Nepal of some 100,000 refugees from Bhutan, as well as the heavy illicit traffic in narcotic drugs have drawn Nepal into a full-scale civil war. Domestic courts are overwhelmed. Indeed, the people of Nepal might need the assistance of the ICC and general multilateral peacekeeping support to avoid prolonged, massive bloodshed.

There are several deficiencies in the Nepali criminal justice system. Firstly, the canvas of the law is narrow. Many crimes that are considered crimes in other countries are not covered by our criminal laws. Additionally, impunity has been a problem in our system. Therefore, resolve to join the international community by being a party to the Rome Statute would expedite much needed reform initiatives in the country.

All the mentioned statistics illustrate that criminal activity has been increasing in Nepal along with impunity. The ICC is expected to contribute to restore peace and security, maintain human rights culture, and uphold human dignity. Nepal needs to ratify the Rome Statute to make the State and non-state parties under its jurisdiction accountable to violations of human rights on their part under the ICC.

Campaign in Nepal

Human rights NGOs have a vital role to play by pressuring the government to ratify the ICC. NGO often have direct knowledge of violations and contacts with victims and witnesses. They are able to document violations soon after their incidence. Human rights NGOs may also be well placed to provide a broad picture of the context in which violations occur and highlight patterns and trends. NGOs ultimately, can play an important role in drawing the State's attention to the ratification of the Rome Statute by Nepal. In fact, a campaign for ratification of the Rome Statute has been started through the National Coalition for the International Criminal Court (NCICC).

In Nov. 2001, a loose network of organizations was formed as a result of a two-day national consultation programme on the ICC in Kathmandu. The participating organizations resolved to form a national coalition of civil society groups, legal experts and other individuals, which will hold education and promotional campaigns to educate the people about the ICC and the movement that is building towards the ratification of the Rome Statute. In its capacity as the national coordinator of the Nepal Coalition for International Criminal Court, INSEC has been actively working to promote the Court.

Who Can Join the Coalition?

Any individual/entity can join the Coalition, including:

- INGO/NGOs
- Universities
- Media
- Bar
- Lawyers
- Students
- Individuals
- Others

General Agreement Made During the Consultation

The ICC and the Statute governing it should be supported regardless of whether the USA, Japan or other countries support them. It is beneficial to seek their support in favour of the ICC, but the value and importance of it should not be doubted because a few powerful countries do not support them. They are needed by the weak countries as well. The opportunity to act should not be allowed to pass. The Rome Statute should be ratified immediately so that Nepal may participate in discussions relating to the establishment of the Court, including the appointment of judges and officials.

The Consultation Made the Following Decisions

Form a National Coalition of civil society groups, legal experts and other individuals, whose purpose will be to act on different platforms to ensure:

- Ratification of the Rome Statute by the Government of Nepal;
- Dissemination of information on the Court to all different sectors within Nepal;
- Harmonization of domestic laws with the provisions of the Rome Statute;
- Successful prosecution of aggression, war crimes, crimes against humanity, and genocide both nationally and internationally.

A Brief Review of Activities

Invitation of Lobby Team to Nepal

As Coordinator of the National Coalition for the ICC (NCICC), INSEC has taken part in the movement to ratify the ICC from the very beginning. It has raised the voice of Nepal as well as of South Asia in the preparatory commission held by UN on different dates. On May 12-15, 2002, it also invited other CICC members to Nepal to create a medium for support of the ICC.

On this event, the lobby team visited the Prime Minister's Office, main political parties, NHRC, lawyers, HR Representatives as well as multiple media outlets. In each meeting, the team discussed the importance of the ICC in the Nepali context. Delegates of the lobby team included Niza Concepcion, Joanee Lee, Ahmad Ziuaddean and David Mattas. The CICC delegates met government officials and received positive response for the ratification. The team answered crucial queries regarding the ratification of the ICC from the Nepali perspective.

Interaction Programme

As Coordinator of the NCICC, INSEC organized an interactive programme on the fifth anniversary of the Rome Statute of the ICC on 1 July 2003. The interactive programme was organized on the theme of the International Criminal Court and Human Rights a Nepali Perspective.

The objectives of the programme were to:

- Analyze the importance of the ICC from a human rights perspective.
- Discuss the possibility and potentiality of the Nepali Legal System being in compliance with the ICC.
- Discuss the activities and development of the ICC.
- Relevance of the accession of ICC by Nepal.
- Sensitise the lawyers, media, and NGO workers on necessity for the ICC in the current context of Nepal.
- Programme has been able to gather people from civil society organisations to have discussion on the importance of ICC in Nepal. This programme has also cleared up the confusions on why Nepal needs to ratify the Rome Statute in the present context.
- The programme has sensitised lawyers, media persons and civil society organisations on the need of ICC for small countries like Nepal.
- A strong voice has been raised to pressurize the government for ratification of the ICC.
- Activities performed by INSEC and the Coalition of International Criminal Court were highlighted during the programme.

On 6 June 2002, in its role as NCICC Coordinator, INSEC formally asked, the National Human Rights Commission (NHRC) to recommend to the government for ratification of the ICC.

On 2 July 2002, the NHRC released a press statement welcoming the establishment of the ICC and urged the government to accede the Rome Statute of the ICC.

Subsequently, a press statement was released on 1 January 2003 condemning the "Article 98 agreement" struck between the governments of Nepal and the USA in the name of countering terrorism. In the statement, INSEC condemned both governments, saying that the agreement violated Article 98(2) of the Rome Statute and breached Article 18 of the Vienna Convention.

On 7 Jan. 03, INSEC sponsored a study session to discuss the importance and development of the ICC. During the session, separate meeting was held for discussion on the Rome Statute of the ICC and its importance in the Nepali context.

A workshop was conducted to initiate the campaign in the support of ICC on 17 July 2003, anniversary of the establishment of the ICC.

Rome Statute of the ICC was translated into Nepali, to make locals in Nepal aware of the ICC and the need for its ratification by Nepal. INSEC has also incorporated the provisions of ICC in its training manual.

On 1 July 2004, an interactive programme among different groups of society was organised. In the programme, legal experts, intellectuals, human rights activists and law students expressed their views on the importance of ratification of the Rome Statute. Legal luminaries and human rights activists strongly condemned the Royal Nepalese Army's (RNA) refusal to furnish the details required by the Supreme Court, despite the orders, to ratify/consider the ICC.

Anti-ICC Campaign: Nepal's Agreement with the USA

By being party to the Geneva Convention, Nepal has already recognized war crimes as a crime of international concern. The core crimes under the ICC are crimes of universal jurisdiction. These crimes are so universally condemned that those who commit them are considered *hostis humani generis*, and any nation in the world has the authority to exercise jurisdiction over such persons without the consent of the individual's state of nationality. With

the support and commitment that Nepal has shown to international human rights instruments, there is no reason why Nepal should hesitate to join the comity of nations supporting the ICC.

By being party to the Treaty, Nepal would not lose her sovereignty, nor would the Treaty usurp the local jurisdiction of her courts. The jurisdiction of the ICC is only complementarity. Therefore, so long as the courts function independently, fairly, and expeditiously, there is no reason to fear the ICC would usurp her jurisdiction. In fact, none of the countries that have signed or ratified the treaty believe on this distorted notion of the Treaty, which has been raised by those who oppose it.

The Treaty adopts the principle of both territoriality and nationality. The principle of territoriality is a traditional principle recognized in municipal criminal law. Over time, countries are also slowly adopting the principle of nationality. It is the sceptics that argue the Nepalese military working abroad on peacekeeping missions may be made a target for prosecution under the ICC. But the Nepali military has been involved only under the banner of the UN. Moreover, as a country, Nepal does not sanction military adventurism and thus maintains sufficient leverage in her favour to check frivolous prosecution. Further more, the Security Council (SC) can veto against the investigation. In fact, whether or not Nepal becomes a party to the Treaty, it is a member of the UN. Since the SC is empowered to instruct the prosecutor to initiate investigations of any crimes committed under the Statute, there is less likelihood that Nepal will be able to do much to save its national interest against the will of the SC.

Further, Nepal can very much make a reservation under the transitional measure that it will opt out of the court's jurisdiction over war crimes committed on its territory or by its nationals for the period of seven years upon ratification of the statute (ICC Art. 124). If the signing of the treaty imposes restraints on those bent on pursuing mindless killing it is always better for the country.

Finally, respect for the rule of law in the arena of international law serves the interest of weaker nations. Therefore, Nepal gains more by joining the international community in its resolve to fight serious crimes of international concern than by remaining isolated and aloof.

If Nepal becomes party to the Rome Statute of the ICC, the Government and the Maoists have to rethink the launch of attacks. Both parties will be prosecuted to their transgressions. The human rights activists, civil society organizations and other professional organizations and individuals have been working to pressure the government to ratify the ICC. We hope that our government will ratify it as soon as possible. ●

Agreement Between His Majesty's Government of Nepal and the Government of the United States of America Regarding the Surrender of Persons to the International Criminal Court

His Majesty's Government of Nepal and the Government of the United States of America, hereinafter "the parties,"
Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Recalling that the Rome Statute of the International Criminal Court done at Rome on July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Considering that both the Governments have expressed their intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by their officials, employees, military personnel or other nationals,
Bearing in mind Article 98 of the Rome Statute,
Hereby agree as follows:

1. For purposes of this agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.
2. Persons of one Party present in the territory of the other shall not, absent the expressed consent of the first Party,
   (a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or
   (b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.
3. When the United States extradites, surrenders, or otherwise transfers a person of the other Party to a third country, the United States will not agree to the surrender or transfer of that person to the International Criminal Court by the third country, absent the expressed consent of His Majesty's Government of Nepal.
4. When His Majesty's Government of Nepal extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, His Majesty's Government of Nepal will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the expressed consent of the Government of the United States.
5. Each party agrees, subject to its international legal obligations, not to knowingly facilitate, consent to, or cooperate with efforts by any third party or country to effect the extradition, surrender, or transfer of a person of the other Party to the International Criminal Court.
6. This agreement shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. It will remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

Done in duplicate in Kathmandu on 31st of December 2002 in English language.

Sd.
MR. MADHU RAMAN ACHARYA
FOREIGN SECRETARY
FOR HIS MAJESTY'S
GOVERNMENT OF NEPAL

Sd.
MR. MICHAEL E. MALINOWSKI
AMBASSADOR
FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA

Asian Network for the International Criminal Court

OVERVIEW

What is the International Criminal Court?

The International Criminal Court (ICC) will be a permanent court capable of investigating and trying individuals accused of the most serious violations of international humanitarian law, namely war crimes, crimes against humanity, and genocide. Unlike the International Court of Justice, whose jurisdiction is restricted to states, the ICC will consider cases against individuals; and unlike the Rwandan and Yugoslavian War Crimes Tribunals, created to consider crimes committed during these conflicts, its jurisdiction will not be situation specific. The jurisdiction of the ICC will not be retroactive.

When will the ICC begin functioning?

The International Criminal Court is being created on the basis of the Rome Statute, a treaty which was adopted by 120 nations voting in favor, 7 in opposition, on July 17, 1998 in Rome at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. The Rome Statute will enter into force once sixty states have deposited their instruments of ratification at the United Nations. The NGO Coalition for an ICC has set a target deadline of July 17, 2002 to reach the requisite 60 ratifications in time to celebrate the 4th year anniversary of the adoption of the treaty.

What is the Coalition for an ICC?

The Coalition is a network of over one thousand civil society organizations from all around the world, working together towards a common goal: the establishment of a permanent, fair, effective and independent International Criminal Court. The Coalition has national and regional networks in Africa, Central and South America, Asia, Europe, the Middle East, the Pacific, the Caribbean, and North America. Coalition members also participate in sectoral caucuses, including the Women's Caucus for Gender Justice, the Victim's Rights Working Group, the Faith-Based Caucus, the Steering Committee on Children and Justice, and the Peace Caucus. The Coalition works closely with like-minded governments and international organizations to achieve its goals.

What work remains to be done?

Governments have been meeting at the United Nations Preparatory Commission for an ICC at the United Nations in New York, and have drafted a complementary set of rules of procedure and evidence for investigating and prosecuting genocide, crimes against humanity, and war crimes. They have also completed the draft elements of these crimes. The Preparatory Commission is now focusing on the definition of the crime of aggression, the issue of the financing of the Court, the relationship between the UN and the ICC and other instruments supplemental to the treaty. Two to three Preparatory Commission meetings are held each year.

At the same time, support for the Court must be as widespread as possible, and ratifying countries must adopt complementary national laws to allow full cooperation with the ICC. Many believe these laws will themselves represent

a great advance in the rule of law, ending impunity and preventing and reducing the commission of these crimes in the 21st century.

HOW TO GET INVOLVED

Much of the pressing work for governments, international organizations and civil society must be undertaken at the national and regional levels. There are many opportunities for involvement, regardless of how much time you have available.

If you are...

an NGO you can...

* join the Coalition and contact other NGOs and ICC networks in your region (visit the Coalition's website or ask us for more information)
* encourage other civil society organizations in your area to join the local network
* request information from your political representative about your country's ratification plans and share it with the Coalition
* urge your national and regional governments to sign and ratify the ICC Statute
* hold briefings for other civil society organizations and for the press to inform them about the ICC
* inform your membership about the ICC and encourage them to take action
* link your website to the Coalition's website
* follow developments at the meetings of the UN Preparatory Commission

an individual you can...

* visit the websites of the Coalition and its members to learn more about the ICC
* write a letter to the editor of your local newspaper in support of the ICC
* write a letter to your political representative, calling for his or her active and public support of the ICC
* conduct a petition drive to gather signatures in support of the establishment of the ICC and send the petition to your political representative
* encourage local groups with which you are involved (faith-based, community action, peace and other groups) to join the Coalition and become active on the ICC
* contact the Coalition to do translations of key information materials to the languages in your region
* monitor ICC coverage in your region and send copies to the Coalition for distribution

How do I contact the Coalition?

Headquarters: William R. Pace, Convenor, c/o WFM, 777 UN Plaza, 12th floor, New York, NY 0017, USA

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Coalition for the International Criminal Court

The creation of the International Criminal Court (ICC) is a historic victory for human rights and international justice. It is the first permanent international judicial institution with jurisdiction over individuals who commit the most egregious violations of human rights and humanitarian law. The ICC has often been described as the "missing link" in international human rights enforcement. Despite the existence of domestic legislation and several multilateral treaties dealing with some of the crimes included in the Rome Statute of the ICC (genocide, war crimes and crimes against humanity), no permanent enforcement mechanism with jurisdiction over individuals who commit these crimes, regardless of their official position, has ever existed at the international level. While the creation of the ICC is of tremendous relevance to human rights advocates, it impacts those who work on a wide variety of causes, such as women's issues, children's rights, the non-proliferation of weapons, environmental issues and many others. The Coalition for the ICC and its members have been actively supporting the estalishment of the Court for 10 years, and are engaged in a range of activities - from participating in expert consultations on ICC-related matters to advocating for broader national support for and cooperation with the Court. In order to follow the ongoing developments at the Court, one of the important roles of the Coalition secretariat is the dissemination of accurate and timely information on the ICC. This website provides in-depth information about the Court and the campaign for a fair, effective and independent ICC, undertaken by NGOs from all regions of the world under the umbrella of the Coalition for the ICC.

To give feedback on the work of the Coalition, or to receive copies of the CICC's information resources, please contact cicc@iccnow.org

(downloaded from http://iccnow.org/Introduction.html on 3 July 2005)

International Criminal Court (ICC) at a Glance

- It is being created on the basis of the Rome Statute, a treaty that was adopted by 120 nations voting in favor, 7 in opposition, on July 17, 1998 in Rome at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. So far 99 countries have ratified the Statute.

- Capable of investigating and trying individuals accused of the most serious violations of international humanitarian law, namely war crimes, crimes against humanity, and genocide the jurisdiction of the ICC will not be retroactive.

- The Rome Statute will enter into force once sixty states have deposited their instruments of ratification at the United Nations.

Nepal: Widespread Impunity of Crime Against Humanity

Rupesh Nepal

Under the technical cooperation and advisory services in Nepal – Agenda Item 19 - the Commission on Human Rights calls upon all parties to the conflict to respect human rights and international humanitarian law, in particular Common Article 3 of the 1949 Geneva Conventions, as well as to act in conformity with all other relevant standards relating to the protection of civilians, particularly of women and children and to allow the safe and unhindered access of humanitarian organizations to those in need of assistance...

-Agenda 19, Passed on Nepal on 20 April 2005

Civilian Militia Backed by the Government

Kapilbastu, Nawalparashi and Rupandehi districts have been facing incidences of violent conflict since last year. The trend intensified since the Royal takeover on 1 February 2005. Peoples of these districts feel threatened and terrified by the constant violation of human rights and humanitarian law by the State and the rebels.

With the ten-year-old armed conflict between the government forces and the insurgent Communist Party of Nepal CPN (Maoist) intensifying, Nepal in recent days has been witnessing massive extra-judicial killings by both sides of the conflict. The prolonged conflict has already claimed the lives of more than 12,000 citizens with about the same number injured. Thousands of citizens might have been illegally executed by both sides since the beginning of the conflict and consistently gone unpunished. However, recent reports suggest that the scale of killings is increasing.

These killings are going on in the context of a severe human rights crisis and a failure of the rule of law. In addition to the killings, there are reports of hundreds of "disappearances," thousands of arbitrary arrests, rape and widespread torture by Nepali security forces, and torture, abductions, attacks on civilian infrastructure, and the use of children in military activities by the CPN (Maoist).

The crux of the problem is the environment of impunity that security forces and the CPN (Maoist) are enjoying. Despite high profile pledges of commitment to human rights, both the Nepali government, military and the CPN (Maoist) leadership have failed to investigate human rights abuses or punish those responsible.

Each warring side operates under an environment of impunity. And now the establishment and involvement of other small groups in this conflict has further complicated the state of impunity. Whatever the reasons such groups may be fighting for, the ultimate sufferers are civilians.

The recent example of such group is the Maoist Defense Committees, formed after the continuous atrocities by Maoists reached extreme proportions. To further worsen the situation, without weighing its impact on society, the state machinery is very active and publicly encouraging and establishing civil militia to counter any sort of opposition. The direct targets of such groups are those perceived as Maoists, alleged Maoist sympathizers, victims and witnesses of gross human rights violations by the state security forces, as well as human rights defenders, journalists and lawyers.

In this context, the Maoists may find a way to clear themselves of culpability by blaming their offenses upon the village defense committees. Recent events have further exacerbated this problem.

It was only after the royal takeover on 1 February 2005 that such groups were formed and were backed by the government and security institutions. Since then, the militia groups and the Maoists have been playing a cat and mouse game. But the ultimate sufferers have been the innocent people who are forced to bear the wrath of both sides. The notable point here is that although the government and the Maoists have been repeatedly making their commitments to Common Article 3 of the Geneva Convention under which attacking non-combatant is prohibited, both sides have failed to stand by their commitments.

It is a matter of deep concern that the government, instead of trying to put control on such incidents between the militia groups and the Maoists, has been encouraging such groups in violence. And in some cases has even provided them with weapons. The incident of Kapilbastu is testimony to this fact, where cabinet ministers visited the site and encouraged the villagers to take action against the Maoists, further worsening the situation. Reports from different human rights organizations reveal the fact that had the government members not encouraged them, the situation would not have worsened such and life and property casualties would be prevented.

The incident of Nawalparasi, where 10 civilians including children were shot dead by the Maoists, shows how innocent civilians are crushed in between the attacks and counterattacks between both sides. The defense committee members overtly patrol villages, armed with weapons and beat people inhabiting the hillsides accused of being Maoists. Such lawlessness on the part of the defense committees is likely to plunge the country in a full-scale civil war.

Since some past years, Nepal has been known in the international arena for the increasing impunity of the government. The incidents at Kapilbastu and Nawalparasi have further lowered any expectation of impunity coming to an end. Despite monitoring reports submitted by human rights organizations, the government has neither tried to investigate any of the incidents nor taken any concern to compensate any of the victims. Though there is evidence of gross human rights violation from the government side, the lack of punishment against the perpetrator has further raised question on ending impunity.

And now the defense committees have now joined the race in gross human rights violation. There are many examples where the victims of such committees are human rights activists, law professionals and journalists. In Nawalparasi, defense committee members arrested and beat 5 human rights activists who had been monitoring the conflict situation and handed them over to security forces. The activists were later released under the pressure from local journalists, but they continued to receive threats from defense committee members and security persons. No investigation was carried out in the matter and the perpetrators went unpunished. Such incidents have certainly raised the bravado of the perpetrators and increased the trend of impunity. The major concern here is that the government is keeping a blind eye and deaf ear in such incidents. The excuse of the government is "They (defense committee members) have been countering the Maoists in the outskirt area of the district headquarters and we are taking care of the major cities." Such lack of attention has further closed all the possibilities of investigation in the incidents of rights violation and punishment to the perpetrators.

After the Royal Proclamation of 1 February 2005, the government continued to violate the minimum human rights of citizens and brought chaos upon the country. Even though the international human rights community had been constantly publishing reports and cautioning the government about the growing human rights crisis in Nepal, the government never heeded them. As a result, the 61st UN Human Rights Committee Meeting in Geneva passed Agenda Item 19 on Nepal citing the deteriorating human rights situation. A UN office has already been established in Nepal to monitor the human rights situation of the country. This has now raised some hopes among the civil society that the government will stop violating the basic human rights of the citizens.

With the constant and ongoing violations of human rights in Nepal, the country's human rights advocates are demanding that the government sign the Rome Statute to bring perpetrators into book through the International Criminal Court (ICC).

Kapilbastu Incident

In the past few days Maoists had been conducting activities such as forceful collection of donations, abductions, etc. around Ganeshpur VDC. In this context, on 16 February 2005, Maoists abducted former Sub-Inspector Indra Bahadur Bhujel and Dukha Teli, 65, a civilian of Ganeshpur VDC-2. The next day, on 17 February, a group of around 300 villagers made their way to the western area of the VDC in search of the abducted persons. The villagers found Bhujel handcuffed and blindfolded in a goat shed in the town of Lalpur. The furious villagers beat to death two Maoists sentries, Sitaram Baniya alias Roshan and Ali Akhtar.. Thereafter, a series of incidents of gross human rights violation took place in Kapilbastu district.

In the incident, the most offensive role was that of HMG's Ministers. The National Human Rights Commission claims that the backing of Ministers, who had reached Kapilbastu during the incident, had encouraged the criminal activities. According to the initial monitoring report of the Commission, the address of Home Minister Dan Bahadur Shahi, Labor Minister Ram Narayan Singh and

Education Minister Radha Krishna Mainali to a mass gathering at Ganeshpur on 12 February motivated the mass to carry out such criminal activities. The address of Ministers added fuel to the flame. As a result the aggressive mass even killed people, alleged to be Maoists, in the presence of security persons. And the perpetrators remained unpunished. This also can be cited as an example raising the culture of impunity in the country. According to the report of the commission, the aggressive mass torched and looted 318 houses at Hallanagar, 118 houses at Bishanpur, 18 houses at Jalim Baghin and more than 20 houses at Khurhuriya.

The Human Rights Treaty Monitoring Coordination Committee (HRTMCC) went on a fact-finding mission to confirm the facts of the incident. The facts revealed after the inspections prove that various cases of gross human rights violations such as arson, murder and rape were conducted.

On 20 February 2005 Counter action Committee burnt 306 houses in Hallanagar of Shivapur VDC accusing the residents of providing shelter to the Maoists.

About 40 VDCs out of 77 VDCs of Kapilbastu district were affected. Village Defense Committee Members killed 31 persons in the name of counteraction against Maoists, while Maoists killed 11 persons from 17 February to 5 March 2005. The Village Defense Committee also burnt 3 other persons to death on 20 February 2005 at Baraipur VDC.

According to the above facts, the state machinery seems to be fully behind the incidents. The political elite publicly instigated the actions of the Village Defense Committee.

After the incident, three ministers of the current cabinet visited the affected areas and congratulated the Village Defense Committee for their brave acts and encouraged other civilians to join such "noble cause".

No action was taken by the civil administration nor have the police conducted a thorough investigation. Instead of controlling human casualties and destructions, Chief

Son's Funeral

It was a fateful night on 13 May 2005. At 8:45 PM, Kiran Poudel was listening to the BBC Nepali service. A short distance away, three children were lying on the floor watching television. In a corner of the kitchen, Deepa, his sister-in-law was serving meal to her mother-in-law.

Suddenly, there came a loud explosion. Deepa dropped to the floor. She had no idea how many explosions to expect. When she recovered, Kiran was lying in a pool of blood. Deepa began her frantic cries for help.

Kiran, 28, of Chandrauta in Birpur VDC-7, Kapilbastu is yet another victim in the five-month long violence. According to INSEC statistics, the violence has claimed 56 lives in Kapilbastu after 1 February 2005. Of those, 32 were killed by the members of the defense committee.

Kiran was fatally wounded by the bullets shot from his window. He succumbed to the
injuries at 1 am the next morning before he could be taken to the hospital.

Deepa was a health worker but to act as one for the injured brother-in-law was beyond her capacity. She, instead, started looking for vehicle to transport him to the hospital. She cried for help. But, the vehicle was available nowhere. The lights in neighborhood began to be switched off after the Poudel family's cried for help. The doors began to be closed. At last, the army stopped a truck- a truck carrying a load of boulders. Deepa headed for Butwal with injured Kiran and a baby on her lap. But, luck ran out. The truck went out of order at some distance.

She wandered in the darkness seeking help. She reached a house where she saw a man carrying a torchlight, which she asked to borrow. But the man refused. She nearly snatched it from his hands, giving him in return a 1000-rupee note . It took two and half-hours to find another vehicle. But, by then, Kiran was already dead.

Deepa and her husband Prakash are recognized in Chandrauta as a doctor couple. They have saved a number of lives, responding to the calls during days and nights. But, for the past few months, their lives have been under constant threat.

Prakash Poudel was arrested on 22 April 2005 last year allegedly for helping the Maoists. The security forces themselves said Prakash was arrested under the pressure of the defense committee. He was released on 2 February 2005 after a long investigation. At the time of

Victims father waiting to receive son's corpse

his release, the security man told him to leave the place warning that the defense committee could inflict harm on him. After that, he has returned to his home only once.

Deepa, between her cries, said, "They had come to kill him but Kiran had similar features as his elder brother. So, they targeted him. We only heard the gunshots then Kiran fell down. We did not see anyone shooting."

Hari Prasad Pokharel, the former Birpur VDC Vice-Chairman said that the members of the defense committee could have shot younger brother mistaking him for the elder brother. But, the fear gripped the place in such a way that none from the village come to the hospital to express condolence to the bereaved family. The youths of Kapilbastu, gathered at Butwal concluded that the environment was not viable to take the body back to village. It was 8 o'clock in the morning. Sixty-year-old Bhanubhakta Poudel was wailing at the main gate of the Rupandehi Zonal Hospital in Butwal. The doctors arrived at 9.30 AM. The post mortem began. The doctors said the bullets had damaged the whole of the chest. The splinters had hit several places on the upper part of the body.

Two musket bullets, shot from a short distance had claimed his life. But, Bhanubhakta had no concern at the nature of the injuries. The body was lifted. He also got up. He shuddered. Then, he quietly followed the funeral procession of his youngest son.

- Karyal

District Officer of Kapilbastu commented on the incidents of arson, rape and killing that there was no need to restrict village defense committee. Similar serious incidents were likely to ensue if no step was taken by the administration to minimize the prevailing fear and insecurity.

Only a temporary security base camp was established in Ganeshpur VDC to provide immediate security for the local people who had been mobilized against Maoist, but nothing was done for other civilians.

Counter killings of those persons involved in the Village Defense Committee by Maoist were also reported.

Thousands of locals were displaced and took refuge across the nearest border with India.

Food grain, utensils and clothes were totally destroyed along with houses. Thus, victims also faced problems of food shortage. They did not receive any kind of immediate relief either from district administration or from other government agencies.

Victims requested a guarantee of security and for provision of humanitarian assistance.

Students of affected areas were mentally disturbed fearing further incidents of this kind.

Eyewitnesses testified that the incidents took place in the presence of armed and security forces in uniform. No initiation was taken to stop the incident or to provide redress to the victims.

The Chief District Officer claimed that there was a question about the legality of the land on which were built the residences of Hallanagar of Shivapur VDC. This could not be confirmed.

News published in papers were given by army barracks

located at Gorusinghe, on condition of anonymity.
The team has also noticed increasing communal clash between Hindu and Muslim and Hill and Terai people.

The team documented burning of 600 houses by the date this report was prepared.

Nawalparasi Incidents
Ramkishore Chamar, 40, of Somani VDC-7, was made to eat his own hand- cut by the members of the Village Defense Committee- and was later shot dead on March 26.

Arson by village defense group in Kapilbastu

The group took Chamar in control alleging him of protesting and not supporting the Committee. Behaving in the worst form of inhumanity, the group mutilated his right hand, forcefully made him eat his own chopped hand after burning and shot him dead at some distance from his house. Villagers said that the group had been overtly patrolling the village with weapons. The Village Defense Committee, to denote it as a specialized combat group, has named it the National Security Battalion Committee, says Murahari Kushwaha, Chairman of the Committee, which has been patrolling the border area with weapons. They have been checking everyone entering the area. Also, they have been beating people of the hilly region alleging to be Maoist and people of the Terai in case of not supporting them.

These groups, formed to retaliate against the Maoists and backed by security personnel have been creating problems for civilians over the past few months. On 25 December 2004, one such committee assaulted five human rights activists including Kailash Thakur of Nepal Human Rights Organization, who had been monitoring the situation in town after the Paklihawa incident. All five human rights activists were then handed over to the security persons and were released by the evening on the initiation of local journalists.

In a joint statement issued on 29 January 2005, by Kailash Thakur, Chairman of Nepal Human Rights Organization, Nawalparasi; Nasrullaha Ansari, General Secretary of Nepal Human Rights Organization and member of the Nepal Bar Association; and Dhana Sharma, Member of Nepal Human Rights Organization and member of the Nepal Bar Association, stated that they were beaten, threatened and mentally tortured by security persons. The statement read that they feared the leaders and members of the defense committee protected by the security institutions and appealed to the INSEC Chairperson to take initiation for the safety of their life and punishment of the perpetrators after investigation.

On the night of 16 April, the Maoists in their so-called counter attack against the defense committee members killed 10 innocent civilians including a child of Somani VDC, Nawalparasi. The Maoists encircled the Bargadawa

Sixty-year-old Man Killed by the Maoists, Kapilbastu
Five Maoists shot dead Laddan Musalman, 60 of Baskhor VDC-2 at 4PM on 22 May 2005 after taking him 500m away from his house. The Maoists had arrived there in two motorcycles. The post mortem of the body was conducted on 23 May 2005 in the district hospital in Taulihawa.

Teacher Killed by Defense Group, Kapilbastu
Members of the defense committee beat to death Jayas Mohammad, 38, of Jeetpur in Sisawa VDC, who was working as a teacher at Manpur Primary School on the afternoon of 14 May 2005. He was on his way to Bhalwadi VDC to attend a marriage ceremony. After the murder, the accused set the body on fire and left the charred remains behind. Security forces reached the site soon after the incident but no action was taken.

village, terrorized the village by setting fire on the straw and exploding bombs and then shot dead youths and elders after ordering the girls and women to run away. The fact revealed by different human rights organizations and media persons after the incident confirms that none of the killed were from the defense committee and that the Maoists had poured their wrath on innocent civilians. The Maoists did not publicize their statement for why they carried out such criminal act.

With such attack on the villagers, defense committee members became more furious against the Maoists. They asserted that the next time they got hold of Maoists; they would rather kill them than hand them over to security persons. They gave a simple reason for this: we arrest and hand them over to security institutions that later release them, which has proven us meager against them (Maoists). Now we will not do so; we have changed our policy.

To worsen the situation, the defense committee members have been demanding arms and weapons from the security forces. They argue that 'when we are carrying out the work of security forces, why not we be provided with the arms?' Such demands and statements of the village defense committee members give the indication that there will be more bloodshed in the days to come. But the security persons deny any possibility that they will provide them with arms. However, security persons admit that they have provided them with small non-lethal weapons.

Nawalparasi has been affected more by the activities carried out by defense committee members, but the amount of destruction caused by them is greater in Kapilbastu. In particular, the border regions of Nawalparasi have witnessed many Indian criminals finding a safe harbor in Nepal with the pretext of fighting against the Maoists and thus, are fully backed by the security forces.

Similarities Between the Two Incidents

Though the origin of both incidents lay in the continuous atrocities of the Maoists in the areas, the backing of security institutions to the Village Defense Committee in both the incidents is the main cause of widespread violence, killing, arson and looting. The government after February 1 might think that using such committees will assist them in tackling the Maoist problem. But they forget that allowing any committee/community to carry out violent activity will ultimately result adversely in the long run. Now the acts of the village defense groups are adding the plight of the civilians further increasing the humanitarian crisis. ●

Mechanics of the International Criminal Court and Its Jurisdiction

Bhimarjun Acharya, Advocate

1. Court Structure:
The mechanics of the International Criminal Court envisioned by the Rome Statute are remarkably simple and apparently efficient in theory, at least on the macro level. The Court is made up of two independent components. The judiciary, consisting of 18 judges and their administrative support personnel, falls under the Presidency, while the prosecutorial arm of the Court, which includes the investigators, falls under an independent Prosecutor. These components, in turn, fall under the supervision of the Assembly of State Parties.

2. The Assembly of State Parties:
Each State Party to the Treaty provides one representative to the Assembly, which serves as the overall controlling body for the Court. This control is exercised to "provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court." The Assembly also maintains the power of the purse, as it decides the budget for the Court. As with many international organizations, the Assembly has an executive agency, in this case called the Bureau. The Bureau has a President, two Vice-Presidents, and eighteen members, who are elected by the Assembly for three-year terms. Who will meet at least once a year? Additionally the Assembly may establish other "subsidiary bodies" such as an independent oversight agency for the Court.

3. The Presidency:
The Court has a total of eighteen judges, subject to a potential increase by a vote of two-thirds of the Assembly of State Parties if necessary. These judges vote among themselves to select the President and the First and Second Vice-Presidents, who, together, make up the Presidency. The Presidency is responsible for the administration of the entire Court, except for the prosecutorial arm. This includes the Registry and the three Divisions of judges: Pre-Trial, Trial, and Appeals.

The eighteen judges are selected by a vote of the Assembly of States Parties from two lists of nominees, one containing candidates with a criminal law background and the other containing candidates with an international law background. Each State Party may nominate one candidate for the election, who may appear on either list if qualified for both. The Statute also requires that the initial election select at least nine judges from the criminal law list and at least five from the international law list, and that future elections be organized to maintain the "equivalent proportion" of judges from the two lists. Only one serving judge is allowed from each State, and the term of office is generally nine years, subject to a phase-in period in which one-third of the judges will have terms expiring every three years. Judges may not be re-elected, except for those serving initial three-year phase-in period terms or those elected to fill a vacancy for a period of three years or less.

4. The Chambers:
Once judges are elected, they are to be assigned to one of the three Divisions. The Appeals Division will be made up of the President and four other judges, while the Pre-Trial and Trial Divisions will be made up of at least six judges each. The qualifications of the judges will factor in the assignment, with the requirement that the Pre-Trial and Trial Divisions be heavy in judges with criminal law experience. The functions of the Divisions will be executed by the Chambers, which are the working bodies of the Court. The Appeals Division will have one Chamber, made up of all of the judges in the Division. The Pre-Trial and Trial Divisions may subdivide and operate in three-judge Chambers, and occasionally in the Pre-Trial Division, in single-judge Chambers. Based on the numbers of judges in each Division, both the Pre-Trial and Trial Divisions could have at least two Chambers each, operating simultaneously and independently on different cases.

5. The Registry:

The Registrar is elected by a majority vote of the judges of the Court for a five-year term, with the possibility of one re-election. The Registrar is the principal administrative officer of the Court, and runs the Registry, which is the organ responsible for the administration and servicing of the Court. The Registrar works for the President of the Court, and in addition to being responsible for a staff of administrative personnel, this officer is also tasked with establishing the Victims and Witnesses Unit. This unit works with the Office of the Prosecutor to provide protection, counseling, and other support to victims, witnesses, and others who may be at risk due to testimony before the Court.

6. The Office of the Prosecutor:

As noted above, the Office of the Prosecutor operates independently from the rest of the Court. The Prosecutor is elected by a majority vote of the Assembly of States Parties for a nine-year term, without the possibility of re-election. The Prosecutor then nominates candidates of different nationalities for one or more Deputy Prosecutor positions to be filled by a similar majority vote of the Assembly of States Parties for similar terms of office. These Deputy Prosecutors then assist the Prosecutor and have the authority to act in any capacity for the Prosecutor. The Prosecutor is also responsible for an administrative staff, a team of investigators, and other issue advisors which he may appoint as particular expertise is needed.

7. Court Procedures:

7.1 ***Initiating an Investigation***

There are three basic sources of information that can cause the Prosecutor to initiate an investigation under the Statute. The common element is that the Prosecutor receives information that a crime within the jurisdiction of the Court appears to have been committed. The jurisdiction of the Court is specifically limited to the crime of genocide[1], crimes against humanity[2], war crimes[3], and crimes of aggression as defined in the Statute.[4] The allegation that such a crime has been committed may be referred by a State Party by the Security Council, or may be received by the Prosecutor from any other source. The Prosecutor, upon receiving this information, begins a preliminary examination to determine if there is a reasonable basis to investigate the allegation.

If the Prosecutor determines that a reasonable basis to investigate exists, as a check on prosecutorial discretion, he must obtain authorization from the Pre-Trial Chamber. But before requesting that authorization, except in cases of Security Council referrals, the Prosecutor must first notify any State's, that would normally exercise jurisdiction over the crime alleged. The notified State(s) have one month to respond, within which time any such State may request that the Prosecutor defer to the State's investigation.

Upon receiving such a deferral request, the Prosecutor must defer to the State's investigation, unless the Pre-Trial Chamber specifically authorizes the Prosecutor to proceed despite the deferral request. This is part of the concept commonly referred to as "complementarity," which dictates that national courts should be the first choice for handling these cases. Absent a deferral request, the Prosecutor submits the matter to the Pre-Trial Chamber for a decision on whether there is a reasonable basis to investigate the allegation and whether the alleged crime is within the jurisdiction of the Court. If the Pre-Trial Chamber finds in the affirmative on both issues, then it will authorize the Prosecutor to proceed with the investigation.

If, on the other hand, the Prosecutor finds no reasonable basis to investigate, there are checks on this discretionary decision as well. The Prosecutor must notify the reporting or referring party that no investigation of the allegation will occur. A referring State or the Security Council may then request that the Pre-Trial Chamber review this decision. Upon review, the Pre-Trial Chamber may request that the Prosecutor reconsider his decision. If the Prosecutor did not base his decision on a lack of belief that the crime was committed or a lack of jurisdiction, but instead on a subjective determination that pursuing the matter would not serve the interests of justice, then the Pre-Trial Chamber has the power to reverse the Prosecutor's decision.

7.2 ***Investigation and Pre-Trial Procedures***

Once the Pre-Trial Chamber authorizes an investigation, the Prosecutor may then pursue the full investigation of the allegation. During the investigation, the Prosecutor has a wide range of tools available to discover the facts of the matter, and the people being investigated or questioned have a wide range of rights specified in the Statute to ensure that they are treated fairly. Included are the rights against self-incrimination, coercion, duress, threats, and arbitrary arrest or detention. The person also has the right

to be informed, before questioning, that he is suspected of a crime within the jurisdiction of the Court, and to be informed of his rights, including the right to counsel.

At some point in the investigation process, the Prosecutor must examine what facts have been discovered and determine whether there is sufficient basis for a prosecution. If the determination is negative, then the Prosecutor must inform the Pre-Trial Chamber. If the case was referred by a State Party or by the Security Council, he must also inform the referring party. At the request of one of these referring parties, the Pre-Trial Chamber may review this decision not to proceed and may request the Prosecutor to reconsider. As with the decision not to pursue an investigation, if the Prosecutor's decision not to prosecute is based on a subjective determination that the interests of justice would not be served by pursuing the matter, then the Pre-Trial Chamber again has the power to reverse the Prosecutor's decision.

If, on the other hand, the Prosecutor determines that there is sufficient basis to prosecute the subject of the investigation, he must then determine whether or not arrest is necessary. If arrest appears to be necessary to ensure the accused person's presence at trial, or to prevent the accused from obstructing the investigation or continuing the criminal course of conduct of which he or she is accused, then the Prosecutor may request the Pre-Trial Chamber to issue an arrest warrant. If arrest does not appear necessary, the Prosecutor may request the Pre-Trial Chamber to issue a summons. In either case, the Pre-Trial Chamber will examine the request to decide its propriety. Such analysis will include a determination as to whether there are reasonable grounds to believe the accused person committed a crime within the jurisdiction of the Court.

If the Pre-Trial Chamber issues an arrest warrant, the Court may then request the State Party in whose territory the accused is located to arrest the person. The Court may request either a provisional arrest in urgent cases, with a promise that the proper request will follow, or an arrest and surrender with all the proper documentation provided at the outset. Once arrested by the custodial State, the accused will be brought before the judicial authorities of that State to determine that the warrant does, in fact, apply to that person and that the arrest was properly conducted with respect for the rights of the accused. The custodial State authorities may grant interim release pending surrender to the Court, but may not contest the validity of the warrant itself. In any case, the custodial State must surrender the accused to the Court when ordered to do so.

If the Pre-Trial Chamber issues a summons, this document will specify the date the accused is to appear before the Court. The summons will be served on the accused, presumably using the procedures acceptable in the territory of the State Party where the accused is located. In this case, the accused person will be expected to present himself voluntarily on the date specified. Accordingly, this type of process should be reserved for suspects not considered to pose flight risks.

If the Pre-Trial Chamber refuses to issue the process requested (whether warrant or summons), then the Prosecutor must determine what course to take next. If at this point the Prosecutor decides not to proceed further, he can close the case, but must still inform the Pre-Trial Chamber and the referring party as indicated above. If, on the other hand, the Prosecutor decides to continue pursuing the case, he may either reopen the investigation to attempt to garner more facts to support the allegations, or, if the refusal to issue the process appears to have been based primarily on the Pre-Trial Chamber's belief that the Prosecutor requested the wrong process for the particular case, the Prosecutor may simply submit a new request for the alternate process.

7.3 *Initial Proceedings, Trial, and Appeal Procedures*

Whether brought before the Court by the process of warrant, arrest and surrender, or by summons and voluntary appearance, the accused will receive one more level of procedural protection before being tried on the charges alleged. At an initial appearance, the Pre-Trial Chamber will ensure that the accused has been informed of the charges and of his rights under the Statute, including the right to apply for interim release pending trial. Then, within a reasonable time after this initial appearance, the Pre-Trial Chamber will hold a hearing to "confirm" the charges.

If the Pre-Trial Chamber finds that the Prosecutor has met this burden, it will confirm the supported charges and commit the accused to a Trial Chamber for trial. If the Pre-Trial Chamber is not convinced the Prosecutor has met the burden, it has two choices. First, it may adjourn the hearing to allow the Prosecutor to consider providing additional evidence or amending charges to better fit the evidence. Alternatively, it may simply decline to confirm the

charges. In this case, the Prosecutor may either close the case and take no further action, or he may reopen the investigation to attempt to better support the charges before trying again to prosecute.

When any charges have been confirmed against an accused person, a Trial Chamber will then take over the case from the Pre-Trial Chamber. When the Trial Chamber assumes control of the case, it will hold pre-trial conferences with the parties as necessary to resolve as many administrative and procedural issues as possible in advance of trial. This will include issuing whatever discovery orders are necessary to allow the parties to properly prepare for trial. The Trial Chamber may also choose to refer certain preliminary issues back to the Pre-Trial Chamber for decision. Likewise, the Trial Chamber may also refer certain trial issues to the Appeals Chamber for interlocutory decision. Chief among the duties of the Trial Chamber throughout the process is to protect the rights of the accused, the witnesses, and the victims.

The list of the rights of the accused at a trial of the International Criminal Court is impressive. At least on paper, the due process offered to the accused seems every bit as extensive as the protections afforded under the U.S. Constitution, with the most noteworthy exception being the absence of the right to a jury trial. The accused has the right to be present at the trial, unless unduly disruptive, in which case he will be required to observe from a remote location. The accused has a right to a public trial, subject to limitations when the Trial Chamber determines a need to protect a witness, victim, or sensitive information. The accused is also presumed innocent until guilt is proven "beyond reasonable doubt," and the burden of proving this is on the Prosecutor, and may never be shifted to the accused.

The exhaustive list of trial rights also includes rights to a speedy trial, to counsel, to confront the witnesses, to compel the testimony of witnesses, to remain silent, and to be provided with any exculpatory evidence in the possession of the Prosecutor. On the other side of the coin, the Statute also provides for a well-developed system to protect victims and witnesses, and to respect their rights to participate in the proceedings. Specifically, the Court is tasked with taking "appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses," but is also required to apply these measures so that they do not prejudice the right of the accused to a fair and impartial trial. This inherent friction guarantees that the Court, like other courts in similar judicial systems, will be continually exercising a balancing process to ensure the adequate protection of conflicting interests. The Prosecutor and the Victims and Witnesses Unit within the Registry of the Court are likewise tasked by assisting the Court in the protection of these often-fragile and under-represented parties in the case.

After receiving all the admissible evidence offered by the parties, the judges of the Trial Chamber enter secret deliberations to decide the guilt or innocence of the accused. They are limited to the charges as alleged and to the evidence of record in the case. The Statute prefers unanimity, but failing that, the majority decides the case. The Trial Chamber must issue a single written decision supported by the rationale for the findings and conclusions reached, and including both majority and minority views, if any. The decision or a summarized version of it is then delivered in open court.

If a finding of guilt has been made, except in the case of a guilty plea by the accused, the Trial Chamber may, on its own initiative, or must, at the request of either party, hold a sentencing hearing. In deciding an appropriate sentence, the Trial Chamber will consider any relevant evidence submitted during the trial, as well as any additional information submitted at the sentencing hearing, if one is held. The Trial Chamber will announce the sentence in public, in the presence of the accused, if possible. The maximum sentence is life imprisonment, but this is to be awarded only in extreme cases. Imprisonment for a term of years is limited to a maximum of thirty. The Court may also impose a fine or a forfeiture of assets derived from the crimes of which the accused has been convicted. Furthermore, the Court may order reparations for harm caused to victims, which can include restitution, compensation, and rehabilitation.

Once the Trial Chamber has completed its work, under the Statute, either side is permitted to appeal the guilt or innocence decision of the Court, based on procedural error, factual error, or legal error. The accused may also appeal based on any other issue that calls into question the fairness or reliability of the proceedings. Either side may also appeal the sentence imposed on the ground that it is disproportionate to the crime committed. If only the decision or the sentence is appealed, but the Appeals Chamber believes the other should be appealed as well, the Court

may invite the appropriate party to submit the additional appeal.

After considering the matters submitted, the Appeals Chamber may confirm, reverse, or amend the decision or the sentence, or it may modify the sentence if found to be disproportionate to the crime. Alternatively, the Court may order a new trial before a different Trial Chamber, if the extent of the error warrants this remedy. In gathering information to make this decision, the Appeals Chamber may call for evidence to answer particular factual questions, or may refer the case back to the original Trial Chamber to answer the questions. The Appeals Chamber decides the appeal by a majority vote and, in a similar fashion to the results of trial, the decision is announced in open court with its supporting rationale, including the majority and minority views, if any. In this case, however, a judge may, if he wishes, also deliver a separate opinion on a particular legal question.

Even after the final decision on the appeal, the Appeals Chamber may again be called upon to review the conviction or the sentence at some future time, if important new evidence is discovered, if it is later discovered that a fraud was committed upon the Court, or if one of the participating judges committed a serious breach of duty in the case. The Appeals Chamber has substantial leeway to take remedial action if it finds the claim to be meritorious. It may reconvene the original Trial Chamber or constitute a new one, or it may retain jurisdiction of the case within the Appeals Chamber to hear the evidence submitted and decide the matter. In the event that a conviction is later reversed on the basis of some miscarriage of justice, the Statute even provides an enforceable right to compensation for the unjustly convicted person. ●

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1 For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; and (e) Forcibly transferring children of the group to another group. Art. 6 (of the Statute)

2 For the purpose of this Statute, "crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; and (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. (Art. 7 of the statute).

3 For the purpose of this Statute, "war crimes" means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Willful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Willfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful confinement; (viii) Taking of hostages. (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against civilian objects, that is, objects which are not military objectives; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated; (v) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives; (vi) Killing or wounding a combatant who, having laid down his arms or having no longer means of defense, has surrendered at discretion; (vii) Making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of

the Geneva Conventions, resulting in death or serious personal injury; (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (ix) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (x) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; (xi) Killing or wounding treacherously individuals belonging to the hostile nation or army; (xii) Declaring that no quarter will be given; (xiii) Destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war; (xiv) Declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party; (xv) Compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war; (xvi) Pillaging a town or place, even when taken by assault; (xvii) Employing poison or poisoned weapons; (xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; (xix) Employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions; (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123; (xxi) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (xxii) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions; (xxiii) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations; (xxiv) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (xxv) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions; (xxvi) Conscripting or enlisting children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities. (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause: (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment; (iii) Taking of hostages; (iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. (d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; (v) Pillaging a town or place, even when taken by assault; (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions; (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; (ix) Killing or wounding treacherously a combatant adversary; (x) Declaring that no quarter will be given; (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; and (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict. (Art. 8 of the statute)

4 See, art. 5 of the statute.

International Criminal Court and Internal Armed Conflict

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1. Background

The impunity of violations of essential humanitarian norms was the subject of grave concern of the world population since the very beginning of the modern era. The international community instituted the Tokyo and Nuremberg Tribunals to try the war criminal of the Second World War. This exercise in solidarity was repeated with the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in 1993 and 1994 respectively.

The International Criminal Court (ICC) is the permanent institution established under the Rome Statute of the International Criminal Court in 1998. It entered into force in 2002. The principal motive for establishing the ICC is to abolish the state of impunity that is created by traditional criminal law in the name of immunity of state officials. The ICC holds jurisdiction over crimes against humanity, crimes of genocide, war crimes and crimes of aggression. But to exercise jurisdiction over crimes of aggression, the Statute must have defined the term aggression by amending the statute.

The International Criminal Court Statute is activated in conditions of armed conflict only. In the past, there was a conception that armed conflict only occurred between States. However, following the Second World War, internal armed conflict was recognized. The ICC can exercise its jurisdiction in either international or internal armed conflicts, under the rubric of international humanitarian law.

2. Internal Armed Conflict and International Humanitarian Law

Internal armed conflict is the conflict between a State and a rival group executed within the national territory of that State. Protocol additional to the 1949 Geneva Conventions regards internal armed conflicts as "... armed conflicts which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."[1] In other words, internal armed conflicts can get international status.

Before the 1948 Genocide Convention and the four Geneva Conventions of 1949, international laws of war applied (according to their specific terms) to wars between States and had no formal bearing on non-international armed conflicts. The laws of war, as embodied in customary international law, were regarded as applicable in civil wars if the government of the State in which an insurrection existed or a third State, chose to recognize the belligerent status of the insurgent group, thereby acknowledging the law's applicability.

At the Ninth International Conference of the Red Cross (RC) held in Washington in 1912, the American Red Cross Society proposed that an international agreement be adopted to permit aid to victims of internal armed conflicts. That proposal was opposed by the Russian representative of the RC. However, at the time of the Russian Revolution, the RC provided assistance to the victims of that internal armed conflict.[2] Such efforts by the RC were only for humanitarian assistance.

In 1921, the Tenth International Conference of the RC, held in Geneva, adopted the principle that all victims of civil wars and social and revolutionary disturbances are entitled to relief. The Conference further appealed for international law to be respected even in times of civil war. In 1937 a commission of government experts convened by the International Committee of the Red Cross (ICRC)

unanimously recognized that the Red Cross principle should be respected in all circumstances (even when the Geneva Conventions were not formally applicable). This view was reaffirmed in 1938 at the 16th International Conference of the Red Cross (ICRC) in London.[3]

During the 1949 Geneva Diplomatic Conference that prepared four Geneva Conventions relating to the victims of war, there was substantial debate over the inclusion of any provisions relating to internal conflicts. The Conference rejected the notion that all laws of war should apply to internal conflicts but negotiation resulted in the adoption of Common Article 3 of the four 1949 Geneva Conventions. The Article binds parties to observe a limited numbers of fundamental humanitarian principles in "armed conflicts not of an international character." The question of non-international armed conflicts was also taken up at the 1954 Hague Intergovernmental Conference. Article 19 of the 1954 Hague Cultural Property Convention provides for the application of the Convention to non-international armed conflicts.

Under the auspices of ICRC, commissions of experts were convened in Geneva in 1969 to examining certain questions relating to non-international armed conflicts. At the 21st International Conference of the RC held in Istambul in 1969, the ICRC submitted a special report on the protection of victims of non-international armed conflicts. The conference adopted several resolutions stating that Common Article 3 of the Geneva Conventions be developed. The conclusions of the ICRC on non-international armed conflicts were endorsed in the 1969 and 1970 reports of the UN Secretary-General on Respect for Human Rights in Time of Armed Conflicts[4].

Similarly in the 1960s, the decolonization and liberation movements gained legality under international law. The UN prompted such liberation movement after which was felt the necessity to regulate the non-international armed conflict. As a result, the Additional Protocol II to the four 1949 Geneva Conventions 1977 was adopted to regulate armed conflict of non-international character. The Protocol expanded and supplemented the Common Article 3 of the Geneva Conventions of 1949 without modifying its existing conditions of applicability. Protocol II applies to all armed conflicts either internal or international.

In the 1990s, there were some further considerations on laws applicable to internal armed conflicts and several new legal instruments were introduced. These include the 1996 Amended Protocol II (on Mines) to the 1980 Convention on Certain Conventional Weapons, the 1997 Ottawa Convention on Anti-Personnel Mines, the 1998 Rome Statute of the International Criminal Court, the 1999 Protocol of Second Hague Cultural Property among others.

3. International Criminal Tribunals on Internal Armed Conflicts

The trial of international crimes by a competent international criminal tribunal was started after the Second World War by the Nuremberg and Tokyo Tribunals. The Tribunals were constituted to prosecute war crimes committed in the Second World War that were not internal armed conflict.

There was common understanding among the delegates of the Diplomatic Conferences that the Geneva Conventions of 1949 and the Additional Protocol of 1977 only apply to international armed conflict. However, efforts were made by the ICRC to expand the Convention to apply to internal armed conflict as well. As a result, a compromise was struck that resulted in the inclusion in Common Article 3 of the four Geneva Conventions armed conflict of non-international nature.

A long time after the Tokyo and Nuremberg Tribunals, two more international criminal tribunals, International Criminal Tribunal for the Former Yugoslavia (ICTY) & International Criminal Tribunal for Rwanda (ICTR)were constituted by the UN Security Council.

The International Criminal Tribunal for the Former Yugoslavia (ICTY) was set up by the United Nations Security Council in 1993, pursuant to Resolution 808 of 22 February 1993[5] and Resolution 827 of 25 May 1993[6].

The International Criminal Tribunal for Rwanda (ICTR) was set up by UN Security Council Resolution 955 of 8 November, 1994 in response to genocide and other systematic, wide spread, and flagrant violations of international humanitarian law that had been committed in Rwanda. The ICTR is based in Arusha, Tanzania. It has jurisdiction over crimes of genocide, crimes against humanity and violations of Common Article 3 and Additional Protocol II committed in Rwanda and over Rwandan citizens responsible for such violations commit-

ted in neighboring States between 1 January and 31 Dec. 1994, when members of the Tutsi ethnic group and their Hutu sympathizers were massacred or attacked by members of the Hutu ethnic group.

4. International Crimes Committed During Internal Armed Conflict under the Jurisdiction of the ICC

4.1. Genocide

According to the 1948 UN Convention on the Crime of Genocide , "Genocide" means: any of following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups as such:

(i) Killing members of the group;
(ii) Causing serious bodily or mental harm to members of the group;
(iii) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(iv) Imposing measures intended to prevent birth within the group; and
(v) Forcibly transferring children of the group to another group[7].

Similar definitions of the term Genocide is included in the Rome Statute of the International Criminal Court. The ICC can try Genocide offenses committed in internal and international armed conflicts.

4.2. Crimes against Humanity

Any acts, "when committed as part of widespread or systematic attack directed against any civilian population with knowledge of the attack" are crimes against humanity under the ICC Statute. The acts enumerated as crimes against humanity by the ICC are murder, extermination, enslavement, deportation or forcible transfer of a population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity, persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, regional, gender or other grounds that are universally recognized as impermissible under international law, or any other crime within the ICC's jurisdiction, enforced disappearance of persons, the crime of apartheid, other inhumane acts of similar character intentionally causing great suffering or serious injury to the body or mental or physical health[8]. The definition of crimes against humanity under the ICC Statute is not an innovation. It reflects developments in international humanitarian law since the Nuremberg Trials. The ICC Statute adds "forcible transfer of population" as an alternative offence to deportation. Additionally, the ICC expands the offence of imprisonment to include other severe deprivation of physical liberty in violation of fundamental rules of international law. In the case of sexual offences, the ICC Statute adds to the offence of rape those of "sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity."

The enumerated crimes against humanity can be analyzed separately.

4.3. War Crime

The following two categories of crimes are considered war crimes in internal armed conflict under the ICC.

4.3.1 Serious Violations of Article 3 Common to the Four Geneva Conventions of 12 August, 1949[9]

Article 3 common to the four Geneva Conventions of 1949 has prohibited the following acts, commission of which can be considered war crimes:

(i) Violence to life and person in particular murder of all kinds, mutilation, cruel treatment and torture,
(ii) Taking of hostage,
(iii) Outrages upon personal dignity in particular humiliating and degrading treatment,
(iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Similar provisions are also provided by the ICC.

Subsequently, AP II extended the definition of war crimes to include the following:

(i) Violence to the life, health and physical or mental well being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(ii) Collective punishment;
(iii) Taking of hostages;
(iv) Acts of terrorism;
(v) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
(vi) Slavery and the slave trade in all their forms;
(vii) Pillage; and
(viii) Threats to commit any of the foregoing acts.

ICTR held in the case of Jean Paul Akayesu that the phrase "serious violation" in Common Article 3 and AP II has been held to be synonymous with breaches of a rule "protecting important values (which) must involve grave consequences for the victim"[10]. ICTY also stressed in the case of Clement Kyishema and Obed Rzindana that "for an act to violate Common Article 3 and AP II, the following elements must be established: the existence of a non-international armed conflict at the relevant time; a nexus between the accused and the armed forces; the commission of a crime 'ratione loci' and 'ratione personae;' and a nexus between the crime and the non-international armed conflict.[11]

Article 8(2) (c) of the Rome Statute enumerates following of war crime under war crimes in armed conflicts of non-international character.

(i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture;
(ii) Committing outrages upon personal dignity, in particular humiliating and degrading treatment;
(iii) Taking of hostages; and
(iv) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

4.3.2. Other Serious Violations of Laws and Custom Applicable in Armed Conflicts of Non-international Character [12]

(i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
(ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as along as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
(iv) Intentionally directing attacks against building dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provide they are not military objectives;
(v) Pillaging a town or place, even when taken by assault;
(vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization and any other form of sexual violence also constituting a serious violation of Article 3 common to the four Geneva Conventions;
(vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
(viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
(ix) Killing or wounding treacherously a combatant adversary;
(x) Declaring that no quarter will be given;
(xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; and
(xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.

5. The Current Internal Armed Conflict in Nepal and the Applicability of the ICC

Nepal is suffering from tragic internal warfare between the national government and the CPN (Maoist) since 1996. Since then, and as of 30 May 2005, 12,294 people have been killed as a result of the warfare.[13] Among those, 4,302 were killed by Maoists and 7,992 were killed by the State.[14] Similarly, there are a number of people that have disappeared at the hands of the government and Maoists alike. The National Human Rights Commission of Nepal has revealed that 717 people have disappeared .[15] Furthermore, 19,408 people were tortured from 1996 through the end of 2004.[16]

To discuss international crime in Nepal is to discuss two kinds of international crimes: war crimes and crimes against humanity. Genocide has not occurred in Nepal, as the conflict is not directed against a particular ethnicity, religion, caste, culture, etc. Crimes of aggression are not relevant in internal armed conflict and present armed

Following is a separate discussion of specificinternational crimes.

5.1. Killings

As already mentioned, a large number of people have been killed in the ongoing armed conflict between the Nepali government and the CPN (Maoist). Please see table below for specific data.

The figures below may be many times greater than the revealed data because both the Government and the Maoists are hesitant to provide detailed information about the incidents. Among those killed, very few are security personnel and combatant Maoists carrying weapons. Only 541 are army personnel and 1,241 are police personnel. A large number of dead Nepali people are political workers (see table).

After political workers, the second largest number of people killed are agriculture workers. The internal armed conflicts also have claimed the life of students, civil servants, social worker, journalists, law professionals etc.

The conflicts even have claimed the life of children younger than 4 and citizens older than seventy years of age.

Number of Victims Killed by the State and Maoists
13 February 1996 – 30 May 2005

Occupation	by State	by Maoist	Total
Agricultural workers	1286	740	2026
Teachers	57	82	139
Political workers	5116	407	5523
Police personnel	12	1241	1253
Students	193	128	321
Civil servants	39	527	566
Social workers	6	7	13
Business persons	44	102	146
Workers*	137	73	210
Health workers	2	4	6
Army personnel	8	541	549
Photographers	2	3	5
Journalists	10	4	14
Law professionals	0	2	2
Prisoners	1	3	4
Dacoits	4	4	8
Engineers	0	1	1
Occupation Unknown	154	185	339
Unidentifiable persons	921	248	1169
Total	**7992**	**4302**	**12294**

*Workers denote wageworkers, industrial workers and transportation workers.

Source: INSEC

By analyzing the bellow one can see that 705 Nepali less than 19 years of age lost their life due to Nepal's internal armed conflict. Among them, 185 were less than 14 years and 14 were less than 4 years of age. Similarly, the armed conflict has claimed the life of people more than 75 years old. In this period of armed conflicts 18 persons aged between 75-100 years were killed. 158 persons aged between 60 and 100 were killed as a result of the armed conflict. An analysis of these figures leads to the conclusion that attacks and counter-attacks between the Government and the Maoists are indiscriminate.

Number of Victims Killed by the State and Maoists
13 February 1996 – 30 May 2005

Age	By Maoists				By State			
	Male	Female	Unidentified	Total	Male	Female	Unidentified	Total
0 - 4	10	2		12	2			2
5 - 9	34	15		49	3	3		6
10 - 14	47	11		58	39	19		58
15 - 19	62	11		73	303	144		447
20 - 24	286	23		309	699	147	1	847
25 - 29	450	19	1	470	805	159	1	965
30 - 34	1223	8		1231	1529	53	1	1583
35 - 39	413	7		420	325	18	3	346
40 - 44	200	6		206	197	12		209
45 - 49	167	5		172	112	2		114
50 - 54	142	4		146	63	1		64
55 - 59	85	4		89	39	1		40
60 - 64	51	2		53	13	3		16
65 - 69	22	2		24	11	2		13
70 - 74	25	1		26	8			8
75 - 100	8	5		13	4	1		5
N/A	438	5	195	638	744	145	1667	2556
Total	**3663**	**130**	**196**	**3989**	**4896**	**710**	**1673**	**7279**

Source: INSEC

Following is a listing of armed conflict incidents that violated the international law of war. In each case, both security personnel and the Maoists used long-range weapons which can not discriminate non-target and target objects properly.

5.1.1. Khumel Incident, Rolpa

On 30 Nov. 2001, security men fired from a flying helicopter in Khumel VDC-4 of Rolpa District. As a result, Phursi Rokka, age 12, Man Bahadur Gurung, age 65, and 3 others were shot dead. In the same attack, six-year-old Man Bahadur Gharti, 65-year-old Dulu Gharti, and 5 others were seriously injured.[17] They all were gathered to observe Baraha Puja (a local festival) and not taking part in the hostilities. This was a blatant violation of Rule no. 7 of the Basic Rules of the Geneva Conventions and Their Additional Protocols which provides that "parties to a conflict shall at all times distinguish between the civilian population and combatants in order to spare civilian population and property." Neither the civilian population as such nor civilian persons shall be the object of attack. Attacks shall be directed solely against military objectives.

5.1.2. Doramba Incident, Ramechhap

Twenty persons, including civilians, were shot dead by security personnel at Doramha, Ramechhap District on 17 August 2000. One of the victims was shot dead at his

People Arrested/Tortured by State Authorities	
Year	**No. of Victims**
1996	2071
1997	1568
1998	2665
1999	1139
2000	1035
2001	2195
2002	3430
2003	2716
2004	2589
Total	**19408**

Source: INSEC, DDC

house where the other nineteen were killed after being captured at Dhandakatheir of Daduwa VDC. The victims were taken from the house of Yuv Raj Moktan of Doramba where they in a meeting.

The security forces publicized the incident as a Maoist encounter. However, the National Human Rights Commission (NHRC) formed an investigation team on 26 August 2003 to conduct an "on the spot" investigation of the facts surrounding the incident. The team was headed by the former justice of the Supreme Court Krishna Jung Rayamajhi.

The investigation team concluded that the Doramba incident was not an encounter with the Maoist forces and that the people were killed after capture. The Maoists were gathered there, without arms, for the marriage celebration of two Maoist cadres. The captured people had their hands tied on their backs and taken to Danda Katheri, where they were shot dead. The NHRC further concluded that that incident seemed contrary to international humanitarian law, in particular Common Article 3 of the Geneva Conventions which embodies the principle that prisoners who are arrested and taken under complete control during times of armed internal conflict must be protected.[18] On the day the Doramba incident report was released (i.e. 11 September 2003), the NHRC also published two additional reports that detailed violations of humanitarian law by Maoists. The Maoists were alleged to have ambushed a public bus in which security men and civilians were riding in Nagi VDC of Panchthar District on 5 Aug. 2003. Similarly, on 19 Aug. 2003 Maoists shot dead two unarmed policemen who were engaged in bargaining at a local market in Dhangadi of Siraha District. In both incidents, the Maoists targeted security personnel who were not engaged in hostilities, as well as civilians-- a clear violation of humanitarian norms and principles propounded by the United Nations.[19] The above-mentioned incidents illustrate only a small fraction of the myriad atrocities resulting from the armed conflict. Of these, only a minority is investigated while a large majority is ignored.

5.2. Torture

Despite constitutional prohibition, torture is widely practiced in Nepal. Civilian people, political activists and captured members of the conflicting parties are continuously tortured in Nepal.

A national survey was conducted in 2001 by Centre for Victims of Torture (CVICT) among 95 percent of prisoners throughout Nepal. 70 percent of those surveyed reported that torture had been practiced and that it occurred most often in police custody, leading to the conclusion that of all

	No. of Torture Victims				
Perpetrator	**1998**	**1999**	**2000**	**2001**	**2002**
Police	260	247	714	335	678
Army	-	101	26	5	201
Maoist	-	32	23	37	180
Prison Guard	5	7	2	3	31
Forest Guard	1	8	55	20	9
Others	14	12	61	12	192
Total	**277**	**407**	**881**	**412**	**1291**

Source: CVICT, Annual Reports (1998, 1999, 2000, 2001, 2002)

likely to be tortured. Torture is also exercised by the Maoists. The National Human Rights Commission itself received 23 petitions on torture in 2001. But it must be noted that it is very difficult to pinpoint the exact number of torture victims because many incidents of torture go unreported due to fear of reprisal.[20] Please see the table above for figures regarding reported torture incidents.

Victims are tortured while in police custody, army camps, in Maoist custody, etc. As is evident from table No. 5, torture occurs most frequently in police custody. Following in numbers is the army, especially given its activities in 1999

and 2002, when it reportedly tortured 101 and 201 persons respectively. As for the Maoists, their numbers are lowest (32, 23, and 37 in 1999, 2000, and 2001) compared to the numbers for the state authority.

Disappearance
(13 February 1996 – 30 March 2005)[21]

Category	Number
Disappeared by Security	1232
Abducted by Insurgent	34688
Total	**35920**

Source: INSEC

5.3 Forceful Disappearance and Detention Incommunicado

Both conflicting parties abduct persons and do not provide information regarding their whereabouts to their family, human rights activists or journalists .The government categorically denies the disappearances as do the Maoists. On the basis of complaints received, the NHRC has published data of disappeared people.

5.4 Gender-Related Crime

Women have been more victimized than men by the armed conflict. Sexual abuse and rape are the most common crimes against women. Furthermore, there are specific means of torture applied against women.

One incident involved seven policemen, including a sub inspector, who raped two minors, aged 14 and 15, in the premises of a local school in Rajhaina area. The girls were working at the building construction site for the Armed Police Force (APF).[22]

Similarly, according to a report compiled by lawyers from Advocacy Forum, a human rights group, following their field visit, security personnel allegedly arrested, raped and killed a young girl and shot dead another on 12 February 2004 in Pokhari Chauri VDC of Kavre. The report accused the security personnel, of disappearing another girl who has been missing since then. The report, citing family members' and eye witness accounts, states that about 10 security personnel in plain clothes broke in to the house of Karna Bahadur Rasaili at midnight on 12 February 2004. They then inquired about the people inside the house and went to a bed where his 18-year-old daughter Reena Rasaili and her sister Devi Sunuwar (who was visiting the family that day) were sleeping. The security men grabbed Reena from her bed, even as she pleaded that she was not a Maoist activist. She told the security personnel that she was a student at local Jagriti Secondary School and a social workers at Rural Energy Development Center, Kavre. Indifferent to her plea, the security personnel took her to a nearby cowshed while others stood guard so that the family members could not get out of the house.

According to Devi Sunuwar, the family members were forced to listen to Reena's painful yelling and crying in the cowshed for the next five hours while she was being allegedly raped. At around five A.M., the family members heard three rounds of gunshots. After the security personnel had left the village, the family found Reena's body about 100 meters northwest of their home. The report states that Reena's body was fully naked and showed several injuries and severe bleeding. The report concluded that she could have been raped before being killed and states that the family members and even the villagers were deeply traumatized by the savagery. Devi the victim's aunt also told the lawyers that a security officer came out of the cowshed at around 3 A.M., entered the house and started abusing her. He touched Devi's breast and told her that he was the chief of the security group. He further told her that he would save Reena if she went outside the house with him. She declined his proposal and forcefully pulled his hand out of her breast when he refused to do so. He then walked towards the cowshed. Karna Bahadur claimed that his daughter was innocent.

That same night, security personnel also killed Subhadra Chaulagain, a 17-year-old ninth-grader studying in Prava Secondary School. She was also taken from her bed, beaten up and shot dead. According to her father Kedar Nath Chaulagain, a driver, the victim pleaded that she had done no wrong and said she was ready to surrender. She begged them not to kill her but the security forces opened fire and killed her at around four in the morning, said Chaulagain.

In yet another grim development in the incident, a group of security personnel visited the house of Devi Sunuwar (aunt of Reena Rasaili) on 17 February and abducted her 15-year-old daughter Maina Sunuwar. Now the security forces are denying the arrest of Maina Sunuwar.[23]

These are only a few of the cases that have been disclosed. As is generally known, victims of sexual offences are stig-

matized by society. Thus, such crimes are usually not reported.

6. Concluding Note

The ICC can have jurisdiction over crimes committed in internal armed conflict. To exercise such jurisdiction, ratification of the ICC by the relevant State is necessary. There are 139 signatories to the Rome Statute of the ICC. Among them, 99 have ratified the Statute as of end of May 2005. A large number of the signatory nations, including USA, have yet to ratify it.

The exercise of jurisdiction of the ICC over internal armed conflict is seen by some as problematic. Some State authorities feel the ICC would be intervening in their internal affairs. In this regard, one must remember that the ICC is a complimentary institution activated only when the a State fails or is unable to punish a grave violation of humanitarian law. If States prosecute perpetrators of such violations through their national criminal justice system, the ICC does not intervene in the process. ●

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3 ibid

4 id p.482

5 UN Doc. S/RES/808 (1993)

6 UN Doc. S/RES/ 827 (1993

7 Article II, *Convention on the Prevention and Punishment of the Crime of Genocide*-1948.

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10 Prosecutor vs. Jean Paul Akayesu Case No. ICTR-96-4-T, ICTR T. Ch. I 2 Sept. 1998.

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International Court of Justice and International Criminal Court: Similarities and Differences

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1. Introduction

Justice is a very important principle in the civilized world. The constant and rapid development of the justice system has created the notion that even in extremely difficult situations, States have to ensure that justice is meted and the perpetrator punished. Traditionally, delivery of justice was considered a daily function of the government. As the concepts of transnational governance and supra national adjudication are comparatively new, we find very few instances where justice is dispensed at the international level.

Supranational adjudication is comparatively a new concept, developed during the League of Nations era. The international rule of law movement began in 1920 with the push to establish a Permanent International Court of Justice. However, the authority of the ICJ was limited since its decisions were not legally binding. The International Criminal Court, on the other hand, could provide a framework for strengthening the rule of law by minimizing impunity in the world. The traditional notion of State sovereignty and national legal order has frequently been invoked in international fora to justify their wrongful acts. However, sovereignty and domestic jurisdiction no longer serve the interests of justice if the crime is defined in international law. The international legal bodies are the outlets of the constant efforts towards justice.

This paper attempts to compare two international judicial organs, the International Court of Justice (ICJ) and the International Criminal Court (ICC). The ICJ is designed to settle disputes between States and other subjects of international law. Thus, its jurisdiction is limited in the sense that it cannot interfere in matters not submitted voluntarily by the nations to the Court. Serious violations of human rights and humanitarian law may come under the jurisdiction of the ICJ, but it substantially lacks an enforcement system and the extent of adjudication would be limited to advisory opinions. The ICC on the other hand, has jurisdiction over crimes, not only disputes between nations. Therefore, the scope of comparison is limited. The first part of this article discusses the quest for international rule of law in recent times. The second part discusses the role and function of the International Court of Justice. As the ICC is mandated to adjudicate specific kinds of crimes deemed to affect international peace and security, the third part will discuss the establishment and mandate of the ICC as well as the scope of its jurisdiction. As discussed earlier, the scope of the ICJ is very different from that of the ICC. Accordingly, the fourth part will analyze possible similarities and differences between the two international legal bodies.

2. A Quest for International Rule of Law

Over the past 500 years, the world community sought different ways to confront international crimes such as crimes against humanity, crime against peace and war crimes.[1] The attempts made by the international community have contributed tremendously to the present system of globalized justice. However, concerns about the legitimacy of such international tribunals in light of traditional concepts of state sovereignty and the disputed definition of some crimes under universal jurisdiction; the lack of State will to cooperate with other States regarding codification of internationally recognized crimes; and the Act of State doctrine continue to impede progress in the sustainability of the international courts and their effectiveness.[2]

The Permanent Court of Justice was a first step towards international rule of law. However, the jurisdiction given to the court and the lack of cooperation among the members of the League of Nations with the court eventually caused the court to become defunct. It decided some important cases while settling disputes between States and helped to codify customary international law. Such deci-

sions had an impact on international law-making and codification, founded a system of international justice, and also established jurisdiction in some important cases.[3]

The ICJ is the continuation of the Permanent Court of International Justice. It was established under the United Nations Charter as the principal judicial organ of the UN. The ICJ, with its limited jurisdiction, has also been able to establish a system of global justice. Its decision in the case of the former Yugoslaviaand advisory opinion on the use of nuclear weapons, among other decisions, are seen as significant progress in the protection of human rights in the world.[4] Although its jurisdiction is limited only to member States and subjects of international law, its decisions on certain matters have a definite impact on human rights,[5] peace, and the new world order.

The settlement of matters between States and subjects of international law was an important achievement in international justice. However, certain matters having universal relevance such as the matter of jus cogens,[6] were outside the scope of an international court. The Nuremberg tribunal was a major achievement towards punishing the crimes that might come under the scope of an international court. Although the verdicts of the Nuremberg tribunal have been challenged by international lawyers and academicians, they remain a major exercise in international law jurisprudence, frequently cited by the subsequent international tribunals.

To further analyze the progress in international rule of law jurisprudence, it is necessary to consider developments after 1990, which saw the establishment of two international ad hoc tribunals. In 1993, the United Nations established the International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia, at The Hague, to try violators of international human rights in the former –Yugoslavia. In 1994, the UN established the International Criminal Tribunal for Rwanda in Arusha, Tanzania, to try violators of human rights and humanitarian law. As their names imply, the jurisdiction of each tribunal is limited to violations of human rights and humanitarian law in those two countries only.

The violation of humanitarian law has been a major concern of the world community. Civilian suffering due to international and domestic armed conflict has constantly been demanding the attention of the world. However, opposition to the establishment of a permanent international court to address these issues has been voiced for the following reasons:

1. Difficulty of establishing ad hoc or issue-specific tribunals, including time and expenses.
2 Claims that the court would be an ineffective mechanism for crime deterrence at the global level.
3. States are the ultimate authority on matters that may come under the jurisdiction of their domestic courts. However, in the long run, States do not provide long-term solutions to international crimes.

3. International Court of Justice

The International Court of Justice is a legal institution-charged with reconciling international disputes. It is designed so that only member States can be parties to the court. The effectiveness of this institution has been called into question, however, because its jurisdiction is limited to cases in which all State parties consent, and because States have other means for settling international disputes. The rule limiting jurisdiction to consenting State parties is a reflection of the customary international law concept, later embodied in the Vienna Convention on the Law of Treaties, that sovereign States can only be bound if they consent. States can agree to create a court with jurisdiction over them even in the absence of case-by-case consent. However, none have done so.

The Court has a dual role: to decide in accordance with international law the legal disputes submitted to it by State parties, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies[7].

The Court has the capacity to hear a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:[8]

- By the conclusion between them of a special agreement to submit the dispute to the Court;
- By virtue of a jurisdictional clause, i.e., typically, when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court. Several hundred treaties or conventions contain a clause to such effect; and

- Through the reciprocal effect of declarations made by them under the Statute, whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. The declarations of 64 States are at present in force, a number of them having been made subject to the exclusion of certain categories of dispute.

The decision of the court is binding on the parties of the case only. It does not create international precedent that can affect the future behavior of nations. While deciding the cases, the court can make international law systematic, codified and establish a normative standard of international law.

The Court can render advisory opinions for the authorized subjects of international law. The only bodies at present authorized to request advisory opinions of the Court are five organs and 16 specialized agencies of the United Nations family.[9] On a substantive level, advisory opinions of the court uphold consultative standards and by their nature, they are not binding. The modus operandi is the same as for the hearing of cases. Until now, the court has given 24 advisory opinions, "concerning, inter alia, admission to United Nations, reparation for injuries suffered in the service of the United Nations, the territorial status of Namibia and Western Sahara, judgments rendered by international administrative tribunals, expenses of certain United Nations operations, applicability of the United Nations Headquarters Agreement, the status of human rights rapporteurs, and the legality of the threat or use of nuclear weapons."[10]

4. International Criminal Court

International criminal tribunals, particularly those of an *ad hoc* nature, deal with crimes against peace, heinous war crimes, and crimes against humanity committed by civil and military officials. As stated above, the Security Council, the UN Charter, established two ad hoc tribunals for the prosecution of serious violations of international humanitarian law in the Former Yugoslavia and Rwanda.[11] The foundation of these two tribunals has been criticized sharply on the ground that there was no objective assessment as to whether the situations in each country represented threats to international peace and security. They have to be assessed not by their contribution to the development of international criminal law and the enforcement of international humanitarian law, important and valuable though that is, but by their contribution to the restoration of peace in those war-torn areas.

International law, as applied by the international tribunals, is fast developing into a highly specialized branch of law. The substantive law is mostly derived from international treaties against a background of customary international law. The procedure is composed of a blend of common law and civil law criminal procedures, perhaps with a leaning toward the common law adversarial system- with the heavy burden of proof that it imposes on the prosecution and somewhat passive role for the judge.

A mechanical replication of national law practices and procedures in international criminal proceedings is not appropriate. International trials exhibit a number of features that differentiate them from national criminal proceedings. All these features are linked to the fact that international criminal justice is dispensed in a general setting markedly different from that of national courts: international criminal courts are not part of a State apparatus functioning on a particular territory and exercising an authority which domestic courts enjoy. International criminal courts operate at the inter-State level. They discharge their functions in a community consisting of sovereign States. The individuals over whom these courts exercise their jurisdiction are under the sway and control of sovereign States.

Many important consequences follow from this state of affairs. Firstly, one may conclude that an international criminal court has no direct means at its disposal to enforce its orders, summons and other decisions or to compel individuals under the sovereignty of a State to comply with its injunctions. The court must rely on the cooperation of that State. To lose sight of this fundamental condition, might be a source of great confusion and misapprehension. The philosophy behind all national criminal proceedings, is unique to those proceedings and stems from the fact that national courts operate in a context where the three fundamental functions (law-making, adjudication and law-enforcement) are discharged by central organs partaking in the State's direct authority over individuals.

a. Why a Permanent International Criminal Court?

In 1998, about 160 countries met in Rome to negotiate a

treaty to establish a permanent international criminal court. After five weeks of intense discussion, a statute appeared which was adopted by a vote of 120 to 7, with 21 countries abstaining. The Statute has received the number of ratifications required for activation and it is now in force. "The Rome Treaty is an historic achievement, establishing for the first time a universal framework to end impunity for the most serious crimes under international law."[12] Now the question arises: what are the substantive aspects necessary to establish a permanent international criminal court? The main reasons for establishing a permanent international court are the following:

1. After Nuremberg, the push to establish an ad hoc tribunal prevailed. The influence on the Security Council by powerful States to establish international tribunals may not serve the true purpose of international justice. The Security Council has been criticized of "tribunal fatigue."[13] From a legal standpoint, ad hoc tribunals do not provide equal treatment to individuals in similar circumstances.[14] However, a permanent international criminal court can provide solutions to the limitations of ad hoc tribunals.

2. Despite the experience with Nuremberg and Tokyo, several gross violations of human rights and humanitarian laws have not been punished either at the national or international level. Impunity prevails even in countries where the rule of law prevails. "Impunity not only encourages the recurrence of abuses against human dignity, but also strips human rights and humanitarian law of their deterrent effect."[15] It has been widely argued that "the quantum of human harm produced since World War II by conflicts of a non-international character far exceeds the combined casualty figures of World War I and World War II. Yet, the overwhelming majority of perpetrators [in those conflicts] have not been punished."[16]

3. The ICC is complementary to national systems of justice. It can hear issues of human rights violations if a State is unwilling or unable to bring the perpetrators to justice. In most cases, it is a later government that carries out an investigation and prosecution against the perpetrators, and may even grant them amnesty. A recent example is South Africa, where many of the perpetrators were not prosecuted, as the government decided to provide amnesty to them. In such situations, the core of the victims remain without relief. Thus the ICC could be an important measure of relief to victims, their family and even to the affected communities.

4. The Court is sometimes taken as an alternative to the national courts. National courts, ideally, can adjudicate and decide any matter falling within their jurisdiction. However, the prerequisite is that the government must be willing to punish culprits. The willingness of a State has often been overshadowed by its preference for amnesty and the government's failure to protect witnesses. The ICC can counter the failure of the national system.

b. Jurisdiction of the ICC

The ICC has jurisdiction over four types of crimes: genocide, crimes against humanity, war crimes, and aggression. According to the Rome Statute of the ICC, it can expand its jurisdiction over more crimes if member States agree. However, for the time being, the ICC cannot exercise jurisdiction over crimes of aggression because "aggression" has not yet been defined.

One significant achievement of the ICC is that in the process of selecting the crimes over which the Court would have jurisdiction, the drafters also had to define the crimes more precisely. The crime of genocide, for example, is defined by a separate convention, namely, Article 2 of the Genocide Convention. However, the Rome Statute expanded that definition.

Similarly, Article 7 defines crimes against humanity as "any …acts…committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."

These provisions are not likely to apply in the absence of a state of armed conflict. Other conflicts occur which may not be considered armed conflict. Conflict occurs in a wide variety of situations. Accordingly, it should be addressed even in the absence of arms. After all, regardless of whether the conflict is armed, victims should be entitled to redress. It would be difficult to explain to the victims that their perpetrators cannot be brought before the Court

because their crimes occurred in the absence of armed conflict.

The Rome Statute has a seven-year opt-out provision with respect to war crimes. This provision allows a nation becoming a party to the Statute to declare that for a period of seven years after the Statute enters into force, that nation does not accept the Court's jurisdiction for war crimes articulated in Article 8 for situations in which it is alleged that war crimes were committed by its nationals or on its territory. This is a significant loophole in the Statute. It will allow nations to avoid the jurisdiction of the Court and the accompanying penalty for serious war crimes. No nation should be accorded such a privilege. Such a privilege comes at the expense of the crime victims. The only purpose of this provision, which still does not seem to justify its inclusion, may be to encourage nations not already a party to the Statute to sign on.

B) The Obligations of the State

A State party to the Statute of the ICC agrees to recognize the jurisdiction of the ICC within its borders.[17] The Court is permitted to exercise jurisdiction if one or more of the States are parties or have accepted the jurisdiction of the Court. There are two prerequisites for accepting the Court's jurisdiction: (1) The State in which the conduct in question occurred can accept the Court's jurisdiction or, if the conduct occurred on board a vessel or aircraft, the State of registration of that vessel or aircraft can accept jurisdiction of the Court; or (2) The State of the accuser's nationality can accept the jurisdiction of the Court. The Court may exercise its authority when a situation is referred to the Prosecutor by a State Party or by the Security Council, or when the Prosecutor initiates the investigation of a particular crime within the Jurisdiction of the Court. No State consent is required where the Security Council refers a situation to the Court.

C. Defining the Terms "Unwilling" and "Unable"

Another important provision of the Statute is the one that applies to States that are "unwilling" or "unable" to bring perpetrators to justice at the national level. Article 17 of the ICC has established the criteria for deciding admissibility of the cases before it. The Article gives authority to national courts to deal with the matter that might fall under the jurisdiction of the ICC. But the question is where the national institution is unwilling or unable to investigate or hold proceedings, how can the admissibility of the case to the ICC be determined.

The criteria for analyzing instances of unwillingness or inability are quite vague. The drafters of the Statute believed that the ICC had too broad a discretion in defining these terms and that there was no objective criteria on which the ICC could base its determination.[18] It is a challenging process that the ICC may not be able to decide without debate. The Statute only requires that the ICC have "regard to the principles of due process recognized by international law." [19]

Article 17 prescribes the conditions under which national institutions are judged as unwilling. The unwillingness of a State to prosecute or investigate is determined when it is found that: (1) The proceedings undertaken or the decision made at the national level was for the purpose of shielding the accused from the ICC; or (2) There has been an unjustified delay in proceedings; or (3) The proceedings are not independent or impartial.[20] There is also an argument that certain procedural rules that affect the proceedings also be considered a sign of unwillingness to prosecute. For example, discriminatory requirements relating to prosecuting sexual violence crimes, such as having male eye witnesses to a rape of a woman, would be inconsistent with the intent of the Statute to bring the accused to justice.

Steps for Implementing the Rome Statute of the ICC

Despite the efforts to establish the ICC, much is desired with regard to cooperation among States. The American stance on the implementation of the Statute has created problems in implementing some of its provisions. The creation of an international court would fortify the role of national courts in undertaking trials involving international crime. This is possible because the principle of complementarity. The Principle of Complementarity sets out the circumstances under which the Court is allowed to act in relation to a particular case, and when the national courts have preemptive jurisdiction. Consequently, the ICC's impact on domestic law and national capacity building will be significant and far-reaching, as there remains an opportunity for the States to address impunity within their jurisdiction.

There are some fundamental responsibilities of the State while implementing the Rome Statute of the ICC. The first

must be to adopt or amend the domestic legal framework to make it compatible with the Statute of the ICC. This will entail both substantive and procedural changes that touch on an endless number of legal areas. While the principle of complementrity reserves the prosecution of nationals charged with crimes defined under the ICC for the States, they must ensure that their own judicial systems meet requisite international standards.[21] States will also have to tread carefully when adopting judicial proceedings, such as truth commissions, so they are not viewed as avoiding prosecution.

Despite these safeguards, there is a practice among States of granting amnesty to perpetrators of gross violation of human rights and humanitarian law. This practice will have to cease. In other words, the successive governments should take proactive measures to prevent and punish past atrocities. Domestic legislation will also have to reflect a prohibition against selective amnesties after conviction since such a policy would be difficult to defend against the general purpose of the ICC of eliminating impunity of perpetrators of crimes.

5. Analysis

It is agreed that effective combat against violations of international law can be achieved through international cooperation. Cooperation will enhance the capacity of nations to promote and protect human rights and strengthen the enforcement of environmental regulations while also addressing not only the crimes defined by the ICC and the ICJ, but also other criminal activity, such as corruption, illicit drug trafficking, and national and international terrorism.

In principle, international courts and tribunals can deter crimes at the international level. However, major cooperation among nations is still necessary. The implementation of a permanent court to prosecute international criminals is an important goal of the international community. This goal can only be reached through further cooperation among the member States. Additionally, States should make a collective effort against impunity at the international level and bring international criminals to justice.

In this context, the role of the ICJ has been limited to the extent of the disputes between States. The subject matter of its jurisdiction and the value of its decisions in terms of establishing the international rule of law seem much less than that of the ICC. The ICJ cannot deter grave crimes that threaten the peace, security and welfare of the world. On the other hand, the ICC would be able to cope with the disadvantages of the ICJ and deter grave crimes in the world. The ICC was established to enhance international cooperation by putting an end to the impunity of perpetrators of grave crimes that threaten the world. The role of States in implementing the ICC Statute is absolutely essential to the success of the ICC.

6. Conclusion

Supra national mechanisms for deterring serious violations of human rights and humanitarian law would be an effective measure to combat impunity at the national level. The efforts of the International Court of Justice have been significant to the development and codification of international law and in settling disputes among the States. However, in terms of protection and promotion of human rights and discouraging crimes against humanity and war crimes, the International Criminal Court would be more effective. For the ICC to carry out such functions, State cooperation and proactive support will be required. ●

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1 Although some of these crimes are defined by the subsequent development of international law. Sandra L. Jamison Leonard v.B. Sutton Award Paper: A Permanent International Criminal Court: A Proposal that Overcomes Past Objections, 23 Denv. J. Int'l L. & Pol'y 419, 1995. The US approach to Article 98 of the Statute of the ICC is one of the major issues where academicians and lawyers raised questions earlier in the drafting period of the ICC Statute.

2 Ian Browlnie, *Principles of Public International Law*, ELBS with Oxford University Press, fourth edition, 1990, page 714.

3 www.icj-cij.org, the official website of the International Court of Justice.

4 Advisory Opinion of 8 July 1996 Preliminary Objection, Legality of the Use by a State of Nuclear Weapons in Armed Conflict (1993) available at www.icj-cij.org.

5 Article 53, Vienna Convention on Laws of Treaties.

6 Official website of the ICJ, www.icj-cij.org

7 Official web site of the court: www.icj-cij.org

8 Ibid
9 *id*
10 For the establishment of the International Tribunal for Rwanda, *see* S. Res. 955, U.N. SCOR, U.N. Doc. S/RES/955 (1994)
11 Lawyers Committee for Human Rights, *The Rome Treaty for an International Criminal Court: A Brief Summary of the Main Issues*, vol.2, no.1, (August 1998), <http://www.lchr.org/icc/papv2nl.htm.
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13 M. Cherif Bassiouni, From Versailles To Rwanda In Seventy-Five Years, 10 Har. Hum. Rts. J. 12 (1997).at 60
14 Young Sok Kim, the cooperation of a state to establish an effective permanent international criminal court, 6 D.C.L. J. Int'l L. & Prac. 157
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16 Article 12,
17 Mark S. Ellis, the international criminal court and its implication for domestic law and national capacity building, 15 Fla. J. Int'l L. 215, Fall, 2002, at 236.
18 ICC Statute, *supra* note 1, at Art. 17(2).
19 *Ibid*. at Art. 17(3)
20 At least the states must adhere to the recognized principles and standards of due process in international human rights instruments, particularly as they relate to the rights of defendants

International Humanitarian Law and the International Criminal Court

Bidhya Chapagain

International humanitarian law (IHL) is the part of public international law that is primarily responsible for regulation of armed conflicts and in particular, protection of victims of armed conflict. It sets out the rules that all combatants must follow. IHL protections fall into two main categories. The first concerns the proper treatment of civilians and captured combatants by a party to a conflict. The second category of violations concerns the conduct of warfare and the weapons used. Attacks that do not or cannot discriminate between combatants and civilians are illegal. Civilians cannot be used as human shields. Attacks that cause disproportionate harm to civilians are prohibited. The rules of humanitarian law concerning international crimes and responsibility have not always appeared sufficiently clear. One of the thorniest problems in the implementation of the IHL relating to the legal nature of international crimes committed by individuals and considered as serious violations of the rules of humanitarian law.

The most serious IHL violations are considered war crimes including willful killings, torture and inhumane treatment, the taking of hostages, unlawful deportation and confinement, and willfully depriving a person of the rights of fair and regular trial. Civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, the principles of humanity and the dictates of public conscience. The first and second world wars brought horrific violations of international humanitarian law and gaps in its implementation. The situations identified the need for more comprehensive monitoring through a universal treaty. This prompted the four Geneva Conventions of 1949, which were mainly concerned with international armed conflicts. However, they contain a key article in common dealing with non-international armed conflicts known as "Common Article 3," which, together with Protocol 2 of 1977, supplements the 1949 Geneva Conventions with regard to victims of international armed conflicts and non-international armed conflicts.

Today, there are six main international instruments that regulate warfare and the protection of civilians and those wounded in combat. The four Geneva Conventions of 12 August 1949 and the two Protocols Additional to the Geneva Convention of 1977 provide the basis for international humanitarian law. They are particularly complex because of three different thresholds in applicability. By threshold it is meant that the conflict has to have a certain level of intensity in order to be characterized as an armed conflict:

- The four Geneva Conventions and Additional Protocol I apply in general international conflicts.
- Additional Protocol II applies in non-international conflicts, but the conflict must be fairly intense, including having an organized armed group on both sides in the fighting.
- Common Article 3 to the four Geneva Conventions applies in non-international conflict, but the requirements for the level of intensity and organization are not as strict as in Additional Protocol II.

The main shortcoming of international humanitarian law is that most of it was drafted to apply in international armed conflicts, and only partially to internal conflicts. A weak point in relation to the different thresholds is that there is no determining body to apply the standards or to decide which body of humanitarian law is applicable. The most obvious weak point is in relation to enforcement, which is also the case more generally with international law.

The key challenge for international humanitarian law from the very beginning has been its enforcement. Violations of international humanitarian law are serious transgressions, whether in peace or war. The development of crimes within the international legal and jurisdictional framework,

stating with the most doubtful precedents and then concentrating primarily on the decisions of the Nuremberg and Tokyo International Military Tribunals for the trial of war criminals whose offences have no particular geographical location whether they are accused endividually or in their capacity as members of organisations or groups. An important step in the lengthy process of developing rules on individual criminal responsibility under international law was taken with the setting up of the two ad hoc tribunals for the prosecution of crimes committed in the former Yugoslavia and Rwanda.

Atrocities in the former Yugoslavia and Rwanda shocked the conscience of people everywhere, triggering, within a short span of time, several major legal developments: the promulgation by the Security Council, acting under chapter VII of the United Nations Charter, of the Statutes of the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the adoption by the International Law Commission of a treaty-based statute for an international criminal court. These developments warrant a fresh examination of the present state and future direction of the criminal aspects of international humanitarian law applicable to non-international armed conflicts, conflicts that occur with far greater frequency than international armed conflicts.

The new international criminal court thus fills a crucial gap by providing the world with a permanent court that can act to prosecute the culprits if domestic courts fail to do so. The 1998 Rome Statute of the International Criminal Court established this court. The Rome Statute itself has enormous implications for the evolution of international humanitarian law and its enforcement. The jurisdiction of the ICC includes four varieties of crimes committed by individuals: genocide, crime against humanity, war crimes and the crime of aggression. Under the Rome Statute, the definition of genocide is derived from the 1948 Conventions Against Genocide.

Crimes against humanity encompass acts committed as part of a deliberate widespread or systematic attack against any civilian population, including murder, rape, sexual slavery and enforced prostitution. Crimes against humanity are serious acts of violence which harm human beings by striking what is most essential to them: life, liberty, physical welfare, health and dignity. War crimes are defined as serious international and non-international crimes in war such as grave breaches of the 1949 Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

The major merits of criminal prosecution and punishment by an international criminal court can be stated as follow:

- The purpose of an impartial tribunal is to determine the individual criminal responsibility of individual offenders.
- The judicial reckoning of perpetrators of serious violations of international humanitarian law before an independent tribunal can serve to blunt the hatred of the victims and their desire for revenge.
- The impartial justice can, in turn, create the conditions for a return to peaceful relations.
- The proceedings of an international criminal tribunal build an impartial and objective record of events.
- Punishing those who have deviated from acceptable standards of human behaviour sends a clear statement of the will of the international community to prosecute the perpetrators on the ground of their past offences.

The International Criminal Court has strengthened international humanitarian law by providing it with the following:

- The Court provides greater certainty for international humanitarian law because the Statute defined various notions like definitions of genocide, war crimes and crimes against humanity.
- The Statute enumerates instances of war crimes and crimes against humanity that provide key crietria specifying what is and what is not covered in the relationship between the Court's jurisdiction and international humanitarian law.
- The Court provides greater predictability—a distinct difference from the history of enforcement and accountability of international humanitarian law, which depended upon inconsistent and unpredictable national and local actions.
- The Statute encourages States to exercise their jurisdiction over ICC crimes. It follows the principle of complementarity, which deems that the ICC only may exercise its jurisdiction when State parties fail to investigate or undertake judicial procedures in good faith, after a crime covered under the Statute has been committed.

- The Court adopts a universal approach to humanitarian crimes. It invites participation from the global community, both governmental and non-governmental, in addressing violations of international humanitarian law.
- The Court evinces a degree of representativity in its establishment and lawmaking. The Court permitted input from both developing and developed countries, as well as from governmental and non-governmental entities.
- The Statute and its rules of procedure reflect the call for more victim-friendly and gender-sensitive interventions and remedial measures adopted by the court.

The adoption of the Rome Statute of the International Criminal Court in July 1998 was an important step forward in terms of providing legal protection to civilians in non-international armed conflicts. While the Statute was not in force at the time of preparing this module, it was anticipated that Articles 6-8 will take on a life of their own, even before the entry into force of the rest of the Statute. This is because these articles are generally seen to be reflective of international customary law and therefore, expected to have great influence.

The provisions of Articles 6-8 are a potentially great resource for advocacy and for preventing human rights violations against the civilian population. Not only do the provisions reflect international customary law, but also prosecute those who carry out the violations. Article 6 on genocide repeats the words of article 2 of the 1948 Genocide Convention. The great chances will be the enforcement mechanism provided through the court.

Article 7 on crime against humanity makes no nexus to armed conflict whatsoever; these standards can be seen as applicable in any widespread or systematic attack against civilians. Article 8 on war crimes goes beyond what in international humanitarian law so far has been recognized as "grave breaches," which are defined in Article 147 of Geneva Convention IV as acts such as "willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person or willfully depriving a protected person of the rights of fair and regular trial as well as taking of hostages".

The next level of enforcement of international humanitarian law is through criminal jurisdiction, that is, through the prosecution and punishment by national or international tribunals of individuals accused of being responsible for violations of international humanitarian law. The enforcement of international humanitarian law must also be strengthened in order to bring those responsible to justice and to send a clear message of the international community's intolerance of such violence. Intentionally attacking humanitarian personnel who are legitimately conducting their work is a war crime, and has been specifically codified as such in the Statute of the International Criminal Court (ICC). Civil society support the ICC as a powerful instrument for bringing to justice perpetrators of crimes against humanitarian personnel, as well as perpetrators of other war crimes and crimes against humanity. The ICC will do this not only by providing a mechanism for the investigation and prosecution of such crimes where no State is able to do so, but also through the imperative it will place on States, through its complementarity regime, to investigate and prosecute such crimes through national initiative.

For centuries, those accused of some of the worst violations of human rights and humanitarian law, including war crimes, crimes against humanity and genocide, have enjoyed impunity at the global level. Violations of the more important rules are considered to be grave breaches of international humanitarian law (i.e., the Geneva Conventions and Protocols). The international community has shown a new concern for respect for fundamental rights of individuals and has strengthened international control mechanism to guarantee such respect, *inter alia*, by creating judicial bodies to bring perpetrators to justice, and in particular, by adopting the Rome Statute establishing the International Criminal Court. Under certain strict conditions, the ICC has jurisdiction to try persons suspected of having committed more serious crimes.

The relationship between international humanitarian law and the ICC will be seriously tested by the growing threat of global terrorism. Terrorist acts, many of which cause death or serious injury to civilians are grave breaches of the fourth Geneva Convention; in other words, war crimes. Under the conditions laid down by the Rome Statute, per-

sons that perpetrate terrorist acts may be subject to the jurisdiction of the ICC. But the ICC has only a subsidiary role to play. Both under the provisions of the Geneva Conventions and those of the Statute of Rome, the State which has jurisdiction over the person concerned has priority over the powers of the international tribunal.

Finally, it should be borne in mind that international law guarantees human treatment for persons who have committed a crime, be they military perosonnel or civilian, but does not obstruct criminal justice in the accomplishment of that task. On the contrary, bringing suspected criminals to justice in a humane method is an essential part of ensuring respect for humanitarian commitments. By creating the International Criminal Court, the international community has made an important contribution both to the policy of prosecuting and punishing alleged violations of human rights law and international humanitarian law. The Rome Statute and the Geneva Conventions of 1949 enshrine the right of all persons to a fair trial. ●

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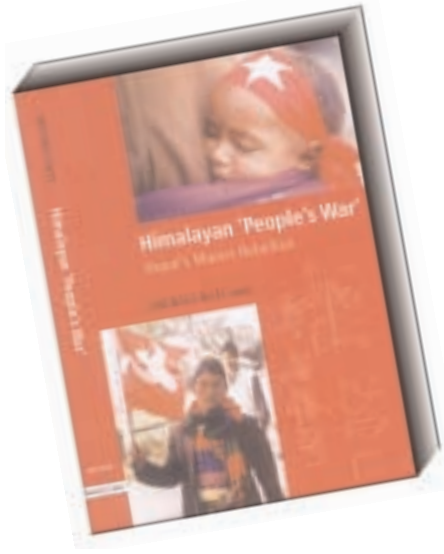
Book Review

Anthropological Insights on The "People's War"

"This is a readable and high-quality book. It provides more information and insight on the most successful Marxist rebellion in South Asia's history than has previously been found within one set of covers."

David Gellner, Oxford University

"Himalayan 'People's War': Nepal's Maoist Rebellion" is a good collection of articles within a set of cover which deals with the various aspects of the Maoists' "People's War." Most of the articles were presented as papers at a conference at the School of Oriental and African Studies in London on 2-3 November 2001 to cover the situation up to date. It sets forth explanations on the emergence of the Maoist movement, its expansion, response and effects on Nepali society. The writers are concentrated on examining Nepal's development and the Maoist movement from various aspects.



Himalayan 'People's War': Nepal's Maoist Rebellion
Editor: Michael Hutt
Date of Publication: 2004
Publisher: C. Hurst & Co. (Publishers) Ltd., London, UK
Pages: 322

As Book Editor, Michael Hutt points out that the chapters vary greatly in themes, approaches, methodologies and styles, the book has brought different experiences and analyses into a single volume, which in turn will provide for a wider perspective on the causes and consequences of the movement.

Hutt writes as an introduction a chronology of the political events and developments leading up to the Royal takeover in October 2003. He addresses the monarchy, democracy and Maoism in Nepal, and analyzes the two contradicting regimes in the country by examining the insurgency, the negotiation process, and the ensuing state of emergency. He concludes that the military approach of the State to quell the Maoists "smoulder[s] the multifarious angers. If such angers are not to find new avenues and vehicles, their root causes will have to be addressed."

The political context of the country is presented in the first three articles. In "Radicalism and the Emergence of the Maoists," Deepak Thapa traces the historical roots of the CPN (Maoist) to the early days of party politics in Nepal and provides a description of the origin of the communist movement in Nepal, its development, splits, and armed uprisings before the Maoists' 'People's War'.

In "The Maoist Movement: An Evolutionary Perspective," Sudheer Sharma explains how the insurgency developed and organized. He describes the organizational structure of the Maoists; the series of government agency displacements in the Maoist affected areas; the deployment of government army forces; and the Maoist's new strategies. Sharma also illustrates the political, economic and socio-cultural components of the Maoist-declared "People's Government" and their functions; the Maoists' methods of war; latent dissatisfaction with the war; and the government's failure properly to deal with the issues raised by the Maoists and quell the insurgency. Sharma also presents a brief account of the Prachanda Path– a political guideline, what the Maoists claim to be "the product of creative application of Marxist-Leninist-Maoist science in the concrete conditions of Nepal" (www.insof.org/w7). However, Sharma emphasizes that the war has intensified and affected every part of the country, and thus, talks are the only way and the last hope to transform the armed conflict into a mainstream political debate.

In "Nepali State and the Maoist Insurgency, 1996–2001," Krishna Hachhethu examines the State's response to the insurgency up to late 2001 and concludes that elections to a constituent assembly are a plausible way to bring the Maoists into mainstream politics.

The second part of the book deals with the relationship between the Maoists and civilians. In "The Path to *Jan Sarkar* in Dolakha District: Towards an Ethnography of the Maoist Movement," Sara Shneiderman and Mark Turin describe how the movement impinged upon and was received in the context of Dolakha, a district in the hills of eastern Nepal. The authors make clear that they present only the perspectives of those vil-

lagers living in areas of Maoist activity with whom they had close rapport. Thus, the article does not present the perspectives of government officials, security agencies or various other groups active in the villages. The authors well present the villagers' perspective on various aspects of the movement, including the origin and objective of the Maoists, their motivation for joining the movement, and their views on government security forces. Similarly, the authors trace the major reasons "that made Dolakha a logical choice for the Maoists' first publicly-declared eastern base." The reasons include ethnic composition, caste/class concerns, demographic aspects, and the Maoist approach in dealing with local issues, among others. The article also presents a multifaceted account of the Maoist activities in the district, the formation of *Jan Sarkars* (people's government), its functions and the people's response.

Marie Lecomte-Tilouine, in "Ethnic Demands within Maoism: Questions of Magar Territorial Autonomy, Nationality and Class," examines the involvement of ethnic minorities, especially the Magars, in the Maoist movement and presents the views of Magar activists and intellectuals on this issue. In "Democracy and Duplicity: The Maoists and their Interlocutors in Nepal," Pratyoush Onta takes a critical look at the relationship between the Maoists and the Kathmandu intelligentsia and illustrates the features of Nepali society and politics after the 1990 movement as well as the growth of the Maoist movement. He presents the duplicitous features of the political, commercial and civilian sectors and their effects on politics. Onta also observes critically the Maoists' ability to place their agenda in the media and in the discourse of the intellectuals. Lastly, Mandira Sharma and Dinesh Prasain analyze the experience of rural women with the Maoist movement in "Gender Dimensions of the People's War: Some Reflections on the Experiences of Rural Women."

Part three, entitled "Geopolitical and Comparative Perspectives," is comprised of three articles. Joanna Pfaff-Czarnecka, in her piece, "High Expectations, Deep Disappointment: Politics, State and Society in Nepal after 1990," examines the causes of the movement and points out the shortcomings of the political environment after the beginning of the democratic movement in 1990.

Likewise, Saubhagya Shah, in "A Himalayan Red Herring? Maoist Revolution in the Shadow of the Legacy Raj," 'looks at the Maoist movement in the context of India's geopolitical domination of Nepal.' To that end, he has analyzed the Maoist movement and India's response, within a historical context. "Maoism in Nepal: Towards a Comparative Perspective," by Philippe Ramirez, is a comparison of the Maoist movement with similar movements in other countries, including Cambodia, China, India, the Philippines and Sri Lanka. The writer also examines the reasons and doctrinal bases for the standard of annihilation adopted by the Maoists when dealing with enemies.

In conclusion, the book presents studies on the current situation of civilians in rural Nepal as well as the political future of the country. Hari Roka describes the ideological and organizational background of the Maoists' 'People's War' and its effects. He also reflects on the political implications of the deployment of the army mainly after the declaration of state of emergency in 2001. On the basis of background studies, Roka ponders:

> [The People's War] has kindled a flame of rebellion in people, but those in charge of the [the] war have shown such a lack of principle and order, and such intolerance towards the people, that they have shoved the left movement as a whole onto a kind of directionless path. Callous deeds such as using defenseless people as shield during attacks, killing detainees and police personnel in heinous ways, and meting out death sentences to ordinary people suspected of informing on them gives some inkling of the kind of tyranny the Maoists might bring if they won tomorrow. That is why the CPN (Maoist) has come to be extremely isolated from national and international politics.

Judith Pettigrew assesses conditions in the conflict zones in the hills of western Nepal. Pettigrew writes "The presence of the Maoists and the security forces has changed the way people move around the village and the surrounding countryside." This is a general phenomenon. More specifically, the writer has pointed out the results of the "culture of terror" created by the armed conflict and people's sufferings as well their tactics for avoiding the violence.

Part five of the book includes documents such as the forty-point demands of the United People's Front (February 1996); the full text of Prime Minister Sher Bahadur Deuba's Message to the Nation (27 November 2001); and the full text of King Gyanendra's Address to the Nation (4 October 2002).

This book is a joint effort of Nepali and foreign researchers and scholars providing national as well as international perspectives on the various aspects of the Maoist movement in Nepal. Although the book contains an interesting compilation of articles, it does not illustrate the cycle of violence manifested in the areas affected by the "People's War." Though the writers have presented first-hand information through anthropological methods, in various contexts, their accounts seem biased. This may be a result of the conflict and resulting fear in those areas. Furthermore, the socio-cultural effects of the conflict and its long-term implications have not been sufficiently discussed. In sum, the book is quite useful for human rights activists, journalists, academics, social researchers and the like who are interested in the study of the Maoists' "People's War."

– Prakash Gnyawali