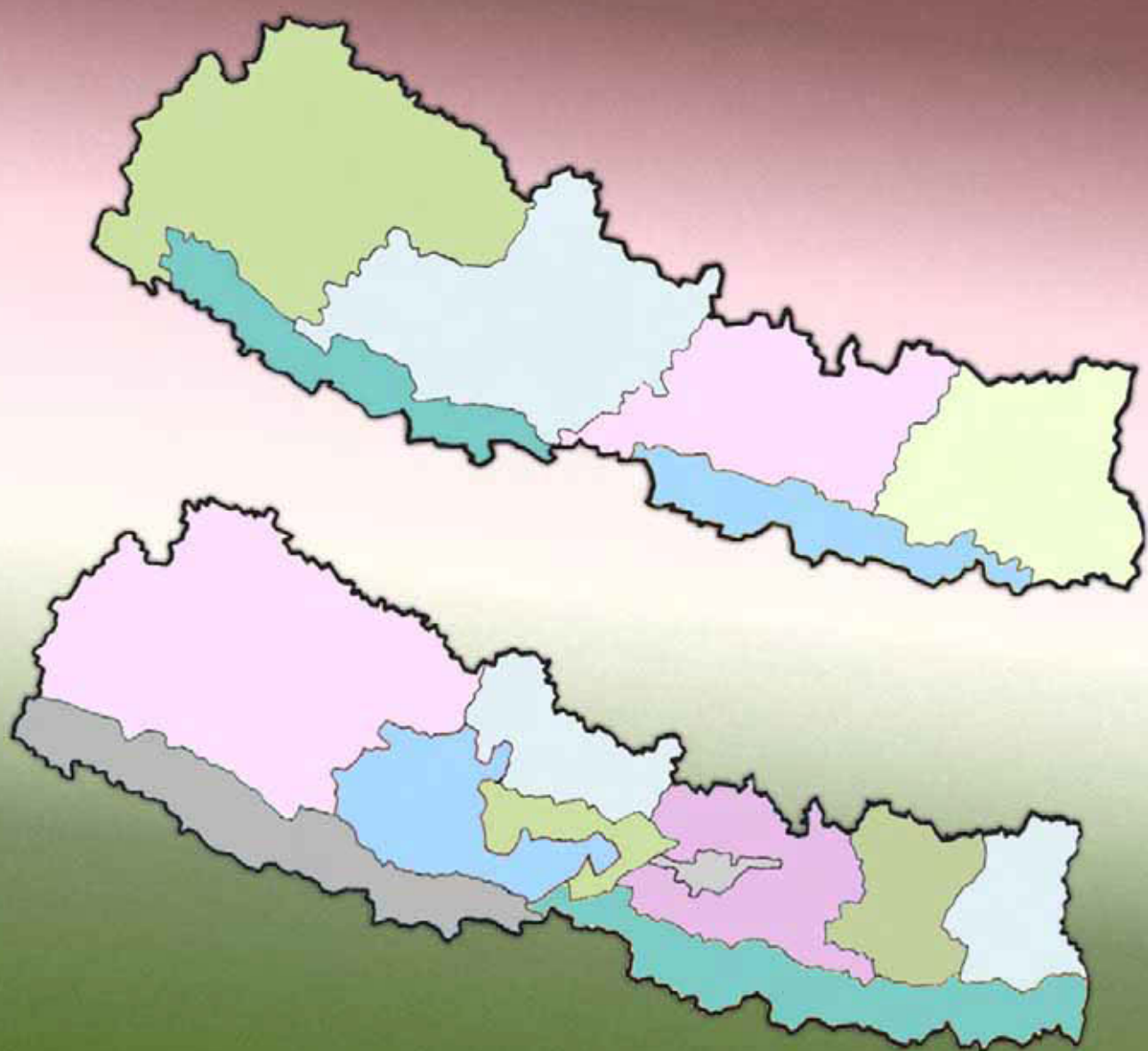


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## Restructuring the Nepali State

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# Delimit Prudently

Federalizing Nepal is already a constitutional, political and also a social commitment. Hence, it is not apt to debate against going for a federal structure now. As the realizations converged that we cannot guarantee a secure future of Nepalese people under unitary form of the state, Nepal had acceded to the idea of restructuring giving it a federal form. However, how to find an all-satisfying manner for delimiting federal boundaries of the country amidst differing views and perceptions has been a major political debate for some time now. Having said this, it is not to understand that the decision to enter into a federal set up is totally free from grudges.

Amidst the grudges and differences, we are obliged to restructure Nepal soon. In the face of this compulsion that we have had marathon debates over needs, importance, form and future of federalizing Nepal. The debates intensified especially since the country promulgated the existing Interim Constitution of the country. Some aspects, as will be discussed below, are worth-considering at a time when we are on the verge of finalizing the federal structure.

First, stepping into a federal form of state-structuring has been assumed as panacea but we are giving continuity to traditional political culture. It is fruitless to envision a reformed political ambience in the absence of necessary reformation on existing political culture and the commitment of the political actors. Very few discussions have been held underscoring necessity of reformed political leadership and culture in a newly set up context. Blaming the existing state structure oblivious to the fact that problems arise in the country as much from the misrule or conducts of the leaders and rulers as they arise from faulty form of state structure is futile.

Second, our undisputed entry into the new structure only will keep us united in the future. The success or failure of the changed context also pivots on this. However, political parties in Nepal are going to take us into a new state structure either with an undertone of resistance and acquiescence within them or with a feeling of success on wrenching the others. Such a reality indicates at the difficulty to achieve order even in the federal set up.

Third, reorganizing is more an administrative question. It has more to do with easing the livelihood of citizenry nationally and fixing an easy path, if the existing state structure is believed as a hindrance, for international competition in the matters of development. However, our debate on the issue is concentrated as though the matter is related solely with calculative power politics. The new state structure to be resulted in through dominant political parties' brouhaha may not bring positive changes in the livelihood of the citizenry.

Fourth, gravity should be there as to in what manner we are demarcating federation as federalizing is not only the end but also a beginning of a plethora of problems. There will continue or will newly emerge so many demands and interests being embedded with the new structure. There certainly will emerge uncontrollable but genuine further divergence. Our political expertise and honesty, challengingly, has to be able to go with such the different but equally legitimate interests accordingly. States of federal government have to be ready and capable to resolve these problems using a sustained democratic practice. Paradoxically, such a democratic practice should be able to preserve national unity and give freedom to all the diversities at the same time.

Occasionally, political leaderships express their smugness through infomercials and public forums that Nepal has made headway regarding ongoing peace process and towards secure future of the country. However, how easily we will achieve in the future is more important. To borrow the view of Leo Tolstoy, the distance one has gone is less important than the direction in which one is going today. So, it is a matter of necessity now to demarcate state structure prudently by keeping possible problems and prospects into consideration. This only will convince the public that the political, economic and social state of the country is going to orient towards correct direction. The leaderships will also be able to promote democratic practice and address geo-political dimensions internally by balancing international and neighborly dynamisms.

# Restructuring the Nepali State: Context, Debate and Progress



*Prof. Dr. Ram Kumar Dahal\**

## 1. Introduction

The advocacy for restructuring of the state is a quite recent phenomenon in a centrally controlled Nepal that has unitary form of state structure so far. It became a hotly debated issue in Nepali politics during post-1995 days, more specifically following 2006. The issue has been strongly raised by political parties, particularly by the UCPN-Maoist and civil society organizations (CSOs) I/NGOs and academia.

State-restructuring and federalism has become one of the most controversial and complex issues in Nepali politics in the course of ending ongoing peace process and writing constitution. However, reaching consensus on the issue has been a Herculean task for the political parties in the country due to political and ideological differences. Similarly, state-restructuring and federalism has also posed problems in making democratic constitution through the Constituent Assembly (CA). The advocacy of different models of state restructuring and federalism by different political parties, non-political groups and individuals, both

from inside and outside the CA, has further complicated the issue whereas it is high time Nepal has to reach consensus on the issue sooner rather than later.

## 2. Concept and Context

The concept of restructuring of the state has become one of the pertinent issues in global politics after

state, as Bhatta views, “is something that is directly associated with political re-imagination of the state as per the spirit of the time and is a continuous process in democracy. It primarily hinges on three organs of the state - the judiciary, legislature and the executive body. It deals with how best all the three organs of the state can be made more representative

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1990 and it has also been defined differently. As the territories of a country cannot be changed, some also believe that it is not restructuring of the state but restructuring of government. The concept of state restructuring has its own philosophy, international practice and instances. The concept of restructuring of the

and pro-public so that more and more citizens are collectively taken into the institutional life of the state and no group/caste/ethnicity/religion are left behind. Rather some sort of ownership of the state is regenerated”<sup>1</sup>.

Following People’s Movement II and political development since then, the supporters of state-

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1. C. D. Bhatta “The Politics Of State Restructuring” ([http://www.nepaldemocracy.org/civic\\_education/politics\\_of\\_state\\_restructuring.htm](http://www.nepaldemocracy.org/civic_education/politics_of_state_restructuring.htm))

restructuring have been raising the issues such as secularism (instead of Hindu state), federalism (instead of unitary state), republicanism (instead of monarchial state), proportional representation/PR, (instead of first-past the-post system of election), equal status to all languages of the nation( breaking the monopoly of Nepali language in government

and federalization of the Nepali state. The restoration of pluralistic and competitive polity (as part of the global democratization and respect for and observance of human rights) after the historic mass uprising 1990, the liberal provisions of the 1990 constitution, the rise of ethno-nationalism, the ethnic and linguistic movements started in the

academia, political and non-political activists have played very significant roles in this direction.

#### 4. The Debate on the Issue in the Past

The debate for or the concept of state- restructuring and federalism in Nepal was started in post-1990 period when country adopted competitive and liberal democratic system under the constitution of Nepal 1990. Few political parties and ethno-linguistic activists started advocating for federalism and restructuring of the then Hindu monarchial and unitary state.

The issue of state restructuring and federalism got encouragement when the issue was raised as some of the principal political agendas during the second *Jana Andolan* in April 2006. This aspiration was sanctioned by the Interim Constitution 2007; hence, the issue became a constitutional obligation. Political parties, in their election manifestoes published for the CA election (2008) presented different models of state restructuring and federalism. Along with these commitments, non-political groups, academia and individuals also advocated for the appropriate models of federalization and state restructuring.

After 1990, political parties, various interest groups and academia presented different models of state restructuring and federalism. The Tarai-based,<sup>3</sup> ethnic parties and organizations<sup>4</sup> came up with different models immediately after

The debate for or the concept of state- restructuring and federalism in Nepal was started in post-1990 period when country adopted competitive and liberal democratic system under the constitution of Nepal 1990. Few political parties and ethno-linguistic activists started advocating for federalism and restructuring of the then Hindu monarchial and unitary state. The issue of state restructuring and federalism got encouragement in Nepal when the issue was raised as some of the principal political agendas during the second *Jana Andolan* in April 2006.

business), equal treatment to all ethnic groups (breaking the monopoly of dominant hill groups). In post-2006 days, some issues have been settled, and the issue of state restructuring and federalization is awaiting proper settlement. The concept intended to promote the concept of democratic federal system by ending the existing centralized and unitary state structure.<sup>2</sup>

#### 3. Inspiring Factors for the Restructuring

A number of factors had inspired the agenda of restructuring

country following 1990, the growing activities of the INGOs and civil society organizations, the global waves of democratization, human rights, privatization, liberalization, globalization, among other things, encouraged the issue of federalism in Nepal. The Maoist waged insurgency after 1995 further escalated the issue to a new height in different manners. The concept of state-restructuring and federalism was encouraged in Nepal in different ways in which different political, non-political and non-state actors, including I/NGOs, civil society organizations (CSOs), media,

2. [http://www.addcn.org.np/quick\\_file/State Restructuring and Issues of Local Self Governance in Nepal1.pdf](http://www.addcn.org.np/quick_file/State%20Restructuring%20and%20Issues%20of%20Local%20Self%20Governance%20in%20Nepal1.pdf)

3. The Tarai-based Nepal Sadbhavana Party (NSP) in the parliamentary election 1994 had advocated for four federal states based on geography and later it had proposed five states, namely 1) Eastern Hill 2) Central Hill 3) Western Hill 4) Eastern Tarai and 5) Western Tarai.

4. Nepal Janajati Party in 1990 had proposed a federal government constituting twelve federal units. Nepal Janata party in the parliamentary election in 1991 had proposed twelve federal states. Such 12 states were 1) Awadhi 2) Bhojpuri 3) Jadaan 4) Limbuwan 5) Khumbuwan 6) Khasan 7) Kochila 8) Magarat 9) Mithila 10) Nepal 11) Tamsaling 12) Tamuwan. The Nepal Rastriya Janamukti Morcha and Janamukti Party Nepal in 1991 had advocated for federal states for administrative purposes. The Khumbuwan Mukti Morcha in 1997 had strongly demanded full autonomous Khumbuwan state in eastern hill. Gopal Khumbu-led Kirant Rastriya Morcha in 2003 had proposed for nine ethno based autonomous states. The 9 autonomous states were 1) Kirant 2) Mithila 3) Tamsaling 4) Newar 5) Tharuwan 6) Tamuwan 7) Magarant 8) Jadaan 9) Khasan. The Nepal Rastriya Janajati party had advocated for the federalization process based on 12 federal units. The 12 federal units as advocated by Nepal Rastriya Janajati party were 1)Khasan 2) Jadaan 3) Magarant 4)Tamuwan 5) Tamsaling 6)Nepal 7) Khumbuwan 8)Limbuwan 9) Kochila 10) Maithili/Mithila 11) Bhojpuri 12) Abadhi . The Kirant working party (KWP) in 2001 had supported nine region- based federalization. The nine federal units as advocated by KWP were 1) Kirant Autonomous Region 2) Mithila Autonomous Region 3) Newar Autonomous Region 4) Tamuwan Autonomous Region 5) Tamsaling Autonomous Region 6) Tharuwan Autonomous Region 7) Magarant Autonomous Region 8) Jadan Autonomous Region 9) Khasan Autonomous Region.

1990. The Nepali academia also advocated for federalization in their own ways<sup>5</sup>. The party leaders and activists had also their own model in this direction.<sup>6</sup> Besides these, some more models were presented in this direction.<sup>7</sup>

## 5. The Issue of Restructuring and Constitutional/ Political Commitment

The concept of state-restructuring was encouraged under the current Interim Constitution of Nepal 2007. The constitutional provisions in article 138 of part 17 of the current constitution intends to promote the state-restructuring by promoting inclusive, democratic and federal system by ending the ethnic, linguistic, cultural, religious, and regional discrimination and centralized and unitary state. The preamble and the article 4 of part 1 of the interim constitution 2007 have declared Nepal a federal democratic republic. Most of the political parties, particularly the UCPN-Maoist, in their election Manifestoes published

for the CA election had promised or shown political commitment in the restructuring the state. Many of the political parties having representation in the CA have expressed political commitment on the issue. Although the issue has not been resolved yet, there is no debate on whether or not Nepal has to go for new state structure. The wrangle is going on now as to total number of states and the basis of demarcation.

## 6. Need for Restructuring

The advocates of the state restructuring have pointed out a number of reasons for that. In post-1995 days, the concept of state restructuring and federalism was advocated by different political and non-political regional, ethnic, linguistic and religious groups for different purposes and intentions. To the people from Tarai, it was a movement to discontinue the monopolization of power by the few dominant hill groups. To the powerless, voiceless, marginalized

and vulnerable groups, the issue of state- restructuring and federalism has become an effective instrument to practically encourage inclusive democracy, and the participation of all groups of people in the existing power structure. It has also been taken as a means to exercise control over the existing local resources, formerly monopolized by the central government. To many ethnic groups, state restructuring and federalism is to promote their pride, identity, ethno nationalism, language, culture, self-esteem, glorious history of the past and their ownership in politics and economy.

For many minority groups, the restructuring and federalization of the state would provide them an opportunity to share political power, monopolized by national power elites of some particular political, economic, socio-cultural, religious and regional groups. To be precise, the advocacy for the restructuring of the Nepali state was a strong protest movement against the powerful

5. Dr. Harka Gurung had proposed for federations based on 25 administrative areas for administrative purposes, which were strictly non-ethnic, non-linguistic and non- regional, and were broadly named after historical places, the religious and spiritual centers, holy places, rivers and mountains Dhaulagiri, Ridi, Swargadwari, Srinagar, Manaslu Annapurna, Rapti, Kathmandu, Trishuli, Simroon, Sailing, Kamala, Sagarmatha, Chaudandi, Bijayapur, Arun, Tamor, Kankai were some of the proposed names. Dr. Krishna Bahadur Bhattachan ( 1999) had proposed for 12 ethno-based (language and culture based) federal units. Surendra KC had proposed five federal units in his first proposal, nine in second and eleven in the third proposal. (K.C, 2065:64-66). Pitamber Sharma wants Nepal to be divided into 5 main regions and 19 districts. Those 5 regions and districts are 1)Swargadwari 2) Sudur Pachim Madhesh 3) Sagarmatha 4) Sailung 5)Arun 6)Annapurna 7)Madhya Madhes 8) Manaslu 9)Summa 10) Jajarkot 11) Purva Madhes 12) Paschim Madhes 13)Ridi 14) Trisuli 15) Kathmandu 16)Khaptad 17) Dhaulagiri 18) Humla (K.C, 2065:77) Govinda Neupane (2000) wants Nepal be federalized into seven constituting units namely, 1) Kirant Region 2) Bijaypur Region 3) Mithila Region 4) Lumbini Region 5) Kapilvastu Region 6) Tamsaling Region 7) Nepal Region. Later, Neupane proposed 11 states in his first proposal and eight in his next proposal. The 11 states, as proposed in his first proposal, are 1) Madhya Khasan 2) Newa 3) East Khasan 4) West Khasan 5) Mithila 6) Birat 7) Kirant 8) Lumbini 9) Kapilvastu 10) Tamu Magarant 11) Tamasaling (K.C, 2065:51). The eight states, as advocated by him in his next proposal include 1) Bhojpur 2) Nepa 3) Mithila 4) Kirant 5) Tamu Magarant 6) Tamsaling 7) Khasan 8) Tharuwan (K.C, 2065:52). 1). KB Gurung has advocated for eleven federal units namely, 1) Limbuwan Autonomous region 2) Khumbuwan 3) Tamsaling 4) Newar 5) Maithili/Tharu 6) Tamu(Gurung) 7) Magar 8) Western Khasan 9) Far Western Khasan 10) Tharuhat 11) Tharu Bhojpur Mahendra Lawati's proposed 13 units are 1) Limbuwan 2) Khumbuwan 3) Kochila 4) Mithila 5) Lumbini 6) Kapilvastu or Awadh 7) Nepal 8) Tamsaling 9) Tamuwan 10) Magarat 11) Eastern Khasan 12) Western Khasan 13) Tharuwan; Ethno activist Baldip Chamling (2005) wanted to be restructured into eight autonomous units.
6. As opposed to other ethno and linguistic activists, NC leaders Narhari Acharya (2005) had proposed for six -region based federal units. The units were 1) Koshi Pradesh 2) Bagmati Pradesh 3) Gandaki Pradesh 4) Karnali Pradesh 5) Mahakali Pradesh 6) Kathmandu Dhundi Raj Shastri ( 2006) was for five federal states based on existing concept of five development regions, namely, 1) Eastern Region 2) Central Region 3) Western Region 4) Mid-Western Region 5) Far Western Region. Govinda Raj Joshi proposed for six federal units, namely East Region, Mid Region, Bagmati Region Gandak Region, and West Region). The communist leaders too have presented their own models of federalism. Shankar Pokharel proposed for fifteen states, namely, 1) Rapti 2) Sunkoshi 3) Annapurna 4) Bhabar 5) Narayani 6) Janakpur 7) Simrongadh 8) Birat 9) Lumbini 10) Karnali 11) Kathmandu 12) Koshi 13) Kaligandaki 14) Tamor 15) Khaptad. Rajendra shrestha had proposed for fourteen federal units (K.C 2065:55).
7. Ethno activist Bir Nembang (2003) had demanded for separate Limbuwan autonomous region. Parshuram Tamang was for 9 federal states Those 9 states, according to Tamang are 1) Mithila 2) Kirant 3) Newa 4) Bhojpur 5) Tamsaling 6) Tamuwan 7) Magarant 8) Khasan 9) Tharuhat (K.C, 2065:56). Kamal Tilega Limbu (2004) had proposed seven ethno and region based federalism. The seven federal units were 1) Wallo Kirant 2) Majh(central Kirant 3) Pallo Kirant 4) Tamuwan 5) Magarant 6) Karnali 7) Mahakali. Interestingly enough, three out of total seven remained Kirant regions as federal units. Similarly, Baburam Acharya, Kumar Yonjan, Surya Thapa, Rajendra Gautam, Bhawani Baral, Alok Bohora, Surendra Devkota and Shiva Gautam, Shri Krishna Yadav, Amresh Kumar Singh, Amresh Narayan Jha and others have also put forth proposals in their own ways.

unitary government, and against the monopoly of few groups of people in power. It was also a movement against Hinduism, monarchy and the first-past the post-election system. Similarly, it was also a movement targeted against the monopoly against one-language, one-religion and one-culture and the hegemonistic nation building process. The UCPN-Maoist, not sure how honest it is in its agenda now, had advocated for the concept for culminating the monopoly of few political groups in power and for promoting inclusiveness in the state mechanism. The need for the restructuring after 2008 was felt for different purposes for different groups.

## 7. Appropriate Way of Restructuring

The political parties represented in the CA remain sharply divided regarding appropriate basis and model of restructuring of the state. Their ideological and political differences and the failure to develop political consensus on the issue have made the constitution making process a complicated task. However, many political parties, leaders and academia believe that ethnicity, language, culture and religion based state restructuring would create problem in the long run. They are also in favour of reducing the number of federal units to make the restructuring financially more sustainable and also prefer the creation of the north-south demarcation of the federal units, rather than east-west one.

## 8. The CA and its Progress toward State-Restructuring

### 8.1 Committee on State Restructuring and Distribution of State Power

The CA, in the course of writing new constitution, had formed several thematic committees including

Committee on State Restructuring and Distribution of State Power in order to make the constitution making process systematic and regular in thematic form<sup>8</sup>. A 43-member Committee for Restructuring of the State and Distribution of State Powers (under the Chairperson of Lokendra Bista Magar) was formed on 15 December 2008 and the committee was reformed by the CA on 10 January 2009 and on 19 January 2009. It had the mandate to prepare a list of activities to be carried out on the concerned subject, to collect relevant materials on the subjects and to conduct discussions and studies and prepare a preliminary draft, including a concept paper with technical advice from specialists on the subject under the working areas of the Committee.

It had submitted its draft report including a concept paper on 21 January 2010, and CA had discussion on the report. The committee was to submit the report by preparing the preliminary draft along with concept paper on the subjects assigned to individual Committee which included subjects like the structure in the federal democratic republican form of the state; the principles and bases for determining the areas of the federal units; delimiting the boundaries and naming of each of the federal units; division of legislative, executive and judicial powers among the governments in various levels of federal units; determining the contents of working areas of federal units of various levels and the common subjects; determination of interrelationship of legislative, executive and judicial powers among federal units; mechanism for adjudication of disputes that may arise between the federal units; and other necessary matters relating to the working areas of the Committee<sup>9</sup>.

## 8.2 Formation of State Restructuring Commission

The three larger political parties and the Madhesi Joint Forum succeeded in forming the State Restructuring Commission (SRC) on November 22, 2011, which consisted members from different political parties to suggest an appropriate federation model for the proposed federalization of Nepal. Unfortunately, it failed to evolve a common political consensus on the proposed restructuring while submitting its report. Consequently, the State Restructuring Commission submitted two different reports, the majority group recommending establishment of 11 federal units<sup>10</sup> with first rights to dominant ethnic groups at the local level whereas minority section of the commission had proposed six such federal units (including two in the plains and four in hills and mountains on the basis of economic viability). The two reports also differed regarding the residuary power in the federation. The majority faction of the commission preferred the issue to be settled by the center or federal units depending on the nature of the problem whereas the minority section was in favor of vesting the power to the center<sup>11</sup>.

Even before such a high level commission was formed, the CA thematic Committee for Restructuring of the State and Distribution of the State Power had already submitted its report to the Constitutional Committee. Initially, the top leaders of the three major parties proposed a bill amending the Interim Constitution to provide for a committee of experts in place of a high level commission, but it was scuttled because of the stiff opposition from Vice-chairman Mohan Baidya's faction of the UCPN-Maoist, and from the Indigenous People's Constituent Assembly Caucus,

8. <http://www.can.gov.np/en/committees/view/14>

9. (<http://www.can.gov.np/en/committees/view/14>).

10. The 11 provinces include Karnali-Khaptad, Madhes-Abadh-Tharuwan, Magrat, Tamuwan, Narayani, Newa, Tamsaling, Kirat, Limbuwan, Madhes-Mithila-Bhojpur and one non-territorial Dalit state.

11. (Nepal State Restructuring Commission <http://www.thehindu.com/news/international/article2850556.ece>).

consisting of members from all the political parties<sup>12</sup>.

## 9. Conclusion

For materializing the aspirations, and expectations of the Nepali citizens expressed through the historic *Jana Andolan* (April 2006) and also for developing trust to multiparty democracy, the issue of federalism and state restructuring in Nepal has to be properly addressed by the CA. This will also be the fulfillment of the commitment by the CA in Nepal's constitutional process as expressed in the present Interim Constitution. If new constitution could not be promulgated in time, or if the CA failed to fulfill its constitutional responsibilities as expressed in the interim constitution, it would create serious constitutional and political problem in the country. In order to satisfy the people at all levels, the issue of state restructuring<sup>13</sup>, identity politics and inclusive democracy has to be properly addressed.

In order to promote broader and inclusive democracy and satisfy the agitating groups (given the growing unrests/agitation in different parts of the country in the name of identity politics, state restructuring, federalization, participation, representation) including the Dalits, *Adibasi Janajatis*, *Madhesis*, *Muslims*, *Tharus* (in western Tarai) and other marginalized, powerless, voiceless and vulnerable groups; the issues related to state restructuring and federalization (including the determination of the number of federal units, delineation of their boundaries, division of power) have to be very practically addressed by the CA. In the course of fulfilling the aspirations and expectations of the Nepali people in the present political context, the concepts like territorial integrity, integration and unity of the nation and its people have to be carefully addressed.

The citizenry generally

believe that the restructuring and federalization of Nepalese state on the basis of ethnicity, language, (social, caste-based, linguistic, and cultural basis) religion and other parochial loyalties instead of geographical, historical and regional and economic/resource bases would invite newer political controversies in the political discourse. Hence, the CA has to reach conclusion on the issue farsightedly.

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# Public Security and Human Rights in Post-Conflict Societies



Shobhakar Budhathoki\*

## 1. Introduction

Public security and human rights are equally important elements for a sustainable democratic polity, good governance, just peace and post-conflict management. These are important for ensuring rights of individuals and collective freedom through the impartial enforcement of laws. They both promote the rule of law and are helpful to responsible law enforcement agencies in assisting and supporting them in enforcing the law. Principally, security and human rights complement each other, but practically, these values contradict each other due to jurisdiction. These elements are sometimes found to have been negatively affected as a result of subjective attitudes and behavior. However, there always is enough space for public security and human rights to collaborate and coordinate to create a respectful and dignified society.

## 2. Relationship between Public Security and Human Rights

There is no possibility for substitution and compromise through a trade-off like approach

while ensuring public security and human rights. These two thoughts originate from different perspectives and background, but both aim to establish a civilized and harmonious society by abiding national and internally accepted legal safeguarding mechanisms for the protection of civilians and promotion of human rights through enabling security and rights of individuals without interference.

Public security and human rights are inseparable elements of society for its betterment, safety and prosperity. Combined, these factors unequivocally enhance a lawful, civilized and respectful society. 'The balance between security and human rights tend to obscure the parallel development of the notion of security as a human right.'<sup>1</sup> Neil MacFarlane argues 'the evolution of the disclosure on security may considerably enhance the capacity for international protection of the human rights of the individuals and communities at risk from violence'.<sup>2</sup> This means that that there is a strong and balanced relationship between the principle of safeguarding human rights and the

promotion of security. Particularly, the need for a balanced relationship between them is most relevant in post-conflict societies which have struggled to handle serious human rights abuses and crimes that occurred during the violent period, or when crimes and abuses have continuously arisen due to political instability and vulnerability, the culture of non-compliance of laws and impunity, and the consequences of a divided society.

Public security generally incorporates the principles of law enforcement and crime prevention. However, the promotion of human rights requires a change in attitudes and behavior, and the proper enforcement of laws within the periphery of due process. In some cases, a rift is created and a contradiction between these two differently guided thoughts results due to the limited understanding of stakeholders' values and objectives and when discussions take place in isolated environments instead of in an open and integrated manner. Public security is eventually related to promotion of human rights and access to justice for marginalized populations. Thus, the

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1. Goold, Benjamin J. and Liora Lazarus. 'Security and Human Rights: The Search for a Language of Reconciliation.' Security and Human Rights. pg 19 (Hart Publishing: Oxford and Portland) 2007

2. Macfarlane, S Neil. 'Human Security and the Law of States.' Security and Human Rights. pg 348 (Hart Publishing: Oxford and Portland) 2007

human rights certainly aim to enhance public security at all levels.

Creating a positive environment for enjoying and safeguarding human rights enhances civilian security and prepares the foundation for access to justice of ordinary people. Some of these rights related to public security include: the right to life; freedom from torture or inhuman or degrading treatment; freedom from slavery; freedom of expression and thought; freedom of peaceful assembly; and the right not to be subjected to retroactive criminal laws or penalties. These internationally protected and promoted rights of people, have significant impact and consequence towards creating a conducive environment for civilian security and rule of law. Therefore, 'security is increasingly framed as a matter of cooperation and unification, while discourses about liberty are framed in relation to fragmented jurisdictions severely constrained by law and regulations. Security is now considered as a value without frontiers'.<sup>3</sup>

Security is a principally and practically disputed issue and efforts to analyze it remain complicated. What constitutes a security threat is relative, but for some it may only be the absence of a threat. The perception of threat mostly varies from person to person which might include physical threats to survival to welfare; and struggles from identity to values.<sup>4</sup> However, numerous efforts have been made to ensure the security of its citizens by governments, and rights groups have taken initiatives from oversight to monitoring responsibility. It is realized that the human rights community should instigate further initiatives to address security issues. The International Council of Human

Rights Policy states that 'faced with the failure of the state to ensure the security of its citizens, rights groups have adopted a number of approaches, ranging from continued, exclusive focus on the oversight or watchdog function (reporting and denouncing abuses by state agents) to collaborative efforts to provide security services jointly with state authorities, to the development of forms of public discourse that de-emphasizes human rights and address security in broader terms'.<sup>5</sup> Therefore, the collaborative efforts of governmental and non-governmental sectors could be an effective option for developing the forms of public discourse that addresses human rights and security in extensive ways.

Security and human rights are directly concerned to the activities of law enforcement agencies, particularly the civilian police. In recent times, community oriented policing to improve relations with local stakeholders, and to introduce

of safeguarding security as well as the promotion and protection of human rights. Roy<sup>7</sup> highlights as follows in this connection:

"These tools can be found at the national, continental, regional and international levels. Of central importance is an analysis of the accountability mechanisms at each of these levels that can serve to ensure that human rights are integral to security policies. However, despite the comforting rhetoric about balancing security and human rights through improved and effective security measures for the improved and effective human rights mechanisms at each of these levels that can serve to ensure that human rights are integral to security policies."

So, it is essential to prioritize economic, social and cultural rights while dealing with civil and political rights in relation to public security or human security.

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new forms of policing as known as police-public partnership is discussed regularly. It brings responsiveness and accountability "because of its emphasis on responsiveness to communities, community policing is often perceived to be the most "human rights friendly" form of policing."<sup>6</sup>

In terms of fulfilling the gap between security and human rights, it needs to be looked at from the point

While maintaining security, law and order, there is always a chance of human rights violations, and the arbitrary use of force. In such situations, human rights advocates raise their voice against the abuse of power and authority, and report alleged human rights abuses and violations of the law while enforcement agencies lobby for legal action to be imposed on perpetrators

3. Ibid Pg. 114

4. Macfarlane, S Neil. *Human Security and the Law of States*. Security and Human Rights. pg 348 (Hart Publishing: Oxford and Portland) 2007

5. 'Crime, Public Order and Human Rights' Pg 1 (International Council on Human Rights Police) 2003 [www.ichrp.org/files/reports/8/114\\_report\\_en.pdf](http://www.ichrp.org/files/reports/8/114_report_en.pdf)

6. Osse, Anneke. *Understanding Policing: A Resource for Human Rights Activists*. pg. 27 (Amnesty International Netherland) 2006

7. Roy, Jean-Louis. Pg. 7 'Bridging Human Rights and Security.' (speech) [www.dd-rd.ca/site/\\_PDF/publications/.../bridgingrightsandsecurity.pdf](http://www.dd-rd.ca/site/_PDF/publications/.../bridgingrightsandsecurity.pdf)

and justice to be granted to victims. Certainly, there must be accountability mechanisms (internally and externally) for violations and abuses committed by security agencies. In the meantime, it is important to understand the limitation on resources, as well as the capacity of law enforcement agencies. Having said this it doesn't mean that law enforcement agencies involved in human rights violations, or irresponsible acts during the period of use of force or who carried out preventive actions should be excused.

of security is framed as individual security or the right to safety, the contradiction with human rights is not central.<sup>9</sup>

The issues of public security and human rights must be looked at from the perspective of mutual interest and a collaborative approach for problem-solving. The values and principles of public security and human rights should not compromise or replace one another for the other's advantage. Both security and rights are equally valuable to ensure the

agencies which are interfered with and incapacitated due to their violent past. It is a common syndrome in almost every post-conflict country where the rule of law situation seems deteriorating and lawlessness seems increasing. This directly affects the civilian security and human rights of people. In such post-conflict situations, every society has to struggle to address challenges related to security, governance, and rule of law, including consequences which arose due to anarchism and general lawlessness, hooliganism, political and communal violence, and increased criminalization of society.

Increasing impunity, insecurity and lawlessness continue to threaten sustainable peace and the institutionalization of a democratic polity, as well as the regime that abides by the rule of law and committees to promote human rights. Growing instability and distrust further creates dissatisfaction among the public regarding government services and decision-making processes are usually stalled.

It is very much accepted that post-conflict societies are unpredictable and the possibility of escalation of violence or conflict remains on the edge. Cochran-Budhathoki's<sup>10</sup> view on how there remains such a possibility is relevant to quote here:

"In the aftermath of violent conflict and authoritarianism, the civilian security agency for law enforcement and maintaining security and the rule of law, has been impeded by limited logistic and human resources and rendered vulnerable and many

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Issues related to public security and human rights should be dealt with using an integrated approach, and should not be understood in isolation because these are interrelated and interdependent. "Security as individual safety, juridical guarantee, human security or social security can go hand in hand with human rights, but security as coercion, prevention, surveillance and marginalization/exclusion of some groups infringes human rights."<sup>8</sup> Even though the concept of security usually varies compared to human rights depending upon the social composition context, economic status and access to power, 'there is not necessarily a contradiction between the terms "security" and "human rights" but there are certainly contradictions between human rights and the practices that are referred to under some accepted usages of the term "security". As long as the concept

dignity and respect of the human being and create a harmonious and peaceful society. Similarly, the enforcement of security mechanisms and promotion of human rights can be complicated while exercised in multi-cultural, multiethnic, or multi-religious society due to identity and access or acceptance reasons. Despite difficulties with maintaining neutrality, impartiality, maintaining operational independence, issues of public security, human rights should be promoted and safeguarded principally, legally and practically based on norms and values of co-existence, mutual interest and friendship.

### 3. Relevance

Post-conflict societies are naturally vulnerable and unstable. They are with severe security threats due to poor state mechanisms and the incapacity of law enforcement

8. Bigo, Didier and Guild, Elspeth. *'The Worst-case Scenario and the Man on Clapan Omnibus'*. Security and Human Rights. pg. 113 -114 (Hart Publishing, Oxford and Portland) 2007

9. Ibid

10. Cochran-Budhathoki, Karon. 'Calling for Security and Justice: Citizens Perspective on Rule of Law and Role of Nepal Police.' pg. 11 -12 (United States Institute of Peace, Washington D.C.) 2011

times ineffective by increasing political interference and criminal activities conducted under the cover of politics.”

The activities of splinter groups and newly formed armed groups pose an additional challenge to post-conflict society, which directly undermines the principles of human rights and civilian security. Some other common challenges include identity or religion, long-standing issues of discrimination, marginalization, economic disparity and criminal activities such as smuggling and theft.<sup>11</sup>

The issues of public security and human rights fundamentally fall under the responsibility of law enforcement officials, particularly civilian police and human rights advocates. Although human rights advocates and police often disagree and put forth their grievances due to their nature of work, both groups intend to improve security and human rights situation in the country. Osse<sup>12</sup> expresses:

“Human rights advocates as well as academics often argue that “good policing” means policing in line with international human rights standards. Although this is no doubt the case, it must be understood that international human rights standards offer only limited guidance for day-to-day police work.”

What this means is that human rights advocates should proactively engage and be willing to invest their resources (intellectual and financial) towards building the capacity of law enforcement officials to increase their understanding through training and orientation about human rights and its implications in the case of violations. Such sessions should also include how these principles can be used as a tool

to protect the rights of people by the police while maintaining security and rule of law through respecting human rights principles.

It is important to prioritize security and rule of law and pay enough attention to reduce serious crimes that could further destabilize the country and may possibly instigate violence. To identify these contested issues, it is essential to understand the factors of insecurity, injustice and forms of policing within all sections of society. Traditionally, human rights can be understood as positive and negative rights, which usually differ according to the nature of the duty of the state and the forms of government. ‘Negative rights are said to be impose a duty of restraint on the state, whereas positive rights action by the state.’<sup>13</sup> Similarly, the right to security includes the perceptions of restraint and protection both. However, the promulgation of these rights from the state is dependent upon the level of understanding of security that incorporates freedom from interference or right to be free from threats.

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Traditionally, human rights can be understood as positive and negative rights, which usually differ according to the nature of the duty of the state and the forms of government. ‘Negative rights are said to be impose a duty of restraint on the state, whereas positive rights action by the state.’<sup>1</sup> Similarly, the right to security includes the perceptions of restraint and protection both.

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In addition, Liora Lazarus<sup>14</sup> points out:

“Right to security does not mean that it is a defensive right to be free from interference, but it is also the duty of state to ensure it for every citizen. The right to security can be interrelated with

the right to liberty. Even though the relationship between liberty and security is more complex, international human rights instruments have referred to the right to liberty and security. However, the right to security can just as well conflict with liberty for its reinforcement, but it cannot be part of trade-off of liberty for security.”

It does not mean that the ‘right to security’ should only protect established rights but should also focus on self-standing rights such as the right to life, dignity, liberty, health, freedom from torture and so on.<sup>15</sup>

While dealing with the issues of public security and human rights in post-conflict societies, these can be tools for sustainable peace and the institutionalization of a democratic polity. It can be helpful to address past human rights abuses, ensure justice to victims, bring perpetrators of serious crimes or human rights abuses to justice as well as establish the foundation for the rule of law and a peaceful and secure society.

#### 4. International Protection Mechanism

The individual freedom of people, including the right to life, liberty and security are guaranteed by international and regional human rights laws and instruments. Legally and morally, the state has an obligation to maintain law and order and provide

11. Ibid

12. Osse, Anneke. ‘Understanding Policing: A Resource for Human Rights Activists.’ pg. 41 (Amnesty International Netherland) 2006

13. Fredman, Sandra. *The Positive Right to Security*. pg. 308 (Hart Publishing, Oxford and Portland) 2007

14. Ibid pg. 309

15. Lazarus, Liora. *Mapping the Right to Security*. Security and Human Rights. pg. 327 (Hart Publishing, Oxford and Portland) 2007

security and promote human rights. Internationally, the United Nations has adopted numerous human rights instruments aiming to ensure security of individuals and the protection of human rights. It is mandatory for the member states of the United Nations to honor these provisions and they are obliged to enforce them in their respective jurisdictions.

Although human rights generally advocate for the rights of people, it also deals with the security. It aims to promote human rights through ensuring security and justice of people and preventing criminal acts by enforcing laws relevant to achieving this end. The Inter-American Commission on Human Rights report<sup>16</sup> states:

“A human rights perspective enables the issues of crime and violence, and their impact in citizen's security through the strengthening of democratic participation and the implementation of policies focused on the protection of the individual instead of those focused on the security of the state or of any particular political system.”

Citizen's security and human rights both advocate for justice and due process of hearing. It means the process that follows principles of fair trial and rule of law ultimately creates the foundation for public security and promotion of human rights. The report<sup>17</sup> further states that:

“While the international legal order of human rights does not expressly define the right to be safe from crime or interpersonal or social violence, whose prevention and control are the object of citizen security policies, States are bound by a normative core demanding the protection of rights particularly vulnerable

to criminal or violent acts: the right to life; the right to physical integrity; the right to personal liberty; the right to due process and the right to peaceful use of property and possessions. The States' obligations in the area of citizen security also involve the right to a fair trial and the right to judicial protection; the right to privacy and the right to have one's honor respected and dignity recognized; the right to freedom of expression; the right to freedom of assembly and association; and the right to participate in public affairs. In broad terms it may also include measures to guarantee other human rights, such as the right to education, the right to health, the right to social security and the right to work, among others.”

Security and the rule of law are also interconnected within the mandates of international arrangements. The objective of one cannot be accomplished without respecting the other or following the spirit of both simultaneously. While dealing with security, we must understand the concept of the rule of law, which is regarded as the basic thrust of international human rights instruments, including the Universal Declaration of Human Rights (UDHR). The preamble of the UDHR states that ‘it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression that human rights should be protected by rule of law.’<sup>18</sup> Similarly, the UN<sup>19</sup> has defined the rule of law vividly. It states:

“Rule of law refers to the principle of governance, in which all persons, institutions and entities,

public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.”

Assurance of justice is considered primary factor for security and human rights, which can be guaranteed through establishing a fair trial system, and access to justice mechanisms. ‘The states’ obligations in the area of citizen security also involve the right to a fair trial and the right to judicial protection; the right to privacy and the right to have one's honor respected and dignity recognized; the right to freedom of expression; the right to freedom of assembly and association; and the right to participate in public affairs. In broad terms it may also include measures to guarantee other human rights, such as the right to education, the right to health, the right to social security and the right to work, among others.’ Therefore, the state must abide by all obligations agreed nationally and internationally, including those relevant to citizen security and human rights, and meet the expectations of citizens based on the provisions of international human rights standards respecting both negative and positive rights.

Although these international instruments mainly discuss the protection and promotion of human rights, these are also directly related to civilian security and protection of individuals from threat, fear and violence. As a result, the security of individuals and society is also protected by international human rights instruments. Those

16. ‘Report on Citizen, Security and Human Rights.’pg. 8 (Inter-American Commission on Human Rights) 2009 <http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>

17. Ibid

18. ‘Universal Declaration of Human Rights- 1948. (United Nations Department of Public Information, New York) 1998 <http://www.un.org/en/documents/udhr/>

19. The Rule of Law and Transitional Justice in Conflict and Post-conflict Societies: Secretary General Report, (United Nations Security Council, New York) 2004 <http://www.unrol.org/files/2004%20report.pdf>

international human rights instruments include United Nations Charter (UN Charter); Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); Convention on Elimination of All Forms Racial Discrimination (CERD). Some other instruments are Geneva Conventions on International Humanitarian Law, Convention on the Status of Refugees; Convention on Forced Labour; Declaration on the Protection of Women and Children in Emergency and Armed Conflicts; and the 1993 Vienna Declaration and Programme of Action, as well as United Nations' Basic Principles on the Use of Force and Fire Arms; United Nations Standards for Law Enforcement Officials, and the Rome Statute for the International Criminal Court.

Similarly, there are numerous other regional mechanisms that also promote human rights and security of people, including the European Convention for the Protection of Human Rights and Fundamental Freedoms and Nine Protocols; American Convention on Human Rights; and African Charter on Human and People's Rights. While guaranteeing security and human rights, the 1995 UN Charter accepts the idea of fundamental human rights maintaining dignity and values of human person, and the equality between men and women in the preamble. Similarly, Article (2) specifies 'to achieve international co-operation in solving international

problems of an economic, social, cultural, or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.'<sup>20</sup>

Similarly, the UDHR mainly focuses on freedom of speech and belief, and freedom from fear and want through the preamble to ensure safety and security of individual citizens. It further includes the freedom and equal in dignity and rights (Article 1), equality without any forms of discrimination or interference (Article 2), right to life, liberty and security (Article 3), freedom from torture, inhuman or degrading treatment (Article, 5), and freedom from arbitrary arrest or detention (Article 9). More specifically, International Covenant on Civil and Political Rights has specified security and human rights that include right to life (Article 6), right to physical integrity (Article 7), right to be free from arbitrary arrest (Article 9.1) and right to human conditions of detention (Article 10.1).<sup>21</sup>

While dealing with public security, there are some non-derogable or absolute rights, which cannot be compromised or denied even during the period of crisis or state of emergency. The absolute rights of people include the right to be free from torture and ill-treatment; the right to be enslaved, and the right to freedom of thought and conscience.<sup>22</sup> Protecting such non-derogable rights of people, the Article (4.1) of the ICCPR states<sup>23</sup>:

"In times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State

Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin."

It means that the following rights must be protected by the state during period of conflict or violence which includes right to life (article 6), freedom from torture (article 7), freedom from slavery or servitude (article 8), freedom from imprisonment for failure to pay a debt (article 11), freedom from retroactive penal laws (article 15), right to be recognized as a person before the law (article 16) and freedom of thought, conscience and religion (article 18).<sup>24</sup>

Similarly, the Article (9) of the 1990 UN Basic Principles on the Use of Force and Fire arms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders explains about the use of firearms for law enforcement officials. The article states 'law enforcement officials shall identify themselves as such and give a clear warning of their intent to use fire arms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.'<sup>25</sup>

In addition, the UDHR

20. 'Charter of the United Nations and Statute of the International Court of Justice,' pg. 3 (United Nations, New York) <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>

21. 'Universal Declaration of Human Rights' (United Nations Department of Public Information) 1998

22. Osse, Anneke. Understanding Policing: A Resource for Human Rights Activists. pg. 74 (Amnesty International Netherland) 2006

23. 'International Covenant on Civil and Political Rights.' International Instruments of the United Nations: A Compilation of Agreements, Charters, Conventions, Declarations, Principles, Proclamations, Protocols and Treaties.' pg. 93 – 100 (United Nations, New York) 1997

24. Ibid

25. 'Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' <http://www2.ohchr.org/english/law/firearms.htm>

and the 1955 First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council also guarantee a range of public fair trial and due process rights to criminal defendants. The right to fair trial and other due process protections are contained in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil

and the security of people are protected by international human rights instruments, these must be guaranteed by the state within national jurisdiction. Such basic rights related to security are as follows: right to life; right to the security of one's person; right to personal liberty and security; right to a fair trial and to judicial protection; right to privacy; right to dignity and recognition; right to freedom of expression; right

almost every major international human rights instrument, the implementation status seems unsatisfactory. Whereas the country respects internationally accepted human rights principles, most of these provisions are already internalized in national mechanisms through interim constitution and legislation, as well as in the established national human rights institutions.

The history of the practice of human rights principles in Nepal is just more than two decades, the internalization of these instruments has moved ahead more than expected. The Interim Constitution of Nepal 2007 has incorporated the provisions of all major human rights issues (both civil and political rights, and economic, social and cultural rights) identified by international human rights instrument and has incorporated as part of fundamental rights. These major fundamental rights related to public security include right to freedom, right to equality, freedom from discrimination, right to employment and social security, women's rights, right to justice, freedom from preventive detention and torture, and right to privacy.<sup>27</sup>

Some more rights and issues related to security are also incorporated as part of the directive principles section of the constitution. These rights are included in the 2006 Comprehensive Peace Agreement as well. It means that these rights have become part of peace process, and integrated annex of the Interim Constitution. Similarly, the Comprehensive Peace Agreement has realized the importance of human rights and public security, and it aims to ensure access of people to justice, has included all major provisions related to public security and human rights that includes right to life, right to individual dignity, freedom and movement, civil and political rights, economic and social rights and right

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The Interim Constitution of Nepal 2007 has incorporated the provisions of all major human rights issues (both civil and political rights, and economic, social and cultural rights) identified by international human rights instrument and has incorporated as part of fundamental rights.

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and Political Rights (ICCPR), and also in the regional human rights conventions from Africa, the Americas and Europe. It is also well accepted through African Charter on Human and People's Rights (Article 7), European Convention on the Protection of Human Rights and Fundamental Freedoms (Article 6), and American Convention on Human Rights (Articles 8 and 25). The concept of a fair trial accepts the idea of providing justice without undue delay. It means that the justice process should be speedy and address reasonable doubts. It must avoid the saying 'delay justice is injustice.

Even though all of these instruments incorporate norms and values of human rights, these documents also aim to enhance public security and promote civilian security simultaneously through the implementation of human rights principles, and creating human rights friendly society because the issues of human rights and public security cannot be separated.

## 5. National Prospects

Even though human rights

to assembly and association; right to participate in government; and right to peaceful assembly. Public security is also considered as one of the dimensions of human security and therefore of human development is directly linked to human rights. The state's obligations and responsibility from the standpoint of citizen security extends to the adoption of measures to prevent the violation of rights linked to citizen security; the duty to investigate; reinforced obligations in the area of violence against women; the treatment of victims of crime and violence; democratic governance of citizen security; professionalization and modernization of the police forces; and the intervention of the armed forces in the work of citizen security.<sup>26</sup>

In Nepal, security and human rights usually do not complement to each other since the human rights community and security institutions are with different understandings and perceptions. In some occasions, these entities are viewed in an inimical relation. Although Nepal has ratified

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26. 'Report on Citizen, Security and Human Rights'. pg. 13 - 39 (Inter-American Commission on Human Rights) 2009 <http://www.cidh.org/countryrep/Seguridad.eng/CitizenSecurity.Toc.htm>

27. 'Interim Constitution of Nepal' pg. 4 - 10 (Law Book Management Committee, Ministry of Law, Justice and Parliamentary Affairs) 2007

to individual liberty.<sup>28</sup>

Similarly, Nepal has ratified all major international human rights, including International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on Rights of Child, Convention on Elimination of All Discrimination Against Women, International Convention on the Elimination of All Forms of Racial Discrimination, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and many other instrument related to International Labour Organization and Geneva Conventions on humanitarian laws.<sup>29</sup>

As a result of ratification, all of these international instruments have fallen under the category of national jurisdiction, and prevail automatically in the country as national laws. Justifying the Article (9.1) of the Nepal Treaty Act<sup>30</sup> states:

“In case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing laws, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws.”

By doing so, Nepal has become a strong ally of human rights in international politics. As part of fulfilling its commitment in national jurisdiction, the state has established a National Human Rights Commission, National Women's Commission and National Dalit Commission with the main objectives of monitoring the human rights situation, reporting

accurate information through analysis and recommending action against the human rights violators through legitimate process.

The state must be responsible for the protection of civilians and its population, and ensure the human rights of individuals. There is no excuse for its inefficiency and incompetency for failing to protect its citizens. It is also highlighted by the 2005 World Summit Outcome adopted by the United Nations General Assembly. It<sup>31</sup> states:

“Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means.”

Even though all of these instruments are mainly related to human rights, these are also directly related to civilian security and directly deal with the right to life, liberty and freedom as specified by the UDHR.

The state must be responsible for the protection of civilians and its population, and ensure the human rights of individuals. There is no excuse for its inefficiency and incompetency for failing to protect its citizens. It is also highlighted by the 2005 World Summit Outcome adopted by the United Nations General Assembly.

Therefore, security and human rights must be looked at the perspective of enforcing laws equally and impartially. The proper enforcement of laws creates conducive environment for improving security and rule of law in the ground.

## 6. Conclusion

Assurance of security and

promotion of human rights should be always prioritized by state mechanisms, and must be supported by international mechanisms. It should also be looked from the perspectives of integrated approach. Security and human rights are primary factors for peace and harmony, as well as institutionalization of democracy, transformation of society and creating adequate environment for law enforcement. The prevention of crime and violence and promotion of human rights by ensuring security could be crucial factor for the establishment of long-term stability, justice and development.

As Bertrand Ramcharan says, ‘conflicts cannot be prevented or peace maintained in a world of wanton violations of human rights, and respect for human rights is the requirement for efficiency and effectiveness in governance.’<sup>32</sup> In the situation of absence of security and rule of law, and restriction on freedom and human rights, particularly in post-conflict period, democracy cannot be flourished and institutionalized, peace

cannot be restored, justice cannot be prevailed, and society cannot be transformed. Therefore, the state must be proactive to ensure civilian security and promote the rights of ordinary people by establishing foundation of peace, justice, security and democracy, as well as rule of law, accountability, good governance and transparency.

28. ‘Comprehensive Peace Accord Concluded Between the Government of Nepal and The Communist Party of Nepal (Maoist).’ Agreements and Understandings on Peace Negotiation of Nepal. pg. 64 -66 (Government of Nepal Peace Secretariat, Kathmandu) 2007

29. ‘Nepal: Status of Ratification of Key International Instruments’ <http://insec.org.np/index.php?type=cms&id=7&lang=en>

30. ‘Nepal Treat Act, 2047 (1990)’ <http://www.lawcommission.gov.np/en/documents/prevaling-laws/prevaling-acts/Prevailing-Laws/Statues---Acts/Nepali>

31. ‘2005 World Summit Outcome: Resolution Adopted by the UN General Assembly’ <http://www.un.org/summit2005/documents.html>

32. Ramcharan, Bertrand. ‘Human Rights and Human Security.’ pg 2 <http://unidir.org/pdf/articles/pdf-art2018.pdf>

# Democratic Future of Nepal



Dipendra Prasad Pant

## 1. Introduction

The use of uprisings and organized popular movements for regime change has been a political practice in Nepal for long. People-unfriendly modes of politics were ousted being propped up by popular strength. The fall of Rana oligarchy in 1951, defeat of the party-less Panchayat regime in 1990 and the extirpation of the authoritarian monarchical administration in 2006 were the result of unflinching belief and solidarity shown by people toward democratic mode of governance in the country.

Once the king Gyanendra's regime ended in 2006, the then insurgent Maoists and the government formally declared an end of a decade long armed insurgency on 22 November 2006. There followed peace process in the country based on the agreement entitled Comprehensive Peace Agreement (CPA) and Nepal is in a state of transition since then. The transition has been understood by many to have undergone from authoritarian rule to democratic mode of governance. However, it cannot be assured that political transition in Nepal is certainly heading to a democratic mode of governance. The present transition is full of

internal tensions, contradictions and complexities coupled with international interests and neighborly dynamism, lately. Passing through the transition towards consolidation of democracy by building amiable relation among the major political parties is full of challenges. This article aims to put forth some thought on why the future of democracy in Nepal is not free from challenges.

## 2. The Political Parties in Relation to Peace Process

As the transition has prolonged with intervallic progress in the ongoing peace process, political parties, it seems are still considering on either to subvert or co-opt the transition. Besides, the ethnic, nationalist, religious and regional discourses have been intertwined with the ongoing political discourse. So, there exists a Herculean task of taking the incompatible political forces of the past together. Reconciliation, justice, amnesty and punishment should have been the basic guidelines for political parties to give post-conflict order in the country through negotiated peace. However, political parties are perceived to have been working either to give blanket amnesty to the violence, crime, human rights abuses and violations committed

during armed insurgency or are seen to be demanding punishment and justice only. Neither of the former warring sides is in the capacity to be dominant in their demands and assertions. Lacking absolute control, as Bloomfield<sup>1</sup> says, neither side will achieve its goal in this. The present transition theoretically, has been the peace versus justice controversy. By foregrounding its logic that it has adopted a democratic course, the UCPN Maoist wants blanket amnesty for its violations and offenses committed in the course of armed conflict or afterwards. Other political parties want the violations and offenses committed by the Maoists in the course of armed conflict or afterwards be punished and the Maoists shun organizational structure like that of a warring party.

Political parties in such a transition should have been concentrated seriously for the guarantee of shared future but they are further divided by renewing the issues of the divided past. Rather than assuring the citizenry that they would work for not allowing the horrible past to return, some responsible leaders of the parties have been even issuing threats irresponsibly through infomercials. The threats of returning to violent past or undoing

1. Bloomfield, David (2003): "Reconciliation: An Introduction" in David Bloomfield, Teresa Barnes and Lue Huysle (eds.) *Reconciliation after Violent Conflict: A Handbook*, International Institute for Democracy and Electoral Assistance, Stockholm

the achievement if their assertions and demands are not supported by other parties are common. This indicates at the possibility that what has been achieved so far towards lasting peace in the country may not be secure. Their expressions, coupled with countless instances of breaches of peace negotiation, come as a mockery to aspirations of people who are desirous to see improved situation in the country. Not to fulfill the obligations arising from the peace agreement and even to transgress it has not been a big deal.

Political forces are distracted from their primary duty of writing constitution. The deteriorating relationship among the parties has played role to disorient them from this responsibility. The antagonistic, distrustful and disrespectful relation of the violent past has continued. To be more specific, internecine party politics and the hurtful relation the parties had during the armed conflict against each other has repelled them even today, rather than attracting to reconcile<sup>2</sup>.

Reconciliation at the top political level has not been an easy task in Nepal. The international experiences have it that often armed conflicts are transformed into peace by agreeing on democratic mode of polity. It is always so when peace process is the direct result of the international intervention and cooperation. Nepal too entered into peace process with the involvement of the UN but it is difficult for the Maoists now to acknowledge this. Initially, the then rebel group Maoists, which turned into a major political party in the country being tested into the election of the Constituent

Assembly, had agreed to turn democratic. Then, Nepal promulgated an Interim Constitution under democratic principle. Positively, the Maoists accepted the democratic Interim Constitution then but, now, they are seen to have accepted the Interim Constitution as an ad hoc document, as if it does not have any bases for the formulation of the new constitution. They seem to be ready to write constitution through the existing Constituent Assembly only if the new constitution can take shape as per their wish or ideological cores. They want to prevail over other political forces in the matter of writing constitution as well, as they do in other political affairs of the country. The Maoists, so, have stopped to talk about the necessity of new constitution now whereas the existing Constituent Assembly was formed, basically, to address their demands of writing new constitution.

The UCPN- Maoists' priority now is to stick to the government. They are incessantly desirous to lead

the country, which have begun to be manifested going beyond perception, were and are awaiting resolution.

### 3. Failure and Unwillingness to Enforce Law against Crimes

It is generally believed that crimes pose threat to the post-conflict situation of a country. Nepal isn't an exemption in this regard. Very seriously, the contour between political and criminal activities is gradually becoming indistinct. Lawbreakers, including felons, have not been punished for their illegal activities. The criminals behind serious crimes have not been prosecuted despite the ruling of the courts, the Supreme Court included. To be able to forge link with the political parties, it seems, is to enjoy non-prosecution. Similarly, to be a member of any political party is to enjoy immunity. As the debate is going on and demands are on the rise as to taking punitive actions against the crimes committed during Maoist-waged armed conflict in the country, the non-Maoist lawmakers

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the government at any cost. Some had high opinion about the UCPN-Maoist-led government in the country. Those who opined in this way were optimistic that the underlying causes of the socio-economic problems would be solved. The Maoist-led government has not made any headway towards resolving them. Mismanagements in

are also found to have committed crimes. Unfortunately, about a dozen lawmakers are in the list of committing crime and flouting laws. Similarly, figures seated at upper echelon of law implementation institution are also found to have been involved in crimes<sup>3</sup>.

2. Subodh Raj Pyakurel & Dipendra Prasad Pant, Ongoing Transition in Nepal: The Challenges ahead and the Human Rights concern, <http://www.thinkindiaquarterly.org/ArticleDetails.aspx?ArticleId=91&Id=6>

3. A former Minister and incumbent member of the Constituent Assembly has been arrested for his major role and involvement in abducting a Kathmandu based industrialist and entrepreneur and also for receiving about one hundred thousand dollar in ransom. It has been a matter of interest how he will be penalized. Similarly, a high brass i.e Deputy Inspector General (DIG) in Armed Police Force (APF) has been arrested for killing his wife brutally. Looking into the crime committed by the DIG through the perspective of victim woman, who was killed after being perpetrated a sustained psychological and physical torture at her home for long, an abysmal sense of violence underlies there. Looking into the incident through the prism of the perpetrator, it shows how the security sector and responsible personnel there, having the prime role to bring the situation into order lawfully even in a situation that all the other sectors are off-tracked, have deviated from their professional etiquette, morality and decorum.

Viewing the incident through the perspective of the Government, even more horrendous situation of crimes is portrayed. The victims' realities are to the knowledge of the government, the perpetrators' professional and personal behaviors was also to the knowledge of the government. But, the government seems not noticing all these happenings. Such and similar

making democratic norms a way of life in the country is far from easy.

#### **4. Democracy Understood as ism not as a Practice**

Until the point of achieving it, democracy in Nepal is hyped as a universal remedy to all the problems long existing in the country. People contribute or sacrifice themselves for the achievement. However, once

Nepali society is highly conscious politically. Diasporas, who are capable to gauge right and wrong and are free to put forth their non-partisan ideas, have increased over years. The education level in the country is getting better. People in all parts of the country and from all walks of life are well aware through mass media of the inability of the political leadership to control mismanagement. They are also noting the fact that the leaders have also roles to play for the maladministration in the country besides resolving it.

situations have provided breeding ground for the citizenry to form anti-democratic ideas and develop anathema against the democratic values. Such the incidents speak louder than they really are.

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achieved, the political parties in rule tend to forget that democracy has to pay off to the people especially in easing their everyday life. Leadership fails to relate democratic principle to daily problems of the citizenry. This has been a trend beginning from the introduction of democracy following the downfall of Rana oligarchy. Every democratic change that has taken place in Nepal since then has been unable to meet even the minimal expectation of the Nepalis.

The issues such as poverty, injustice, regional disparity, ill-managements, structural deficiencies, prejudice, nepotism, crimes, price hike, and corruption, among others, which need to be addressed through democracy, remain unresolved whereas these very issues and problems are believed to be in inimical relation to democracy. The leaderships in rule or the political parties in general rarely act to show the populace that democracy is the best response to remedy these problems. The failure of the changed political system to meet the high expectations of the Nepalis have bred a brooding sense about

their future and aggravated discontent simultaneously.

In the case of democratic change of 1951 and 1990, power dynamics especially the influence of the Ranas and the king in the state affairs, it can be inferred, had debarred the democratic forces of the country from working freely for people. However, the post-CA election Nepal has provided sufficient ground for the political actors in the steering seat of governance to work for people unhampered. Still, the actors have failed to do so. While a plethora of problems as were mentioned above are awaiting resolution, political parties are deeply divided over 'isms' and political ideologies. The UCPN Maoist seems to be trying its best on whether its ideological target is still achievable. Hence, it is not sure whether it will honestly switch to democratic polity permanently.

On one hand, the UCPN-Maoist, many people blame, is endeavoring to fill up the vacuity appeared in the country after the walking out of the totalitarian monarchy. The post-CA election strategy of the Maoists affirms this. On the other hand, the non-Maoist parties, currently, don't seem to be strong enough to provide democratic guardianship. However, the backstopping they have received from the international communities for the democratic exercise is laudable.

Rather than initiating concrete steps to resolve the long standing issues, the Maoist-led government seems to give continuity to them, which are the result of socio-economic and political dynamics. Given the war time arousal of the certain groups and class of people by the Maoists, there was an apprehension among the citizenry that the Maoist-led government would impose burden on some while granting favor to others. But, as the Maoist led-government's term is increasing, a general feeling is developing among the people that the government is not working in line with popular interest.

## 5. Neighborly and International Relation

The pressures created by international communities against autocratic regime have positive role in introducing and reinstating democracy in the country. This is an undisputable fact. Hence, the sustenance of it also depends partially on the support from them. This is a reality that political transition or stability is linked with neighbors, one way or the other. Our geographical location, socio-cultural and long standing diplomatic relations have something to do with political situation in the country regardless of the comments from some angles that neighbors of Nepal are nosey and meddlesome. Nepal's democratic transition has been perceived by many to link with neighboring countries as well. Because of the conjuncture with the bordering big countries, which have the capability to impact the worldwide politico-economic powers, Nepal's situation will certainly be affected by them.

To be specific, China never expresses clearly for or against democracy in Nepal. Given the form of polity under which it is being ruled, it is not apt for China to be interested to set up democratic polity here. Similarly, given its commercial expansion far and wide under the espousal of liberal trade system and also given its gradual departure from its original form of economy to mixed one, it is also not relevant for China to expect Chinese type of society in Nepal. Hence, the type of polity Nepal adopts is not a direct concern of China. However, the latter's vague views are made public through diplomatic sector and sometimes through political leaders from China that it wants "stability" here. The

phrase as such has something to do with (in)stability of democratic polity in Nepal. Expecting stability as a foundation for prosperity is commendable. But, Nepal's reality speaks otherwise. The periods of democratic polity in the country were perceived by people as an unstable time. If only democracy is adopted as a means for achieving 'stability', we can think of consolidation of democratic polity in the country.

The Chinese influence, however, is getting more visible at present in Nepali politics especially through diplomatic and, lately, through political visits<sup>4</sup>. The thawing political and diplomatic relationship in the face of changed political situation in Nepal seems to have been stabilized to some extent<sup>5</sup>. However, the agreements reached between the two countries have not made democracy a point of agreement.

India has been reiterating its stand on democracy in Nepal for long. India, which is maintaining order internally amidst so many unfavorable situations within it for democracy and which is emerging as

grassroots people still perceive that political order or disorder in Nepal necessarily has something to do with Indian role. This misunderstanding has to be cleared. This only will be helpful for the citizenry in acknowledging the efforts made by India toward democratic sustainability in Nepal.

There exists another school of thought among Nepalis that India might not always advocate for democracy in Nepal. This school of thought takes example from some of the neighboring countries of India in which meaningful democracy does not exist and democratic polity has not been a matter of priority for India there. It is also feared that India might abandon its stand on democracy in Nepal for possible far-reaching Indo-Nepal agreement on commerce and natural resources utilization. If this materializes as feared, Nepal's democratic journey may not be safe.

Nepal was able to establish and re-establish democracy only when political environment was conducive for democracy internally and the international, especially neighborly, supports were obtained for the

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a significant power in global power dynamics, has significant role to play for the democratic establishment, re-establishment and its sustenance in Nepal. History has it that democracy could not sustain in Nepal in the past more due to internal incapacities and mismanagement than due to neighborly influence. However, the

purpose. Nepal is being ruled under the Interim Constitution and even the political forces reluctant to opt for democracy as their desired polity in the country have accepted it. Having said this, it does not mean that democratic establishment is being consolidated in the country. So many factors stand as the hindrance against

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4. Chinese PM Wen Jiabao's visit on January 14, 2012 and the agreement reached on the day seem to have provided clarity on Nepal's understanding on China and vice versa.

5. Nepal and China have witnessed subtle alteration in their mutual relationships and diplomatic situations with the changes in politics and political actors in Nepal or sometimes due to relationship of China, the then Tibet and India as well. The Nepal- Tibet war, The Thapathali Agreement, recognition of Chinese sovereignty over Tibet in 1956, the Sino-Nepal boundary treaty of 1961, Nepal's commitment not to submit itself to any side in aggression and remain neutral during the Sino-Indian conflict in 1972, Nepal's negotiation to purchase weapons from China in 1988 and the perception of India that the negotiation contravened the earlier agreement reached between Nepal and India were some of events that thawed Sino-Nepal relationship.

democratic consolidation. It has been nearly a decade since democratically elected local bodies were dissolved. Debate between the executive and judiciary over the encroachment of each other's jurisdiction indicates at the fact that achieving democratic order will not be easy. The debate is embedded with broader ideological differences. Similarly, the constitution writing process has been delayed primarily due to the efforts of the big political parties in the CA to write constitution as per its ideological interest.

efficiently amid contradictory interests of the neighbors, Nepal's democratic future remains uncertain. Its national unanimity, concern and diplomatic ability are of utmost importance in the matters of sustaining democratic polity and also in achieving benefits from the neighbors. The predisposition of the responsible political parties to receive benefits by drawing the neighbors into controversy is unfortunate and will be at the cost of democratic order in home. If we want the neighbors to act as per our vulnerability, we also have to be

process started, the relation between Nepal and the neighboring countries has started to thaw with internally and externally volatile undercurrents. There has been a hectic amount of diplomatic activities and exchanges of visits<sup>7</sup> but the expressions of diplomatic and political concerns by the countries provide space to doubt that we will have a normal relation with the close neighbors. Political actors now are not aware of the fact that Nepal has right to deepen its relationship with its neighbors but one relationship does not have to come at the cost of the other<sup>8</sup>.

Certainly, the particular interests of neighboring countries are embedded with such the expression. Unless Nepal succeeds in working efficiently amid contradictory interests of the neighbors, Nepal's democratic future remains uncertain. Its national unanimity, concern and diplomatic ability are of utmost importance in the matters of sustaining democratic polity and also in achieving benefits from the neighbors.

While the international institutions and missions are absent in the country to monitor peace process and transition, political parties are pitting against each other with the motive of dwarfing each other's size. The tussle between political parties has swept aside so many long pending problems of the citizenry. These problems have bred further complexities relating to socio-economic and political dynamics. Given this, it is not unnatural for the neighbors to express their concerns for the timely constitution, peace and political order in Nepal.

Certainly, the particular interests of neighboring countries are embedded with such the expression. Unless Nepal succeeds in working

able to understand their concerns. "While Nepal anticipates its two immediate and powerful neighbors India and China to understand the vulnerability of a small country and respect its independence, sovereignty and territorial integrity, it is in the national interest of Nepal to become sensitive to the security concerns of its big neighbors and take appropriate measures to prevent and curb all kinds of hostile operations against them"<sup>6</sup>.

In retrospect, however, there have always been disputes among the political actors in Nepal regarding the perception of the neighboring countries. Similarly, the neighbors too perceived Nepal differently during different situations. However, it seems that especially after the peace

## 6. Security Forces in Relation to Democracy

Nepal's democratic struggle and popular participation in the struggle has always been propelled by the demand of humanitarian governance that requires social justice as the benchmark in a concrete sense. By the time Nepal saw the unprecedented mass uprising in 2006 these issues were vociferously demanded. Democratic governance, rule of law, social justice, good governance and respect of human rights, elimination of region, caste, class and sex based inequalities, among others, were the demands during the uprising.

Before 2006, there existed general perception among the people and also among some of the political parties that these demands, ultimately, would even involve the king, who by then was seen to be unconnected with the demands. The security forces especially the then Royal Nepal Army was under the total control of the monarchs. As the security forces of the country could be used, were also used several times,

6. In 'Defining National Interest in an Emerging Nation-State: Challenges Ahead, by Dr. Mohan Lohani (*Paper presented by the author at a CSAS/KAF Seminar held in Kathmandu, October 21, 2009*).

7. Chinese Foreign Minister Yang Jiechi's arrival to Nepal on 2 Dec after several days of Indian Foreign Minister Pranab Mukherjee's visit to Nepal in Dec 2008, PM Purna Kumar Dahal's two visits to China; one as the Prime Minister and another as the Chief of the Party, visits of Nepal's President and the Vice President to China, the visit of the commanders of the Maoist combatants and also a top level representation of the Chinese Communist Party at the General Convention of the Madhesi Janadikar Forum in Birganj etc.

8. Subodh Raj Pyakurel & Dipendra Prasad Pant, Ongoing Transition in Nepal: The Challenges ahead and the Human Rights concern, <http://www.thinkindiaquarterly.org/ArticleDetails.aspx?ArticleId=91&Id=6>

by the monarchs as the last resort in maintaining their status; the former had roles in fulfilling or deferring the demands of the citizenry. Despite the fact that the monarchs' were gleaned less popular supports gradually, security forces had been bolstering the status of the monarchy. These two institutions were in a reciprocal relationship with strong attachment between them. The monarchs would form a circle of military elites and the later would assist the former in need in return. Hence, general perception was there that the army belonged to the kings. The coup d'états engineered by kings in 1960 and 2005 as backed by the military forces proved that the perception of the people were true. We have also an instance that the army forces ignored the decision of the executive Prime Minister to mobilize the former for the security of citizenry<sup>9</sup>.

The post-monarchial Nepal has undergone a sea change, for good, in relation to civil military relationship. The then Royal Nepal Army has become the Nepal Army by name and is under the control of government and the elected president. It has accepted the civilian supremacy and abided by the decisions of the government. However, unfortunately, attempts are being made by some of the big political parties to involve the army institution into controversy. The army does require changing its modus operandi in line with changed political system. However, the way the political parties are endeavoring to make it as theirs rather than the national and common army is unfortunate. The national army is required to adjust itself as per the changed political and constitutional context also by keeping its professional integrity and etiquette intact. Similarly, it has the responsibility to reform itself and take in the ex-Maoist combatants as its members and mold them as per its policies, norms and structure.

Above all, the army institution itself is required to turn democratic and stand as a facilitator for democratic consolidation in the country. This only will make Nepal's democracy sustainable.

## 7. Conclusion

As the transition has protracted with the intermittent progress in the ongoing peace process, political parties, it seems, have got time to deliberate whether to undermine or choose the transition. The political parties in such a transition should have been focused truly for the assurance of shared future but they are at odds by reintroducing the issues of the divided past. They are diverted from their key onus of writing constitution. Very seriously, the contour between political and criminal activities is becoming increasingly blurry adding to the mismanagement already created by political debates.

Such a development is increasing pessimism against democracy. Hence, firming up democratic culture and making democratic norms a way of life in the

While a plethora of problems are awaiting resolution, political parties are deeply divided over 'isms' and political ideologies, failing to converge on the national urgency.

Nepal was able to establish and re-establish democracy only when political atmosphere was encouraging for democracy inside the country and the international, especially neighborly, supports were obtained for the purpose. Although national concord, concern and diplomatic ability are of paramount prominence in the matters of nourishing democratic polity and also in achieving benefits from the neighbors, Nepal's geographical position always demands international support in the matter of democratic sustenance. However, governmental intent and acts are not concerned towards this aspect.

The post-monarchial Nepal has experienced a sea change, for good, in relation to civilian and military relationship. The national army is working positively toward supporting democratic set up introduced in the country. It requires further adjusting itself as per the changed political and constitutional context by keeping its

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country is far from easy. The failure of the changed political system to meet the high hopes of the Nepalis has reared a gloomy sense about citizenry's future and has also heightened displeasure among them concurrently.

professional integrity and etiquette intact at the same time.

Proper consideration of the concerned stakeholders on these issues, but not exhaustive, is of great importance for the secure future of democratic polity in Nepal.

9. The then PM Girija Prasad Koirala had decided to mobilize the army against the then Maoist insurgents but to no avail.

# The Report of the Commission is in Favor of Nepal and its People

The issue of state restructuring is one of the intricate subjects of the constitution writing and the ongoing peace process as a whole. Following unending debates, the political parties in the country reached an agreement to form a State Restructuring Commission (SRC) as stipulated in the constitution. The government appointed **Dr. Madan Pariyar** as the coordinator of the commission on December 6, 2011, and the commission under his coordination has already submitted its report. He previously served as the Member Secretary of the High Level Commission for Information Technology. **Dr. Pariyar**, who is also a board member of the Informal Sector Service Centre (INSEC), talked to *INFORMAL* over a range of issues relating to the report prepared by the SRC and the issues included in the report. Excerpt:



● *What aspects were taken as the bases for preparing report by the commission? What kinds of suggestions were provided for the purpose?*

The report of the Committee on State Restructuring and the Distribution of State Power of the Constituent Assembly (CA), the differing views included in the report and the views expressed by the CA members in the CA at different time were taken into consideration while preparing the report. In addition to these, suggestions from different organizations and personalities were also taken into account. The commission had organized discussions with different experts and had received suggestions from them. Similarly, the commission had reviewed related literature, study-reports and information for the purpose.

● *We face the unpleasant reality that most of the reports of the commissions formed previously for different purposes are not implemented. Do you think the report prepared by the commission will be implemented?*

As the SRC was formed as per

article 138 of the Interim Constitution 2007, the report will certainly be implemented. The commission was formed for resolving a very complex issue of restructuring state as such. The suggestions of the commission, hence, will receive a significant position and attention in the CA. I am sure that the report of the commission will be deliberated at length in the CA and be implemented by incorporating the views and suggestions given by the CA members.

● *The report of the commission faced mixed criticisms. It was even set on fire. How do you take these things?*

All those concerned analyzed the report. I found out through the media that the report was opposed. Severe criticisms were received. However, many people are of the view that a good report has emerged. Some are in support of the report. The criticism and assessment are not unnatural. Largely, the report is in favor of Nepal and Nepalis. I think the commission has accomplished the responsibility assigned to it by the government.

● *The commission was formed to resolve the disputes that have emerged relating to state restructuring. Don't you think the commission increased the disputes further rather than resolved them?*

No, the commission's report has not intensified disputes. The matter of restructuring the state itself is a complex issue so disputes were bound to arise. It is usual that differing views and thoughts emerge in connection with the issue. The commission was comprised of different figures from different sectors with different thoughts and expertise. It was natural for them to have opposing views. So, it is not logical to construe those views as a reason for the intensification of disputes.

● *Even some of the leaders of the Nepali Congress and CPN-UML commented that the expertise of the experts was not reflected in the report. What is your opinion in regard to the comments?*

This is surprising. However, such comments do not hold true. The comments were not appropriate. All the members of the commission were appointed because they are capable

in their respective fields. The political parties accepted them as capable at the time of appointment. It is surprising that the very members have been incapable for the parties now. While working with the members for two months, I found out that they were capable and possess expertise in their respective fields. So, I disagree that the members of the commission were incapable.

● *The political parties believed in you and appointed you unanimously as a coordinator of the commission. However, the concerned parties seem like they are not ready to accept the report. What's your opinion regarding this?*

I was chosen unanimously by the political parties. I am grateful to all the parties for that reason. I, from the beginning to the end, had an independent role in the commission. The report was prepared after the opinions and expectations of all concerned were considered and incorporated. Hence, the report is good for the country and people.

● *You, initially, were of the view that the state should be restructured based on a North-South delimitation. Why did you produce the report based on the ethnicities living in the country?*

I expressed my view through a media club roughly one or two days after I was recommended as the coordinator of the commission. The media did not accurately reflect my view. I refuted the false reporting immediately. I, at the media club, was asked what it would be like to demarcate the state in terms of a North-South divide. I responded to the question by saying it could be a good option. I had also stated at that time that all models for restructuring the state have both positive and negative sides. However, I was misquoted as saying that demarcation on a North-South basis was the best option.

● *People say that the report submitted by the Commission resembles the concept of the UCPN-M on state restructuring.*

● *What's your say in regard to this?*

I refute this accusation. We prepared the report after studying the report of the Committee on State Restructuring and Distribution of State Power and the concept paper of the NC and UCPN-UML, among others. It was only after reviewing these reports that we proposed the appropriate model. It is wrong to say that the commission's report resembles the concept espoused by the UCPN-M on state restructuring.

● *Your report has also proposed a non-territorial Dalit state? Why was it necessary?*

The Dalit community in Nepal is one of the most backward groups. Dalits are made to live a very backward life economically, socially and culturally. In the course of long deliberations held for restructuring the state, the issues of the Dalits, we felt, had not been taken into consideration seriously in Nepal. According to governmental data, the population of Dalits is almost 3 million, or 13 per cent of the national population. Other sources, however, claim that their population is 20-25 per cent. We had a realization while preparing the report that the Dalit community having such a big share should possess their own state. We studied in detail as to which region can be a state for Dalits. However, it was difficult to locate a particular region as the Dalit community is scattered across the country. The population of Dalits in the districts such as Siraha, Saptari, Dhanusha, Baglung, Myagdi and Parbat, among others, is sizable. However, they are settled in small clusters. It was not possible to provide a state for them based on clusters. The population of Dalits in those clusters did not make even 10 per cent of the total population. Given the situation, the SRC came up with a concept of non-territorial Dalit state with an aim to address the long existing problems of the Dalits.

● *Disputes between the members of the Commission were exposed. As a result, there emerged two reports. What's your*

*say regarding the disputes between the members of the commission themselves?*

It is untrue that two reports were submitted. It has been incorrectly disseminated that the commission submitted two reports to the PM. We submitted only one report. The report was endorsed by all nine members of the commission. The report, however, contains a section for differing views where the views of the members of the commission who were with diverse ideas on certain issues are included. This is a part of the democratic process. Differing views should be respected and given space. The report includes a section that records differing views of the members on different topics.

● *Some people also claim that a dispute arose among the members of the commission due to the weakness of the coordinator of the commission seen in coordinating its members and issues. Was that true?*

The emergence of differing views among the members of the commission who have dissimilar ideologies, expertise and understandings is not unnatural in a democratic practice. It is unreasonable to expect ideas to fit together in all situations. I personally believe that to have expected uniform ideas from all the nine members of the commission would have been unrealistic. However, most of the decisions of the commission were reached unanimously. Some decisions were made on a majority and minority basis. The views of the minority members are accommodated as the differing views. Raising questions as to the capability of the coordinator of the commission is meaningless. My term in the commission was a success. The commission under my coordination accomplished the assigned tasks responsibly and successfully in time. I am confident that the suggestions provided by the commission will be given due priority in the Constituent Assembly. The report prepared by the commission is in favor of Nepal and its people.

*As Interviewed by Gopi Krishna Bhattarai*

# Critical Pitfalls of Good Governance in Nepal



*Tara Dahal\**

## 1. Introduction

The term governance is popularly used in contemporary development literature. In the hyper-connected world governance has a connection with all the sectors of society ranging from individual life to local, national, regional and global and other spheres. The network of such complexity cannot be understood by focusing only on political or economic aspects of society. Nevertheless, the general meaning of “governance” refers to the process of decision making and its implementation by the coordination of several factors such as state, market, civil society and a myriad of organizations and networks of citizens, government and international community—and mediation of their interests. This core of good governance “refers to the processes through which states acquire their power and use their power and authority” (Moore and Unsworth, 2007:1). Here, power means the ability to deliver public goods and services to society, guarantee rule of law, ensure human rights, develop strong institutions, create resources,

policies and programs, make people sovereign and fashion order in a society by balancing individual and collective needs. “Development, in short, requires good governance, meaning open, transparent and accountable public institutions” (Jung and Wolfensohn, 1999). Nepal has no choice but to become a competitive nation in the midst of global resurgence of its neighbors—India and China—in order to survive while receiving the international community’s support to emerge from an internal crisis and achieve stable democracy. “Effective action no longer rests primarily on collaboration among like-minded democracies. Instead, it depends on team work across a much more diverse –and unwieldy –circle of states” (Kupchan, 2011:12).

Though Nepal has many of these criteria of governance, it suffers from a functional deficiency in fulfilling some indispensable elements in practice, such as a virtuous state, sustainable economic growth, creation of regional balance, reduction of social and economic disparity, poverty alleviation, social inclusion and mitigation of climate change.<sup>1</sup>

A weak state is characterized by, among other things, its incapacity to command the loyalty of its citizens, right framework of rule and maintain a “monopoly over the legitimate use of force” (McCormick, 2009: 78) to use the definition of Max Weber. It lacks respect for central authority among the peoples where individual leaders become more powerful than institutions akin to African politics. As a result, internal and external tensions have added to the crises of governance in formulating contextual policies and implementing them. “The purpose of governance is correct disposition of actors, institutions, policies and programs to serve the needs and freedoms of human life in a sustained manner (Dahal: 2010:3). To establish good governance, sovereign citizens must get chance to exercise rights to self-governance, enjoy social, economic and political rights and engage in the rational reconstruction of society in line with liberty, justice and effective public participation. Nepal’s post-conflict political and constitutional processes cannot establish real demand-driven, inclusive democracy if its justice system remains less autonomous of political

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1. Good Governance Action Plan 2012 seeks to remove the tainted image of government by awarding ministries and central departments for good work and take action against non-performers, offer award to officials of three best ministries and three best security officials. It has identified 15 central departments and seven public enterprises as the most-corruption prone institutions.

power and its integrity to condemn the political crimes of the past and defend human rights of citizens remains unrealized. This article narrates policy pitfalls and the people, root causes of governance failure, non-linear resolution of governance crisis, nexus of economy, democracy and governance, strengthening of national integrity system and presents a brief conclusion.

## 2. Policy Pitfalls and the People

Without active citizens democracy cannot flourish. A sovereign state with the capacity to socialize people into citizens can foster the social base of nationality and create conducive basis of democracy. The state's provisions for a shared space for all citizens to relate to each other and develop a collective vision of society are essential. Equitable and inclusive resolutions of ecological, social, political and cultural conflicts are additional requirements for its effectiveness. Conflicts largely occur from the group-based partisanship of institutions and positions lacking impersonal performance, greed and selfishness drive leadership and citizens.

Good governance rests on the civic and political culture of its citizens and leaders – a culture that respects all the generations of human rights—civil, political, social, economic and cultural. They together define empirical belief, expressive symbols and values necessary to undertake effective political action. It also requires “accessible courts, effective bankruptcy laws, sound securities and competition regimes, and strong anti-corruption policies” (Jung and Wolfensohn, 1999). Without these, economic growth and distributive justice cannot occur. However, chronic political instability caused by the weak accountability regime in Nepal has attenuated the fabric of society and peaceful co-existence. The opening of historical fissures has posed problems for governance. Similarly, the top down model of development practiced in Nepal since 1950s has undermined

the public's capacity to articulate their longstanding problems. It has also undermined the concept of democracy, which is important for the sustainable development of any society.

The political transformation of Nepal in various phases by political movements only marked the revolt of middle classes, civil society and professional bodies against the state. It could not harmonize state-in-society to abolish governance related weaknesses on public security and law, listen to citizens' voice and promote visibility, ensure informed civic participation, fulfill basic needs or create predictable nature of laws, plans or policies. Nepal is now dragged in centrifugal directions by competing classes of society, globalization from outside forces and horizontal associational groups, armed groups, caucuses and pre-political solidarity groups for space, power, resources and identities across the political spectrum. These trends have eroded Nepali's capacity to create public order and manage competitive, if not unfair, struggle among the parties such as civil society, economic and cultural associations and the non-state armed groups engaged in violence. In

equity required by the poor, workers and disadvantaged groups in the forms of subsidies, welfare benefits and affirmative measures were destabilized and curtailed. It also allowed illegal capital flight. The erosion of the human rights condition also undermined the loyalty of citizens to the state. The inability of the leaders of 1990s to abide by the vision of the Constitution to visualize the ethics of democratic equity, accountability and transparency spawned an existential crisis of livelihood. The poor job market in the country forced skilled and unskilled workers to migrate to sell their labor in for low wages abroad. Remittances from Nepalese workers constituted the lifeblood of the rural economy. With no choice to enjoy popular sovereignty and power, it ignited a condition favorable for the CPN (Maoist)s' People's War that began in 1996, which devastated Nepal's people and retarded economic progress with far-reaching implication.

The People's War escalated on the deterioration of human rights conditions rather than the calculated choice of parties alone. The neglect of the mid-hill regions, expansion

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The political transformation of Nepal in various phases by political movements only marked the revolt of middle classes, civil society and professional bodies against the state. It could not harmonize state-in-society to abolish governance related weaknesses on public security and law, listen to citizens' voice and promote visibility, ensure informed civic participation, fulfill basic needs or create predictable nature of laws, plans or policies.

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the process, Nepali parliament too seems to have been weakened and has given space to bureaucratic forces and donors to fashion democracy and development along a top-down path.

The neo-liberal policy temptation of Nepalese leaders in the 1990s produced the growing divides among the people with the declining performance of industry, agriculture, trade and commerce. The democratic

of political constituencies by ruling parties by police force, erosion of the image of authority of central leaders, bad governance, use of extra constitutional movements to stay in power and coercive measures to resolve political issues, among others, strangled democracy, fed unstable regimes and gave rise to a crises in governance. The frequent use of violence institutionalized the culture

of violence and undermined the capacity of democratic institutions to deliver national security, rule of law, participation and basic services. Bad governance in Nepal put more costs on marginalized people, deteriorated their living standards and curtailed their human rights during the insurgency and counter-insurgency operations which lead the country to economic stagnation, political

political parties in Nepal have failed to establish accountability for abuses during the decade-long conflict. "The parties instead further weakened an already dysfunctional justice system by ignoring court orders and appointing people allegedly guilty of serious rights violations to senior government positions."

Economic decline has also reduced their aspirations for

framework or condition of the country under which policy has to be implemented added another risk of governance failure. This is because development policy did not work for the poor and did not heed national priorities. Nepal's problem of establishing the sovereign power of people is mainly attributed to a credibility gap between high sounding development goals such as MDGs, PRSP, post-conflict reconstruction, etc and weak means to achieve them. Public needs for qualitative improvements in living standards remains largely unmet as the human capacity to energize the economy remains feeble. Economic jitters faced by the majority of the population have posed impediments to good governance—the powerful have flouted law for sheer demonstration of the web of power while the poor lacking means for survival have followed suit under the garb of radical politics. The persistent inability of the national leadership to control spoils of office hobbled the structure and performance of public representation in politics and policies that shape their lives, liberty and property. Unmet human needs have bred structural conflict and paralyzed the scope for social cohesion, system integration and national unity. Climate change, population growth, scarcity of livelihood means, culture of impunity, cross border smuggling, capital flight<sup>2</sup>, corruption, tax evasion and economic mismanagement have further fueled the crisis of governance.

The interdependencies of public policies across the state, market and civil society levels especially on local bodies, education, health, energy, irrigation, community development, forestry etc are keys in initiating interrelated reforms. However, unless Nepalese political leaders prepare a clear framework to enhance poor people's abilities, capabilities, and roles and engage them to heal the wounds of society, trust, reconciliation and

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Political instability and the failure of government to execute national plans and policies have contributed to slow economic growth and generated a huge gap between the supply and demand of public goods and services. Frequent political strikes, underproduction of public goods, a syndicate regime and the poor distribution system have added complex uncertainty to people's hope for fulfilling their economic rights underlined in the Interim Constitution of 2007.

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instability, security dilemmas in international relations and the erosion of constitutional rule.

### **3. Root Causes of Governance Failure**

In Nepal, the failure of state to deliver public goods and services to the disadvantaged generated a crisis of trust in governance. It has steadily weakened the connection between the state and citizens leaving the latter disillusioned about politics. Political instability and the failure of government to execute national plans and policies have contributed to slow economic growth and generated a huge gap between the supply and demand of public goods and services. Frequent political strikes, underproduction of public goods, a syndicate regime and the poor distribution system have added complex uncertainty to people's hope for fulfilling their economic rights underlined in the Interim Constitution of 2007. Human Rights Watch World Report 2012 has revealed that the government and

social mobility and the underlying optimism that democratic governance is a redistributive regime which would optimally satisfy the basic needs and freedom of citizens. Citizens sought solutions from the elected leaders but they are too busy tussling to ensure their individual survival in political power. Fewer provisions of public goods have risked breaking the social contract and any hope doled by the 601-member elected Constituent Assembly that the new constitution would elevate the status of people into citizens with equal rights and duties and universalize their identity and dignity. This hope helped them to embrace revolutionary change but the dissatisfaction between the old and young generation of leaders is mounting as the latter feel cheated over and over again and "inequality and discrimination, which were root causes of conflict, persist" (OHCHR-Nepal, 2011:1).

The adoption of the imported design of development without proper knowledge of the historical, geographic, economic and social

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2. Transparency International revealed that between 2000- 2009 illegal capital flight appeared to the tune of \$6.4billion.

### ‘The Report Submitted by the Commission will not be Implemented’

Being an issue embedded with the constitution writing and ongoing peace process in general, the task of state restructuring has become one of the complicated issues in Nepal. Deliberations have been taking place on the issue for long. The commission formed for providing suggestions on state restructuring has already submitted its report, which has also been deliberated at the Constituent Assembly. However, differences still exist between stakeholders regarding the bases of restructuring and number of states. In this background, **INFORMAL** had collected views from the members of the Constituent Assembly by asking a range of questions concerning different facets of state restructuring. Excerpt:

**Ram Krishna Chitrakar**  
CA Member, NC



We have been preparing for federal mode of state restructuring. The process is meant to empower people socially and economically. The unitary state mechanism long practiced in the country resulted in poverty, underdevelopment, and backwardness among people. So, people are hopeful that state restructuring will transform them economically, socially and culturally. The end result of state restructuring should be economic prosperity. Hence, undermining economic aspect will make people disappointed again. Besides, the restructuring will provide special focus on identity and capabilities.

So far as re-consolidating the existing structure of state as an alternative to the proposed restructuring is concerned, the former is not likely to meet the expectation of people. We had also thought of acknowledging the principle of devolution. Similarly, we could not run administration properly under the decentralization process; basically, we were unable to implement the process well. Although the

central authority has allocated power to the local bodies, practice is not satisfactory. Sticking to the idea of decentralization and advocating for it, now, is to sound as though one is against federalism. State cannot backtrack from adopting federal system but debates and discussions can take place as to which form of federalism to adopt. We have envisioned three tiers of state mechanism clearly.

Capability should be the main focus of state restructuring. The economic opportunities, availability of natural resources and their utilization, and, ultimately, the ethnic identities are also embedded with capability. Likewise, the socio-cultural identities also fall under the ethnic identities. The Nepali Congress (NC) has not accepted the notion that state should be restructured on ethnic basis. Hence, I also do not believe in ethnic-based state restructuring.

As the federal state structure has already been a political, constitutional and national agenda, the NC is determined that Nepal now has to go for it. We cannot retreat from the decision. Identity and capability have to be the main issue while demarcating states. So, demarcation cannot be possible on the ethnic basis. In the meantime, all the socio-cultural and economic groups will have to be able to feel ownership under the new structure.

The NC is doing homework for taking its official view on the subject down to the lower level of its party structure. However, the party has not

taken final decision regarding it. State restructuring being a very complex and sensitive issue, we have been sticking to debates and discussions internally. The issue demands ample deliberations. We have been organizing meetings at the regional and national level however, I, personally, do not think that we have sufficient deliberation toward this end.

We failed to form State Restructuring Commission as per the spirit of the constitution. Experts were required to be commissioned for this process. As the issue as such demands intensive technical knowledge, we had envisioned a commission for the purpose. However, we committed mistake by forming commission based on political quotas. The commission, so, produced its report as per the interest of political parties, that too on the basis of majority and minority votes of the members of the commission. The report of the commission made the debate on restructuring further complex. Three are so many differences on the issues included in the report of the state restructuring Committee of the Constituent Assembly and the commission formed for the purpose. The NC is not ready to accept the main intent of the commission that state should be restructured on ethnic basis.

**Krishna Prasad Sapkota**  
**CA Member, CPN(UML)**



Nepal, so far, has centralized state structure, which has to be decentralized. However, it is preparing to go for federal state structure now. The types of federalism vary worldwide and they have their own norms. The advocates of democracy have to consider first as to what makes people stronger. So, we are seeking for a system in this regard. I personally feel that subsidiarity principle is the best in this connection. The idea under the principle is that a central authority should have a subsidiary function, performing only those tasks which cannot be performed effectively at a more immediate or local level. Direct democracy,

local democracy and participatory democracy are the main dimensions of democracy. We are in need of a democratic system that includes all these components and in which people will also get opportunities to partake in the state mechanism. They will be able to make decision for themselves and will feel autonomy.

Based on the subsidiarity principle, there need strong local governments with legislative, executive and judicial power. These bodies will have to have the authority of taxation and distribution of revenue as well as the rights to language and culture. Those works that are not under the capacity of the local governments will have to be carried out by the state or central government. The authorities being used by line agencies at the district level under present structure have to come under the local governments so that people will not have to travel afar seeking for government services. This only will materialize New Nepal, as the phrase as such has been hyped.

As people have already started to think in a broader manner in relation to localization of government services, the existing state structure cannot be given continuity. We are in need of local governments to which people will have easy access in their day to day life.

As ethnic basis is not a permanent issue, I am for the restructuring of state on geographical bases. The cross-cultural marriage and the mobility and migration of people are increasing over time. Hence, the pattern of settlement in the country will speedily alter in the days to come. So, state should be demarcated in a democratic way but ethnic based restructuring may not be democratic. Because it was based on single caste and ethnic based pattern of governance, we ousted monarchy from the country. We, now, have to go for a system in which all categories of people will be able to reach the governance through competition. Hence, our endeavors should be concentrated as to eliminating different forms of disparities existing in the country. These disparities are based on class, gender, region, religion and ethnicity. We have been discussing welfare and socialist state system for the purpose.

The ethnic based state restructuring should be avoided. Such the restructuring is likely to invite irresistible problems and nuisances in future. Unlike in other countries where different categories

of people were not bestowed with political rights simultaneously, Nepalis were empowered with their rights concurrently regardless of their identities. No particular ethnic groups were responsible to oppress other groups but it was due to the autocratic rule of the time that some groups were benefitted better than others. The disadvantaged groups that are the result of autocracy should be empowered and constitution should be written accordingly. However, demarcating states on ethnic basis is not acceptable. Also, the ethnic based state restructuring does not match with reality of Nepal. We have seen the examples from the countries having ethnic based state structure. Nigeria and Ethiopia, which have been facing so many problems, can be examples in this connection. Rather, the pace of development is believed to be faster through cultural intermingling; the USA can be an example in this connection.

The UCPN-Maoist seems to be advocating for ethnic based restructuring but, in practice the party is not for it. Their rhetoric and reality has discrepancies.

When we juxtapose state restructuring with constitution writing, the former becomes a vital issue. This matter is related to our country's progress, development and bright future. For the quality life of citizenry, their proximity with the administrative authorities is essential. State restructuring has to focus on it and the process should be meant for the decentralization of power in the truest sense. State restructuring is necessary also for competition. People, under federal system, will have opportunities to compare the situation of developments in each other's' states.

The CPN-UML has not made any official decision on the issue so far. However, principally, the party has been discussing identity and capabilities. Identity is more than ethnic issue; historicity, continuity and geography are also the part of it. So, majority of voices in the party is against ethnic based state restructuring. Discussions and debates on the issue have not been organized at the party level. The party's federal affair department had conducted a study in this connection. The district level representatives from all development regions were the participants in the study. It is not known to what extent the district representatives circulated the idea down to the lower level. The representatives in the meeting had

underscored the need of going for federal structure on the basis of geography.

Political parties are with differences as to the basis of demarcating states. Should they fail to converge on the issue, it is sure, new constitution cannot be written even within the extended period. Practically, however, circumstances are compelling us to come together for the cause. So, I don't think it will be too difficult to converge on the issue.

The report submitted by the State Restructuring Commission is not appropriate. The CPN-UML has already stated that the report is unacceptable. Personally, I have the same view. The report submitted by the Commission will not be implemented. For reaching consensus on state restructuring, first of all, democratic norms, values, and social justice should be the basis. This only will assure forward-looking restructuring of the state. Similarly, agreements should also be reached for eliminating class, caste, gender and regional discriminations and disparities. Convergence of the political stakeholders in these matters, I think, will provide right direction for the country.

**Sarita Giri**

**CA Member, Sadbhawana Party (Anandidevi)**



Federal system of governance should be based on the principle of equality in such a way that no particular region or state will be governed by other regions and states, that no particular groups with their distinct identities will be governed by other groups

and identities and that no region or state will be a colony of other region or state. The federal structure has to be established keeping these issues in mind.

Based on the trend of settlement and migration, several factors have to be considered while demarcating states. Geography, capability, identity and the availability of resources are some of the factors. However, given the weak economy of the country, imposition of burdensome taxation on people and heavy reliance on remittance, establishing

too many states will not be supportive in sustaining federal system. So, we have been reiterating that only a total of three states viz. Tarai, Pahad and Himal should be established. However, there can also exist sub-states based on language, culture and similar dynamics. If it is difficult to reach agreement in this way, two states in Tarai and Pahad each along with one separate Rajdhani state could be the other option. As is the case with the hilly region, Madhes is also full of different linguistic and cultural groups. If we are ready to have two states in such diverse situation of Tarai region, why should we go for more than two states in the hilly region? Hence, Provisioning a total of 5 states is suitable. The slogan of One Madhes, One State has been reiterated also due to the fact that Madhes has been colonized so far. Such the slogan was started for ending colonial type of governance. As it provides political power for the people of Tarai, we have been advocating for One Madhes, One State slogan. The slogan as such, however, has been understood by some as disintegrating move. Nobody from Tarai is interested to pose threat to integrity of the country.

Ethnic autonomy is against democratic system so we are not in favor of this concept. Ethnic based and identity based issues are not synonymous. I don't think constitution will be promulgated through consensus. Rather, it is possible that constitution will be produced based on agreement reached between three major political parties.

**Abhishek Pratap Singh**  
**CA Member, Madhesi Janadhikar Forum, Nepal**



The Nepali State should be restructured based on identity and capabilities. This is my personal and party's view. Besides being based on identity and capabilities, a mechanism should be made through which disadvantaged and excluded groups have to be given proper attention. The international practice should also be considered while demarcating states. As it will create conflict

and will also not be feasible in our context, restructuring can never be possible on ethnic basis. Nepal is too diverse in terms of ethnicities. Hence, identity and capabilities can be the best bases of state restructuring in such a situation.

The UCPN-Maoist party is advocating for ethnic based state restructuring. However, we should understand that advocacy can be possible even on wrong issue. My party is for an autonomous Madhes state. Autonomy and devolution of power is the top most agenda of the party, which is of the view that power should be devolved following the establishment of federal system. Madhesi's demand for One Madhes One State is construed by the rulers as an unwanted and disintegrating demand. However, the people from Tarai are more anxious about the integrity of the country than the people from hilly region are. Also, if one can convince us with proper logic on why our demand is wrong, we can be flexible on the issue. The demand for autonomous Madhes state is backed by the voices from the grassroots people in Tarai. The North- South demarcation of states might be unnatural and unacceptable for some, ultimately leading to civil strife in the country.

The State Restructuring Commission should have been formed earlier. The report submitted by the commission is unacceptable even to the parties that commissioned members. The report is full of discrepancies and is impractical in the meantime.

It will be hypothetical to state right now on whether or not new constitution having the provision of federalism will be written in time. However, we have been experiencing that conspiracies are being hatched against timely promulgation of new constitution. Attempts are being made against writing a constitution that stipulates federal state mechanism whereas such the constitution is necessary to guarantee the rights of different groups that have been deprived of their rights so far. Similarly, peace process has to go along with constitution writing process. Country has to get a clear access now toward economic growth through political stability. Dilly-dallying will be for the benefit of none. Concluding the ongoing peace process and writing all-satisfying constitution are the two major challenging tasks of Nepal now.

*Views collected by Ramesh Prasad Timalsina*

rebuilding of war-torn relationship become thorny. Good governance requires giving vulnerable groups adequate opportunities to use their potential to bring desirable change to society, enable them to remove structural injustice and modernize the repulsive features of traditional society, hierarchy and patriarchy by fulfilling their legitimate rights, needs and aspirations. State building from below requires removing the patronage-based structures especially in human resource, planning, finance, dialogues and information system. State-building plays a critical role especially in fostering its tentacles in society and improving trust through mutual learning.

Three factors: utopian promises, the absence of human rights safeguards and poor connectivity have a negative impact on the performance of the governance in a hyper connected world. Effective governance is the key to the solution of Nepal's many problems. Issues such as national security problems owing to poor civil-military relations, the demilitarization of armed groups, rule of law by institutional strengthening of order-creating and law-enforcing administrative, police and political agencies, control of massive corruption and the culture of impunity and supply of essential public goods have to be taken into consideration seriously to enable the state-society synergy. Above all, for as long as a workable constitution is not produced, it would be difficult to bring all the actors of governance—the state, market and all the intermediary institutions of society—into a framework of rule of law and to define their mutual accountabilities. In the post-conflict context, it means key civic institutions of governance-- political parties-- have to be institutionalized into their roles and inner-party democracy should be strengthened to make future

political dispensation inclusive of social diversity and complexity. These steps help to overcome alienation and rebellion tendencies among youths.

In Nepal, one fundamental fact of governance failure can be attributed to a gap between the rights and duties of Nepali government and its citizens. A right-oriented regime without accountability can easily foment soaring aspirations beyond the capacity of Nepali state to fulfill duties within constitutional bounds. The critical pitfalls remain in practice. "Principle of accountability and justice have been subordinated to political imperatives" (OHCHR-Nepal, 2011:4). The tax effort ratio of Nepal is very small as it contributes to around 14 percent to GDP which is not sufficient to sustain even a unitary state. The admission of the nation to federal structure with so many of its accessories, such as One Madhes, One region, ethnic self-determination, regional autonomy, prior use rights on land, water and forest claimed by indigenous population, pre-emptory rights for dominant ethnic groups for two electoral terms, etc have generated enormous disorder in the public's daily life as their resolution on an optimal basis seems far-off. Frustration mainly arose because dominant caste leaders of political parties put Brahmin-Chhetri into an identity-deficient "others category," denied their legitimate space and continued to maintain politics of negation. Dalits and several minorities too feel deprived and would prefer a social, economic and political shift in power as the country is undergoing a social transformation.. The crises of good governance have engulfed Nepali society, economy, polity and international relations.

The contesting visions of the leaders of four forces—the Maoists, CPN-UML, NC and United Democratic Madhesi Front--have

created legitimacy crises in managing the competing interests of polarized Nepali citizens since the Constituent Assembly failed to produce the new constitution in time and its tenure was extended without popular consent. The loyalty of citizens to leaders rather than the ideology of co-operation and their incapability to transcend the code of friend and foe have augmented governance fragility. The authorities who emerged in the post-April 2006 government operated according to a partisan line rather than creating a "common ground" for conflict resolution, or the resolution of many constitutional issues or providing public goods at a low cost. Poor and unskilled people seek to change their plight by integrating themselves into an insecure global market. Nepali people are seeking stable peace and a harmonious life in a state of lawlessness. Political breakdown caused economic, social, ethical and moral crises within the country and failure to tackle transnational threats like climate change, foreign interference, huge immigration and cross-border operation of non-state armed actors posed as spoilers of governance and peace.

#### 4. Non-Linear Resolution of Governance Crisis

Sustainable good governance calls for addressing the "root causes of conflict"<sup>3</sup> which are systemic in nature and their resolution requires non-linear means. One of the causes of conflict is the denial of rights of citizens while the other is the operation of an unequal social order that discriminates against women, the poor, minorities and the disempowered. Institutional closure for the disempowered has removed their stake in the political system and skewed their engagement in multi-level governance. Democratic resolutions of "public order" require the participation of citizens in both

3. Nepal's conflict has emerged as a complex combination of structural and proxy causes, such as neglect of the ethnic population of mid-west hills, growing urban rural urban disparity, social discrimination of women, Dalits and marginalized, weak governance, declining economic performance, manipulation of ethnic and regional identities, distributional struggle waged by subsidiary identities, proliferation of small arms and regional and global drivers of conflict (Dahal, 2005).

decision and policy making which in turn enable people of all social distinctions to participate in the rules of governance, democratic institutions and have a share power and resources. Civic engagement in fostering the political culture of compromise offers the possibility to resolve every conflict through the peaceful compromise of legitimate interests, ideologies and identities.

A non-linear approach is based on systemic principles, contexts and actors' goals, means, relationships and fair outcome. By adopting linkage principles, it builds on a concept that allows space for all regarding social learning and instills knowledge of the legitimate pursuit of self-interest. "Social structures that create fundamental inequalities among participants are reflected in the belief system and in forms of social relationships exchange—specifically personal versus impersonal exchange and the forms, types, and access to organizations that the society supports" (North, Wallis and Weingast, 2009:262). This is the reason "particular interest" is optimized and general interest is maximized in the system so that the orientation of actors largely becomes systemic, not system-disrupting. A rule-based order naturally reduces violence in public life through the strengthening of mediating structures of society, such as political parties, policy institutions, civil society, NGOs, community-based organizations and citizens own public interest institutions.

Good governance espouses the production of public goods, exchange through competitive market mechanisms while distribution and service delivery instruments are inserted so that improved human rights and human security conditions can foster comprehensive reconciliation, justice and peace. Impunity for crimes against the weaker sections of society reduces their potential as peace builders. In this context, the systemic resolution of problems of governance in Nepal

entails a synergy of the compatible interests of the state, the market and civil society groups. The state can create orders allowed by the constitution, laws, institutions and policies and provides all necessary security, order and incentives only if it is embedded in social interest and functions independent of outside interference... The market is a means to balance production, exchange, circulation and distribution of supply and demands under a competitive regime. In Nepal, however, hoarding essential goods in times of crisis and the operation of syndicate system mirror the loss of business ethics. Many intermediary institutions constituted between the state and family called "civil society" groups are expected to mediate the interest of dominant interests of society, articulate, communicate, monitor and deliver public goods and service to the citizens. In Nepal, however, state fragility has caused dysfunctional markets and fragmented civil society groups except those charity-based and cosmopolitan ones. This is why private sector-civil society interaction is marred by a lack of cooperative action. The networks of citizens' initiatives, local NGOs, human rights bodies, and cultural associations have, however, aroused grassroots movement and preparing the society for social transformation.

### **5. The Nexus of Economy, Democracy and Governance**

A strong economy and democracy are the foundations of good governance as both have the capacity to abolish hunger and the domination of citizens and protect and promote their human rights. In the absence of an adoption of democratic environment, economy becomes a game of free-riders which increases ecological and social costs to development and removes the benefits of democratic goods, such as dignity, justice and right to shape one's own future (Friedman, 2012:8). Though Nepal has adopted a mixed economic system based on

three pillars—public, private and cooperative, market capitalism has a dominant position as it has universal legitimacy. The allocation of scarce resources is uneven among citizens and, therefore, Nepalese consumers are caught in various hierarchies of economic order—upper classes, middle classes, lower-middle classes and workers. The market economy has skewed the benefits in favor of the upper classes in Nepal. The intervention of the government in distribution and support is weak due to governance ineffectiveness. "Economic performance is shaped by a variety of determinants including factors endowment, economic system, institutions, economic policy and variety of non-economic factors" (Mohr: 2011:65). The adoption of global economic models has failed to capture the appropriate historical, political, geographical and other reality and made Nepal a consumer of development and governance. Urban-centric models failed to make a dent on the deteriorating human rights situation of the targeted groups below the poverty line and turned Nepal from an export-driven to import oriented country. As a result, a massive number of unemployed and under-employment people have been excluded from the mainstream economic development that determines their fate and the progress of the nation. The inability of the state in making its citizens competent, productive and the lack of a business-friendly environment and mismanagement of resources have challenged the economic growth of Nepal.

Sheer unaccountability and the culture of impunity continue to perpetuate conflict even in the post-conflict phase and mar reconciliation and peace building activities across the fault lines of conflicts. Frequent bureaucratic reshuffling, transfer of police officials, the decline in the performance of public institutions owing to over politicization and the absence of locally elected bodies set constraints on Nepal's development.

Factionalism, clientalism and corruption have skewed the allocation of resources and institutions among limited groups. This has also created political instability in the country and impeded the governance efficacy. Good governance is founded on the capacity of strong organization, skilled manpower and capacity of creating resources and its coherence. Co-ordination, communication and collective action of governance actors are equally essential for development synergy. However, in Nepal, the centralization of power and resources broke the capacity of system to recover. Mutual accountability rather than mutual accusation should be restored for the effectiveness of governance. Obviously, the goal of the stabilization of democratic values cannot be realized until the political parties themselves encourage inclusive democratic practices within their organizational networks and activities and enlarge their representative base of power" (Yadav, 2011:18).

## 6. Strengthening National Integrity System

Governance cannot become effective without political honesty and integrity of leadership, social discipline, bureaucratic efficiency, rationality and performance, and management of sectarian fears from each other's overextension. Constitutional behavior of actors of governance according to their defined path can control capricious acts of free-riders and fence-sitters and steer them to chosen path of progress and peace. This means not only the separation of powers but checks and balances are necessary as is the implementation of mutually agreed norms, laws and acts without impunity. Nepal urgently needs a solution to the fundamental gap between its democracy confined to nation state, economy integrated to regional and global system and foreign policy which is facing the horn of a security dilemma as its mega neighbors not only cooperate and compete but also have conflicting

interests on security matters. Fragile institutions and the lack of resources and politician's irrationality have pushed the nation into the brink of internal vulnerability to centrifugal forces and mal-adaptability at changing international dynamics. The incapacity of leaders in relation to making a new constitution, unclear federal structures recommended by the state restructuring commission and indecision on the form of governance have muddled the path of the nation. The opposition forces have too little in common with each other than their mere jockeying for power. They are, therefore, becoming less active. The government besieged by its own party factions offers uneasy choice for compromise and lead the nation forward. The Supreme Court's verdict has closed the option for the over-extension of CA's tenure for the last time. This means there is a limit to the flamboyant politics of self-seeking and scheming without accountability.

Excessive reliance on the outer world for advice, policy, ideology, aid and techniques without an estimation of one's ability and context continues to buffet the nation's immense incapability towards positive transformation. The politically unstable state of Nepal has lost legitimacy on issues regarding power, tax, the national loyalty of citizens as well as necessary international recognition. Respect for rights, the empowerment of people and efficient competence have been channeled towards identity conflict and the growing social unrest has corroded the habits of compliance and duties to the authority of the nation-state.

The leadership could not capture the spirit of the April 2006 movement for democracy and grasp the aspiration of people for better choices in life. Politicians and civil society offer their own party-based ideology turning Nepalese democracy into a hostage of patrimonial rule. The gap between cosmopolitan ideas of development and unequal socio-economic classes of society has generated tension and chronically

paralyzed the capability of national leadership to manage competition of interest making government more survival oriented than pro-active. Nepalis are mobilizing their interest in democratic state building but leadership's power-addiction seen in through continuous search of any kind of alliance in power sharing has created new rivals among top levels of party leadership and enervated each other's efficacy. Governance functions well when the leaders are responsive to electorates. It functions well when the electorates directly take interest in public's affairs and talk, discuss and accept mutually-binding solutions.

Partition factionalism has hampered the national responsiveness and accountability towards citizens. The gap between the optimism of citizens and the confusion of leaders about the management of constitutional and development issues illustrate the difficulties of coping with governance challenges. Popular participation of the people, especially those left out or marginalized by the system -- Dalits, the backward, Janjatis, women, those living below the poverty line, Taraian issue and grassroots problems need to be brought to the mainstream for debate and articulation of public policy formulation. Accommodation of their grievances requires "inter-state as well as intra-state institutions" (Guelke and Tournon, 2012: 100). Demand-driven local development requires successful decentralization as democracy gives the power to the people for the self-determination of their development priorities. After the restoration of democracy in Nepal several steps have been taken to strengthen decentralization but yet there are several hurdles in implementation. All-party committees blamed for excessive rent-seeking and political protection have just been dissolved for the better. After the restoration of democracy in Nepal in April 2006 the country has been declared a secular, federal democratic republic and several institutional reforms have been taken to strengthen social inclusion by

increasing the participation of social diversity, disabled and marginalized groups in the governance as per the global policy framework. But, there is a lack of capacity building to make these measures stable, manage social diversity of this nation and overcome governance pitfalls.

Imposing global values without making a proper assessment of grassroots, ecological, social, economic and political conditions and needs can easily curtail the potentiality of the ordinary citizen. For example, impunity has favored particular interest groups and undermined the demands of citizens and supply of the government. It has weakened the authority of the state. Good governance equally needs self-discipline and integrity of legislative, executive and judiciary power, the corporate sector and civil society working in a cohesive spirit of Directive Principles and Policies of the State. Its leaders should take redemptive measures on checking corruption, crime, abuse of power and mitigate climate change that is affecting its energy, economy and environment for production and investments. Obviously, in a post-conflict state like Nepal facing the brunt of globalization, strategic planning is crucial. It should be combined with state-led investments "in infrastructure, education and jobs to restore competitiveness, redress inequality and advantage mass publics rather than the party faithful or special interests" (Kupchan, 2011:12).

## 7. Conclusion

Democratic governance needs democratic discipline in maintaining the corresponding attitudes and thinking of leaders and enlightened citizens. As Nepal's polity is negotiated, not consensual, it has had a hard time in mustering the loyalty of groups excluded from mainstream society. It must guarantee rule of law and create conditions for an equitable and just society. This means that a majoritarian mechanism for conflict resolution will not endure. The Nepali

state is facing multiple social, political, economic, ecological and other crises as competing forces have ravaged the country. In this context, the negotiation of the social contract, a workable constitution, is the primary way to abolish lawlessness and create public order for the provision and production of public goods. Security is essentially linked to economic development and prevention of groups from warring against each other. It is time for leaders to cede their absolute power "without accountability" to the people who believe in citizenship. The sound functioning of the state, competitive market, socially embedded civil society and the integration of citizens into polity are indispensable conditions for good governance.

National plans and policies, directed towards national goal achievement, the protection of the rights of citizens by fostering their self-determination and enhancing their capability, can improve the citizens' access to governance. Citizens' democratic control on leaders ultimately makes governance responsible, transparent and sensitive to sovereign citizens' demands. The management of factional demands within constitutional framework, the cultivation of constitutional habits for the formation of civic culture, acceptance of public opinion, intra and inter-party democratization, establishment of effective constitution are essential safeguards for making multi-level governance functional. Post-conflict Nepal requires a basic commitment to good governance for the promotion of justice, peace and democracy. Another crucial aspect of good governance is to make it inclusive by reducing its costs to society as democracy creates more winners than losers. Obviously, losers will not have any interest in sustaining non-profitable politics. This means that those living in remote and isolated areas should be connected to democracy. The overall reduction of poverty, decentralization and satisfaction of shared interests, technical and

managerial competence, strengthening of organizational competence, rule of law, accountability, transparency and wide participation are key properties to make good governance sustainable. Implementation of these promises can relieve long-suffering country.

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# Nepal's Badi Women



Grace Kennedy\*

## 1. Introduction

In Nepal, women of the Badi community are believed to have engaged in prostitution on a level disproportionate to women of any other groups. This fact is mostly due to a restructuring of Nepali society dating back to the 1950's and to the ensuing effects that this shift played on the social and cultural norms on the lives of the Badi. Several human rights issues have emerged as a result of this reality, including a radical shift in the group identity of the Badi, caste based discrimination, the citizenship status of the children of Badi women, access to education, social marginalisation and economic disempowerment.

This piece will begin by tracing the historical and social context in which women of the Badi caste became affiliated with prostitution and eventually became synonymous with this occupation. It will then discuss some of the various human rights issues that have affected the group as a result of their engagement

in prostitution. The demands of locally based activists involved in the Badi struggle will be addressed as will the treatment accorded to this group by international human rights treaty monitoring bodies. Accordingly, the response of the government of Nepal will be addressed and discussed before a surmise of the current situation of the Badi's struggle for their rights will be provided.

## 2. History

Although women of Nepal's "untouchable" Badi caste are now almost exclusively synonymous with the flesh trade, this is a reality that has emerged over time and has caused the displacement of the traditional cultural activities and way of life of this group. According to anthropologist Thomas Cox, the Badi settled in Nepal in the 14<sup>th</sup> century and earned their living as semi-nomadic entertainers.<sup>1</sup> For several hundreds of years after their arrival from India, the services of these professional entertainers were much sought after by Nepal's kings

and wealthy landlords.<sup>2</sup> Rather than prostitution only recently becoming a means of income generation for the Badi, research has pointed out that they were, indeed, engaged in forms of casual prostitution during this time, but that they also provided entertainment in the form of singing, dancing and storytelling in addition.<sup>3</sup> In this way, the historical link of this caste with prostitution can be understood in light of the current link between the two.

It was found that the Badi were primarily supported by rulers of three principalities in the mid-western regions of the country and also by wealthy high caste landlords to whom they offered their variety of services in exchange for which their basic needs were accommodated.<sup>4</sup> It has been said that they were remunerated so well for their services that they were able to live quite comfortably without having to over exert themselves or having to seek lower paying income elsewhere. At that time, the Badi were valued for their work and were rewarded well for

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1. Thomas Cox, 'The Badi: Prostitution as a Social Norm among an Untouchable Caste of Western Nepal' (1993) Kathmandu, Asian Ethnographer Press p. 166
2. Carol Davis, 'Against their will: Nepal's activist theatre fights girl trafficking' in Not for Sale Feminists Resisting Prostitution and Pornography, Christine Stark and Rebecca Whisnant (eds) Spinfex, Melbourne 2004 p 411
3. n 1
4. n 1 It was observed that the district of Musikot has the only Badi community where women do not prostitute themselves. This is because Musikot Badi have developed other means of generating income.

their efforts. However, a change in the circumstances of the Badi came after the Rana regime was overthrown and the *panchayat* regime was established in the early 1950's. At that time, many rulers and landlords were stripped of their land and wealth.

Following these changes, life for the Badi changed drastically. It has been noted that due to their history as an entertaining group, which included prostitution, they were faced with

Awareness for Education.<sup>6</sup>

Despite this fact, it has importantly been remarked that 'the reality of relationships between high caste men and Badi women often differs from the norms defined by Orthodox Hinduism.'<sup>7</sup> A major discrepancy presents itself here between the strict social and cultural codes and norms that define social relations in Nepali society, and the reality that the prostitution of an

Regardless, it has been observed that 'Badi girls, from early childhood on, know and generally accept the fact that life as a prostitute awaits them. Their parents, and other Badi, tell them that prostitution is, and always has been, the work of women in their caste and that to aspire to any other profession would be unrealistic.

little choice but to continue their engagement in this profession, albeit on significantly different terms; they began to offer their services which were confined to prostitution for lesser pay and therefore to a greater number of customers in order to maintain a living. With increasing affluence, modernity and the replacement of traditional forms of entertainment with more modern forms, such as radio and television, more customary and traditional forms were steadily eradicated throughout the 1960's and 1970's, including the role of the Badi.<sup>5</sup> They thus became more reliant on prostitution in order to sustain a living than ever before while they somewhat ironically became more exposed to caste based discrimination in wider society as a result. They quickly became known as the 'lowest of the low' and faced discrimination even from other "untouchable" castes because of their low status as sex workers, according to Mahesh Nepali, director of the advocacy group Social

"untouchable" fraction of society persists in such an environment, despite their wider segregation and disempowerment in society. Indeed, it has been claimed that due to the 'limited education among Badis has hindered greater respectability even as the caste system slowly loses its grip and most who try to break out to run tea stalls, tobacco shops or hair salons say customers know they are Badis and refuse to pay, abuse them, or boycott their businesses.'<sup>8</sup> We can thus see how the combination of their low caste and low status as sex workers, the Badi endure extreme discrimination and disadvantage in a public sense, although they are still used as providers of sexual services in exchange for money in private. This reality is totally at odds with ideal and traditional norms related to relationships between castes and only serves to underline an inherently contradictory and the discriminatory nature of this age old system of social relations and stratification.

It has been contended that there is a tacit acceptance amongst Badi women in relation to their status as prostitutes because of the lack of other means by which to earn a living available to them. However, it has simultaneously been claimed that prostitution is not viewed as a 'caste occupation by the Badi themselves, in the sense that the other "occupational" castes are aligned with jobs such as leather work of tailoring.'<sup>9</sup> Regardless, it has been observed that 'Badi girls, from early childhood on, know and generally accept the fact that life as a prostitute awaits them. Their parents, and other Badi, tell them that prostitution is, and always has been, the work of women in their caste and that to aspire to any other profession would be unrealistic.'<sup>10</sup> In addition, young girls are socialized in way that largely excludes contact with members from outside of their community and witness the female members of their family and community prostitute themselves on a regular basis. This fact, compounded with their low levels of participation in education and lack of exposure to wider values or belief systems serves to perpetuate their partaking in prostitution as a means of sustaining a basic living. For all of these above stated reasons, the situation of Badi women and their relationship to sex work has become a concern of three major human rights treaty monitoring bodies who have explicitly referred to their case in several concluding observations made to the government of Nepal.

### 3. United Nations Treaty Monitoring Committees

The situation of the Badi was first referred to specifically by a UN treaty monitoring body in a concluding observation of the

5. n 1 p. 166

6. Caste system traps Nepal's "hereditary prostitutes", Clair Cozens 13/01/2010 *The Telegraph*

7. n 1 p. 178

8. 'Badi Women are Trapped in a Life of Degradation', Mark Magnier, Los Angeles Times, 12/06/2011 available at <<http://articles.latimes.com/2011/june/12/world/la-nepal-prostitutes-20110612/2>> accessed 10/01/2012

9. Linnet Pike, 'Innocence, Danger and Desire: Representations of Sex Workers in Nepal' (1999) Re/productions, Issue NO.2 Harvard School of Public Health, available at <<http://www.wainet.org/csis/papers/doezma-ouch.html>> accessed 20/01/2012

10. n 1 p. 167

Committee on the Elimination of Discrimination against Women issued to Nepal in 2004. The Committee expressed its concern over various issues and practices affecting girls and women and one such issue which was singled out was that of Badi women which was described as the 'ethnic practice of prostitution among young girls.'<sup>11</sup> The Badi were not referred to by the Committee in its subsequent concluding observations to Nepal in 2011.

Later, in 2004, the Badi were again referred to by the Committee on the Elimination of Racial Discrimination. The Committee noted the 'lack of information in the periodic report to them from the government of Nepal on the situation of women belonging to disadvantaged groups who are victims of multiple discrimination, and express[ed] concern over the forced prostitution of girls and women of the Badi caste.'<sup>12</sup> The Committee recommended that the government 'consider issues of political representation, personal security, employment and education in line with general recommendation XXV (2000) on gender-related dimensions of racial discrimination and XXIV (2002) on decent based discrimination, in taking measures to eliminate multiple discrimination against women who belong to vulnerable groups.'<sup>13</sup> The Committee requested the government to include information in its next periodic report on the specific measures taken by them to 'eradicate the forced prostitution of Badi girls and women.'<sup>14</sup> There has been no communication between the Committee and Nepal since 2004,

despite the fact that Nepal was due to submit a state report in 2008. It may be added here that the use of the term "forced" in this context refers to social and economic factors rather than overtly coercive means such as trafficking, for example.

In 2008, the situation of the Badi again came to the attention of a treaty monitoring body, the Committee on Economic, Social and Cultural Rights. They acknowledged that although 'certain harmful practices have been prohibited by law, the Committee expresses its continuing concern about the persistence of practices that violate the rights of women and girls such as badi...'<sup>15</sup> They described this practice of 'badi' as the 'widespread practice of prostitution among the Badi caste.'<sup>16</sup>

Of these recommendations, the government of Nepal responded to the recommendations of the Committee on the Elimination of Discrimination

regions 'who are commonly known as sex workers.'<sup>17</sup> They further added that the plan intended to 'conduct household development programs to provide employment-oriented training and free education for Badi children.'<sup>18</sup> However, despite these programs, their promise has not eased the discontent and generally abysmal situation of the Badi.

As Nepal became a state party to the Convention on the Elimination of the Elimination of Racial Discrimination in 1971, the Convention on the Elimination of Discrimination against Women and the Covenant on Economic, Social and Cultural Rights in 1991, it is bound to act according to the provisions of all three treaties and to progressively work towards meeting the values contained within them. Similarly, the government is obliged to adhere to the recommendations issued to them by these bodies in

As Nepal became a state party to the Convention on the Elimination of the Elimination of Racial Discrimination in 1971, the Convention on the Elimination of Discrimination against Women and the Covenant on Economic, Social and Cultural Rights in 1991, it is bound to act according to the provisions of all three treaties and to progressively work towards meeting the values contained within them.

against Women in 2010. They stated that they had significantly expanded scholarship programs for deprived groups in society and that the Interim Plan formulated special programs for empowerment, rehabilitation and income generation for Badi women of the Far-western and Mid-western

order to strengthen the human rights situation within the state and to improve the lives of their citizens in accordance with human rights norms and values. With regard to the case of the Badi, the government of Nepal has acknowledged them as being disproportionately involved in sex

11. UN Committee on the Elimination of Discrimination Against Women, *Concluding observation of the Committee on the Elimination of Discrimination Against Women: Nepal*, (19 January 2004) UN Doc. CEDAW/C/SR 630 and 631

12. UN Committee on the Elimination of Racial Discrimination, *Concluding observation of the Committee on the Elimination of Racial Discrimination: Nepal*, (28 April 2004) UN Doc. CERD/C/64/CO/5

13. Ibid

14. n 12

15. UN Committee on Economic, Social and Cultural Rights, *Concluding observation of the Committee on Economic, Social and Cultural Rights: Nepal*, (16 January 2008) UN. Doc. E/C.12.NPL/CO.2

16. Ibid

17. UN Committee on the Elimination of All Forms of Racial Discrimination Against Women, *Combined fourth and fifth periodic reports of Nepal*, (9 November 2010) UN Doc. CEDAW/C/NPL/45

18. Ibid

work and has claimed that they have made steps to improve their situation. However, several issues still remain regardless despite these claims. One such issue extends to the citizenship rights of this group which will be discussed below.

#### 4. Citizenship

Because of their status as the most lowly members of society and in the caste system due to their

admitting to having had relations with a prostitute and because of difficulties in locating the whereabouts of past customers.<sup>20</sup> Such non-citizens are therefore non legal entities and none of their rights or entitlements can be granted to them as a result. Constitutional provisions that have outlawed discrimination on the basis of caste or tribe, amongst other bases, are also invalid and non-applicable for the children of Badi women

The court declared this provision invalid for being discriminatory against women and it was therefore decided that citizenship for the children of Badi women, including those whose fathers were unidentified, would be ensured to protect them from statelessness.

long established occupation as sex workers, which is considered to be both traditional and cultural in this context, we have seen that the Badi face numerous disadvantages and widespread discrimination. Foremost amongst the issues affecting them has been the issue of citizenship which in turn affects almost every aspect of their lives. It has largely been the case that majority of them are not considered Nepali citizens because in order to gain citizenship the name or address of the father are required at the very least, which often proves impossible for Badi women who conceived in the course of their work.<sup>19</sup> Until recently, no such woman was granted the right to use her identity to transfer citizenship onto her child without the cooperation of the child's father which it has been deemed difficult for them to obtain, considering the social stigma that would ensure from

who have not been acknowledged by their fathers. As a result of this situation, it has been said that a 'lack of citizenship poses a paralyzing and often insurmountable barrier to social and economic mobility, paving the road to a cycle of poverty. Their non-citizenship status leaves Badis fully exposed to violations of fundamental rights applicable to all citizens, including education, land ownership, employment opportunities, social rights as well as representation in the government.'<sup>21</sup>

It was decided by the courts as recently as 2005 in *Tek Tamarakar for Pro Public V GoN* that the children of unmarried Badi women were to be granted citizenship.<sup>22</sup> In this case, the petitioner challenged Section 4 (1) (a) of the Birth, Death and Other Personal Events Act, 1975 which restricted birth registration by the mother. The court declared this provision invalid for being

discriminatory against women and it was therefore decided that citizenship for the children of Badi women, including those whose fathers were unidentified, would be ensured to protect them from statelessness.<sup>23</sup> As well as being rendered stateless by this law, these children had been deprived of many of their other most fundamental of rights which further compounded their already disadvantaged position in society. In addition to this order, the Supreme Court ordered the government to establish retraining and alternative employment programs and extend grants to vulnerable families.

However, this order was largely ignored and activists reacted by holding protests in Kathmandu in August 2007 in order to force the government into abiding by their promises to them. It was remarked that the Badis blamed inertia, corruption and Nepal's polarized government for their continuing situation.<sup>24</sup> More than 30 Women Human Rights Defenders from the Badi community in a show of strength and solidarity staged protests in Singha Durbar Square and made several demands, including the issuance of citizenship certificates to their children, the rehabilitation of women who had been compelled to engage in prostitution and the right to own land.<sup>25</sup> They also demanded one female and one male representative in the constituent assembly and the provision of legal bodies in all levels in government that would address issues of racial discrimination and untouchability. While in the process, they were physically assaulted and detained in custody.<sup>26</sup> Undeterred,

19. 'The Badi Impasse: A question of Identity' Archana Joshee, Jharna Joshee, Mirdula Shrestha and Raksha Pant, February 2006 available at <<http://badikosathi.org/pdf/Badi%20Impase.pdf>> accessed 10/01/1012

20. Ibid

21. n 19

22. *Tek Tamarakar for Pro Public V GoN* (2004, Writ petition No. 121 of 2060 (decided on 15 September 2005) 'Women's Tight to Nationality and Citizenship', Sapana Pradhan-Malla and Phanindra Gautam, Forum for Women, Law and Development, Nepal. International Women's Rights Action Watch Asia Pacific Occasional Papers Series No. 9, 2006.

23. Shadow Report on the Fourth and Fifth Periodic Report of the Government of Nepal on CEDAW, 2011

24. n 8

25. Available at <[http://www.defendingwomen-defendingrights.org/badi\\_attacked.php](http://www.defendingwomen-defendingrights.org/badi_attacked.php)> accessed 12/01/2012

26. Ibid

another protest was held only days later at the same location, and yet again participants were arrested and injured while they were peacefully assembled to protest for their rights.

Despite such activism, conditions for the Badi have remained stagnant while little more in the way of progress or the realisation of their rights has been achieved. A government sub-committee travelled across the mid-western region where the majority of the Badi reside in order to assess the implementation of government programs aimed at their social mobilization. According to the committee sub-coordinator, Binod Pahadi, 'we roamed across the nation, nowhere is it implemented.'<sup>27</sup> Although such a reality is certainly discouraging in terms of the government's seriousness about addressing the issues of the Badi community and committing to their upliftment, the issue remains of grave concern of the human rights community. The National Conference of Dalit Women 2011 was attended by women from the 75 districts as well as by representatives from Europe and other South Asian countries who discussed, amongst other issues, the 'exploitation of Badi women.'<sup>28</sup> It was concluded in the meeting that there should be a 'provision for the birth registration of the children of the Badi women engaged in forced prostitution where the father's names were unascertained; and the Supreme Court's order of issuing citizenship certificates in the name of the mother' was called for.<sup>29</sup> It has also been tendered that 'in terms of employment, unless a programme of affirmative action or a quota system

that reserved jobs for the wider dalit population were developed, young and unskilled Badi women will continue working from home as sex workers.'<sup>30</sup>

## 5. Conclusion

Of all groups who are deemed 'untouchable', the Badi have particularly encountered persistent forms of extreme discrimination and disenfranchisement over the past six decades due to their low caste and heavy engagement in prostitution. It has been seen that although they don't regard sex work as a traditionally inherited occupation, they are nonetheless compelled to engage in it for economic survival. Poverty, a lack of education, a lack of access to the ownership of land and people's unwillingness to interact with them as business persons, as least in public, have all contributed to this situation. Although this group are of concern to human rights treaty monitoring bodies and the wider human rights community, and have recently been active themselves in calling for their

may be said to be a lack of genuine will to address their problems. Caste-based discrimination, though prohibited by law, still persists and this has undoubtedly lent itself to their difficulties and the dearth of human rights abuses from which they suffer, which are further compounded by their status as sex workers. Attention must continue to be cast on this issue, for is unarguably one of the most grave human rights issues occurring in Nepal today. Badi man Nirmal Nepali wisely articulately remarked that 'you can change laws but it's a lot harder to change the culture' while Badi woman Bina Badi similarly claimed that 'for many years, I thought it was my fate to be a prostitute. Now I realize this system wasn't made by God. It was made my man.' These two statements seem to succinctly summon the general backdrop against which this article was set; that this suffering, inequality and degradation is fed by a contradictory and institutionalized system in which the suffering of some continues at the willful ignorance

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A government sub-committee travelled across the mid-western region where the majority of the Badi reside in order to assess the implementation of government programs aimed at their social mobilization. According to the committee sub-coordinator, Binod Pahadi, 'we roamed across the nation, nowhere is it implemented.'

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rights, affirmative action to meet their needs and efforts to respect their human rights, as promised by the government, have been stymied in the face of the wider socio-political difficulties which Nepal is currently suffering from, and also because there

of others who have a larger and more personal agendas in mind, and in a society that must commit to overcoming caste based discrimination and dedicate itself to the upliftment and equality of all its people.

27. 'New Study Confirms Government Did Not Fulfill Promises, Badi Women Forced Back into Prostitution' Nima Kafle, 20/05/2011 available at <http://www.globalpressinstitute.org/global-news/asia/nepal/new-study-confirms-government-did-not-fulfill-promises-badi-women-forced-back> accessed 04/01/2012

28. Kathmandu Declaration on the Issues of Dalit Women 14/04/2011 available at <[http://idsn.org/fileadmin/user\\_folder/pdf/New\\_files/Nepal/2011/FEDO\\_Kathmandu\\_Declaration\\_2011.pdf](http://idsn.org/fileadmin/user_folder/pdf/New_files/Nepal/2011/FEDO_Kathmandu_Declaration_2011.pdf)> accessed 07/01/2012

29. Ibid

30. n 9

# Violence Against Women on the Rise in Nepal



*Alka Acharya Bazgain\**

## 1. Introduction

To gauge the situation of women in South Asia in light of their rights and security is complex. Even limiting the discussion only to violence against women is a multifaceted subject. The incidents of violence against women (VAW) are immeasurable and diverse in their types. South Asia is still believed to be a pilgrimage for those who believe that undermining women is a birth right of men. Having said this, it does not mean that other parts of the world do not have such problems.

VAW has a global reach, and it spreads in all societies and cultures irrespective of women's race, ethnicity, social origin, property, birth or any other status. Violence subsists against women in both structural and systematic forms. Being one of the South Asian countries and also being governed under patriarchal society, Nepal too is not an exception in this connection. VAW in Nepal is manifested in different forms. However, gender based violence that is manifested in the form of domestic violence is a primary mode of inflicting violence and torture against women here. The ensuing paragraphs

in this article will attempt to analyze VAW in Nepal in 2011 based on the data provided by INSEC. The article will also endeavor to analyze such the violence committed during 16 days' campaign on VAW beginning on November 25 and ending on December 10, 2011.

## 2. Global Scenario of VAW

Before the beginning of modern civilization it was believed that women were given relative equality to men. As civilization progressed, the dominance of men over women started to become institutionalized through culture, economy and religion, which eventually marginalized women. The marginalization resulted in fear, ignorance, dependence and violence against women. The structural barriers formed through men's prominence ultimately resulted in a situation in which women were trapped in an inescapably sorry state and deprivation. Women started to be treated as the property of their husbands or fathers and were also deprived of owning land and voting rights. Over the last hundred years, much progress has been made in gaining equal rights for women

around the world, but many still live without the rights they are entitled to. Becoming a target and undergoing an untold degree of violence during wars and conflicts is routine for women worldwide. Paradoxically, however, women face violence even during times of peace. So called culture, tradition, religion or the other social mores deprive women from their rights and subject them to violence at the same time.

Gender selective abortion, , rape and the other forms of sexual violence, forced prostitution and genital mutilation or honor killings are pervasive as the primary forms of VAW worldwide. The degree of violence or perception of violence may be dissimilar but the trend has traumatized women everywhere in the world.

It is relevant to quote the UNFPA<sup>1</sup> in regard to the situation of violence against women and girls. According to the organization, at least 60 million girls who would otherwise be expected to be alive are "missing" from various populations, mostly in Asia, as a result of sex-selective abortions, infanticide or neglect. Studies suggest domestic violence is widespread in most societies and is

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1. <http://www.unfpa.org/swp/2000/english/ch03.html>

a frequent cause of suicides among women. Rape and other forms of sexual violence are increasing yet many incidents of rape go unreported because of the stigma and trauma associated with them and also due to disbelief that they are justly dealt by the existing legal systems. Estimates of the proportion of rapes reported to authorities vary - from less than three percent in South Africa and South Asia to about 16 percent in the United States. Somewhere around two million girls between age 5 and 15 are introduced into the commercial sex market each year and at least 130 million women have been forced to undergo female genital mutilation or cutting and another 2 million are at risk each year from this degrading and dangerous practice. The so-called "honor" killings take the lives of thousands of young women every year mainly in Western Asia, North Africa and parts of South Asia. The irony is such that these sets of serious crimes against humanity are justified and veiled under the norms of gender roles and identities under the wrapping of miscalculated views about the roles and responsibilities of men and women in relationships.

To be a woman is to encounter different forms of violence at different periods of her life. The chart below provided by Heise<sup>2</sup> reflects different sorts of violence and the violations of rights a women faces at different age in her life.

The prenatal sex selection kills many girls worldwide. As referred to above, a UN study on the status of women in 2000, at least 60 million girls who would otherwise be expected to be alive are "missing" from various populations, mostly in Asia as a result of sex-selective abortions, infanticide

**Figure 1. Gender Discrimination throughout a Woman's Life**

Phase	Type
Prenatal	Prenatal sex selection, battering during pregnancy, coerced pregnancy (rape during war)
Infancy	Female infanticide, emotional and physical abuse, differential access to food and medical care
Childhood	Genital cutting; incest and sexual abuse; differential access to food, medical care, and education; child prostitution
Adolescence	Dating and courtship violence, economically coerced sex, sexual abuse in the workplace, rape, sexual harassment, forced prostitution
Reproductive Age	Abuse of women by intimate partners, marital rape, dowry abuse and murders, partner homicide, psychological abuse, sexual abuse in the workplace, sexual harassment, rape, abuse of women with disabilities
Old Age	Abuse of widows, elder abuse (which affects mostly women)

or neglect.<sup>3</sup> Similarly, sexual abuse and assaults are common worldwide against adolescent girls. Worldwide, up to 50 per cent of sexual assaults are committed against girls under 16.<sup>4</sup>

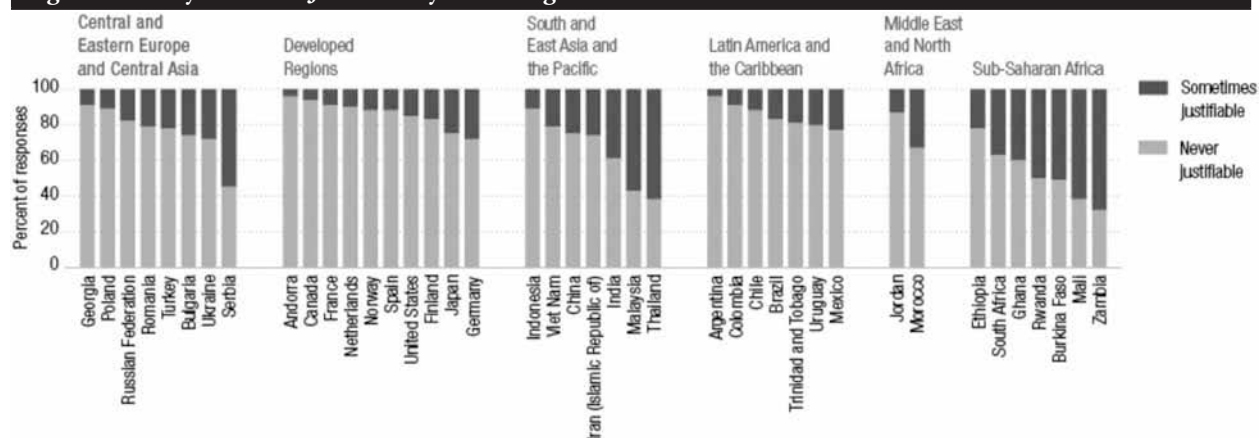
The Declaration on the Elimination of Violence Against Women (DEVAW)<sup>5</sup>, adopted by the United Nations General Assembly, defines violence against women as "any act of gender based violence that result in or is likely to result in, physical, sexual or psychological harm or suffering to women, including treats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.' The Convention on Elimination of all Forms of Discrimination against Women (CEDAW) is the most comprehensive international instrument imposing legally binding duties on states parties to eliminate discrimination against women and ensure equality between women and men. It offers a means of holding the governments accountable for structural and systematic discrimination against women. Three decades have already passed since the convention came

into being; however, women are still discriminated in different forms and pretexts. Whether in the name of honor killing in Islamic nations or feticide in India or women trafficking in Nepal, violence against women has continued unabated in different manifestations worldwide.

In a survey conducted by World Values Survey Association<sup>6</sup> in 2010, in which the respondents were asked how fair or unfair they thought it was for a husband to beat his wife, respondents from both the developed and developing regions said some degree of violence from the husband was justified. Regrettably, although the world is bent on eliminating different forms of violence against women, respondents worldwide were still of the opinion that domestic violence against women in the form of physical assaults from their husbands was not always wrong. Hence, mixed reactions were put forth during the survey. Shockingly, to beat or physically intimidate his wife is still perceived as a husband's right. It was seen through the survey that a deeply

- Heise, L. 1994. *Violence against Women: The Hidden Health Burden*. World Bank Discussion Paper. Washington. D.C. The World Bank <http://www.unfpa.org/swp/2000/english/ch03.html> accessed on February 22, 2012
- [www.feminist.com/.../facts.html](http://www.feminist.com/.../facts.html) accessed on February 21, 2012
- [www.endvawnow/en/articles/299-f...](http://www.endvawnow/en/articles/299-f...) accessed on February 2012
- Article 2, UN Declaration on Violence against Women, 1993, UN General Assembly Resolution 48/104 of 20 December 1993. <http://www.un.org/documents/ga/res/48/a48r104.htm> accessed on February 20, 2012
- The World Values Survey asked respondents to rate on a scale from 1 to 10 the degree to which they think it is justifiable for a man to beat his wife. The data refer to the proportion who responded that it is never justifiable (scale = 1) and those who responded that it is somewhat or always justifiable (responses 2 to 10).

**Figure 2. Survey Result on Justifiability of Beating Wives**



held justification for beating women exists even today in many societies.

### 3. VAW and its Situation in 2011

VAW is a part of Nepali women's past and they are still not free from such the violence at present. However, by the time Nepali women stepped into the 21<sup>st</sup> century, equipped with an increased educational level, understanding, expertise and assertiveness; they have found out that women in general have been perceived more positively than in the past. "The lens of looking at women has changed significantly and shifted from being child bearers and providers of health care in the 60's and 70's to the slow realization of their productive role in rural economy in the 80's and to the recognition of women as citizens in need of equal and political rights in the 1990's."<sup>7</sup>

VAW generally is physical and psycho-social in nature. The physical violence against women includes all aggressive behaviors inflicted on the victim by an aggressor such as pushing, grabbing and pulling by the hair, throwing, burning, stabbing, throwing acid or boiling water to sexual violence such as physical attacks to different parts of the body including the victim's sexual organs to

killing, among others. Psychological violence is committed by using a range of psychological weapons. Excessive control or exercising control over activities such as eating, the forging of social relationships or access to money are some of the psychological forms of violence, besides verbal abuse.

In Nepal, gender based violence is frequent and takes place in many forms. VAW was almost totally disregarded during the armed conflict in the country in the face of ruthless killings and the infliction of torture by the warring sides whereas violence at that time was not less severe. Once the country embarked on a journey to peace by relinquishing armed insurgency, violence against women has manifested as a thought-provoking problem. One-third (35) per cent of women in Nepal experience Gender Based Violence at home, although most of the violence related incidents are unreported or underreported so many incidents go unrecorded in formal or informal concerned institutions. Psychological violence was found to be high, followed by physical, economic and sexual violence.<sup>8</sup>

The incidents of violence against women that are reported are not given proper heed by the state

authorities concerned with giving justice to the victims. The concerned authorities rarely acknowledge VAW as an infringement on women's rights. Legal provisions are in place in Nepal to deal with the incidents of VAW but the incidents of VAW continues, although laws proscribe it, under the garb of so called culture and social mores or customs. Also under the cloak of customs or traditions, violence against women is committed. Similarly, many of the incidents of violence against women go unreported. Of the number of women who live in fear of violence, only 10 per cent come into the contact of state mechanisms. The majority of women affected do not share their experiences of suffering with anyone<sup>9</sup>.

The violence against women in Nepal is committed in public as well as private spheres. However, the mode of infliction shows that the majority of incidents of violence are committed in the domestic sphere. Hence, concerned people tend to perceive VAW synonymously with domestic violence. VAW including physical assaults, abduction, intimidation, betrayal, verbal abuse, arson, sexual violence, marital rape, dowry violence, genital mutilation, violence against domestic helpers and attempt to such acts are domestic violence.<sup>10</sup> Default

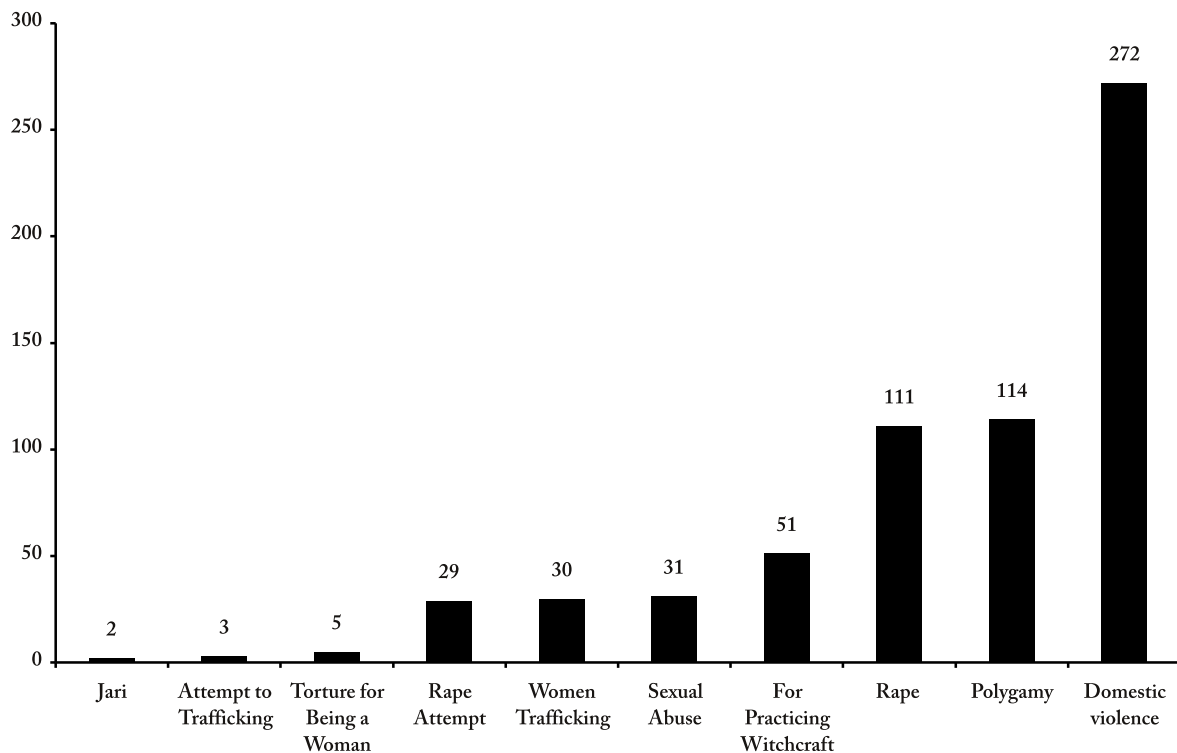
7. Joshi, Dr. Sunil Kumar (2008) Violence against Women in Nepal. <http://www.thefreelibrary.com/>

8. Sharma Paudel, Giridhari. *Domestic Violence against Women in Nepal* <http://gtd.sagepub.com/content/11/2/199.abstract> accessed on February 20, 2012

9. <http://www.stabilisationunit.gov.uk/newsroom/589-elimination-of-violence-against-women.html> accessed on February 19, 2012

10. Deuba, Dr. Arajoo. *Domestic Violence and Human Rights in Hiramani Ghimire(ed), CAMAD, a journal of Administration, Management and Development. Vol. 2, No. 1, April, 1999 pp 1-2*

**Figure 3. Type of Violence against Women in 2011**



on dowry payment is likely to result in the death of a woman. This has been a matter of notorious reality especially in the Southern plains of Nepal.

Nepal has ratified the Convention on the Elimination of All forms of Discrimination against Women (CEDAW). It started to formulate and amend laws in the country since signing the convention. Part III of the Interim Constitution of Nepal 2007 also stipulates not to tolerate discrimination against women. Laws, which are consistent with the provisions stipulated in CEDAW, exist in the country against domestic violence. Nepal, in 2009, formulated Domestic Violence (Offence and Punishment) Act. However, the implementation status of the acts and stipulations are not satisfactory. As a result, violence against women is increasing over time.

According to the data provided by INSEC, a total of 154 women were killed in 2011, 13 of them were killed

in a dowry related incidents. It is quite shocking that the husbands of those killed were abettors in many of the dowry related killings. A total of 648 women were made victims of violence and their rights were violated or abused. Of them 272 were the victims of domestic violence. 10 women were killed after being raped. The figure 3 below shows the type of violence against women and the number of victims affected. INSEC data reveals that a total of 36 women were beaten to death followed by 25 women who were killed by sharp weapons. 16 were strangled to death.

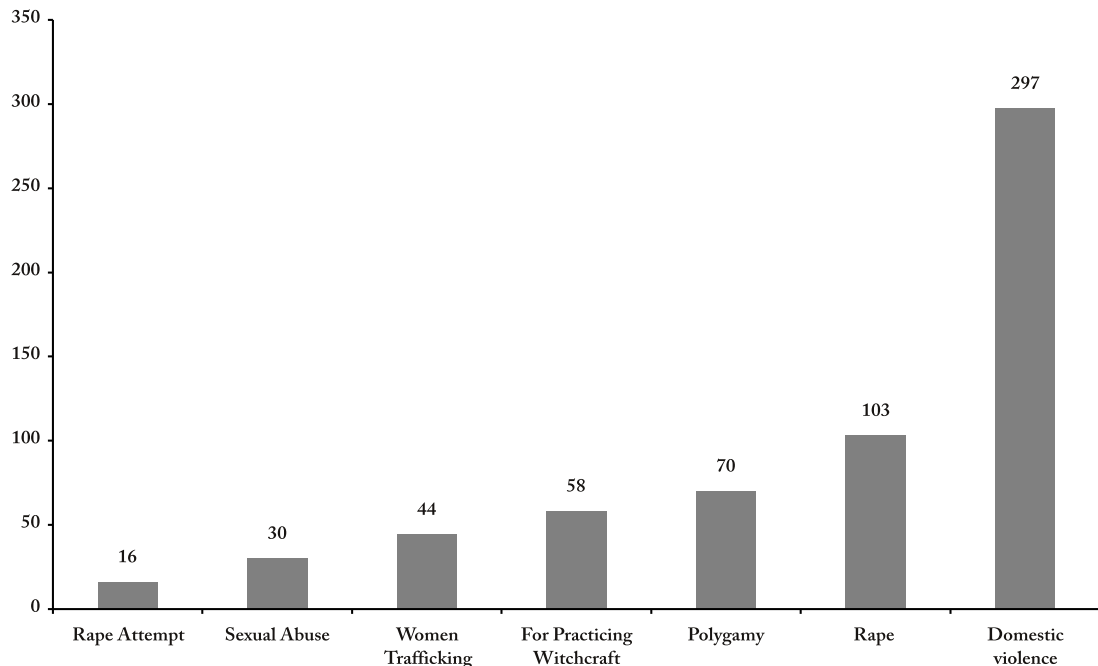
The data on violence and violations compared to the data on the same in 2010 shows increment in almost all types of incidents of VAW. Figure 4 below compares the data.

Domestic violence seems to be a serious problem followed by rape and rape-attempt related incidents perpetrated against women. Domestic violence related incidents make 42 per

cent of the total incident whereas rape, rape-attempt and sexual abuse related incidents make up 26 per cent. The percentage goes higher if the number of women affected by trafficking attempts and trafficking is added to this category. Rather than opting for legal redress, the domestic violence related incidents were brought before police administration in order to be solved through mediation. The incidents in the Rautahat district can be an example in this connection. According to INSEC,<sup>11</sup> 18 incidents of domestic violence were recorded in the Rautahat district, however, police settled all cases by mediating agreements between the accused and the victims so no legal actions were taken against the persons involved in those incidents. Women trafficking or attempts to it seem to have been linked with sexual exploitation. The data from INSEC indicates this. It is because almost all the women (31 women, out of 33 women trafficked

11. Nepal Human Rights Yearbook 2012, p 125

**Figure 4. Type of Violence against Women in 2010**



or subjected to a trafficking attempt) are from the age group between 18-30 years.

The witchcraft allegation related cases point at an ugly picture of Nepali society. 51 persons were accused of practicing witchcraft. There is a generally misguided perception in Asian societies that elderly people, especially women who have unattractive configurations and are living a destitute and neglected life, are likely to be called witches. However, the data in 2011 shows that women were accused of practicing so called witchcraft irrespective of their age group. Of the total 51 women abused after being accused of practising witchcraft, 28 are below 45. It may

be worthwhile to conduct a study which would investigate if allegations of witchcraft have worsened in Nepal and if such allegations are opted for as an easy means to express enmity that has been remaining unexpressed for a long time.

In many incidents women are unable speak up about their situation or they cannot fight against the injustice or violence perpetrated against them due to the factors such as so called socio-cultural bans, economic dependence and the lack of easy access to the justice. Women from all economic strata are seen to have been affected. However, women from the lower and middle classes were more exposed to violence and

violations this reporting year. 70 per cent of the women who were subjected to violence and rights violations or abuses were from these economic classes. The data also reveals that the women from these classes are more vulnerable to domestic violence.

The above table shows a trend that the younger the women, the more vulnerable they are in relation to facing violence. This is also indicative of the fact that VAW in Nepal has something to do with sexual violence. Hence, based on the age group of the women, all modes of violence are related to sexual violence in one way or another.

Violence against girl children is another facet of violence that receives less public attention despite the fact that numbers of national and international organizations are working for the cause of children in the country. In 2011, 16 marriages of girl children were reported while 38 girls were trafficked. 92 girls under 18 were sexually abused and 217 girls were raped. Similarly, 12 newborn baby girls were killed.

### 3. Campaign against VAW

The period of 16 days beginning on November 25 and

**Table 1: Number of Women Victims by their Economic Status in 2011**

Type of Incident	Middle Class	Lower Class	Lowest Class	N/A	Total
Attempt to Trafficking			3		3
Domestic Violence	38	150	12	72	272
Jari			1	1	2
Polygamy	15	66	10	23	114
Rape	20	59	6	26	111
Rape Attempt	5	17	2	5	29
Sexual Abuse	4	19	1	7	31
Torture for being a Woman		4		1	5
Trafficking in Women	2	21	1	6	30
<b>Total</b>	<b>85</b>	<b>369</b>	<b>37</b>	<b>157</b>	<b>648</b>

<b>Table 2: VAW in 2011 by Age-Group</b>						
<b>Type of Events</b>	<b>18-30</b>	<b>31-45</b>	<b>46-60</b>	<b>65 +</b>	<b>NA</b>	<b>Total</b>
<b>Attempt to Trafficking in Women</b>	3					3
<b>Witchcraft Practice</b>	6	22	11	12		51
<b>Rape</b>	65	31	12	3		111
<b>Rape Attempt</b>	18	7	3	1		29
<b>Polygamy</b>	83	28	1		2	114
<b>Trafficking in Women</b>	28	2				30
<b>Torture for Being Women</b>	3	2				5
<i>Jari</i>	2					2
<b>Domestic Violence</b>	169	87	15	1		272
<b>Sexual Violence</b>	27	4				31
<b>Total</b>	<b>404</b>	<b>183</b>	<b>42</b>	<b>17</b>	<b>2</b>	<b>648</b>

ending on December 10 is observed as an International campaign on VAW as per the resolution 54/134 of the UNGA of 17 December 1999. The period is celebrated widely around the world with an aim to eliminate violence against women. In 2011, the 16 days of activism was undertaken under the theme: "From Peace in the Home to Peace in the World: Proliferation of small Arms and Their Role in Domestic Violence." The UN Secretary-General, Ban Ki moon underscored the need of corporate responsibility and sought help from the corporate world in ending VAW. He stated that this year's observance was to highlight the role that business community could play from developing projects to providing direct financial support to organizations working to end violence and embracing the principles of corporate social responsibility<sup>12</sup>.

The campaign was observed in Nepal as well. The rallies with banners and placards to generate awareness and celebration of the event in many of the districts in the country were a positive move of the civil society organizations and I/NGOs. Various organizations involved in the cause of human rights and women rights jointly celebrated the period with various programs, workshops and rallies. The programs were held in almost all the districts. The concerned

expressed their commitment to work against the prevalence of violence against women. The programs held in the districts such as Humla, Tanahun, Kaski, Udayapur, among others, raised concerns of the problems of women such as the Chhaupadi tradition, access to education and the problems encountered by Dalit and Muslim women. The need of easing the process of issuing citizenship identity cards by the name of mothers etc were focused on in the programs. Some of the districts were hit hard by the armed insurgency. So, human rights defenders and the women victimized by the insurgency dwelt on the problems faced by insurgency affected women. Managing means and resources to generate alternatives to ease the harsh lives of those women affected by the conflict were made the agenda in the programs.

Upon analyzing the data recorded by insecnline, it is revealed that violence against women in Nepal ranges from urban to rural areas, the difference being the degree at different times. A total of 28 cases of violence were reported during the 16 days' period. Sadly, most of the perpetrators were found out to be persons with close relations with the victims, which reflect a larger scenario of the threats imposed upon a woman in her own surroundings. So much so that those professionals who are responsible for

implementing law and order in the country themselves were found to be the perpetrators. A woman, was threatened to be to death by her ex-husband. It is noteworthy that her ex-husband is a police constable by profession. The other case involving police personnel was reported in the Sunsari district during the period. The Kailali district reported yet another incident of violence. A blind girl, 12, was raped by a community eye worker, 35, at a hostel where the victim had been staying for her study. Since the family of the girl was embarrassed and frightened, a complaint on the incident was registered 13 days after the incident occurred.

Domestic violence is one of the major modes of violence against women in Nepal. The Asia Foundation reveals that around 23 percent of women and 20 percent of men in Nepal believe that domestic violence is acceptable. And, most of the women hold back from complaining about such issues due to the fear of being a victim of more extreme forms of violence.

Domestic violence was one forms of violence committed against women during the period of 16 days. An incident was reported from the Dang district in which a woman was killed by her husband while he was under the influence of alcohol. In another case of domestic violence from Panchthar district, a woman filed a complaint against her husband. Her misery dated back to the time when her husband tricked her into marrying him after he said that he was unmarried whereas he was already married. A woman, 24, of Sanishchare VDC in the Jhapa district, filed a complaint against her mother-in-law, among others, saying that she was beaten by them. Her husband was employed in a foreign country. Similar cases were filed by various victims of domestic violence across the country. However, the police administration attempted to solve the incidents of domestic violence and the complaints filed at different places.

12. [www.un.org/Words-to-Action-Issue-No-10-January-2011](http://www.un.org/Words-to-Action-Issue-No-10-January-2011)

In Nepal, women are also subjected to torture and humiliation by being accused of practising witchcraft. Most of the accused women are from the Dalit community. Two such instances were reported during the period of 16 days. The women and girls in Nepal are vulnerable to sexual violence both in domestic and public spheres. As the incidents of rape and attempted rape are reported throughout the year, the 16 days' period too could not be exception in this connection. A total of nine incidents of rape and one case of attempted rape were reported during the period. The age of the victims ranged between 12-55 years. Of the total number of victims, six were children, two of whom were blind. In most of the incidents the perpetrators were the relatives of the victims.

A case was reported from the Jhapa district in which a girl, 14, was raped by her own father. Similarly, a woman from Butwal in the Rupandehi district was reported to have been sexually abused by her father and physically abused by her step-mother. She narrated the story of her tremendous suffering and torture and appealed for justice. She reported that her father abused her sexually for four years when her step mother was not present. Similarly, in a report from Kathmandu district, a girl, 18, was gang raped in a hotel in Thamel by two men, both aged 28. The perpetrators were familiar to the victim. A girl, 10, from Banganga VDC in the Kapilvastu district was unable to resume her normal life and go to school after she was raped by a man, 25, from her neighborhood.

The difference between the age of the victims and that of the perpetrators is tremendous which may be illustrated with the two examples. In one of the cases a blind girl, 6, was raped by a 55 year old man of Geta VDC in the Kailai district. The perpetrator was handed down an 11 year sentence for the crime. In another case, a single woman, 55, was raped by a gang of four including a

microbus driver, 34, as reported from the Churiyamai VDC in Makwanpur district. Similarly, the incidents of child marriage and trafficking in women and girls were also reported during the period of 16 days campaign on VAW.

## 5. Conclusion

Gender based violence is a serious crime and leaves so many negative effects on women. It is multidimensional in nature and is a very complex issue, making it difficult to easily expose in a society like ours. Women in Nepal still tend to refrain from speaking against their family members and relatives, it does not matter how badly the former is treated by the latter. The incidents related to VAW that are exposed and receive public attention are resolved through mediation either at the village level or by police administration. Once exposed, the victims of VAW are likely to be re-victimized by the perpetrators of the initial incident. It is in very few cases that the perpetrators are likely to refrain from committing violence against the victims.

VAW in Nepal was persistent during the armed insurgency and did not abate even during more peaceful times. The data provided by INSEC shows that as the years have passed by since the end of violence in the country, the number of the incidents of VAW, especially the domestic violence, is increasing. The data recorded at INSEC on VAW indicates the necessity to immediately take steps towards finding out the causes of the increase in violence against women. Silence on the part of the victims and also the failure of the concerned authorities to acknowledge VAW as a serious problem in the country will exacerbate the problem. Unless the women's agendas are dealt with properly and violence against them is reduced in time, it will be difficult to reach the 3<sup>rd</sup> Millennium Development Goal (MDG) which refers to women's issues.

It is high time the government open access and ease the process for

the women to report crimes, violence and abuses committed against them. Similarly, the level of confidence should be boosted among the women so that they will not shy away from reporting crimes and will be able to break the vicious cycle in which women are undermined both directly and structurally. Continued VAW has resulted in the low educational status of women, no control over resources and the dependence on men.

It is very shocking that VAW took place undisturbed at a time when the whole country, especially organizations and stakeholders, were launching a campaign of 16 days against VAW. It seems that the campaigns meant for the mitigation of VAW did not hold meaning for the perpetrators. They were not overawed and refrained from committing to the preventing VAW. It is wrong to expect in a society like ours that VAW will be easily eliminated. Hence, stakeholders have to give due attention to the trend seen in the country relating to VAW. Working synergistically for the cause is indispensable now.

## 6. Recommendations

Given the increasing incidents of VAW in the country, following recommendations can be made:

- Ensure that the new constitution will guarantee women's rights.
- Include women in all the spheres of state mechanisms in an equitable way.
- Encourage the women and youths to play pro-active role for the elimination of VAW.
- Establish a separate administrative and legal body to deal with the incidents and cases related to VAW.
- Incorporate the issues, problems and situation of VAW into curriculum ranging from school level up to higher education.
- Make sure that the perpetrators of VAW are not given immunity and impunity.
- Discourage the tendency to reach the incidents of VAW reconciliation through mediation.

# Human Rights Education for Youth in Nepal



*Rupesh Dahal\**

## 1. Introduction

We see the nation's hope in youth, little better than the previous generations. If they will find a lofty cause, they can work for it, improve relationship with families and friends, enlarge the circle of genuine enthusiasm in social and voluntary works and worry less for the difficulties of daily life they face. Internal circumstances of Nepalese society impose social stress on Nepali youths as they find great promise of everything but underachievement. This gap has made them stay in half comfort and half anguish. What happens when only anguish grips them? There is no straight answer. If the nation gives them public purpose of promoting the standards of human rights embedded in universal civil, political, economic, social and cultural rights as reference points for the youth they can work to improve the conditions of Nepalese society, to remove social and cultural absurdity and create a system they help to realize their individual dignity, self-worth as well as humanitarian works.

External circumstances of youth are beyond their control. But many opportunities provided to them can attract them by appealing their

difficulties. Once the youths leave the country it is highly unlikely that they will come back to the country. If internal circumstances of political instability, economic stagnation and social disintegration continue, they will not be inspired to come back with vocational skills, resources and eagerness to actively participate in all spheres of an increasingly knowledge-intensive society and build this conflict-torn nation. Unimproved situation will continue to lose their enthusiasm to stay with families, societies and country where they were born. They lose their determination to build Nepal, work for peace, human rights and democracy. Perhaps they will also lose creative and spiritual energy to work for development of their own society, which had invested on them hoping that they will contribute in the future more. When youth lose hope for their own country, the soul of that country dies and its entire development is imprisoned. These are the major challenges of Nepalese human rights organizations. This paper narrates the challenges for human rights organization in Nepal in engaging youth; links between youth and human rights; and draws a brief conclusion.

## 2. Challenges for Human Rights Organizations

The UN in its resolution 1983/46, adopted at its 39<sup>th</sup> session, called upon states to take appropriate action for the exercise by youth of all their human rights, including the right to education and the right to work, with a view to creating conditions for the active participation of young people in the formulation and implementation of programmes or the economic and social development of their countries. The Millennium Development Goals of the UN have also made commitment of developing and implementing strategies that give youth everywhere a real chance to find decent and productive work. The UN is mainly focusing on rights-based approach to development in Nepal. Realization of this rights depends on organizing youth. A rights-based approach to development recognizes that youth become empowered to act on their own behalf and enjoy their human rights as they gain access to relevant education, information, skills and institutional opportunities.

For youth, this implies the adoption of measures to remove barriers to the realization of their overall development, to prevent and

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punish rights violations and to take concrete measures to achieve human rights. But, there are many challenges for the human rights organizations of Nepal to implement this agenda as youth is not a homogeneous concept (in terms of economy, social status, gender, capacity and exposure), their needs are uneven and their aspirations are also different despite one common denominator of defining

to discover their self-worth and become worthy for other human being. Third, Nepalese human rights organizations should work to remove these shortcomings and enliven their potential in enabling to cooperate with others for the achievement of the goals of democracy and modernity as these two terms are closer to human rights. Fourth, in a very emotionally unstable period that marks the stage

world they can easily remove their desperation and feel that they have an obligation to serve other likeminded human rights workers.

### **3. The Links between Youth and Human Rights**

The connection of human rights to youth is deep as it nurtures human dignity and liberates individuals for humanity. A persistent pattern of desolation of youth is inherited in the institutional structure of Nepalese polity as media is educating about uncertain future of the nation. We cannot solve youth's problem by lofty speeches. It requires rethinking by all those who are engaged in the improvement of human science and restructure institutional life that is more a problem than a solution. The reform cannot come from within the system as entrenched patterns, habits and power lusts have given continuity to status quo. It comes from outside agencies, human rights organizations. Human rights can be global standard for removing the irrationalities of many of Nepalese society's ills that discriminate youth, women, Dalits and marginalized sections of society as they have also trapped youth into political culture of past and forestalled the possibilities that lie ahead of them. Human rights organizations can link youth to the post-conflict vision of Nepal and engage them healing, reconstruction and reinvestment to bring the society back to normal life.

The erosion of human rights corrodes the condition of justice and tears the hope to live together with their family, community, society and the nation. A healthy life cannot grow in fear, insecurity and deadlock, which imprison change for the benefit of the future generation of citizens. The struggle for human rights in Nepal, therefore, largely remains unfinished. Liberation of bonded labor, entitlements of new rights to Dalits and marginalized groups, social opportunities to youth and general

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The idealism of human rights is also a youthful idealism. Therefore, human rights organizations should offer them opportunities for their life-choices and life-skills to grow harmoniously. Its perusal requires not only knowledge but also courage and enthusiasm to help those in time of need. Nepalese youth now, however, need to find a hope to deal with the core challenges they are facing.

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youth solely in terms of certain age group. The transition from education to volunteerism and work is a major challenge such that many young Nepalese end up either jobless or underemployed in the informal labor market with little prospects. In this context, turning them into the leaders of tomorrow is a difficulty. This difficulty can be overcome if ideal spirit that underlies youthfulness is combined with practical policy measures.

The first major challenges for human rights organizations in Nepal is to keep alive the supreme spirit of youth for social work and social justice and evoke ideal human potential to help others, an ideal which is essential to build the character of youth. Second, to disseminate human rights education to youth, both male and female, as it can instill in them broadened vision of human being which is no less important than their age collectivities. It enables them to see broader vision and horizon and internalize human rights principles in daily life. The depressing condition of youth reflects unfavorable situation for them to realize their potential,

of youth they on their own cannot spiral down the challenges, they need support from the experience of their elders, institutional support from civil society and the society of human rights where equality, freedom and justice are hallmarks for campaign. It is a campaign not only for the liberation of future generation of Nepalese citizens from the constraints they inherited from the past but also guaranteeing them inter-generational justice in every aspects of life.

The idealism of human rights is also a youthful idealism. Therefore, human rights organizations should offer them opportunities for their life-choices and life-skills to grow harmoniously. Its perusal requires not only knowledge but also courage and enthusiasm to help those in time of need. Nepalese youth now, however, need to find a hope to deal with the core challenges they are facing. They find deep meaning of hope in human rights they can cherish and bring true happiness in their own inner sense of well-being and link that inner to the outer world of society, the nation and the larger world. When they have a healthy relationship with outer

citizens of society indicate that human rights needs for different groups are not even. So long as injustice of our society continues the current generations of human rights workers have to train the next generation of youth so that inter-generational transmission of knowledge is facilitated so that youth can shoulder the responsibilities. Similarly, those youths engaged in armed conflicts too need to be democratized with human rights education so that they do not see the world from the angles of friend and enemy. Failure in doing intergenerational transformation of responsibilities marks a sign of flawed character of movement. It also requires the reflection and reassessment of what works in this field. The capacity of Nepali youth to choose depends on the opportunities of life. The components of human right values-civic, political, economic, social and cultural rights offer them meaningful choice in entire dimensions of life, liberty and property.

#### 4. Conclusion

Putting human rights of youth into practice requires institutional measure of supporting youth first in

the realization of their human rights as enshrined in the Convention on the Rights of the Child (1989), second linking these rights to public policy of the government, third removing institutional and cultural barriers, selecting proper organizations to implement them and finally, find a mechanism of oversight to see whether youths are really empowered to define their future. Many of the agreements on youth and children have been internalized by the Nepalese government but implementation aspects are critically affected by lack of resources and post-conflict condition of Nepal where political stabilization measures are weak and peace dividends yet to be dispersed through Local Peace Peace Committees. Still, these rights provide a strong basis for programs addressing youth's educational, physical and moral development. Increasingly, as in other areas of development, program planners in this field are adopting a rights-based approach that stresses states' obligations as well as community and family duties to enable children and youth to enjoy their legitimate rights in a very culturally sensitive way.

Human rights organization of Nepal have to work collectively to exonerate Nepal from the vicious cycle of conflict, lobby for the impleetation of peace accord and foster a successful transition of youth to human-rights sensisitive citizens.

Nepal needs a youthful leadership who are visionary, dedicated to national development and public welfare and committed to democratic norms and values. Only then they can contribute to better socio-economic transformation with remarkable impact on the living conditions of the people. In the Nepalese context, the country has pinned high hopes on young politicians as they are determined to bring about healthy democratic change in society and can stand up to undemocratic challenge of armed groups, youth wings of parties militant ethnic wings and conservatives to democracy. Human rights postulates to delink violence from public life and promises the peaceful progress of society. Post-conflict Nepal can make its transtion to peace and shared future if culture of human rights is etrenched and a human rights code is prepared and implemented in the country.

The act of enforced disappearance carried out by the state can be traced back to 1951. This heinous act escalated during the 30 years of authoritarian Panchayati Regime. The trend of enforced disappearances did not subside even after the restoration of democracy in 1990. There was a systematic practice of disappearance on the state part in the name of tackling the conflict following the launch of 'People's War' by the CPN-M on February 13, 1996. The rebels were also engaged in abduction and subsequent disappearance of the people. At one time, Nepal was on the top of list of states responsible for enforced disappearance of the citizens. The armed conflict came to a formal end with the signing of the Comprehensive Peace Agreement on November 21, 2006. However, the families of nearly 1,000 victims of enforced disappearance are still waiting for the implementation of the commitment mentioned in the CPA that the whereabouts of disappeared persons would be made public within 60 days.

### *Profile of* **Disappeared Persons**



# Baglung District during Armed Conflict: Killing Disappearances and Injuries



Nirajan Mishra\*

## 1. Background

Nepali people were awaiting incentives optimistically following the restoration of democracy in 1990. They were of the view that democratic polity would gradually consolidate in the country and their long unfulfilled dreams of adding affluence to their lives would come true. They were longing to be empowered with their rights. But, their elected representatives could not be honest in fulfilling popular demands and will. The dire socio-economic life in the country went further worse as years passed by. Grasping this moment, the Maoists started to forcefully debunk democratic practice. They attempted to prove that democratic practice could not yield desired result. Ultimately, the then CPN-Maoist declared armed insurgency against the state. Following the declaration, people at the lower rung of socio-economic life were used as a means to propel the insurgency, forcefully or voluntarily. This resulted in unprecedented and protracted warring situation in the country with heavy casualties.

Mind boggling bloodshed, widespread disappearances and heartless modes of inflicting tortures became a persistent element of social

life. The state also largely involved in hasty and indiscriminate detention and killing of suspects. The Maoists, on the other hand, treated the rural population with brutality and suspicion either by tagging them as informants, hoods, non-Maoists, crooked or by adopting similar other ploys and labels. Unprecedented levels of social grief and mourning engulfed Nepali society creating a shared sense of loss, irreparable by any compensatory provisions. The leaders from both the warring sides tried to make deaths of the people through cosmic interpretations and implications like *for the country or martyrdom*, meaning their deaths as triumphant or heroic. However, differing views were surfaced regarding causes, actors and the projection of the course of the conflict. As the war escalated, it turned more brutal and took a heavy toll on citizenry.

This article has endeavored to analyze the conflict related deaths, disappearances and injuries during armed insurgency in the Baglung district. The data included in the article is based on the Victim Profile published electronically by INSEC.

## 2. Killing

The series of daring attacks

and conflict related circumstances killed a total of 13,274 people during Nepal's armed conflict. Around one thousand people were disappeared. Their whereabouts are not known yet. The concerned Nepalis especially the families of the disappeared people are living with a flagging hope of finding out truth about their beloved members, who were disappeared in many ways.

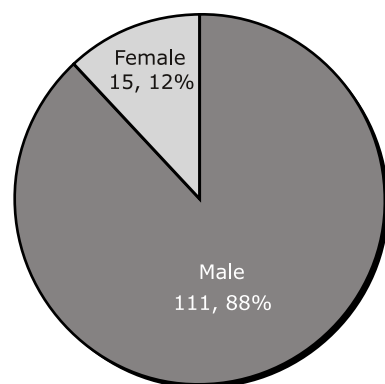
The mind baffling bloodbath, disturbing and distressing photographs and video footages were printed and aired through media almost every day. Visiting battlefields and reading accounts in newspapers was shocking. Each Nepali having the access to such reality was flabbergasted. The conflict pitted countrymen against countrymen and, neighbor against neighbor. The profound emotional pain of individual citizens created an unprecedented level of social grief and mourning throughout Nepali society. However, when the Nepalis were saying "enough is enough", leaders from both the warring groups stayed focused on winning and losing rather than focusing on the humanitarian crisis resulted by deaths, maiming and disappearances.

As no part of the country was untouched by the insurgency, Baglung

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district too could not be exception in this connection. Being a district located adjacent to Mid-Western Region, which was the most affected region of the country, the district started to be affected by insurgency from the very onset of the armed conflict. A total of 126 people were killed in the district due to armed conflict.

**Figure 1: Killing by Sex**



Compared to that of male, the percentage of female killed in the district during conflict is very low. Among the killed women, majority of them, politically, represent from the UCPN-Maoist.

Table 1 Killing by State and Non-State Actors					
Actor		Male	Female	Total	Percentage
State		68	14	82	65
Non-state	Maoists	42	1	42	33
	Unidentified Group	2	0	2	2
	<b>Total</b>	<b>111</b>	<b>15</b>	<b>126</b>	<b>100</b>

Almost two-third people are seen to have been killed by the state in the district. Among the people killed by the state, there are a number of women. However, only one woman

Table 2 Killing by State (Based on Political Affiliation)		
Party Affiliation	Number	Percentage
Nepali Congress	5	3.9
CPN(UML)	2	1.5
CPN(Maoist)	50	39.6
Samyukta Janamorchha	2	1.5
Not Affiliated to Any Party	67	53.1
<b>Total</b>	<b>126</b>	<b>100</b>

seems to have been killed by the Maoists.

The state has killed the people who had nothing to do with armed conflict in the country. More than half of the killed are the persons not affiliated to any political party. Followed by this category of people, the Maoist affiliated people are killed in large number. Several people affiliated to other political parties are also found to have been killed by the state.

Table 3 People Killed by Maoists (Based on Political Party Affiliation)		
Party Affiliation	Number	Percentage
Nepali Congress	5	12
CPN(UML)	1	2
CPN(Maoist)	3	7
Not Affiliated to Any Party	33	79
<b>Total</b>	<b>42</b>	<b>100</b>

The Maoist too killed the people not affiliated to any political parties more than the people affiliated to political parties. The people affiliated to the Nepali Congress were the next category of people to be killed by the Maoists.

Once the armed conflict turned more complicated or unbridled, the Maoist cadres were killed by

security forces, and involving in rape and killings. Similarly, several Maoists were killed due to the fact that they returned to their home quitting party activism. Several others were killed with the allegation that they turned corrupt and also could not kill people as assigned to. No case as such has been found in the case of this district. However, three Maoist cadres were killed in the district as the explosives they were carrying went off.

No records of killing, disappearances and disability were found in the VDCs such as Malika, Lekhani, Res, Dadilabhathi, Amarbhumi, Heela, Narayansthan, Dhullubaskot, Hugdisheer, Salyan, Sukhaura, Pandavkhani, Righa, Sisakhani, Ranasingkiteni, Adhikarichour.

Similarly, among the people from the Baglung district killed during armed conflict, 86 were killed in the Baglung district itself whereas the rest were in different parts of the country. They were killed in Bhojpur, Dhankuta, Sunsari, Sindhuli, Dhading, Kathmandu, Kavre, Lamjung, Syangja, Kaski, Myagdi, Parvat, Gulmi, Palpa,

*Prem Prasad Sharma, 55, of Kalika Municipality-4 and working at the Regional Administration Office in Dhankuta was abducted by the Maoists on February 7, 2006. He died in a Maoist controlled situation on February 17 of the same year due to lack of medicine. He had been regularly taking medicine for High Blood Pressure for long. The Maoists had apologized for the death saying that Sharma's death was a technical error on their side.*

**Table 4****Top Five VDCs/Municipality (Killing, Disappearances and Injury)**

SN	VDC/Municipality	Killed	Disappeared	Injured
1	Tara	15	2	-
2	Kalika Municipality	11	4	1
3	Argal	10	-	-
4	Bowang	7	1	1
5	Darling	6	1	-

Arghakhanchhi, Kapilvastu, Rolpa, Rukum, Dang, Jumla, Dadeldhura.

Those killed in the war were children, young men and women in their peak physical condition,

economically productive age. A total of 19 children, 9 girls included, were killed in the district. This portrays a grim picture of child exploitation. Besides being killed, children had to

witness unprecedented forms of abuses and rights violations. Nationally, suspecting the under-18 people as insurgent, the failure of the security forces to distinguish between child combatants and adult ones, coerced recruitment of the children by the Maoists, the extrajudicial execution and the exploitation of children on many forms became a constant feature of the armed conflict. Deliberate killing, or killing in 'encounters', sexual violence and conflict related abduction were common. Holding in detention incommunicado, not having cells in jails separate from the adults, subjecting to torture and not to receive effective remedies even from the court were the other aspects of degraded treatment against children during the warring period.

The coercion, enticement and persuasion to the youths by the Maoists to join their war certainly increased the number of youths in the war. It was not unnatural for the youths to follow them given that they were unemployed; many were unable to achieve success in their studies especially at the school level. Such a trend was observed in the United Nations Secretary General's 2001 Report on the Prevention of Armed Conflict, which said: "Young people with limited education and few employment opportunities often provide fertile recruiting ground for parties to a conflict. Their lack of hope for the future can fuel disaffection with society and make them susceptible to the blandishments of those who advocate armed conflict." Baglung district too could not be exception in this aspect.

Similarly, 77 people who were below 30 were killed, which is the 61 per cent of the total killed. Educationally, among them 52 have either passed lower secondary level of education or are below the level. Economically, of the total killed in the district, almost all of them are either from lower middle or low economic class.

**Table 5****VDC's by Killing, Disappearances and Injury**

SN	VDC	Killed	Disappeared	Injured
1	Bhakunde	3	-	-
2	Tityang	1	-	-
3	Rayadanda	1	-	-
4	Bhimpokhara	1	-	-
5	Dhamja	3	-	-
6	Pala	5	-	-
7	Singana	4	-	-
8	Bihun	1	-	-
9	Tangram	1	-	-
10	Narethanti	4	1	-
11	Harichour	3	-	-
12	Amalachour	3	-	-
13	Kusmisera	1	-	-
14	Paiyupata	2	-	-
15	Binamare	1	-	-
16	Arjewa	1	-	-
17	Chhisti	1	-	-
18	Jaidi	2	-	-
19	Sarkawa	2	-	-
20	Damek	1	-	-
21	Paiyunthanthap	2	2	-
22	Rangkhani	-	1	-
23	Batakachour	1	-	-
24	Hatiya	-	1	-
25	Malma	2	1	-
26	Burtibang	3	-	-
27	Rajkut	3	-	-
28	Dagantudanda	2	-	-
29	Gwalichour	3	-	-
30	Jaljala	1	-	-
31	Darling	6	1	-
32	Bhimgitthe	3	-	-
33	Bungadovan	-	3	-
34	Khunga	1	-	-
35	Sungkhani	-	1	-
36	Taman	3	1	-
37	Bohorigaun	5	-	-
38	Devasthan	5	-	-
39	Nisi	2	-	1
40	VDC Not Known	1	-	-

*Bhubindra Kunwar, 10, of Ditthatol in Bohoragaun VDC-5 was killed as a gun being cleaned by the Maoists went off. The victim was watching gun cleaning along with other two friends.*

*Maoist district member Mira B.K (Dhamal), 17, of Thadaswara in Baglung Municipality-7 was arrested at ward no. 8 of the same municipality by security personnel on August 13, 2002 and was killed by shooting on 16 of the same month. She was shot after taking to a place called Kabule.*

The extrajudicial killing followed by the killing in crossfire is the main type of killing in the district. The Maoists killed many people by tagging the latter as spy, alleging them to have worked against the Maoist

Table 6		
Type of Killing	No.	Percentage
Extrajudicial	66	52.3
Severe type	11	8.7
By Left out bomb/explosive	1	0.7
Self-carried bomb/explosive	2	1.5
Crossfire	27	21.4
Other	19	15.0
<b>Total</b>	<b>126</b>	<b>100</b>

policies, allegedly being a person from security forces or for working for the latter. Similarly, the victims were killed by shooting, hitting with the domestic weapons, ambushing or by throwing off the bridge.

*An ordinary person Hum Bahadur Kami, 34, of Dunikot in Bhimgitthe VDC-3 was abducted from his home by Maoist cadres on August 12, 2005 and killed by throwing off the bridge over Dunibot stream of the same VDC. He was alleged to have spied against the Maoists.*

Looking into the national context, the victims were killed with the allegations such as for having political belief on the non-Maoist parties, for being of a so called feudal

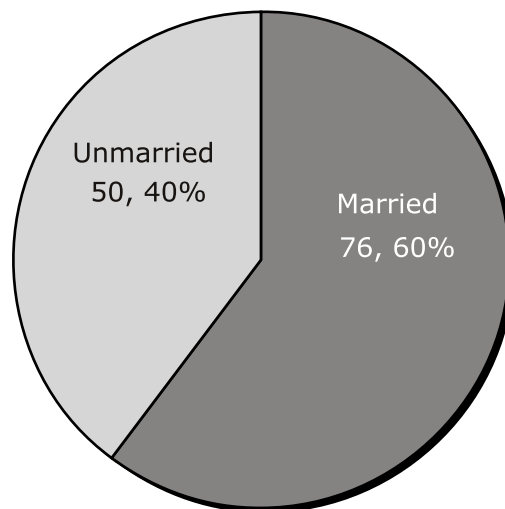
origin or exploiters, for not providing donation to the Maoists and for being robbers. Similarly, others were killed allegedly for raping, running schools defying the closure strike called on by the Maoists, for embezzling money and also for verbally abusing the Maoist cadres while taking shelter at the victim's home. In many killing incidents, there are not any explicit allegations; it is deducible that those killed without explicit allegation were killed for having political affiliation with the non-Maoist parties at different

levels and structures. 52 percentage of extrajudicial killing as shown in the table above is a grim situation of warring period of the country and consequences of the Maoist waged war in Baglung district as well.

Browsing through the data and information collected in Victim Profile, revelation is there that the Maoists used various methods of killing people. Nationally viewing, people were killed by silting, beating or beheading, shooting, axing, hitting with socket bomb, inflicting torture or were interred alive. Likewise, some people were killed by using spear or by strangulating. Cultural objects and the religious places are acknowledged as highly sensitive during warring situation and the international provisions have it that the warring parties deal with these objects accordingly. This issue has been incorporated under the International Humanitarian Law as well compelling the warring parties to make distinction between the civilian object and military objectives. The warring sides, however, had mockery to the cultural and religious sensitivity.

A total of 1443 women were killed in the country due to armed conflict. The number makes 8.1 percentage of national killing.

Figure 2  
Total Killing by Marital Status



Similarly, a total of 15 women were killed in Baglung district due to the armed conflict. The number makes 12 percentage of national killing of the women. As most of the human cost during the armed conflict was on the people ranging from 15-30 years, majority of the women killed during armed conflict in this district were also unmarried. The table below shows the number of women killed on the basis of marital status.

Table 7		
Marital Status	Number	Percentage
Married	7	47
Unmarried	8	53
<b>Total</b>	<b>15</b>	<b>100</b>

Politically viewing, the women affiliated to the UCPN-Maoists were killed more in the district than the women affiliated to non-Maoist parties. Of the total women killed, 66 per cent were affiliated to the UCPN-Maoist. *Women's problem and Issue* being one of the highly hyped issues of the Maoists propaganda, it was believed there was high number of pro-Maoists women in the insurgency. Certainly the women supporting for the cause of the Maoist were unprecedentedly stirred or enticed to be the part of movement

The Supreme Court of Nepal had ordered the government of Nepal in 2007 to enact legislation to criminalize the act of disappearances; however, the desired legislation has not been enacted yet. The reluctance and deniability of the government to ratify the Convention on Enforced Disappearances shows that the issue of the disappeared will be deferred for uncertain time. Unfortunately, over time, there will be nobody to prove what happened to the disappeared. Such a possibility has been clearly explained by Wapedia. Mobi that often enforced disappearance implies murder.

which resulted in highest number of deaths of the Maoist women. Baglung, being one of the districts severely affected by armed conflict, the killing of the Maoist women was high compared to the women affiliated to other political parties.

<b>Table 8</b>		
<b>Women Killed by Party Affiliation</b>		
<b>Political Affiliation</b>	<b>No.</b>	<b>Percentage</b>
CPN Maoist	10	66.6
Not affiliated to any Party	5	33.3
<b>Total</b>	<b>15</b>	<b>100</b>

Politically viewing, the women affiliated to the UCPN-Maoist were almost two-third of the total number of women killed in the district due to armed conflict.

The government had suspected some particular ethnic groups and the Dalits from some particular areas as possible Maoists as if to fall under the ethnic groups or to hail from the areas were to be suspected as the Maoists, unjustly. Gurung and Subedi (2007:142) portray this reality vividly that Tharus and Kham Magars were considered "natural" suspects by the security forces in Mid and Far Western Nepal; Blacksmiths and Magars from Baglung Myagdi, Rukum and Rolpa, Tamang, Thami and Jirel from Dolakha and Kiratis from Shankhusabha districts. They were harassed even when they moved from one place to another.

### 3. Disappearances

By the time this analysis has been attempted, almost half of 2012 has been passed by. However, no responsible stakeholders of Nepal are doing their best to materialize the provisions of the Comprehensive Peace Agreement relating to finding out the whereabouts of the disappeared. This indicates at the reality that political parties assume the suffering created by the conflict-related disappearances will be forgotten over time. This will be unfortunate for the families of the disappeared who are waiting for their members' arrival or revelation of their whereabouts. The Supreme Court of Nepal had ordered the government of Nepal in 2007 to enact legislation to criminalize the act of disappearances; however, the desired legislation has not been enacted yet. The reluctance and deniability of the government to ratify the Convention on Enforced Disappearances shows that the issue of the disappeared will be deferred for uncertain time.

Unfortunately, over time, there will be nobody to prove what happened to the disappeared. Such a possibility has been clearly explained by Wapedia. Mobi that often enforced disappearance implies murder. The victim in such a case is first abducted, then illegally detained, and often tortured; the victim is then killed, and the body is hidden. Typically, a murder will be surreptitious, with the corpse disposed of in such a way as to prevent it ever being found, so that the person apparently vanishes. The party committing murder has deniability, as there is no body to prove that the victim has actually died".

If the enforced disappearance is understood the way it has been explained here, it is highly unlikely that majority of the disappeared people will return. Hence, it is equally unlikely that people from the district disappeared during insurgency will return.

However, as an exceptional case, one woman from the Baglung district supposed to have been disappeared during armed conflict and recorded accordingly has appeared after a long duration. Bijuladevi Kandel, 22, from Painyu Thanthap VDC-8 was believed to have been disappeared once the then CPN-Maoist sent her to their labor camp on September 3, 2005. However, she appeared on August 26, 2011. A total of 19 people are disappeared from the district. Among them, 13 are male and remaining six people are female. 17 people are disappeared by state whereas one was

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subjected to enforced disappearances by the non-state actor during armed insurgency.

#### 4. Injured

Armed conflict obviously causes injuries on the battlefield. However, health consequences, injuries and illnesses caused by conflict have received less attention in Nepal. The problems of the injured people are immense; however, concerned authorities and parties have paid almost no attention to the problems of the people injured during armed insurgency. The Baglung district has also not been an exception in this connection.

A total of three people hailing from Bowang VDC-8, Nisi VDC-4 and Baglung Municipality-9 were injured during insurgency. Among them one was injured due to unattended bomb, one was injured due to severe beating of the security forces and the other was injured due to explosive planted by the security forces.

#### 5. Conclusion

The Mid-Western region of the country was the most affected region. Baglung, being one of the districts located closer to the region was affected badly during the armed

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insurgency. A total of 126 people were killed, 19 were disappeared and three were severely injured in the district due to armed conflict. Two-third of total killing was by the state and remaining was killed by non-state actors. People not affiliated with any political parties make majority of the killed. Tara, Argal, Bowang and Darling VDCs and Kalika Municipality are the top five places in the district in terms of killings.

However, no records of killing, disappearances and disability were found in the VDCs such as Malika, Lekhani, Res, Dadilabhati, Amarbhumi, Heela, Narayansthan, Dhullubaskot, Hugdisheer, Salyan, Sukhaura, Pandavkhani, Righa, Sisakhani, Ranasingkiteni, Adhikarichour.

86 people from the Baglung district were killed in the Baglung district itself whereas the rest were killed in different parts of the country. They were killed in Bhojpur,

Dhankuta, Sunsari, Sindhuli, Dhading, Kathmandu, Kavre, Lamjung, Syangja, Kaski, Myagdi, Parvat, Gulmi, Palpa, Arghakhanchhi, Kapilvastu, Rolpa, Rukum, Dang, Jumla, Dadeldhura.

A total of 15 women were killed in the district due to armed conflict. Politically viewing, the women affiliated to the UCPN-Maoists were killed more in the district than the women affiliated to non-Maoist parties. Of the total women killed, 66 per cent were affiliated to the UCPN-Maoist.

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# Conflict and Development

Written by an author with extensive field expertise in conflict affected countries such as the Democratic Republic of the Congo, Liberia, Timor-Leste and Sri Lanka, and who worked as an advisor to the United Nations and the government of the United Kingdom, this book is an overview of the close relation between development and security concerns.

Divided into six comprehensive chapters, the book outlines international conflict and development in the twenty-first century by treating the changing nature of war, beginning in the post-cold war period. It also addresses the liberal peace based interventions of the international community and the paradigm shift in the mode of interventions following September 11. Discussing the criticism of liberal peace, which has been internationalized as a response to 'new wars', the book also attempts to discover the roots and disciplinary debates of conflict, peace and development. Achieving the Millennium Development Goals, fulfilling international responsibilities in carrying out aid related activities by abiding by the 'do no harm' principle and the placement of development as a means of addressing the underlying causes of violent conflict are put forth as the answer to development organizations' interest in war and peace.

Greed, grievance and poverty have been analyzed in relation to conflict. Sociobiology, structural violence, cultural inherency, relative

deprivation and economic essentialism are deliberated in relation to conflicts. The inclusion of different methods and frameworks of conflict analysis developed and advocated by different experts in the field is another feature of this book. The book also features a detailed analysis on conflict analysis frameworks including situation, behavior and attitude based triad. In the meantime, the elements receiving convergence on strategic conflict study provides an outlook for the analyzers. Also, there is a vivid discussion as to how shifts in the notional aspect of humanitarian intervention have given shape to the aid policies and architecture of international conflict and development.

'New Humanitarianism', through 'Responsibility to Protect (R2P)', to 'Sovereignty as Responsibility' are taken as some of the notional shifts. Opinions regarding conflict prevention; peacebuilding; fragile states, stability and statebuilding; conflict and development programs; and the issue of climate change as the new agendas of conflict and development are elaborated. Under the fifth chapter, the book discusses gendering of international conflict and development in terms of women, peace and security whereby there is an attempt to explore gender as an early and continuing theme of the relationship between conflict and development. A gradual move from gender as role playing to gender transformation to international



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**Pages:** 179

policy framework on women, peace and security are discussed.

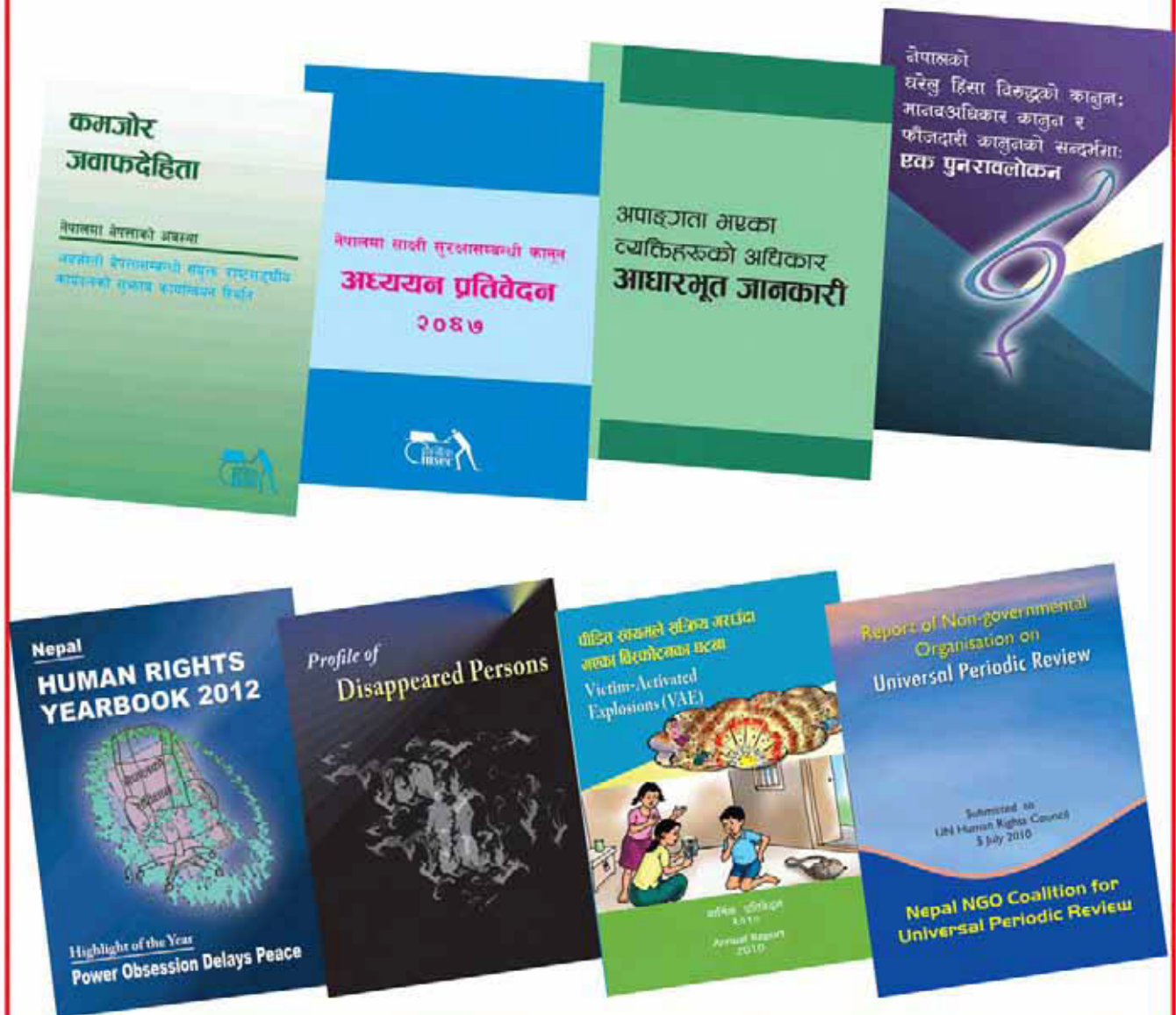
The concise thematic chapters in the book have attempted to present a combined approach of theory, practice and policy regarding conflict and development as the author herself claims the book was born of many years spent working across the academic, policy and practical divides of war and development. For the professor Mark Duffield, the Director of Global Insecurities Center, O'Gorman's deft analysis moves from greed, grievance and poverty, through gender to embrace the wider issues of peacebuilding and statebuilding. For a single volume that brings order to this crowded terrain, this cannot be beaten.

This book, it is clear, can be of great importance to students pursuing studies in peace, conflict and development, to the policy framers involved in a post-conflict context and also to those who are active in peace and development activism.

*Reviewed by Binod Gautam*



## Some Publications of INSEC





For:

- immediate reports on human rights violation
  - information collected from all 75 districts
  - updated information on various issues of human rights
- (in English & Nepali)