

# Situation of Human Rights Defenders in Nepal



*For Human Rights and Social Justice*

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# **Situation of Human Rights Defenders in Nepal**

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# Preface

Every individual has the right to conduct their business legally and freely on their own or in partnership or with others. During the period of insurgency, the people who adopted the work of protection and promotion of human rights as their profession faced attacks and threats for their life and liberty by state and non-state actors. No progress has been seen even after the beginning of the peace process. There is a lack of protection mechanism for HRDs who put their lives at risk to work impartially for the protection and promotion of human rights. While committed to lessen the pain of the victims of human rights violation, a Human Rights Defender is being victimized in absence of any protection mechanism.

National and international agencies, UN Special Rapporteur for HRDs, OHCHR-Nepal and HRDs have been demanding for a mechanism for the protection of HRDs. United Nations Declaration on Rights of Defenders, 1998 has guided us to establish accountability of state in ensuring freedom and security of human rights defenders. In this context, the Supreme Court of Nepal in 2008 directed the government to promulgate appropriate security policies, programs, plans, administrative directives and foundations along with legal provisions for the protection of defenders. The government has not forwarded any step even though the country's supreme judicial entity issued a directional order nearly four years ago. National Human Rights Commission of Nepal has not managed its responsibility institutionally and legally in this regard.

The Declaration on Human Rights Defenders comprehensively defines the HRDs, but this report covers the incidents of violation

occurred against teachers, media persons, lawyers, health workers and human rights activists as per INSEC documentation dating from 2007 to 2010. It also talks about the existing protection mechanisms at national, regional and international level for the protection of the HRDs. In this context, the measures adopted by several countries, their efforts and the mechanisms they have set up have also been included. The legal provisions existing in Nepal and the vigor shown by Nepali judicial body for the protection of HRDs are also analyzed in the report.

I hope that the report will turn out as an important resource for HRDs, government agencies and other stakeholders to find out about the situation of the HRDs and to adopt the necessary security measures. I would like to thank Senior Officers Advocates Bidhya Chapagain and Samjha Shrestha, Advocate Puspa Pokharel and intern Roopa Silwal for preparing and editing the report. I also thank Senior Officer Yogish Kharel and Prasannata Wasti for their effort in language editing and Officer Gita Mali for layout/designing.

**Subodh Raj Pyakurel**  
Chairperson

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# Executive Summary

HRDs are at great risk of violation of their rights including that of the right to life and liberty as they are always in the front for the protection and promotion of human rights. During the armed conflict, many HRDs were deprived of life and liberty and while others faced assaults and threats.

The state, cadres of the political parties, police, government officials and unidentified groups have been violating the rights of the human rights activists exploiting impunity and prolonged transitional period prevalent in Nepal. They were involved in killing and abduction of the HRDs, physical attacks on them and life threats. The lives of HRDs who are fighting for others' lives are also in peril. INSEC documentation shows that 706 HRDs had their rights violated between the period of 2007 and 2010. Among them, 18 were killed. Women Human Rights Defenders (WHRDs) remain in the front for protection and promotion of human rights. They have to face all the challenges that their male colleagues face but in addition to that, they also have to face sexual, psychological violence and mistreatment meted out to them by the society. During the reporting period, three WHRDs were killed and 160 had their rights violated.

There is no separate national level legal or institutional mechanism in Nepal for the protection of the HRDs. Although, some laws are useful for the HRDs, yet the right to protection enjoyed by the citizens is the one that the HRDs are also subjected to. At international level, UN Declaration for the protection of the HRDs 1998 is the first document ensuring protection of HRDs. There are some regional mechanisms for protection of the rights of the HRDs.

For their support and protection of the HRDs, African, European and American regions have developed regional mechanisms after the UN Declaration came out. But, the Asian and Mid-Eastern regions do not have any such mechanism yet.

**Following recommendations have been proposed for the protection and promotion of the rights of the HRDs.**

- Formulation of separate laws for the HRDs in accordance with UN Declaration 1998,
- Setting up a separate body for impartial investigation on the claims of violation of HRDs' rights and to take action against the perpetrators,
- Ensuring effective legal and psychological measures for the WHRDS for violation of any of their rights considering the special situation of the WHRDS,
- Extending invitation to the UN Special Rapporteur on HRDs for monitoring of the situation of the HRDs,
- Civil Society taking active role for the Asian regional mechanism for the protection of the HRDs and the state formulating policy and planning regarding the mechanism,
- Creating a national rapporteur under National Human Rights Commission with a broad mandate to seek information, obtain and investigate and act upon the finding and to recommend for the action,
- Initiating for the establishment of national and regional network for the protection of HRDs and drafting plans and policies accordingly.

# Chapter 1

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## Introduction

The human rights instruments enshrine rights that the States must respect and guarantee for all persons under their jurisdiction. The work of human rights defenders is fundamental for the universal implementation of those rights, and for the full existence of democracy and the rule of law. Human rights defenders are active in every part of the world: in States that are enmeshed in internal armed conflict as well as States that are stable; in States that are non-democratic as well as those that have a strong democratic practice; in States that are developing economically as well as those that are classified as developed.

State authorities, the most common perpetrators of violations against human rights defenders, yet also bear the primary responsibility for assuring their protection. However, a variety of “non-State” actors such as armed groups, businesses (transnational corporations and individuals) also commit, or are implicated in, acts against human rights defenders and it is important to note their responsibility.

A great many human rights defenders, in every region of the world, have been subjected to violations of their human rights. They have been the target of executions, torture, beatings, arbitrary arrest and detention, death threats, harassment and defamation, as well as restrictions on their freedoms of movement, expression, association and assembly. Defenders have been the victims of false accusations and unfair trial and conviction. Hence the concept of protection of human rights defenders was developed. For Example: Human Rights activists from different part of the world gathered in Paris

Conference in 1955 and raised a concern on the situation of human rights defenders and their protection. Thereafter, United Nations General Assembly in 1998 adopted *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms* (commonly known as the Declaration on Human Rights Defenders).

### 1.1 Human Rights Defenders

“Human rights defender” is a term used to describe people who, individually or with others, act to promote or protect human rights. There is no specific definition of who is or can be a human rights defender. Human rights defenders are not only those whose daily work specifically involves the promotion and protection of human rights, but also can include all persons who undertake rights activities. As well as persons working for human rights organizations, this can include journalists who campaign on human rights issues, lawyer, women opposing violence against women, teachers and health professionals, persons who work in favor of labors and others those who work for promotion and protection of human rights. These persons are active to ensure civil, social and economic rights; oppose and investigate violations; fight against violence and displacement and mainly to play a crucial role in protecting the rights of victims.

The basic framework for analysis for determining who should be considered as a human rights defender is found in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter “the United Nations Declaration”).<sup>1</sup> Article 1 of the United Nations Declaration provides:

1 Para. 4, Preamble, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.” Therefore, every person who in any way promotes or seeks the realization of human rights and fundamental freedoms, nationally or internationally, must be considered a human rights defender.

In accordance with this broad categorization, human rights defenders can be any person or group of persons working to promote human rights, ranging from intergovernmental organizations based in the world’s largest cities to individuals working within their local communities. Defenders can be of any gender, of varying ages, from any part of the world and from all sorts of professional or other backgrounds. In particular, it is important to note that human rights defenders are not only found within NGOs and intergovernmental organizations but might also, in some instances, be government officials, civil servants or members of the private sector.

The United Nations High Commissioner for Human Rights, interpreting this provision, has noted certain tools that facilitate the task of identifying who can be considered a human rights defender.<sup>2</sup> The High commissioner has suggested that the determination as to whether a person is a human rights defender is based on the actions of that person, and no other considerations, such as whether he or she is paid for such work. To be considered in this category, the person must protect or promote any right or rights of persons or groups of persons, which includes promoting and protecting any civil or political right, or economic, social, or cultural right.<sup>3</sup>

The United Nations High Commissioner notes that human

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2 United Nations Office of the High Commissioner for Human Rights, Protecting the Right to Defend Human Rights and Fundamental Freedoms, Fact Sheet No 29, UN Publications, Geneva, 2004

3 *ibid*

rights defenders undertake to further the realization of any of the rights, which includes addressing summary executions, forced disappearances, torture, arbitrary detentions, discrimination, labor rights and the right to housing and forced evictions, among others. In addition, human rights defenders may carry out their work in certain categories of rights or persons, such as protecting the rights of women, children, indigenous peoples, refugees and forcibly displaced persons.

In the manual on this topic, the High Commissioner indicates that there is not a closed list of activities that are considered action in the defense of human rights. These actions may entail investigating and compiling information to report human rights violations, lobbying the national and international authorities to ensure they learn of those reports or of a given situation, actions to ensure the responsibility of state authorities and eradicate impunity, actions to support democratic governance and to eradicate corruption, the contribution to implementing, on a national scale, the international standards established by human rights treaties, and education and training in human rights.

## **1.2 Women Human Rights Defenders**

Women human rights defenders put themselves on the front line in the promotion and protection of human rights. In doing so, they face risks that are specific to their gender and additional to those faced by men.<sup>4</sup> Harassment and attacks against them in themselves may take gender-specific forms ranging from verbal abuse directed exclusively at women because of their gender, sexuality or gender identity to sexual harassment and rape. These human rights abuses can, in turn, have repercussions that are, in and of themselves, gender-

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4 <http://www.defendingwomen-defendingrights.org/pdf2007/book3Neo.pdf>

specific. For example, the rape of a woman human rights defender in custody can result in pregnancy and sexually transmitted diseases, including HIV/AIDS<sup>5</sup>. Other gender-specific consequences could also include forced abortion or forced childbirth.

Their particular situation and role require special awareness and sensitivity both to the ways in which they might be affected differently by such pressures and to some additional challenges. It is essential to ensure that women human rights defenders as well as men are protected and supported in their work and, indeed, that such women are fully recognized as human rights defenders.

Women human rights defenders also have to do their work within a context where democratic principles are being undermined. In authoritarian regimes, human rights defenders are arrested, detained, harassed or killed for criticizing the state. Making state and non-state actors accountable for human rights violations has become more frustrating than ever, and the work of women human rights defenders more dangerous than before.

‘Women human rights defenders’ include women active in human rights defence who are targeted for who they are as well as all those active in the defence of women’s rights who are targeted for what they do.<sup>6</sup> Sexual and gender minorities activists, who participate in many human rights struggles, including the advocacy for sexual rights, become vulnerable to violence because of who they are and the work they do. These persons are also referred as women human rights defenders.

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5 Report submitted by the UN Special Representative of the Secretary-General on Human Rights Defenders, Hina Jilani, to the 58th session of the Commission on Human Rights, 27 February 2002, E/CN.4/2002/106, para 93.

6 Ibid Comment note. 4 p. 15

### 1.3 Rights of Human Right Defenders

No “qualification” is required to be a human rights defender, and the Declaration on human rights defenders makes it clear that we can all be defenders of human rights if we choose to be. Nevertheless, the “standard” required of human rights defender is a complex issue, and the Declaration clearly indicates that defenders have responsibilities as well as rights. The human rights defender must: accept the universality of human rights as defined in the Universal Declaration of Human Rights; concern the validity of the arguments being presented within the scope of human rights; take peaceful action in order to comply with the Declaration on Human Rights Defenders. Human Rights Defenders focus their activities as follows:

- Seek the promotion and protection of civil and political rights as well as the promotion, protection and realization of economic, social and cultural rights;
- Work at the local or national level, supporting respect for human rights within their own communities and countries;
- Investigate, gather information regarding and report on human rights violations and use for lobbying strategies to draw attention of the public and of key political and judicial officials to ensure human rights;
- Act in support of victims of human rights violations at a very large proportion;
- Work to secure accountability for respect for human rights legal standards and to strengthen the State’s capacity to prosecute perpetrators of violations;
- Encourage a Government as a whole to fulfill its human

rights obligations, good governance, advocating in support of democratization and an end to corruption and the abuse of power, and providing training to a population;

- Make a major contribution, particularly through their organizations, to the material implementation of international human rights treaties;
- Undertake the provision of human rights education in the form of training for the application of human rights standards in the context of a professional activity and for disseminating information on human rights standards to the general public or to vulnerable populations.

## Chapter 2

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### Protection of Human Rights Defenders at International and Regional Level

United Nations has created several instruments that are essential for the work of human rights defenders. Among these is the Universal Declaration of Human Rights, of which articles 19, 20 and 28 refer to freedom of opinion and speech, the right of peaceful assembly and association and the right to an established social and international order in which these rights and freedoms are fully effective. The International Covenant on Civil and Political Rights in article 19, 21 and 22 recognizes and guarantees freedom of opinion and speech as well as the right to peaceful assembly and association.

In addition to above mentioned documents, the main international instrument on human rights defenders is the United Nations *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*.

#### 2.1 Declaration on Human Rights Defenders

The first major instrument to define formally the “defence” of human rights as a right in itself and to recognize persons who undertake human rights work as “human rights defenders” which was adopted by consensus by the General Assembly on the fiftieth anniversary of the Universal Declaration of Human Rights and therefore represents a very strong commitment by States to its implementation.

The Declaration is not, in itself, a legally binding instrument.

However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments which are legally binding—such as the International Covenant on Civil and Political Rights. Under the Declaration, human rights defender is anyone working individually or in a group for the promotion and protection of human rights. The Declaration provides for the support and protection of human rights defenders in the context of their work. It does not create new rights but instead articulates existing rights in a way that makes it easier to apply them to the practical role and situation of human rights defenders.<sup>7</sup>

### **(a) Rights and protections accorded to human rights defenders**

Articles 1, 5, 6, 7, 8, 9, 11, 12 and 13 of the Declaration provide specific protections to human rights defenders, including the rights:

- To seek the protection and realization of human rights at the national and international levels;
- To conduct human rights work individually and in association with others;
- To form associations and non-governmental organizations;
- To meet or assemble peacefully;
- To seek, obtain, receive and hold information relating to human rights;
- To develop and discuss new human rights ideas and principles and to advocate their acceptance;
- To submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights;

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<sup>7</sup> Basic Information for Human Rights Defenders, Informal Sector Service Centre (INSEC), 2065

- To make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- To offer and provide professionally qualified legal assistance or other advice and assistance in defence of human rights;
- To attend public hearings, proceedings and trials in order to assess their compliance with national law and international human rights obligations;
- To unhindered access to and communication with non-governmental and intergovernmental organizations;
- To benefit from an effective remedy;
- To the lawful exercise of the occupation or profession of human rights defender;
- To effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights;
- To solicit, receive and utilize resources for the purpose of protecting human rights (including the receipt of funds from abroad).

### **(b) The duties of States**

States have a responsibility to implement and respect all the provisions of the Declaration. However, articles 2, 9, 12, 14 and 15 make particular reference to the role of States and indicate that each State has a responsibility and duty: To protect, promote and implement all human rights;

- To ensure that all persons under its jurisdiction are able to enjoy all social, economic, political and other rights and freedoms in practice;
- To adopt such legislative, administrative and other steps

as may be necessary to ensure effective implementation of rights and freedoms;

- To provide an effective remedy for persons who claim to have been victims of a human rights violation;
- To conduct prompt and impartial investigations of alleged violations of human rights;
- To take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration;
- To promote public understanding of civil, political, economic, social and cultural rights;
- To ensure and support the creation and development of independent national institutions for the promotion and protection of human rights, such as ombudsmen or human rights commissions;
- To promote and facilitate the teaching of human rights at all levels of formal education and professional training.

### **(c) The responsibilities of everyone**

The Declaration emphasizes that everyone has duties towards and within the community and encourages us all to be human rights defenders. Articles 10, 11 and 18 outline responsibilities for everyone to promote human rights, to safeguard democracy and its institutions and not to violate the human rights of others. Article 11 makes a special reference to the responsibilities of persons exercising professions that can affect the human rights of others, and is especially relevant for police officers, lawyers, judges, etc.

#### **(d) The role of national law**

Articles 3 and 4 outline the relationship of the Declaration to national and international laws with a view to assuring the application of the highest possible legal standards of human rights

### **2.2 Special Rapporteur on Situation of Human Rights Defenders**

Resolution 2000/61 of 26 April 2000, the Commission on Human Rights requested the Secretary-General to appoint a special representative on human rights defenders. The Commission's intention was to provide support to the implementation of the Declaration and to gather information on the situation of human rights defenders around the world. In August 2000, Ms. Hina Jilani from Pakistan was appointed by the Secretary-General as the first holder of this office. Her mandate was renewed by the Commission in 2003 (resolution 2003/64) for the period of three years. Similarly after the reform in UN Human Rights System in 2007 through the resolution 5/1 her mandate was extended for three years by the Human Rights Council. Jilani, for eight years till March 2008 worked as a Special Representative of Secretary General on Human Rights Defenders.

In March 2008 seventh session of the Human Rights Council replaced the mandate of Special Representative of Secretary General on Human Rights Defenders with Special Rapporteur. In March 2008, Ms. Margaret Sekaggya from Uganda was appointed as Special Rapporteur on Human Rights Defender. She started working from May 2008 under her mandate.

### **Mandate of Special Rapporteur**

The Special Representative undertakes activities in complete independence of any State, is not a United Nations staff member and does not receive a salary. The Special Representative's mandate, as

set out in paragraph 3 of Commission on Human Rights resolution 2000/61, is to conduct the following main activities:

- (a) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms;
- (b) To establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration;
- (c) To recommend effective strategies better to protect human rights defenders and follow up on these recommendations;
- (d) To integrate a gender perspective throughout her work.

In the fulfillment of the mandate, the mandate holder: presents annual reports to the Human Rights Council and the General Assembly on particular topics or situations of special importance regarding the promotion and protection of the rights of human rights defenders; Undertakes country visits and take up individual cases of concern with Governments.

### **Activities of Special Rapporteur**

The Special Rapporteur's formal mandate is a very broad one, requiring the identification of strategies, priorities and activities to implement it. The "protection" of human rights defenders is the Special Rapporteur's overriding concern. Protection is understood to include the protection of defenders themselves and the protection of their right to defend human rights. The Special Rapporteur makes every effort to ensure that the same standards are applied equally to each State, in keeping with the mandate's global character. Several broad types of activities are undertaken, although there is often

some overlap between them, with some activities serving a number of different objectives.

### **Contacts with Stakeholders**

First and foremost, the Special Rapporteur tries to be accessible to human rights defenders themselves by: Being available to receive information from defenders, including allegations of human rights violations committed against them (see “(d) Individual cases” below), and using this information in identifying concerns to be raised with States; Regularly attending national, regional and international human rights events (including one session per year of the Human Rights Council), which provide opportunities for contact with defenders from around the world. Former Special representative in her report has mentioned about the situation of human rights defenders in Nepal, incidents of violations of their rights and other critical concerns. Specifically she raised concern on the human rights violation of human rights by state and non-state actors during the internal armed conflict and direct rule of the king. These reports are useful to put pressure on perpetrators for non-repetition of the violation.

Similarly, the Special Rapporteur maintains regular contacts with States. More specific contacts are conducted on a bilateral basis in meetings or in writing and these are used by the Special Rapporteur to raise specific issues of concern with individual States and to seek State support, for example, in addressing a case or in obtaining an invitation to visit.

The Special Rapporteur meets, during the year, with numerous other actors of relevance to the mandate and its activities, including members of national parliaments; members of national human rights commissions; staff and human rights mechanisms

of regional intergovernmental organizations; and groups of States having a commitment to improving the role and situation of human rights defenders.

### **Individual cases**

The Special Rapporteur takes up with the States concerned individual cases of human rights violations committed against human rights defenders. Information on such cases is received from a variety of sources, including State authorities, non-governmental organizations, United Nations agencies, the media and individual human rights defenders.

As information arrives, the Special Rapporteur first seeks to determine if it falls within the mandate. Secondly, every effort is made to determine the probable validity of the allegation of human rights violation and the reliability of the source of the information. Thirdly, the Special Rapporteur makes contact with the Government of the State where the alleged violation is said to have occurred. Contact is usually conducted through either an urgent appeal or a letter of allegation addressed to diplomatic mission to the United Nations in Geneva for transmission to capitals. The communication provides details of the victim, the human rights concerns and the alleged events. The primary objective of the communication is to ensure that State authorities are informed of the allegation as early as possible and that they have an opportunity to investigate it and to end or prevent any human rights violation.

Urgent appeals are used to communicate information about a violation that is allegedly ongoing or about to occur. The intention is to ensure that the appropriate State authorities are informed as quickly as possible of the circumstances so that they can intervene to end or prevent a violation. For example, a death threat reportedly

made against a human rights lawyer in response to his or her human rights work would be addressed through an urgent action letter.

Letters of allegation are used to communicate information about violations that are said to have already occurred and whose impact on the human rights defender affected can no longer be changed. This kind of letter is used, for example, in cases where information reaches the Special Rapporteur long after the human rights abuse has already been committed and reached a conclusion. For example, where a human rights defender has been killed, the matter would be raised with the State through an allegation letter.

In both types of letter, the Special Rapporteur asks the Government concerned to take all appropriate action to investigate and address the alleged events and to communicate the results of its investigation and actions. Allegation letters focus primarily on asking the State authorities to investigate the events and to conduct criminal prosecutions of those responsible. The letters sent to Governments are confidential and remain so until the end of the reporting year, when the Special Rapporteur submits an annual report to the Human Rights Council on communications with Governments on specific cases.

Violation of rights of HRDs is not only the concern of Special rapporteur on HRDs. For example if there is a case of killing of human rights defenders, the incident becomes the concern of Special Rapporteur on Human Rights Defenders as well as other special procedures related to the extra judicial killings. Similarly, if the defender has been arbitrarily arrested, tortured and disappeared, the case become the concern of Special rapporteur on HRDs and at the same time it becomes a concern of Special procedure on arbitrary arrest, torture and enforced disappearances. The Special Rapporteur constantly consults with United Nations Special Rapporteurs whose

own mandates are involved in a particular case and frequently sends joint letters of concern with these mandate holders.

### **Country Visits**

The Special Rapporteur is mandated to conduct official visits to States. Some States have issued invitation for this kind of visits which is known as “standing invitation”. A standing invitation is an open invitation extended by a Government to all thematic special procedures. By extending a standing invitation States announce that they will always accept requests to visit from all special procedures. As of 31 May 2011, 86 countries have extended a standing invitation to thematic procedures. In case if the state has not issued standing invitation, Special Rapporteur sends a letter requesting for a visit.

These visits provide an opportunity to examine in detail the role and situation of human rights defenders in the country, to identify particular problems and to make recommendations on how these could be resolved. By the nature of the mandate, the Special Rapporteur is required to look critically at the situation of human rights defenders in a country. Nevertheless, the process is intended to provide an independent and impartial assessment which will be of use to all actors in strengthening both the contribution of defenders to human rights and their protection.

Country visits usually take place over a period of 5 to 10 days, during which the Special Rapporteur meets with heads of State and Government, relevant government ministers, independent human rights institutions, United Nations agencies, the media and human rights defenders themselves, among others.

Issues raised during such visits include: violations committed against human rights defenders; the strength of the “environment” within which defenders conduct their human rights work, including

freedoms of association and expression, access to funding and the support to defenders provided by domestic legislation; and efforts undertaken by the authorities to protect human rights defenders from violations.

A few months after each visit, the Special Rapporteur issues a report on the visit indicating, among other things, major concerns and recommendations for action. The report is then formally presented by the Special Rapporteur at the Human Rights Council.

Former Special Representative has sent a letter twice (October 2003 and December 2004) to the Nepal Government requesting for a visit. Similarly, the Special Rapporteur after her appointment in 2008 has already sent a request letter twice. However, Nepal government has not responded to the letter till date.

In addition, the Special Rapporteur may identify themes that are considered to have a fundamental bearing on the role and situation of human rights defenders across the world and seek to support defenders through action specifically in those areas. Some such themes are democratization processes, the responsibilities of local authorities and the impact of security or anti-terrorist legislation on human rights defenders. One consistent strategy for supporting defenders has been the establishment and strengthening of regional protection networks for them.

While formulating special strategies, Special Rapporteur may establish international, regional and national mechanism for the protection; provide necessary recommendations for the development and strengthening; public the incidents of human rights defenders for their protection in the form of press releases, speeches; conduct thematic study and research. Special Rapporteur through the press release has raised concern on the situation of human rights defenders and protection of their institutions in Nepal.

The goal of all the above groups of activities is to contribute to the protection of human rights defenders and the implementation of the Declaration on human rights defenders.

### **2.3 Protection Mechanisms for Human Rights Defenders at Regional Level**

As international instruments, the regional mechanisms recognize and protect the right of association and freedom of thought, opinion and speech. Since the adoption of the UN Declaration on Human Rights Defenders in 1998, Africa, Europe and the Americas have developed regional mechanisms to support and protect human rights defenders in their regions. This inter-governmental cooperation has promoted a deeper understanding of the context facing human rights defenders in a particular region, and has helped governments to develop appropriate responses.

#### ***Africa***

##### **African Commission on Human and Peoples' Rights: The Special Rapporteur on the situation of human rights defenders in Africa**

The African Charter on Human and Peoples' Rights, a legally binding instrument adopted on June 27, 1981 and which entered into force on October 21, 1986, after ratification by 53 countries, does not specifically mention the protection of defenders, but protects fundamental freedoms such as freedoms of speech, opinion, association, assembly, etc. as well as fundamental rights such as the right to life, protection against arbitrary arrest and detention and the right to a fair trial.

The African Charter provides for the creation of the African Commission on Human and Peoples' Rights (ACHPR) (Article 30), which is a mechanism of monitoring of the implementation of

the Charter by State parties. The ACHPR, which has a mandate of promotion and protection of human rights on the African continent, examines country reports and communications on human rights violations brought to its attention. Since a couple of years, the ACHPR has adopted specific resolutions on the protection of defenders in Africa, which confirm the protection of their rights in application of the Charter. The ACHPR refer explicitly to the rights of human rights defenders through adoption of certain resolution.<sup>8</sup>

The 1999 Grand Bay (Mauritius) Declaration and Plan of Action, a legally non-binding instrument, calls upon the Members States of the Organisation of African Unity (OAU) “to take appropriate steps to implement the United Nations Declaration on Defenders in Africa”. The Kigali (Rwanda) Declaration of May 8, 2003, a legally non-binding instrument, “recognizes the important role of civil society organizations (CSOs) in general and human rights defenders in particular, in the promotion and protection of human rights in Africa” and calls upon Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes.

### **A specific mandate: the Special Rapporteur on the situation of human rights defenders in Africa**

In 2004, the Special Rapporteur mandate on the protection of defenders was created within the ACPHR. The mandate is defined

8 ACHPR /Res.69(XXXV)04: Resolution on the protection of human rights defenders in Africa, ACHPR(XXXXI)06: Resolution on the situation of human rights defenders in Africa, ACHPR /Res.119 (XXXXII)07: Resolution on the situation of human rights defenders in Africa, ACHPR /Res.134(XXXXIII)08: Resolution on the situation of human rights defenders in the Republic of Gambia, ACHPR/Res.139(XXXXIII)08: Resolution on the situation of human rights defenders in the Democratic Republic of Congo, ACHPR /Res.132(XXXXIII)08: Resolution on the upcoming elections in Zimbabwe, ACHPR/Res.56(XXIX)01: Resolution on the situation of human rights defenders in Tunisia

by ACPHR Resolution 69(XXXV) 04, adopted in 2004 in Banjul, the Gambia. Through this mandate, the Commission examines reports and acts upon information concerning the situation of defenders in the continent. The current Special Rapporteur, M r. Mohamed Bechir Khalfallah (Tunisia), succeeded Commissioner Reine Alapini-Gansou (Benin) in 2009.

The Rapporteur has the following mandate:

- to seek, receive, examine and to act upon information on the situation of human rights defenders in Africa;
- to submit reports on the situation of defenders in Africa at every Ordinary Session of the African Commission;
- to cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake holders;
- to develop and recommend effective strategies to better protect human rights defenders and to follow up on his/her recommendations;
- to raise awareness and promote the implementation of the UN Declaration on Human Rights Defenders in Africa.

## *Latin America*

### **Inter-American Commission on Human Rights: The Functional Unit on Human Rights Defenders**

Although the Inter-American Convention adopted by 25 states in 1969 and came into force in 1978 does not include any provision on HRDs, the Inter-American Commission on Human Rights (IACHR) in 7 December 2001 decided to create a Human Rights Defenders Functional Unit. The Unit's main functions are:

- to gather information regarding the situation of human rights defenders in the Americas;
- liaise with non-governmental and governmental human rights organizations, and other persons who can provide information on the subject;
- coordinate the work of the Executive Secretariat with regard to the situation of human rights defenders in the Americas and assist the Secretariat's specialists in their work on this matter;
- liaise with State bodies responsible for human rights policies in each member state of the OAS, and with any other agencies capable of providing information on the general or specific situation faced by human rights defenders under any jurisdiction;
- encourage the IACHR to adopt any precautionary measures or measures of any other kind that the Commission deems appropriate, in order to protect threatened human rights defenders in the hemisphere;
- prepare a thorough analysis of the precautionary measures that the IACHR extends to human rights defenders to be used both as the basis for reports and to standardize guidelines for the granting of such measures;
- liaise with the United Nations Special Rapporteur on human rights defenders, and cooperate whenever possible.

**The Human Rights Defenders Unit has various means at its disposal to carry out its work:**

### **Press Releases**

The Unit issues press releases to express concern regarding threats, killings, attempted killings, and kidnappings, and on the general situation of human rights workers in the member States of the OAS.

## **Precautionary measures**

The Unit can ask the Commission to request precautionary measures. According to the Commission's regulations: "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons". The Commission has granted precautionary measures in cases involving attempted killings, death threats, other kinds of threat, harassment, physical attacks, breaking and entering into offices and homes, individuals identified as military targets by paramilitary forces, and human rights workers accused of belonging to guerrilla organizations

## **Country visits**

Since the creation of the Unit, much emphasis has been placed on the importance of visiting countries with the purpose of assessing the situation of local human rights defenders. This is of particular importance for gathering first-hand and complete information.

## ***Europe***

In 1950 European Council sign the European Convention for the Protection of Human Rights and Fundamental Freedom in Europe. European Commission established under the European Convention has wider mandate for the protection of HRDS. In 2008 the European Council adopted a Declaration on Human Rights Defenders, which provide recommendations on main impediments to their work including protection issues. In 2004, the EU Council published the European Union Guidelines on Human Rights Defender which has identified EU embassies as an important protection bodies.

## *EU Guidelines on Human Rights Defenders*

In 2004 the European Union adopted guidelines- ‘Ensuring Protection- European Union Guidelines on Human Rights Defenders’ - with the aim of providing EU Member States with practical guidance on protecting and supporting HRDs, especially outside EU countries. The Guidelines adopt the definition of defender provided by the UN *Declaration on Human Rights Defenders* (“individuals, groups and organs of society that promote and protect universally recognized human rights and fundamental freedoms”) and identify practical ways to work towards the promotion and protection of human rights defenders in third countries in five different areas:

- Monitoring and reporting on the situation of human rights defenders
- Support and protection of human rights defenders
- Human rights defenders promotion with third countries and in multilateral fora
- Support for the Special Procedures of the UN Human Rights Council
- Support through other EU programs, including development policy

The EU country missions are the primary interface between EU member states and HRDs on the ground and can undertake a number of support activities including maintaining contact with HRDs to give visible recognition to their work, observing trials of HRDs, etc. EU Heads of Mission make recommendations for action to the Council of EU Working Group on Human Rights, which could include condemning threats and attacks against HRDs, making public statements when HRDs are at immediate or serious risk and

issuing of demarches to the governments concerned. Senior EU officials, during country visits should meet HRDs, raise individual cases with local authorities and include HRD issues in dialogues with senior political and governmental figures.<sup>9</sup>

Furthermore, the EU can provide practical support to HRDs through its social and economic development programs that include financial support for capacity-building and public awareness campaigns of HRDs, assistance in the establishment of international HRDs networks, etc.<sup>10</sup>

## *Asia*

Asia and the Middle East lack such mechanisms for the protection of human rights generally and for the protection of human rights defenders. ASEAN Intergovernmental Commission on Human Rights (AICHR) has been established in 2009 by the Association of Southeast Asian Nations and the mandate is limited to the states in South East Asia.

Although the South Asian States had established South Asian Association for Regional Cooperation (SAARC), the Social Charter of SAARC is silent on human rights and fundamental freedoms.

Asia is generally lagging behind other regions in terms regional human rights mechanisms and also mechanisms for the protection of human rights defenders. Therefore, the protection of human rights defenders in the region is dependent on governments and on national human rights institutions.

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9 Protection for Human Rights Defenders in Nepal, [http://www.kathmandu.diplo.de/contentblob/2708298/Daten/790029/DLD\\_Projektantrag\\_Grundlagen.pdf](http://www.kathmandu.diplo.de/contentblob/2708298/Daten/790029/DLD_Projektantrag_Grundlagen.pdf)

10 Ibid

# Chapter 3

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## Initiatives Taken for the Protection of Human Rights Defenders in Various Countries

States has major obligations for protection of the rights of the HRDs. Although the Declaration is not binding, members of United Nations have moral obligations to implement and respect the provisions of the Declaration. The Declaration includes a series of standards enshrined in other international instruments which are legally binding, therefore, it is important for the States to adopt it.. Article 2, 9, 12, 14 and 15 of Declaration outlines the role of states as well as obligations and duties of the estates.

In implementing this obligation states have mainly Latin American states have developed national law into line with their obligations and other national protection mechanisms for the protection of HRDs. Some states have established programs to protect human rights defenders and other have even considered the possibility of adopting the declaration as binding.

### 3.1 Latin America

#### 3.1.1 Colombia

Colombia was one of the first countries in the world to bring a specific program on HRDs. In 1997 it introduce a protection program for persons at risk from political and ideological violence or from internal armed conflict by bringing a specific law on protection of HRDs. The law subsequently underwent several amendments intended to support the government in safeguarding the lives,

integrity, freedom and security of target population as a consequence of political, public, social or humanitarian activities.<sup>11</sup> In early 2009 the Office of the Attorney General established the Humanitarian Affairs Units with a specific mandate to investigate threats and attacks against human rights defenders.<sup>12</sup>

### **3.1.2 Guatemala**

Comprehensive Agreement on Human Rights signed on 29 March 1994 between the government of Guatemala and the conflicting party, acknowledge the importance of the work done by human rights activists and the need to protect them and their work.<sup>13</sup> This is the first document that ensures the protection of human rights defenders in Guatemala. In 2004, as a result of considerable local and foreign pressure, the government of Guatemala established a coordination unit for the protection of HRDs, law enforcement officers and administrators, journalists and other media personnel. The unit is authorized to coordinate the protection measures granted by the Inter-American system or by the United Nations.<sup>14</sup>

In order to make the protection mechanism more effective, a protection program for HRDs and other vulnerable groups was proposed. On 2 November 2004, the government tabled a proposal for Public policy governing Prevention and the Protection of HRDs, accused persons and witness, journalists and media personnel and a National Plan of Action for Protection and list of protection measures. The documents were debated and agreed upon by several states organizations and with various human rights organizations,

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11 Protection of human rights defender: Best Practices and lessons learnt, Protection International, <http://www.protectionline.org/Protection-of-human-rights.html>, p. 12

12 [http://www.lwr.org/colombia/docs/Climate\\_of\\_Fear\\_Defenders\\_Campaign.pdf](http://www.lwr.org/colombia/docs/Climate_of_Fear_Defenders_Campaign.pdf)

13 <http://www.c-r.org/our-work/accord/guatemala/firm-lasting-peace.php>

14 Ibid Comment no. 11. P.15

the program was postponed without any decision in 2009.<sup>15</sup>

On 10 January 2008, government established a unit with the Ministerial Agreement to study patterns of violence against activists and to analyze attacks against human rights defenders in Guatemala.<sup>16</sup> The Unit which comprises representation of various national and international human NGOs and investigating bodies has led to certain degree of effects in investigation and protecting human rights defenders at risk.

### **3.1.3 Mexico**

In 1997, National Human Rights Commission began to work on offences against journalists and other human rights defenders. The directorate was set up in 2005 with the objectives of addressing complaints relating to human rights violations committed against the journalists and other human rights defenders. Similarly, in 2007, the Federal District Human Rights Commission set up the Office of Rapporteur for freedom of speech and the protection of Human Rights Defenders.<sup>17</sup> The Office formally began its work in June 2007 with the objectives of collecting information on freedom of speech and human rights defenders, as well as organizing training and raising awareness about prevention.

The government established the Unit for the promotion and Defense of Human Rights under the Home Ministry and began a program for the protection of human rights defenders. In addition, National Human Rights Action Plan 2008-2012, provided a list of defenders, protection needs and the organizations responsible for meeting them.<sup>18</sup>

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15 Ibid p. 16

16 Ibid

17 Ibid p. 17

18 Ibid

### **3.1.4 Brazil**

Following a huge pressure from national human rights NGOs, the government on 26 October 2004 adopted a protection principles and guidelines for the protection of human rights defenders as well as assistance to natural and legal persons, groups, institutions, organizations and social movements that promote and protect human rights which in exercising these functions find themselves exposed to risk or in a vulnerable position.<sup>19</sup>

### **3.2 Africa**

In Democratic Republic of Congo, civil society submitted a draft bill on the protection of Human Rights Defenders to the government, which incorporates essential elements of the Declaration of Human Rights Defenders. It was debated but has not yet been passed. In Kenya there is legislation for the protection of certain types of human rights defenders. The ombudsmen in Kenya and Uganda have a mandate to protect human rights defenders.

### **3.3 Europe**

European Union has tried to ensure the security of the persons involved in human rights protection. The German Parliament drafted a motion on the protection of human rights defenders under threat. Spain has also issues a motion on the protection of human rights defenders. In Belgium, the senate issued a resolution on the protection of human rights defenders and the House of Representatives adopted a resolution on defenders.<sup>20</sup>

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19 Ibid p. 19

20 Ibid p. 23

### ***3.4 Nepal***

#### ***NGO Drafts Legislation on HRDs***

In Nepal, Informal Sector Service Centre (INSEC), brought draft legislation on Human rights defenders in discussion in 2009. The draft is prepared on the basis of the UN Declaration on human rights defenders which includes the definition of defenders, activities, duty and rights of the defenders as well as the duty of state to protect the defenders. According to draft, except in criminal cases, human rights defenders should not be arrested while they are fulfilling their professional responsibilities related to the human rights violations or in due course of other investigation; in relation to any of the activities/ actions carried out by the human rights defenders as human rights defenders, no case should be filed in the court against human rights defenders, will not be asked to be witness against their wishes and would not be forcefully compel to make public the information that they receive in capacity of human rights defenders. For the protection of security of service of human rights defenders, a five-member-commission on human rights defenders has been proposed.

The draft has also provision of remedy for violation of the rights of defenders. As proposed in the draft, human rights defenders can lodge complaint at the district court on the difficulties that they face within the 1 month of the incident. The draft proposed a Human Rights Defenders fund which would exist in the commission.

#### ***European Union (EU) Guidelines on Human Rights Defenders Local Implementation Strategy in Nepal***

In Nepal, to support HRDs practically, EU missions have formed the EU Working Group on HRDs and formulated a local implementation strategy which was launched in October 2007. This strategy commits the EU missions to undertake a number of activities

aimed at promoting and protecting the rights of HRDs. In Nepal, to support HRDs practically, EU missions have formed the EU Working Group on HRDs and formulated a local implementation strategy which was launched in October 2007. This strategy commits the EU missions to undertake a number of activities aimed at promoting and protecting the rights of HRDs. These include broadening contacts with HRDs across Nepal; developing HRD networks and linkages to reduce the vulnerability of HRDs; and directly raising individual cases, or issues hindering the work of HRDs, directly with the Nepal government, or through demarches, or even through public statements, demonstrating public support for HRDs. Most importantly, the EU missions are committed to contributing to the development of an effective protection mechanism for HRDs in Nepal.<sup>21</sup>

### *Human Rights Home*

Human Rights Home (HRH) was established after the declaration of State of Emergency by the former king Gyanendra on 19 February 2005 as a space and initiative aiming to bring together human rights organizations and defenders to form a broad, inclusive, and impartial alliance. It had also worked to develop mechanism for the security of human rights defenders and to bridge the gap of civil diplomacy on human rights between national and international human rights communities. With this objective, it had worked to serve as a “safe house” for human rights defenders at the risk and enabling environment in which they could work effectively.

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21 Ibid Comment no. 9

# Chapter 4

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## Legal Framework for the Protection of Defenders in Nepal

Many human rights defenders are working actively in their work places under great threats despite the lack of a separate law for human rights defenders. During the armed conflict, many human rights defenders lost their lives and today, even after the signing of the Comprehensive Peace Agreement (CPA), there has been no satisfactory change in the condition of human rights defenders. No separate protection mechanisms and more specifically, no laws for the protection of human rights defenders exist in Nepal till now. However, there are various provisions in laws which provide for the rights and responsibilities to the individuals or the organizations proactively working in the field of human rights towards helpless, disqualified and detained individuals if they willingly on their own initiatives work for those. A few existing laws are complimentary for their protection. Those few laws are mentioned as below.

### 4.1 Provisions on Fundamental Rights enshrined in the Interim Constitution 2063

The Interim Constitution of Nepal 2063 has provided for several fundamental rights and the provision for constitutional remedy in case of infringement of the fundamental rights thereof. All of these provisions are ensured for the rights of both the nationals and the foreigners. However, the Constitution does not mention the human rights defenders' rights explicitly. On one hand, the Constitution is

silent on the part of the assurance of the protection of the rights of human rights defenders while on the other, it is questionable as to the sufficiency of the provided fundamental rights for adequate protection of the human rights defenders.

#### **4.2 Citizen's Right Act 2012 and its provisions**

The provisions within the Citizen's Right Act has provided for the protection of the universally recognized rights of all citizens, as well as for the legal remedy in case of the violation of the set forth rights in the Act. The provision within the Act can be interpreted to have incorporated the aspect of protection of foreigner human rights defenders as well.

However, this Act nowhere mentions clearly for the protection of human rights defenders. This situation leads to the thought whether the ensured rights for the general people are adequate for the human rights defenders.

#### **4.3 State Cases Act 2049 and its Provisions**

State Cases Act is promulgated with the aim of bringing the victims in the serious crimes of life and property within the judicial procedure. This Act furthermore encourages the human rights defenders to fulfill their roles actively as informants for the proper representation of the victims within the judicial system.

#### **4.4 Law Professional Council Act 2050 and Its Provisions**

Interim Constitution has provided for the right to legal representation to the arrested persons from the time of their arrest and the right to defend the accusation made against them. In such a situation, lawyers are by constitution assumed to be human rights defenders and this Act promulgated for the professional credentials,

determination of the discipline and character of the law professionals can be interpreted to be a law for human rights defenders as such.

#### **4.5 Social Welfare Council Act 2049 and Its Provisions**

Social Welfare Council Act provides for the coordination of the works and the management of the foreign aids of the organizations and the group of people working for the cause of social welfare and social service. Because this Act promotes and protects the interest of such organizations, this Act can be considered to be related to human rights defenders.

#### **4.6 Organization Registration Act 2034 and Its Provisions**

Organizations established without any profit motives to actively contribute in the field of human rights are registered under and regulated by this Act via the rights provided by the Act itself. The Act provides for the provisions regarding registration of the social, religious, cultural, educational and intellectual organizations as well as for the organizations based on literature, science, physics, economics, business and welfare, which can be inferred to have provided protection to the human rights defenders directly or indirectly involved/working in such organizations.

#### **4.7 Trade Union Act 2049**

All the trade unions from the academia level to national are established under this Act and those trade unions provide for the provisions of protection of human rights of the labors, minimum remuneration and the right of collective bargaining. Because this Act is the law on trade unions which are for the protection and promotion of the rights of the labors, this can, therefore, be interpreted to be a law related to human rights defenders.

#### **4.8 Labor Act 2048 related to labor rights**

This Act has been promulgated for the protection of the services of the labors' and their social security which ensures labors' rights which as well provides for the remedy in case of breach of the ensured rights. In the provided situation, if the labors on their own initiatives for the protection of their rights act as human rights defenders and fulfill the role respectively, this Act could then be considered as to be provided with the provisions for the protection of the human rights defenders. However, nowhere in this Act has mentioned human rights defenders explicitly.

#### **4.9 Legal Aid Act 2053**

This Act provides for the provisions related to law professionals whose remuneration is fixed by the state itself working for the needy people who require financial assistance during legal procedures. Based on this Act, till now, incapable, helpless and economically weak individuals have received legal aid in 40 districts. As per the Act, the law professionals are responsible for the protection and guarantee of the rights of needy people by providing legal aid as per the requirement. Thus, this Act can be considered to have tried to incorporate human rights defenders within it.

#### **4.10 National Human Rights Commission Act 2054**

This Act has provided for the provisions related to human rights defenders in a good deal. However, this Act provides mandate to National Human Rights Commission basically to regulate the human rights violations, to provide victim support and to recommend compensation, to make recommendations to government to take actions against the perpetrators and to make policy level suggestions

to the government to implement the obligations raised by the treaties and agreements on human rights signed by the government.

#### **4.11 Human Trafficking and Transportation (Control) Act 2007**

This Act has provided for the significant provisions related to the security of the informants of human trafficking as well as for the control of human trafficking and taking of the legal actions against the perpetrators. This Act stresses on the security of the informants and the witnesses, as to which if the human rights defenders fall within this category, and then they, too, receive the same level of protection. However, like other Acts, it nowhere mentions the human rights defenders clearly.

## Chapter 5

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### Judiciary's Perception Regarding the Protection of Rights of Human Rights Defenders

Until now, from the side of Judiciary: Supreme Court, Appellate Courts and District Courts, noteworthy decisions and orders for the protection and promotion of the rights of human rights defenders have not been issued. In this scenario, in absence of a concrete law regarding protection of human rights defenders and in lack of proper interpretation of the existing scattered laws by judiciary, the human rights defenders are compelled to work under great threats and dangers. Because of the continuous international pressure and the national level pressure and initiation from the human rights defenders working under threats, however, now judiciary is seen to have made some attempts with due consideration to the security of the human rights defenders. Few of those attempts are discussed in this chapter.

Dayaram Pariyar who was a staff of the National Human Rights Commission (NHRC) was shot by armed security personnel including Inspector Prakash Raj Sharma and his assistants, when they fired indiscriminately. The incident occurred when Pariyar was having tea at around 6:45 PM at Janakpur Chok of Janakpur Municipality on March 24, 2006. The victim was died later while undergoing treatment at hospital on March 28, 2006. Despite the timely registration of FIR at the District Police Office, Dhanusha, no further procedures were carried out due to which the applicants in this case demanded for the prompt investigation of the case and

appropriate compensation as a form of relief to the family of victim. Furthermore, in case of absence of such laws or existing laws being inadequate, the petitioners had demanded for the need of providing justice to the victims by prosecuting the perpetrators by making appropriate laws so forth. The Supreme Court in this case issued mandamus order to carry out further investigation in the case as soon as possible with due consideration to the legal duties enshrined in the State Cases Act 1993 and Police Act 1956 and submit to the government attorney and make decision as to whether the suit is to be filed or not.<sup>22</sup> The court did not speak on the compensation issue as the Council of Ministers had already decided to provide Rs. 250,000 as per the recommendation of National Human Rights Commission. A positive judiciary's perspective towards human rights defenders can be observed here. The mandamus order provided for the speedy trial and end of the suit if case is filed but it is yet to be identified whether such an order was provided because a human rights defender was victimized or it would have been the same for other victims as well.

The Supreme Court issued an order in favor of Human Rights defenders for the protection of their rights and their security in 2008.<sup>23</sup> The writ petition had been filed with the demand to issue an order of mandamus to protect the rights of human rights defenders enshrined in the Interim Constitution and UN Resolution 53/144-De-1998 by promulgating appropriate security policies, programs, plans, administrative directives and foundations along with legal provisions. Via this writ, a demand was made for the protection of rights of women human rights defenders and for the assurance for their security, however, the court as a whole issued an order addressing

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22 Advocate Ratna Bahadur Baghchanda v Government of Nepal, 2006, Writ no:3378, Decision date:2007/06/8.

23 Advocate Jyoti Lamsal on behalf of Women Rehabilitation Centre v Government of Nepal, 2008, Writ no:WO-0187

all the human rights defenders in general. The court in this decision has identified human rights defenders as the watchdog in case of human rights violation and had stressed the need of security to human rights defenders. Thus, the court issued a mandamus order to provide for necessary security arrangements if the human rights defenders demand for such when they are heading for any mission to investigate human rights violation and to protect human rights. The court seems to have been positive towards the protection of rights of human rights defenders as it issued an order to ensure security as per the demands of those. However, the court seems to have failed to acknowledge the fact that threats and risks incurred by the human rights defenders all the time due to the nature of their work. The writ petition has also raised the issues regarding the state's responsibilities in protecting the rights of human rights defenders as provided by UN Resolution 53/144-De-1998 but the court, though, recognized the need of security to be provided to the human rights defenders and the organizations working in this same arena, is silent on the part of state's responsibilities in protection of rights of human rights defenders.

The license of the chairperson of Nepal Bar Association was suspended for 6 months by a meeting chaired by the then Chief Justice Kedar Prasad Giri.<sup>24</sup> The chairperson was accused of making a statement against the judges of courts, where he had stated that "if a judge accused of having been involved in corruption is not prosecuted according to the existing laws and is excused from the criminal responsibility, the service of the judges would be like a license permitting corruption." However, because the comments made by the judges regarding the decision were made in the meeting in haste, the decision against the chairperson of Nepal Bar Association was

24 Nepal Human Rights Year Book 2009, Informal Sector Service Centre (INSEC), 2009, February 19, 54-55.

withdrawn. Later on, an agreement was reached between the Supreme Court Bar and the Nepal Bar Association with the conclusion that the court should be fair, able and accountable in order to protect the rights of citizens.

The Appellate Court Ilam issued an order to provide compensation of Rs. 35,000 to the journalist Lavadev Dhungana for having been illegally detained for 50 days by the then government.<sup>25</sup> During the royal regime, District Police Office, Panchthar had arrested and detained the journalist.

The Supreme Court has quashed the government decision of withdrawing the case of murder of journalist Prakash Thakuri. He was killed after abduction on July 5, 2007. Following the government decision to withdraw 349 cases filed during the conflict time, the districts courts of Humla and Kanchanpur had refused to proceed in Thakuri's case. However, when a joint SC bench of Justices Khilraj Regmi and Bharat Raj Upreti decided that only the cases pertaining to political nature and occurred between February 13, 1996 and November 21, 2006 leading to cancellation of the decision to withdraw his case on February 23, 2011.

Bara District Court on April 16, 2011 sent two of the accused-Manager Giri and Ram Ekwal Sahani for killing of journalist Birendra Sah for life sentence. Sah was abducted from Pipara Bazar on October 5, 2007. His body was found buried in Charkose Jungle in Dumarwana VDC-9, Bara, 35 days later.

The nature and the language of the decisions and the orders made by the judiciary lead to a conclusion that those seem to have not recognized the need of security to the human rights defenders and protection of their rights. Only in the decision of the court in Advocate Jyoti Lamsal on behalf of Women Rehabilitation Centre

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25 Ibid 54.

vs Government of Nepal, 2064, Writ no:WO-0187 the term human rights defenders is found within the text, otherwise in other cases even those terms cannot be found. Even after a decade of the promulgation of “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” 1998, by the UN General Assembly and with the due awareness as to the role played by the human rights defenders under threats and risks, the judiciary until this date has not been able to give decisions or issue orders progressively. In absence of a consolidated law specifically on human rights defenders, it might sound irrational to interpret laws in favor of protection of human rights defenders and to create new rights, however, there is a space to identify those rights and interpret accordingly on the basis of international laws, as Nepal places equal emphasis to both international and national laws.

# Chapter 6

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## Problems Faced by Human Rights Defenders

INSEC documentation shows that from 2007 to December 2010, rights of 703 teachers, journalists, law professionals, health workers and human rights activists have been violated in total 703 incidents. Specially, those rights have been violated by UCPN-M and their political wings, other political parties and several armed groups.

### 6.1 Right to life

"Every human being has the inherent right to life"

*International Covenant on Civil and Political Rights,  
1966, Article 6*

There have been several incidents where human rights defenders face such threats to life directly. They encounter situations where countless rights are violated initially and sometimes even leading to violation of their rights to life. Human rights defenders are compelled to face such situation as a result of the nature of works they pursue. After the signing of Comprehensive Peace Agreement between the Government and the Maoists on November 21, 2006, there was a relative decrease in the victimization of human rights defenders, nonetheless, it did not come to halt. Between the years 2007 and 2010, the non-state actors killed 18 defenders across the country among which 10 were teachers, four were journalists, one was a human rights activist, two were health workers, and one was a law professional.

The increasing trend in the number of victims represents the scenario of human rights conditions prevailing in each development region and spread of the perpetrators. Human rights defenders have been killed in each region in the last four years, Central Region seeing the highest number of killings (5 killed), Far Western region (2 killing), and one defender was killed Eastern Region, Western Region and Mid-Western Region each. In the cases of murder, unknown groups are found relatively in higher numbers as perpetrators whereas other armed non-state actors like ATMM, U-JTMM, JTMM-J and JTMM-G are found involved in low extent.

**Table No. 1: Numbers of HRDs Killed**

Killing	Year				Total
	2007	2008	2009	2010	
Teacher	3	3		4	10
Journalist	1	1	1	1	4
HRD	1				1
Health Worker	-	-	-	2	2
Law professional		1			1
<b>Total</b>	<b>5</b>	<b>5</b>	<b>1</b>	<b>7</b>	<b>18</b>

Every year, the most affected professionals are the teachers. In 2010, the murder of teachers has increased in comparison to 2007, 2008 and 2009. In the same years, there had been no murders of health workers; however, 2 health workers were killed in 2010.

**Table No. 2: Numbers of HRDs Killed by different Actors**

Actors	Year			
	2007	2008	2009	2010
State	0	0	0	0
Non-state	4	1	0	3
Unidentified	1	4	1	4
<b>Total</b>	<b>5</b>	<b>5</b>	<b>1</b>	<b>7</b>

In the last four years, there had been no killings of the human rights defenders from the state actors. The non-state actors killed human rights defenders in maximum number in 2007, whereas in 2009, no killings were done by them. From the statistics, it can be observed that in 2008 and in 2010, there had been killings of the human rights defenders by the unidentified groups.

Over the four-year's period, 10 teachers have been killed. Armed groups such as JTMM-G, JTMM-J and U-JTMM killed three teachers in 2007. Surya Narayan Yadav from Siraha, who was charged with being a spy, was killed by JTMM-G in 2007. Same number of teachers was killed in 2008 too. An unidentified group killed Bindeshwor Mahato, a primary school teacher from Dhanusha and so were Loknath Gaire and Sunil Prasad Yadav from Parsa and Rautahat respectively. There was no case of teacher's murder in 2009. Nonetheless, in 2010, four teachers including female teachers were killed. On April 25, 2010, Bishnumaya Dhakal, resident of Pandrung VDC-4 in Gorkha and a teacher at the Manikamdevi Secondary School, Laprak VDC of the same district was killed and placed in a shallow grave by Jeet Bhadur Gurung of Laprak VDC-8.

In 2007, though numerous journalists faced several kinds of violence, one journalist was killed. Likewise, in 2008 and 2009, there was one case each of killing of a journalist. The cases that gained much attention from the media and the human right defenders were the murder of Birendra Sah in 2007, and Uma Singh in 2009, who paid the price for their work. Birendra Sah was killed by the then Maoist cadres including Ram Ekwel Sahani on October 5, 2007. The Maoists admitted to the involvement of Sahani in the killing one month after the incident. Of the accused, Sahani and Maineger Giri are in legal custody since January 5, 2009 and November 3, 2009 respectively. The murder of Uma Singh, a female human rights

defender and journalist employed with Radio Today, Janakpur, is another important case to note. Lalita Singh and Nemlal Paswan, using sharp weapons, killed her on January 11, 2009.

For the first time in four years, two health workers were killed in 2010. So far, health workers had been abducted and threatened, but were not killed. Health worker, Rupbhadur Bhandari, a resident of Partola in Badhu VDC-8, Bajura was found dead on November 26, 2010. Bhandari, who had gone to the neighboring village to treat a female patient, was found dead on the banks of Karnali River. He had sustained deep wounds on head and legs.

In 2007, there was an a human rights defender killed. A human rights defender, as well as the chairperson of Dalit NGO Federation, 38-year-old Purna Bahadur Sunar was shot dead in the evening of August 9, 2007 by Janatantrik Tarai Mukti Morcha-Goit (which was later renamed itself as Akhil Tarai mukti Morcha) in Kapilvastu. Being a human rights defender from the hilly region was the sole reason behind his murder. Amongst the least targeted human rights activists are the law professionals. In four years, one law professional was killed by the non-state body. Resident of Kalaiya Municipality in Bara district, advocate Jagadish Acharya died while being treated in Kathmandu after being shot by the Akhil Tarai Mukti Morcha on May 22, 2008.

## **6.2 Torture and Assault**

“Torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted

by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

*Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Article 1*

Use of torture and ill treatment by law enforcement officials in Nepal has always remained a matter of concern. Even though the Interim Constitution of Nepal 2007 established torture as a criminal offence, its provision has not been implemented in practice since no law providing for criminal penalties has been passed by the Nepali legislature. Therefore, human rights abuses of this nature are being carried out with impunity, especially by the state security apparatuses. Nepal has ratified the Convention Against Torture in 1991, yet people are still being tortured by the state. During the period of insurgency, we learnt of hundreds of cases of torture from the state. After signing of the Comprehensive Peace Agreement between the Maoists and the government of Nepal on November 21, 2006, torture stopped to some extent.

*Table No. 3: Numbers of HRDs Tortured*

Beaten	Year				
	2007	2008	2009	2010	
Teachers	3	14	22	22	61
Journalists	5	41	17	25	88
Law Professionals	9	5	2	2	9
Health Workers	4	2	3	2	11
Human Rights Activists	0	0	0	2	2
Total	12	62	44	53	171

Nepal promulgated Torture Compensation Act 1996 after the ratification of CAT in 1991. However, this Act does not define torture as explicitly done by the CAT. Even though the Act names a person who is a government employee or who works in the police or prison service as being a torturer, in practice torture has also been inflicted by other non-state armed forces. For instance, in 2007, there were 2 cases in which human rights activists were tortured; not by the state, but by non-state actors and unidentified groups. On July 27, 2007, unidentified group physically and mentally tortured Madan Rimal in Bardiya for an unknown reason. Similarly, three human rights activists; namely, Mohan Lal Bara, Shyam Bahadur Chand and Bir Bahadur Gadai, all members of Social Service Centre in Baitadi were abducted and tortured on December 12, 2007 by the YCL for monitoring the community peace building program .

The Torture Compensation Act states that, “the government employee who committed the offence of torture shall be subjected to legal action according to existing law.” Nevertheless, there is nothing mentioned on the type of punishment and its gravity required to be imposed. The government provides only for the departmental action to be taken against the perpetrator but there is no specific ground for the punishments against the non-state actors and unidentified groups.

Besides torture, human rights defenders in Nepal were also subject to assault and battering. From the above mentioned statistics of four years, journalists are seen to have been the victims of assault and battering in maximum number whereas law professionals are found to have been the victims in less numbers in total. Likewise, in 2010, more journalists had been victims of the assault and battering

than other human rights defenders.

All the three parties-state, non-state and unidentified groups have their equal share in escalating the attacks on human rights defenders. In 2007, there had been 12 beatings, of which the state has committed 5, non-state actors 5 and unidentified group beat 2 human rights defenders. Likewise, in 2008, there was massive beating of defenders; 14 defenders had been beaten by the state, 39 by the non-state actors, and the unidentified groups were involved in the beatings of 9 defenders. In 2009, there was some decrease in the beatings of the defenders. With a relative drop in the number of victims, this year, there were 44 victims all together. Of the 44, 29 defenders were victimized by the state, 11 by the non-state actors and 4 by unidentified groups. Similarly, during this period, the most number of human rights activists being beaten were journalists and teachers. In 2010, 17 human rights defenders were beaten by the state, 18 by the non-state actors and unidentified groups.

**Table No. 4: Numbers of HRDs Tortured by Different Actors**

Assault and Battery	Years				Total
	2007	2008	2009	2010	
State	5	14	4	17	40
Non-state Actors	5	39	29	18	91
Unidentified	2	9	11	18	40
Total	12	62	44	53	171

In 2007, 11 human right activists, 9 health workers and 2 law professionals were victimized by the Maoists, MJF, Nepal Police, and civilians. In 2008, most of the physical attacks were carried out by the civilians (7 cases), the Maoists (6 cases) and 5 cases each by the unidentified groups and the Police. In 2009, unidentified group thrashed maximum number of human rights defenders (8 cases).

Civilians too, were involved in 7 cases of beating of the defenders. UCPN-M and the Maoists together beat nine defenders in the year 2009. In addition, unidentified groups were involved in 9 cases, police in 6 cases, and the civilians in 3 cases in 2010.

From the above table representing data of 4 years, it can be observed that the non-state actors were responsible for more assaults and battering of the human rights defenders while the state and unidentified groups are involved in equal number of cases. This trend of non-state and unidentified groups causing more havoc certainly reflects the incapability of the state to implement strict laws against crime in the society. The ineffectiveness of the government and the support of the political parties to the perpetrators are also giving a way-out to the establishment of the deplorable culture of impunity.

### **6.3 Arrest**

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrests detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as one established by law.

*International Covenant on Civil and Political Rights, 1966, Article 9*

Human Rights Defenders are free to carry out their professional functions and to exercise their rights to freedom of expression, assembly, and association. However, defenders in Nepal are at times even restricted by the state for the peaceful demonstrations and peaceful assembly.

From the available statistics, in the past four years, there were 9 such incidents where the state intruded the peaceful demonstrations and arrested the human right activists. As many as 187 defenders have been arrested in the period of which, 52 are teachers, 17 journalists and 118 are human rights activists.

**Table No. 5: Numbers of HRDs Arrested by different Actors**

Arrest	Year				Total
	2007	2008	2009	2010	
State	118	26	17	26	187
Total	118	26	17	26	187

Surprisingly, this is the only one category where more female defenders have been affected than male; moreover, that number represents the female human rights activists only in the year 2007 whereas the male numbers are represented by teachers, journalists and human rights activists. Most of the defenders were arrested in 2007 from Central Development region totalling up to 118. The most famous case that year was the arrest of 110 female human rights activists led by Dr. Renu Raj Bhandari from Singha Durbar by the Nepal Police on August 27, 2007 for demonstrating in the prohibited area with the demand of securing 2 seats for women in the Constituent Assembly. Furthermore, most of these woman activists were arrested again in 2008 in the process of conducting a peaceful demonstration. Police thrashed these woman defenders with boots and sticks. Likewise, 6 journalists were detained by the police for their participation in the protest. In another incident, journalists Bishnu Nisthuri, Mahendra Bista, Shyam Shrestha, Kagendra Sangrual and one other were arrested in 2007 for protesting in front of the PM's residence. The police arrested Rishi Damala from Katmandu on 2 February 2008.

Teachers are no exception and neither have they been spared by the state for putting up any sort of demonstration. On and off and in and around the valley, teachers have stood against the government's irresponsibility towards the teachers, especially government school teachers leading to their arrest. 26 teachers were arrested in Tanahu

on June 24 2010 for putting up a sitting demonstration as a remark of reminder to the government for not implementing the agreement between the teachers and the government. Both the parties had agreed upon relief quota where the government would sanction teachers' allowance and implement other agreements too. Police had arrested 4 teachers in Parsa district on April 26, 2009 after teachers protested the arrest of another teacher, who was a Principal who had beaten and sacked one of the teachers of the school.

Most of the time, the arrests are simply unjustified, but it must be accepted that, at times those become justifiable. There are instances where the police have intruded the demonstrations and turned them into havocs, but other times the defenders provoked the state to arrest them and take actions against them. Similar was the case when 11 teachers affiliated to teacher's union were arrested from Lalitpur on July 14, 2009. Teachers were arrested from different locations in Lalitpur for obstructing the school buses carrying children. They were protesting against the St. Xavier's School for sacking several teachers.

What is notable about these arrests is that teachers have been arrested not for causing massive destructions, but for standing for their own rights, for the rights of their colleagues and for the benefit of teachers as a whole. Nowhere has it been mentioned that a public demonstration is illegal in Nepal; yet teachers have persistently been arrested for that act. Had it been disturbing and violent demonstrations, the arrests would have been justified but that is not the case. Teachers are arrested during and post the peaceful demonstration. Peaceful demonstration here means display of banners with statements, plaque cards, hunger strikes, tying black ribbon on arms. Until and unless the government clearly states that any form of public demonstrations is illegal, arrest of defenders in such situation is unwanted.

## 6.4 Abduction

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

*International Covenant on Civil and Political Rights, 1966, Article 9*

*Table No. 6: Numbers of HRDs Abducted*

Profession	2007	2008	2009	2010	Total
Teachers	14	12	4	8	38
Journalists	6	1	-	-	7
Law Professionals	2	1	-	-	3
Health Workers	-	5	-	1	6
Human Rights Activist	9	-	-	-	9
Total	31	19	4	9	63

Several human rights defenders have been abducted in Nepal since the post conflict period where. In fact, this incident tolls the highest number of victims of human rights defenders. In four years, there have been 61 cases of abduction of human rights defenders and 63 victims. The victims fall into all five categories of human rights defenders- teachers, journalists, human rights activists, health workers and lawyers. Of these, 38 are teachers, 7 are journalists, 6 health workers, 3 lawyers and 9 are human rights activists. These defenders come from every corner of the country; from Kanchanpur in Far West Development Region to Panchthar in Eastern Development Region. Nonetheless, the Eastern Region has witnessed rampant abductions with 32 incidences of abduction of human rights defenders. 22 cases were reported in Central region too. There are significantly lower

abductions in the western part of the country.

From statistics of the past four years, behind most of the incidents are the non-state actors. In this period, the unidentified groups abducted 27 defenders, of which the most abducted are the teachers(18 cases: 2 cases of abduction of journalists, 5 health workers, 2 cases of human rights activists and a case of abduction of lawyer).

**Table No. 7: Numbers of HRDs Abducted by different Actors**

Abduction	Year				Total
	2007	2008	2009	2010	
Non State	28	7		1	36
Un identified	3	12	4	8	27
Total	31	19	4	9	63

The perpetrators have always targeted the most vulnerable but largest group the teachers. Defenders of this category are also easy to outreach too. Unlike the other defenders viz journalists, health workers and human rights activists who are the less targeted of the groups, teachers have been the target of most of the armed groups. A particular trait of the JTMM is seen from the victimized groups. Those victimized by them are teachers and have only victimized those in the eastern part of Nepal. They have not spread to other regions of the country. Their activities are somewhat centralized. Similar is the case with ATMM, though it has only one case of abduction in four years, it has not gone beyond this territory either. An unidentified group of five abducted a law professional. Avinesh Pyakurel from Rajbiraj in Saptari was abducted from his home on September 14, 2008 while he was having his dinner. He was later released. Similarly, an unidentified armed group of six abducted 50-year-old teacher of

the Community Higher Secondary School, Brajeshbansa Jha while he was asleep from Babarjumbh VDC-1 in Sarlahi at 10 pm on 25 December 2009 and took him near the Indian border.

## **6.5 Freedom of Expression**

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

*International Covenant on Civil and Political Rights, 1966,  
Article 19*

In four years' time, perpetrators belonging to state, non-state and unidentified groups violated the rights of 706 human rights defenders. Human rights defenders were challenged by the perpetrators in terms of right to life, right to freedom of expression, right to security, right to movement, right to privacy, rights to peaceful demonstration and right to a dignified life. All these rights were violated with the motive of generating threat or suppressing the defenders, with the ultimate goal of curbing the freedom of expression of the human rights defenders.

**Table No.8: Numbers of Human Rights Violated HRDs**

Activities Against Human Rights Defenders	2007			2008			2009			2010		
	State	Non-State	Unidentified	State	Non-State	Unidentified	State	Non-State	Unidentified	State	Non-State	Unidentified
Disappeared	-	-	-	-	1	2	-	1	1	-	-	-
Threats	2	28	1	1	30	8	1	21	7	2	30	21
Arrest	118	-	-	20	6	-	17	-	-	26	-	-
Misbehave	-	-	-	6	6	1	2	32	2	9	7	5
Displaced	12	-	12	-	5	-	-	5	1	--	---	--
Others	1	-	-	1	7	-	2	4	-	-	1	3
<b>Total</b>	<b>133</b>	<b>28</b>	<b>13</b>	<b>28</b>	<b>55</b>	<b>11</b>	<b>22</b>	<b>63</b>	<b>11</b>	<b>37</b>	<b>38</b>	<b>29</b>

The table above represents the statistical data of 2007, 2008, 2009 and 2010 where human rights defenders had been the prey of killings, assaults and battering, arrests, threats, mistreatment, displacement and other several acts as such.

In 2007, the rights of human rights defenders were violated in higher extent by state, non-state and other unidentified groups, whereas in 2008, the extent of violation of human rights of the defenders was lesser in comparison to other years. In 2007, the rights of the defenders were violated when they were arrested and in 2010 most of the defenders had to face several sorts of threats. In 2007, the state was seen in major violator of the rights of the defenders, whereas in 2008, 2009 and 2010, non-state actors surpassed the state for such sort of violations.

From the statistics, it is revealed that after the signing of the Comprehensive Peace Agreement, maximum number of defenders had their rights violated by non-state actors specially the armed

groups. For instance, the teachers were mostly threatened by the non-state actors to give certain amount as donations from their monthly salary, the journalists were threatened for their life by the non-state and unidentified groups for writing news against their party. In a single incident, 12 journalists were displaced by the Madheshi Janaadhikar Forum for writing news against the party. Directly or indirectly, the freedom of expression of these human rights defenders is being violated. Inability of the teachers to spend the money in accordance to his/her needs and wants and the constant threats posed to the journalists for writing the news indeed violate ones' rights to freedom of expression.

The increase in number of perpetrators led to the number 104 in 2010. This year though there were no incidents of displacement or disappearance, the increase in threats and misbehavior is noticeable. There were 53 defenders who were threatened by the state, non-state and the unidentified bodies. 26 defenders were mass arrested by the state in an instance and 21 defenders were maltreated by all three parties.

There has been a significant rise in the activities of non-state actors including unidentified groups. In addition, more violence is being committed in the name of unidentified bodies, of which most activities occurred in 2010. Despite the right of the people to live in an environment free of any fear and threat, 16 defenders have been disappeared by various bodies during the study period. Although no defenders were disappeared in 2007 and 2010, non-state actors and unidentified groups disappeared two defenders each in 2008 and 2009. In spite of constitutional provisions, as "Every person shall have the right against exploitation", human rights defenders are being disappeared.

During the period, defenders have been compelled to live away from their homes by perpetrators. Mostly, non-state actors have been found responsible for the displacement of the defenders. While non-state actors were responsible for the displacement of 10 defenders, unidentified groups were responsible for further 13 displacements. Altogether, from 2007 to 2010, 23 defenders were displaced. More than 12 journalists and human rights activists from Bara and Parsa districts had to flee to a safe haven overnight because of attacks and threats created by house-by-house search by perpetrators seeking to beat defenders on January 28, 2010. When the defenders started being targeted in the riots created in the Tarai region by the demonstrators, they began leaving the place. Demonstrators in Bara and Parsa districts vandalized the communication centers and threatened to kill the defenders. When the YCL (youth wing of UNCP-M- Pakarwaas VDC in Ramechhappe district threatened to abduct students of the ANNFSU and local CPN UML cadres, including teachers following the dispute with the principal of the Prageshwori Higher Secondary School and students on 18 January 2008, five teachers of that school were displaced to the district headquarter.

Over the past four years' time period, the human rights defenders had been abused through several means such as being forced to pay money, bomb blasts, job loss. Students and representatives of student unions are always the first suspects when it comes to painting teacher's face black with soot, verbally abusing and disrespecting teachers. 69 defenders repeatedly faced abuses such as verbal abuses, and demeaning acts such as their faces being painted black. State, non-state and unidentified groups were also amongst those identified as mistreating defenders. The Vice Chancellor and the Rector of

Tribhuvan University (TU) were mistreated on April 22, 2009. The Vice Chancellor of TU, Prof Dr. Madhavraj Sharma and the Rector Suryalal Amatya's faces were painted black by the students of the ANNISU-R. The guardians of students of the Diyolekharkar Lower Secondary School, in Pavati VDC-1, Dolakha district painted the face of 52-year-old teacher Parshnuram Koirala on school premises on June 5, 2010. The police officer on duty, Ramesh BK mistreated the Bajura district representative of INSEC, Arjun Shah in the police station on December 31, 2009. BK threatened to take cameras belonging to the journalists documenting the bandh and verbally attacked them.

# Chapter 7

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## Conclusion and Recommendation

### 7.1 Conclusion

Although, there is no clear definition regarding HRDs and criteria for HRDs, the Declaration on the Rights of HRDs 1998 includes that any individual working for the protection and promotion of the human rights besides those, who have adopted the work as their regular job. Under this definition fall all those people working for human rights organizations, journalists and lawyers launching campaign for human rights, women who raise voice against the violence against women, teachers and health workers and other people working for the interest of the laborers and any other people working for the protection and promotion of human rights.

There is no separate national level legal or institutional mechanism in Nepal for the protection of the HRDs. Although, some laws are useful for the HRDs, yet the right to protection enjoyed by the citizens is the same one that the HRDs are also subjected to. UN Declaration for the Rights of the HRDs, 1998 is the first document ensuring protection of HRDs. For support and protection of the HRDs, African, European and American regions have developed regional mechanisms after the UN Declaration came out. But, the Asian and Mid-Eastern regions do not have any such mechanism yet.

### 7.2 Recommendations

- Formulation of separate laws for the HRDs in accordance with UN Declaration 1998

- Setting up a separate body for impartial investigation on the claims of violation of HRDs' rights and taking action against the perpetrators
- Ensuring effective legal and psychological measures for the WHRDS for violation of any of their rights considering the special situation of the WHRDS
- Extending invitation to the UN Special Rapporteur on HRDs for monitoring of the situation of the HRDs
- Civil Society taking active role for the establishment of Asian regional mechanism for the protection of the HRDs and the state formulating policy and planning regarding the mechanism
- Creating a national rapporteur under National Human Rights Commission with a broad mandate to seek information, obtain and investigate and act upon the finding and to recommend for the action
- Initiating for the establishment of national and regional network for the protection of HRDs and drafting plans and policies accordingly