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## Ordinance on Transitional Justice Mechanism

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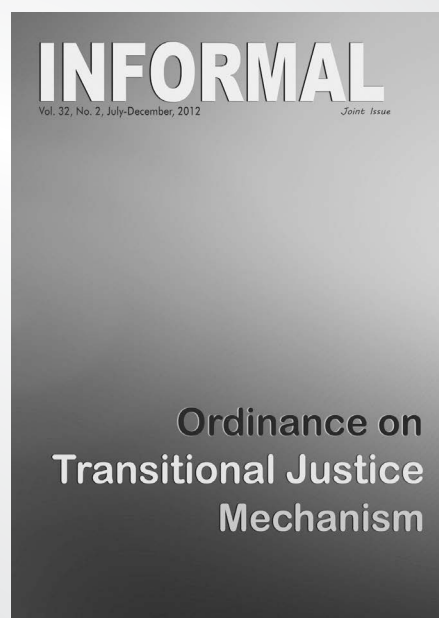
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# Justice is Conflict Victims' Concern

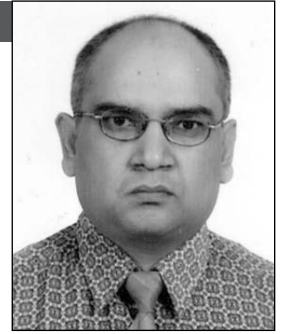
The incidents of victimization, especially enforced disappearances, occurred at record pace when the Maoist-waged armed conflict nearly reached climax in 2004. Conflict victims could not raise their voice during warring situation. However, especially following the start of peace process, victims, their organizations and other concerned organizations started to raise their concerns.

About six years after the signing of the Comprehensive Peace Agreement (CPA), relative headway has been made regarding the concerns and issues of the conflict victims. Although it differs from one organization/body to another, statistics about the victims have been established and despite the fact that their exist grievances as to it, nominal economic interim reliefs have been distributed. The international solidarity is being garnered for the victims' justice. However, in the absence of the commissions on the truth and reconciliation and on disappearances, victims have been denied their right to know the whereabouts of their relatives, the truth about their beloved ones' killings as well as about reparation for the torture and injury they had to undergo during insurgency.

Now, an ordinance on the TRC and Disappearances has been brought by the government in a politically crafty manner. The ordinance on the TRC presented by the government before the President for approval was claimed by the Prime Minister Baburam Bhattarai himself that it was presented realizing the importance of concluding the ongoing peace process. However, the process adopted while bringing it has neither been democratic nor has it given attention to the international practice. Moreover the intricacies of the conflict victims' demands have been disregarded. This ordinance is politically guided and is likely to be driven by government. There are several articles in the ordinance to back this possibility. The power given to the Attorney General through the ordinance and also the curtailment of his/her usual power is contradictory. This ordinance also does not seem to resolve the conflict victims' issues by utilizing the international standards of the transitional justice. Rather, granting amnesty seems to be the ulterior motive of the government whereas doing so especially in the cases of grave human rights violations and breaches of the international laws is not recognized. The title of this ordinance, particularly in its Nepali version, seems to have been fixed intentionally to further victimize the victims. The phrase used in the ordinance cannot be construed as "persons subjected to enforced disappearances" rather it sounds as though the ordinance is simply on the "Disappeared Persons". It has, therefore, laid emphasis only on the victimization process by disregarding the process of perpetration and the perpetrators. Surprisingly, however, justice to the victims has been undermined and amnesty to the perpetrators has been more focused.

The ordinance is pending at the President's, thanks to the President's decision to keep it undecided. This measure taken by the President regarding the ordinance has made the conflict victims hopeful again. However, until and unless he does not send the ordinance back to the Prime Minister indicating its flaws, it will be very difficult for the conflict victims to be assured that they will get justice, which they have been awaiting desperately. The failure to send it back will disallow the new process to be set up and apart from stalling the moves made so far by and on behalf of the conflict victims.

Conflict victims have nothing to do with political maneuvers. They are simply the victims. Therefore, they just want to be dealt justly. Their desire to heal the deep wounds of a ferociously unpleasant armed conflict era is the crux of their agendas and justice is their concern but it is getting clearer by the day that government is not interested to take all these issues and problems into consideration.



# Ensure Victims' Justice

## 1. Introduction

The Comprehensive Peace Agreement signed between the parties of armed conflict has provided for forming Transitional Justice (TJ) mechanism. The provision, however, has not been materialized yet. Bills on the truth and reconciliation commission and commission on disappearances were presented in the erstwhile parliament. As the parliament was dissolved along with the expiration of the Constituent Assembly (CA), the Bills could not be passed. Immediately following the dissolution of the CA, the Baburam Bhattarai-led government has brought an ordinance on the TJ mechanism. In this context, this article will discuss the Ordinance from human rights and victims' perspectives.

## 2. Indispensability to Probe into the Past Human Rights Violations

The incidents of grave human rights violations committed in the past, if not addressed prudently, are likely to result in serious repercussions. Due to the inability to pay due attention or due to total disregard towards so many human rights and armed conflict related issues, Nepal's human rights situation had been a matter of worry even to the international community during armed conflict.

If International Humanitarian Law (IHL), International Human Rights Law (IHRL), the ICRC rules of customary international humanitar-

ian law, common article 3 of the Geneva Conventions, the principle of distinction, indiscriminate attacks, the proportionality and precaution in attack, principle of humanity, double jeopardy and the attack directed against any civilian population<sup>1</sup> were taken into consideration by the warring sides violations and violence could be minimized at that time. Also, the trajectory of Nepal's armed conflict probably would not be so grim. The parties of the armed conflict in Nepal disregarded these grave issues as a result of which an unprecedented violence and violations occurred, which still call for the formation of related commissions for unearthing truth about the incidents of rights violations committed in the course of armed conflict.

Therefore, it is indispensable to dig up country's bloody and repressive past despite the fact that it might be risky, with the view of present necessity of travelling along the road of reconciliation, and painful at the same time in terms of remembrance of the traumatic past.

## 3. Condemnable Ordinance

Although through an ordinance, the government of Nepal has taken a step for the establishment of transitional justice mechanism. Due to the flaws contained in it the Ordinance has been criticized nationally and internation-

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\* The writer is Executive Director of INSEC

1. These aspects have been especially focused by the Nepal Conflict Report published by the UNOHCHR. Details can be accessed from [http://nepalconflicthereport.obchr.org/html/2010-12-00\\_legal-framework\\_applicable-law.html](http://nepalconflicthereport.obchr.org/html/2010-12-00_legal-framework_applicable-law.html)

Human rights community in Nepal has been expressing strong position against this Ordinance. Their position will remain unchanged until and unless such the commissions are formed by consulting with the concerned stakeholders into consideration. We are well aware of the fact that the international principle and standard of the TRC requires that human rights community and the advice, agreement and involvement of their representatives have to be taken into consideration.

ally. Truth and Reconciliation Commission (TRC) is and has been established worldwide for assessing the human rights violations and abuses committed in the past and also for identifying the causes of such incidents. However, the Ordinance put forth by the government does not contain meaningful provisions to delve into these aspects. It is also due to this fact that conflict victims and other concerned organizations have been affirming that government's move to form the transitional justice mechanism is unfair and illegitimate. Also, they have been requesting the government to retreat from its ill-intention to form the TRC through illegitimate foundation. As, principally, the commissions formed on enforced disappearances and, truth and reconciliation do not themselves execute their findings and recommendations, INSEC has been expressing its concerns emphatically that such the commissions should provide for concrete guidelines for the implementation of the recommendations that are made by them. Given that non-implementation or under-implementation of the court verdicts, including those from the Supreme Court, and also the recommendations made by various commissions formed for different purposes in the past are not encouraging for us to be optimistic as regards their implementation, such guideline is required. The Ordinance has the provision that required regulations can be formed for implementing the objectives of this commission. However, given the gravity of the issues the Ordinance has to deal with, the vague statement included in the Ordinance does not assure us of the implementation of the recommendations of the commission formed through this Ordinance.

Human rights community in Nepal has been expressing strong position against this Ordinance. Their position will remain unchanged until and unless the process to form the TJ mechanism is determined by consulting with the concerned stakeholders. We are well aware of the fact that the international prin-

ciple and standard of the TRC requires that human rights community and the advice, agreement and involvement of their representatives have to be taken into consideration. However, these stakeholders have been totally disregarded in the course of preparing and issuing this Ordinance. This reality has made us circumspective.

The initiative of the government on the formation of the commissions is likely to be just a ritualistic one, not having anything to do with conflict victims' justice. We have been highly cautious towards this possibility. As these provisions might be (ab)used so as to apply politico-administrative discretion in the matter of granting amnesty, the amnesty provision laid down in the ordinance has made us anxious in the meantime. Having said this, it is not to construe that transitional justice mechanism does not apply amnesty at all. Rather, our concern in this connection is directly related with the possibility that conflict victims might remain displeased even after the exhaustion of the full process of transitional mechanism, thereby setting stage for the repetition of violence and revenge. On this account, it is desirable to have the provisions of amnesty accompanied by notional and definitional clarity of human rights violations or their levels. Also, this ordinance does not seem to have paid attention towards the possible consequences that appear due to undue application of such provisions.

The current Ordinance seems to have attempted to define serious human rights violations and has tried to be specific as to the qualification and disqualification for the Chair or members of the Commission, besides providing recommendation implementation arrangement. Since the government, through the discretion of the Attorney General, has been made the decision maker on whether or not to prosecute the person recommended by the commission, section 28 of the Ordinance is likely to make the com-



mission formed through this ordinance quite discretionary.

#### 4. INSEC's Engagement in the Past on Reforming the TJ Related Bills

INSEC had provided a number of comments with the view to reform the draft Bills on the Truth and Reconciliation Commission presented in the erstwhile parliament<sup>2</sup>. At that time too, it had demanded for a clear definition of "gross violation" of human rights and incorporation of the phrase "war crime" in the Bill. As the draft Bill was seen to have been brought by ignoring the issue of justice, we had recommended to add some phrases so as to ensure that the bill was for addressing the violations committed in the past as well as to prevent violations in future. The Bill had laid emphasis on compensation, seemingly taking it as the sole measure of providing reparation to the conflict victims. Therefore, INSEC had suggested incorporating arrangements in order to guarantee truth, justice, compensation, rehabilitation, satisfaction and guarantee of non-repetition recalling that these are the mainstays in regards to justly dealing the victims whose human rights have been violated. INSEC still does have unflinching belief relating to these aspects, which generally human rights defenders cannot disregard.

INSEC had put forth its view regarding the qualification for the Chairperson or members of the commission too. Its concern on this issue was primarily related with the worry that the commission as such should not be politically and unduly influenced. We had intended to exclude the persons incriminated by commissions including by the Mallik and Rayamajhi Commissions. Also, suggestions were provided to exclude the persons who are pointed the finger by the findings of responsible organizations accusing them of being human rights violators.

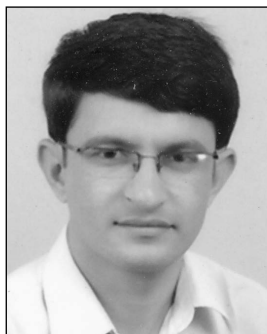
#### 5. Conclusion

The decision to form commission on disappeared person and on the TRC through an undemocratically brought Ordinance is against the Comprehensive Peace Accord, the Interim Constitution of Nepal 2007, various agreements reached in the past, the bills tabled in the erstwhile parliament and the responsibility of the government on human rights and victims' right to justice. Until and unless civil society is allowed to involve in finalizing the contents of the Commission meaningfully and their comments and grievances relating to the formation of the commission are incorporated, the Ordinance will be unacceptable.

Bringing the Ordinance that does not deal with conflict victims' concerns and accommodate provisions accordingly will turn out to be a politically crafty move rather than a serious step towards socio-psychological process of conflict transformation. Therefore, the commission formed through this Ordinance is highly likely to keep the possibility intact for the conflicting parties to relapse into violence. Given that political dishonesty is ruling over us, such a move has to be judged cynically, if not as an attempt to grant amnesty to the perpetrators of armed conflict. Although material welfare is one of the means of providing justice to the conflict victims, more importance has to be given as to how the conflict victims' and their independents' lives have been affected due to what they lost and to infliction of pain. The gruesome effects of the human rights violation committed during conflict-era cannot be faded into oblivion. It is, therefore, the duty of the organizations committed to human rights to stick to the cause until and unless the conflict victims are justly dealt. INSEC, as a committed human rights organization in the country, commits to keep on working for the conflict victims until they feel to have been given justice.

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2. Visit [http://www.insec.org.np/files/documents/Comments\\_on\\_TRC\\_Bill.pdf](http://www.insec.org.np/files/documents/Comments_on_TRC_Bill.pdf) for the comments and suggestions provided by INSEC on draft bill made for making provisions relating to truth and reconciliation commission.



# TJ Ordinance and Its Implications

## 1. Background

The council of ministers led by Prime Minister Baburam Bhattarai forwarded an ordinance on August 28, 2010, seeking presidential approval for the establishment of Commission of Inquiry on Disappearance (CID) and Truth and Reconciliation Commission (TRC). As the commission formed through this ordinance is likely to grant amnesty to the perpetrators of armed conflict, the ordinance was heavily criticized. Given that Bhattarai-led government had been withdrawing the conflict related cases saying that the cases in question were "political" in nature, the government's move was not unexpected. However, the ordinance stunned the conflict victims and concerned others also because the ordinance was forwarded against PM Bhattarai's own commitment not to withdraw the cases of serious human rights violation<sup>1</sup>.

Earlier, the Prachanda-led government had also attempted to establish these commissions through ordinances whereas the Constituent Assembly

(CA) was functioning at that time. Separate bills regarding formation of these commissions had been gathering dust in the parliament for more than two years owing to the lack of political consensus. Government had not been showing any interest in passing the bills through regular parliamentary procedures and deliberations. Ultimately, following the expiration of the CA, the government embraced ordinance as the process of forming commission. Conflict victims and human rights organizations were kept in the dark about the provisions of the ordinance. They came to know about it only after it was forwarded to the President seeking his approval.

## 2. Ordinance against Agreements, SC Directives

Various agreements and even the Supreme Court verdicts have recognized the importance of establishing transitional justice mechanisms. The Comprehensive Peace Agreement (CPA) signed between the government and the then CPN-M on November 21, 2006 which

Ultimately, following the expiration of the CA, the government embraced ordinance as the process of forming commission. Conflict victims and human rights organizations were kept in the dark about the provisions of the ordinance. They came to know about it only after it was forwarded to the President seeking his approval.

\* The writers are with INSEC.

1. The introduction of the ordinance comes after a number of cases were withdrawn and several persons implicated in serious abuses concerning human rights were promoted. The decision of the government received criticism from human rights community. Moreover, police arrested human rights activists from the gate of Prime Minister's residence in Baluwatar on October 7 while they were protesting against such promotions.

brought the decade-long armed conflict to a formal end had provisions to make the persons disappeared and killed during the armed conflict public within 60 days, to establish National Peace and Rehabilitation Commission to maintain peace, to provide relief and reconstruction, to establish a Truth and Reconciliation Commission, to investigate upon those who have been involved in serious violations of human rights and have committed crime against humanity, and to create a conducive environment for the return of the internally displaced persons. The CPA commits to ensure justice and reparation to the victims and to establish TRC and CID, however, the ordinance completely lacks the spirit of the CPA in this regard.

The Interim Constitution of Nepal 2007 has envisaged separate commissions to address the issue of truth seeking and reconciliation and enforced disappearances. Under the responsibilities of the State in the Interim Constitution, there are provisions to provide appropriate relief, respect and rehabilitation to the family of the killed, or injuries leading to disability being physically unfit during the armed conflict; to provide relief to the victims of the disappeared persons in accordance with the recommendations of the report of the Investigation Commission constituted in respect to the disappeared persons, launch special programs to rehabilitate displaced persons, provide relief against the destruction of the private and public property and for the reconstruction of the infrastructures and to establish the Truth and Reconciliation Commission to investigate the persons

involved in committing serious human rights violations and crime against humanity. The ordinance, however, has provisions to grant amnesty, contrary to the Interim Constitution which commits to combat impunity.

Additionally, the June 2007 verdict of the Supreme Court (SC) directed the government to form a separate commission to look into the cases of enforced disappearances. The Supreme Court directed the government to make public the whereabouts of disappeared persons, establish a high-level commission of inquiry on disappearance, enact a law which would criminalize enforced disappearances and provide compensation to the families of the disappeared. Government decision to merge the two commissions is against the SC directive while the ordinance which can provide amnesty even to the cases of enforced disappearances runs contrary to the SC verdict. The ordinance might seem as a step towards implementing the past agreements, but at a closer look, it will be clear that it is against the spirit of all the agreements as it intends to institutionalize impunity by granting amnesty even in serious abuses of human rights.

### 3. Conflict Victims Cry Foul

Conflict victims have expressed their serious concerns regarding the contents of the ordinance and the process adopted to pass it as law. Victims' groups have stated that they will boycott this commission if it is set up through an ordinance. The victims who had been hoping to get justice after the establishment of these commis-

sions have been disappointed as the ordinance was forwarded without its content being made public. It is highly unlikely that a commission established without consulting the victims' groups will provide reparation to the victim and help build social reconciliation. As thousands of them are still suffering the effects of war, any commission that prioritizes amnesty to the perpetrators will not be accepted by the victims. The amnesty provision which is included without the consent, coordination and satisfaction of victims would neither uphold reconciliation and peace, nor relieve society from the conflict mentality. Therefore, an independent commission should be formed in cooperation and consent from the victims' group so as to investigate into the serious abuse of human rights, to establish facts about it and punish the perpetrators, such a commission should ensure justice and reparation to the victims besides ensuring that abuses would not repeat in the future.<sup>2</sup>

Reconciliation is an important goal, but it cannot be built on a foundation of impunity for serious crimes under international law, and it cannot be achieved by coercing victims either. The ordinance forces the victims and their families to artificially 'reconcile' and give up their rights to truth, justice and reparations. From the victims' perspective, forming a Truth Commission through ordinance would simply confirm their worst fears that the state is out to protect and support perpetrators of war crimes while denying victims' basic demands for justice and sustenance assistance.<sup>3</sup>

2. Suman Adhikary, *Pida Matbi Pida Thapne Adhyadesh (The Ordinance that Adds to the Pain)*, Kantipur Daily (September 13, 2012)

3. Ram Kumar Bhandari, Disappearance of Truth, Nepali Times ISSUE 620 (31 AUG 2012 - 06 Sept 2012)



#### 4. Concerns of Human Rights Community

The government's move to pass the bill regarding formation of Commission of Inquiry into Disappearance and the TRC through an ordinance drew widespread criticism. The Commissioner of the National Human Rights Commission (NHRC) condemned publicly the government move to pardon those who committed human rights violations during the conflict. The government completely disregarded the concern expressed by the NHRC over the latter's request to include the constitutional body and stakeholders in the law making process regarding the formation of such commission. The NHRC, after learning about the government plan to bring the law regarding TRC with amnesty provision through ordinance and also upon receiving request from human rights organizations and victim's families, had cautioned the Prime Minister in a letter on August 12, 2012 not to institute TRC as a design to offer general amnesty without ensuring with it peace, reconciliation, compensation, relief and reparation. The move was commented also as a design to whitewash the crimes committed during the insurgency by denying justice to the victims' families. Also, it was criticized that it was more of a commission to pardon those who violated human rights during the conflict period than the one to ensure justice to families of the victims<sup>4</sup>

The UN High Commissioner for Human Rights Navi Pillay, while speaking at the 21st ses-

sion of the Human Rights Council in Geneva on September 10, 2012, expressed concern over the proposed ordinance stating that it would grant the future transitional justice mechanism with broad powers to grant amnesties, including for those who might have committed gross human rights violations, in breach of international law and Nepal's international human rights obligations. She stressed that the rights of victims to justice, to truth, to a remedy and reparations must be respected. Her emphasis on the ordinance reflects the international human rights watchdogs' concerns on the amnesty provision incorporated in the ordinance and sends a message that the ordinance would not be accepted with such provision.

The European Union reiterated the importance of upholding international standards and principles of human rights and humanitarian law, in particular with regard to the establishment of a Truth and Reconciliation Commission and Commission of Inquiry on Disappearances. Accountability for conflict-era human rights violation is an important step towards genuine reconciliation and consolidation of the peace process, and should be addressed as a matter of priority.<sup>5</sup> The EU countries also urged the government of Nepal to ensure that any commission meets international standards and does not include or recommend amnesties for gross violation of human rights and serious violation of human rights and humanitarian law. Transitional justice mechanisms that are genuinely independent seek

both truth and reconciliation and give victims the fullest opportunity for redress and provide the best framework for consolidating the peace process. Special attention is needed to ensure justice for women and girl victims of sexual violence during the conflict.<sup>6</sup>

Amnesty International, Human Rights Watch, the International Commission of Jurists, and the TRIAL (*Swiss Association against Impunity*), in a letter on August 30, urged President Dr. Ram Baran Yadav to return the ordinance claiming that it would empower a politically constituted Commission with discretion to recommend the granting of amnesties for crimes under international law.

Human Rights Treaty Monitoring Coordination Committee (HRTMCC), a coalition of more than 60 human rights NGOs of Nepal, condemned the ordinance in a press release issued on September 6 stating that the cabinet decision was against the CPA, Interim Constitution of Nepal 2007, the past agreements, the bills tabled in the erstwhile parliament, and also the international obligation of the government related to human rights and victims' right to justice.

The present ordinance is a severe setback to years of efforts. Although some provisions needed further scrutiny and amendment, the previous bills under deliberation in the Parliament were far more advanced and nuanced than the present ordinance. In addition, sustained lobbying by victims and human rights organisations had influenced many amendment pro-

4. See <http://www.ekantipur.com/2012/09/04/national/families-receive-death-certificates-of-disappeared-kin-for-damages/359729.html> to see the view of Gauri Pradhan, the Spokesperson of the NHRC in this connection.

5. Statement by Cyprus on behalf of EU at the 21<sup>st</sup> session of UN Human Rights Council (10-28 September 2012)

6. Joint Statement on Nepal by Costa Rica, Denmark, Finland, Germany, Norway, Switzerland and UK at the 21<sup>st</sup> session of UN Human Rights Council (10-28 September 2012)

posals made by parliamentarians in the bills. Against a backdrop of such a promising build-up, the ordinance is a sheer debacle.<sup>7</sup>

## 5. Flaws in the Ordinance

The government's intention to bring the ordinance seems more towards granting blanket amnesty to perpetrators rather than ensuring justice, truth and reparation to the victims. By merging the TRC with CID, the government provides an opportunity for amnesty even in serious human rights violations, including enforced disappearance, extra-judicial killing, torture and rape. Article 24 of the *UN Updated Set of Principles for the Promotion and Protection of Human Rights through Action to Combat Impunity* provides that "the perpetrators of serious crimes under international law may not benefit from [amnesties and other measures of clemency] until such time as ... the perpetrators have been prosecuted before a court with jurisdiction ...". Furthermore, the government of Nepal has an obligation to investigate into and prosecute all instances of serious human rights abuses, and guarantee victims' right to an effective remedy and to be heard by an independent and impartial tribunal as a State Party to the *International Covenant on Civil and Political Rights* (ICCPR). The government has overlooked these aspects while bringing forward the ordinance which can have serious repercussions. British Ambassador John Anthony Tucknott's recent warning to stop aid to Nepal government if the commissions were formed with a view to grant amnesty should be seen in this light.

The ordinance provides opportunity for political maneuver-

ing. The selection committee to choose the commissioners has to consult with political parties before making its recommendations. This means that the commissioners will be under political influence, which will compromise the independence and autonomy of the commission. The ordinance uses the term "high level commission" instead of "independent commission" as used in the previous bill which ominously suggests that the commission will be a mere political mechanism as other commissions of inquiry have been.<sup>8</sup>

Section 22 (1) of the Ordinance mentions that the Commission can reconcile the victim and the perpetrator if either of them applies for reconciliation. However, the clause saying that it would not be considered that the Commission is barred from reconciling even if there is no such application apparently stresses on forced reconciliation. Therefore, there should be a provision ensuring that the perpetrators of serious human rights violation cannot get away in the name of reconciliation.

Section 23 (1) on amnesty says that the Commission could recommend for amnesty of the perpetrator with sufficient base and reasons if its investigation finds that the perpetrator can be pardoned. This gives the commission the power to grant amnesty even in serious abuses of human rights.

Section 24 (1), says that the Commission can recommend for reparation, the victims shall be duly compensated, re-rescued or rehabilitated or any other suitable measures as needed to the government of Nepal. The Ordinance does not focus on reparation but

only touches the aspects of reparation.

Section 28 (1) says that the filing or dismissing of the case would be decided by the Attorney General (AG) or government attorney deputed by the AG on the basis of recommendation of the Commission arrived after its investigation of the perpetrator. This means the Ordinance has the provision of amnesty to all kind of cases and that the cases can be filed not with the permission of the victims but with consultation with them. Weak legal provisions and past experiences reveal that these provisions are likely to promote impunity.

The international standards on the transitional justice mechanisms include: (i) terms of reference and a scope of inquiry which are neutral and adequately framed; (ii) guarantees of independence such that the Commission is structurally and hierarchically independent of the authorities facing complaints; (iii) enjoyment of adequate administrative authority and resources; (iv) non-politicized appointment of the Commission, followed by wide and public notice of the appointment of the Commission and its mandate; (v) public Commission proceedings; (vi) effective victim and witness protection; and (vii) publicizing the Commission's final report(s).<sup>9</sup> However, the mechanisms in the proposed ordinance do not meet these standards.

## 6. Necessity to form TRC, CID, and the International Experience

To paraphrase the views of the ICTJ, transitional justice through the TRC and other related commissions is inevitable in

7. Mandira Sharma, Letting them off the hook, The Kathmandu Post, September 19, 2012 p.6

8. *ibid* 7

9. *UN Updated Set of Principles for the Promotion and Protection of Human Rights through Action to Combat Impunity*, Principles 6 to 13.

The government of Nepal also seems to have brought this ordinance by being guided by similar deduction. However, as the government has tried to establish the truth commission at a time when people have already tested the modus operandi of the political parties and especially the rhetoric and reality of the UCPN-Maoists, such the view is not going to be applicable in Nepal's case. People, here, are still advocating for democratic set up enthusiastically.

the post-conflict context. Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse. In some cases, these transformations happen suddenly; in others, they may take place over many decades<sup>10</sup>. The truth uncovered through the TRC can be therapeutic for the victims especially for the victims of human rights abuses. Reducing tensions should be the main aim of the TRC. Making reform and recommendations so as to prevent the repetition of the violent past and helping the opponents of the past live side by side should be the end result of the TRC. ( Brahm: 2007:22). Referring to the TRC of South Africa Annelies Verdoolaege (2008) writes "testifying, complaining, apologizing, venting one's rage, expressing one's grief, disappointment or despair, all of these discursive practices took a central position in the proceedings of the TRC."

After examining the truth commissions of South Africa, Chile, El Salvador and Uganda, Eric Wiebelhaus-Brahm( 2010) view that even in a variety of unique and difficult situations, truth commissions have promoted human rights reforms to a varying degrees, however, violence was also seen to have been triggered in many countries as a direct result of dissatisfaction with the truth commission process. "A broad range of goals has been attributed to truth commissions. Among them, most scholars recognize human rights improvements as central (Olsen, Payne and Wiebelhaus-Brahm: 2010). Wiebelhaus-Brahm takes the debates of the critics and proponents of the truth commissions into consideration and writes: "...the lack of individual accountabil-

ity provided by truth commissions may send the message that impunity for human rights abusers will continue and this will inhibit the establishment of the rule of law. As a result, the would-be human rights abusers may be emboldened."

Literatures are amply available that the figures selected as the member or head of the commissions formed for the transitional justice should be impeccable and revered by all the parties concerned. Impartiality is sought in the figures selected and nominated to lead the commissions formed for truth and reconciliation. Such qualities have, experience shows, been sought while forming the commissions as such. President Mandela, in consultation with his bipartisan cabinet, made the final selection, people he considered to be of high moral integrity, impartial, and committed to human rights (Lyn S. Greybill : 2002).

It has also been discussed that the citizens of truth commission countries frequently express lukewarm support for democracy and large numbers of people in these countries often express a willingness to abandon democracy in exchange for economic development and law and order (ibid, 24). The government of Nepal also seems to have brought this ordinance by being guided by similar deduction. However, as the government has tried to establish the truth commission at a time when people have already tested the modus operandi of the political parties and especially the rhetoric and reality of the UCPN-Maoists, such the view is not going to be applicable in Nepal's case. People, here, are still advocating for democratic set up enthusiastically.

Keeping the importance of transitional justice related commissions into consideration; various commissions have been formed so far in different countries. However, the contexts of forming these commissions vary from one

10. <http://ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf> accessed on November 18, 2012

**Tables Showing the Truth and Reconciliation Commissions (TRC) Formed so far in Different Countries**

<b>Africa – Uganda, Chad, Ethiopia, Rwanda, Burundi, South Africa, Nigeria, Zimbabwe, Ivory Coast, Sierra Leone, Ghana, Democratic Republic of Congo, Algeria, Morocco, Liberia, Kenya, Mauritius</b>							
<b>S.N.</b>	<b>Country</b>	<b>Commission Type and Name of the Commission</b>	<b>Charter</b>	<b>No. of Com.*</b>	<b>Est. Date</b>	<b>Duration</b>	<b>Report Release</b>
1.	Uganda	Truth Commission/ Commission of Inquiry into the Disappearance of People in Uganda since 25 January, 1971.	Commission of Inquiry Act 1914	4	1974	1974 (6 months)	Not Made Public
2	Zimbabwe	Commission of Inquiry/Zimbabwe Commission of Inquiry into the Matabeleland Disturbances	No Charter Available	4	1983	1983-1984	No Official Report/ Unofficial NGO Report
3	Uganda	Truth Commission/ Commissions of Inquiry into Violations of Human Rights	The Commissions of Inquiry Act Legal Notice No. 5	6	1986	1986-1994	Public Report
4	Chad	Truth Commission/ The Commission of Inquiry into the Crimes and Misappropriations Committed by ex-President Habr'e and his accomplices and/or Accessories	Decree No. 014/P.CE/CJ/90	12	1990	1991-1992	Public Report
5	Ethiopia	Commission of Inquiry/ The Special Prosecution Process by the office of the Prosecutor	Proclamation No. 22/1992	More than 400 staff at peak	1993	1993-2007(?)	Public Report on the first year of activities
6	Rwanda	Commission of Inquiry/ International Commission of Investigation on Human Rights Violations in Rwanda since October 1, 1990.	No formal Charter	10	1993	1993	Public Report
7	Burundi	International Commission of Inquiry for Burundi	UN Security Council Resolution S/RES/1012	5	1995	1995-1996	Public Report
8	South Africa	Truth Commission/ Commission of Truth and Reconciliation	Promotion of National Unity and Reconciliation Act No. 34 of 1995	17	1995	1995-2002	Public Report
9	Rwanda	Truth Commission/ National Unity and Reconciliation Commission	Law No. 03/99	12	1999	1999- today (permanent since 2003)	Various Public Reports
10	Nigeria	Truth Commission/ Human Rights Violations Investigation Commission	Instrument No. 8 of 1999	8	1999	1999-2002	Public Report, released unofficially
11	Ivory Coast	Commission of Inquiry/ Mediation Committee for National Reconciliation	Presidential Decree	28	2000	2000-2001	No Report

\* Commissioners

12	Sierra Leone	Truth Commission/ Truth and Reconciliation Commission	The Truth and Reconciliation Act 2000	7	2002	2002-2004	Public Report
13	Ghana	Truth Commission/ National Reconciliation Commission	National Reconciliation Act No. 611	9	2003	2003-2004	Public Report
14	Democratic Republic Of Congo	Truth Commission/ Truth and Reconciliation Commission	Law No. 04/018	8 officials (21 Members)	2003	2003-2007	Public Report
15	Algeria	Commission of Inquiry/ Ad hoc Inquiry commission in charge of the question of disappearances	Presidential Decree 03-299	6	2003	2003-2005	Public Report
16	Morocco	Truth Commission/ Equity and Reconciliation Commission	Dahir( Royal Decree) No. 1.04.42	16	2004	2004-2005	Public Report
17	Liberia	Truth Commission/ Truth and Reconciliation Commission of Liberia	Truth and Reconciliation Commission Act	9	2006	2006-2009	Report Released
18	Kenya	Truth Commission/Truth, Justice and Reconciliation	Truth, Justice and Reconciliation Bill	7	2009	2009-?	?
19	Mauritius	Truth Commission/Truth and Justice Commission	Truth and Justice Commission Act No. 28	5		2009-2011 (expected)	Not issued yet

**South America – Brazil, Bolivia, Argentina, Chile, Ecuador, Uruguay, Peru, Paraguay**

S.N.	Country	Commission Type and Name of the Commission	Charter	No. of Com.	Est. Date	Duration	Report Release
1.	Brazil	Commission of Inquiry: Brazil	No Formal Charter	Appr. 35	1979	1979-1982	Unofficial Report
2.	Bolivia	Truth Commission/ National Commission for Investigation for Forced Disappearances.	Supreme Decree No. 19241	8	1982	1982-1984	No Final Report
3.	Argentina	Truth Commission/ National Commission on the Disappeared	Decree No. 187/83	13	1983	1983-1984	Public Report
4.	Peru	Commission of Inquiry/ Commission of Inquiry to Investigate the Massacres of Prisoners	Not Available	13	1986	1986-1988	Public Minority Report (Commissioners were split and two reports as majority and minority reports were prepared)
5.	Peru	Truth Commission/ Truth and Reconciliation Commission	Supreme Decree No. 065-2001-PCM	12	2001	2001-2004	Public Report
6.	Chile	Truth Commission/ National Commission for Truth and Reconciliation	Supreme Decree No. 355	8	1990	1990-1991	Public Report



7.	Chile	Commission of Inquiry/ National Commission on Political Imprisonment and Torture	Supreme Decree No. 1040	8	2003	2003-2005	Public Report
8	Ecuador	Truth Commission/Truth and Justice Commission	Ministerial Accord No. 012	7	1996	1996-1997	No Report Issued
9.	Ecuador	Truth Commission/Truth Commission to Impede Impunity	Ministerial Accord No. 305	4	2007	2007-2009	Public Report 2010
10	Uruguay	Truth Commission/ Commission for Peace	Resolution of the President of the Republic, No. 858 /200	6	2000	2000-2002	Public Report
11	Paraguay	Truth Commission/Truth and Justice Commission	Law No. 2225	9	2004	2004-2008	Public Report

**Asia - Nepal, Sri Lanka, South Korea, East Timor**

S.N	Country	Commission Type and Name of the Commission	Charter	No. of Com.	Est. Date	Duration	Report Release
1	Nepal	Commission of Inquiry/ Commission of Inquiry to Locate the Persons disappeared during the Panchayat Period	Order of the Prime Minister	4	1990	1990-1991	Public Report
2	Sri Lanka	Commission of Inquiry/ Commission of Inquiry into the Involuntary Removal or Disappearance of Persons( 3 commissions)	Presidential Proclamation	3 for each commission (in total 11 com.)	1995	1995-2000	Public Report
3	South Korea	Truth Commission/ Presidential Truth Commission on Suspicious Deaths	The Special Act to find the Truth on Suspicious Deaths	9	2000	2000-2004	Public Report
4	South Korea	Truth Commission/ Truth and Reconciliation Commission	Law No. 7542	15		2005-2010	Public Report
5	East Timor	Truth Commission/ Commission for Reception, Truth and Reconciliation	Un Transitional Administration in East Timor(UNTAET) Regulation 2001/10	7	2002	2002-2005	Public Report

**Europe – Germany, Serbia and Montenegro**

S.N	Country	Commission Type and Name of the Commission	Charter	No. of Com.	Est. Date	Duration	Report Release
1	Germany	Truth Commission/Study Commission for Working through the History and consequences of the SED Dictatorship in Germany	Act No. 12/2597	27	1992	1992-1994	Public Report
2	Germany	Truth Commission/ Study Commission for the overcoming of the Consequences of the SED Dictatorship in the process of German Unity	Act No. 13/1535	36	1995	1995-1998	Public Report
3	Serbia and Montenegro	Truth Commission/ Truth and Reconciliation Commission for Serbia and Montenegro	Presidential Decree 59/02	15-19	2002	2002-2003	No Report

<b>Central America: El Salvador, Guatemala, Panama, Honduras</b>							
S.N	Country	Commission Type and Name of the Commission	Charter	No. of Com.	Est. Date	Duration	Report Release
1	El Salvador	Truth Commission/ Commission on the Truth for El Salvador	El Salvador: Mexico Peace Agreements – Provisions creating the commission on Truth	3	1992	1992-1993	Public Report
2	Guatemala	Truth Commission/ Commission for Historical Clarification	Agreement on the establishment of the commission to clarify past human rights violations and acts of violence that have caused the Guatemalan population to suffer	3	1997	1997-1999	Public Report
3	Panama	Truth Commission/ Panama Truth Commission	Executive Decree No. 2, January, 18, 2001	7	2001	2001-2004	Public Report
4	Honduras	Commission of Inquiry/ Independent inquiry undertaken by the National Commissioner for the protection of human rights	Decree No. 26-92, Decree No. 51-92 (establishing the Ombudsman's office)	1		1993-1994	Public Report
5	Honduras	Truth Commission/ Truth and Reconciliation Commission	Decreto Ejecutivo PCM 11-2010	5		2010-2011	Not issued yet

<b>Caribbean and Oceania – Haiti, Solomon Island</b>							
S.N	Country	Commission Type and Name of the Commission	Charter	No. of Com.	Est. Date	Duration	Report Release
1	Haiti	Truth Commission/ National Truth and Justice Commission	Executive Order	7	1995	1995-1996	Public Report
2	Solomon Islands	Truth Commission/ Truth and Reconciliation Commission	Truth and Reconciliation Commission Act (No. 5 of 2008)	5	2009	2009- ?	Not yet issued

Source: Adapted from <http://www.usip.org/publications-tools/latest?filter1=%2A%2AALL%2A%2A&filter0=%2A%2AALL%2A%2A&filter2=2222&filter3=%2A%2AALL%2A%2A&filter4=>

country to another. The following table indicates that name of the commissions differ despite the fact that truth commissions are formed with similar objects. The legal bases of their formation also differ. Some commissions are seen to have been formed through commission acts and some others through the decrees or discretion of the head of the governments or states. Like-

wise, some are seen to have been founded on the basis of the UN Resolutions. Not to release reports of the commissions is seen as a problem and many commissions formed for truth seeking published only the unofficial reports. Likewise, non-implementation of the recommendations of the released reports is seen also as a challenge. Forming the TRC and CID is

indispensable in Nepal and it is highly desirable that such commissions should be formed through a formal democratic process keeping into mind that conflict victims are justly dealt. The recommendations made by different commissions formed at various times for different purpose are not implemented. Nepal has bad precedent regarding this. Therefore, it is highly desir-

able to form an all-satisfying commission whose recommendations are properly implemented.

The above tables show the truth and inquiry commissions formed so far in different countries:

## 7. Conclusion

The forwarding of the ordinance on the eve of the International Day of the Disappeared demonstrates the government's intention to protect the perpetrators of serious abuses of human rights. This move of the government will only prolong the transition. The repeated efforts of the UPCN-Maoists to establish the commission without consulting with the stakeholders has raised suspicions that the party is keen on legitimizing amnesty in the name of reconciliation. Although reconciliation is an important part of the transitional justice mechanism, it cannot be achieved through coercion which the bill intends to do. The introduction of this ordinance following the withdrawal of criminal cases and after the promotion of the security officials implicated in serious human rights abuses show that the government is bent to provide amnesty to the perpetrators.

The President, during a meeting with the Society of the Families of Disappeared Fighters by the State has indicated that he will not approve the ordinance.<sup>11</sup> This measure taken by the President has made the conflict victims hopeful again. However, until and unless he does not send the ordinance back to the Prime Minister indicating its flaws, it will be very difficult for the conflict victims to

be assured that they will get justice, which they have been awaiting desperately. If the process to form such an important commission is forwarded without broader consultation with the conflict victims and the human rights organizations, the would-be formed commission will be unacceptable. Also, the commissions in question should be established based on political consensus following rounds of consultations with the stakeholders. This only will ensure a fair, independent, transparent and effective commission. The effective implementation of the recommendations of the commissions should also be ensured at the same time.

The government has attempted to form the TRC through the Ordinance primarily to grant amnesties for crimes and gross violations of human rights committed during armed conflict whereas amnesties not only contravene international human rights law by upholding impunity, they also weaken the foundation for a genuine and lasting peace.<sup>12</sup> Moreover, at a time when the government itself is caretaker, establishing such commissions through ordinance has invited controversy. It will be most appropriate to bring the law when the parliament is in place but if the present political uncertainty persists compelling the conflict victims to live in the dark, a law brought with broader consultations and political consensus might be acceptable. As this ordinance did not incorporate the suggestions that the previous draft-bills regarding establishment of transitional justice mechanisms had offered, it is imperative that

series of consultations be held with the stakeholders before bringing such a law. Then only will the human rights bodies, victims' groups and international community approve of the government's efforts to ensure justice to the victims and to address the abuses and human rights violations committed during armed conflict.

## References

- Chapman, A. R. & Merwe, H.V.D. (2008). Assessing the South African Transitional justice model. In Chapman, A. R. & Merwe, H.V.D (Eds.), *Truth and Reconciliation in South Africa*. University of Pennsylvania Pres.
- Greybill, L.S. (2002). *Truth and Reconciliation in South Africa. Miracle of Model?* Colorado: Lynne Rienner Publishers, Inc.
- Interim Constitution of Nepal, 2063 (2007). Retrieved from <http://www.lawcommission.gov.np/en/documents/prevaling-laws/constitution.html>
- Olsen, T. D., Payene, L. A., Reite, G.A & Wiebelhaus-Brahm, R. (2010). When Truth Commissions Improve Human Rights. *The International Journal of Transitional Justice*, 4, 457-476.
- Verdoolaege, A. (2008). *Reconciliation Discourse*. Amsterdam: John Benjamin Publishing Company.
- Wiebelhaus-Brahm, Eric. (2010). *Truth Commissions and Transitional Societies: The Impact on Human Rights and Democracy*. NY: Routledge.

11. <http://www.ekantipur.com/nep/2069/5/26/full-story/354410.html>

12. Nepal Conflict Report, OHCHR, Geneva, October 2012, p.14



## This Ordinance has Narrowed down the Mandate of the TRC

The government of Nepal has brought an ordinance on the Truth and Reconciliation Commission and Disappeared Persons without consulting concerned stakeholders. This move came immediately after the Legislature Parliament expired along with the expiration of the Constituent Assembly (CA). Amidst opposition from the conflict victims and the organizations working for them, it has been sent to the President seeking for his approval. However, the ordinance has remained pending at President's. **INFORMAL** had talked with Mr. **Gobinda Bandi**, who is a lawyer by profession and is with special expertise on the transitional justice, on the ordinance especially by taking conflict victims and their justice into especial consideration. Excerpts:

● *How would you assess the ordinance on the Truth and Reconciliation Commission and Commission on Disappeared Persons sent by the government to the president seeking approval from the latter? Why has it been criticized?*

Basically there are two reasons, first the government has brought this ordinance in a very undemocratic way and secondly the ordinance aims to grant amnesty to the perpetrators of armed conflict rather than providing justice to conflict victims. Furthermore, the ordinance fails to recognize the basic four pillars of the transitional justice i.e. truth, justice, reparation and institutional reform. Therefore, conflict victims and the human rights defenders have taken strong position against it.

It is pertinent here to understand the background on how the current ordinance was brought. If you look at the history of the transitional justice discourse in Nepal, it has almost taken four years for the formulation of the transi-

tional justice related bills, which unfortunately expired along with the dissolution of the Constituent Assembly (CA). Human rights activists, lawyers, members of the civil society, conflict victims and other relevant stakeholders such as political parties as well as security officials were consulted during the process of drafting these bills. Nationwide consultation was organized in this connection for four years. The Ministry of Peace and Reconstruction had initially made a draft and uploaded it in its website for public comments. A number of suggestions and amendment proposals were submitted by national and international organizations including by the UN agencies in this connection. Human rights organizations; lawyers and the family members of the conflict victims participated and provided their feedback on the draft. The drafting process got substantive support from the donor agencies, United Nations and the National Human Rights Commission (NHRC). Finally, the

Human rights activists, lawyers, members of the civil society, conflict victims and other relevant stakeholders such as political parties as well as security officials were consulted during the process of drafting these bills. Nationwide consultation was organized in this connection for four years.

Peace Ministry with the help of an expert team, came up with two separate bills; one on the Truth and Reconciliation Commission and another on the Disappeared Persons. These bills were registered in the parliament after finalizing their contents through an all-party meeting in which there was the participation of the civil society members, government officials including Attorney General and other intellectuals. The Bills were also problematic in a number of issues; however, there were two important aspects –the public consultation process to be conducted throughout the country and exclusion of serious crime from the amnesty policy in the bills.

The provision of legislative engagement in developing these laws was another important aspect of this process. For example, the session of the then parliament adopted “in principle” these bills and sent to the legislative committee to further accommodate the concerns of the victims and other groups. Unfortunately, the Legislative-Committee of the Parliament failed to forge consensus, which not only delayed the process but also undesirably, invited a political intervention. Consequently, in December 2011, “Three Big Parties” reached an informal agreement to merge these two Bills thereby forming a single Truth Commission, contrary to the CPA, the Constitution of Nepal 2007 and the order from the Supreme Court. But, due to a huge pressure from the national and international community, the legislative Committee could not go in line with the political agreement. Two members of the sub-committee tendered their resignation, rest of the members remained in the committee but with no courage to object the political bad intention. With the dissolution of the CA on 28 May, these Bills became the property of the parliament with no legal effect.

The government took advantage of the failure of the legislative process and drafted a new Ordinance by merging these Bills with amnesty power to

the TRC. This ordinance, on the one hand, carries all bad provision of the Bills and leaves out all the good provisions, on the other.

As it has made all serious human rights violation and crime under international law amnestiable and empowering the commission to recommend amnesty, the Ordinance represents the culmination of a grand political bargain struck between the political parties, and the proposed Commission is likely to be a vehicle for ensuring that those responsible for gross human rights violations and crimes under international law committed in the course of Nepal’s decade-long conflict will not be held accountable.

Therefore, this ordinance is not acceptable to the victim, human rights defenders and society as a whole who have been desperately waiting for truth and justice.

● *The government has blamed that conflict victims and human rights defenders have opposed the ordinance mainly because they are not going to be made the official of the commission formed through this ordinance. Do you think such an opposition has something to do with getting post in the commission?*

I think it is a baseless allegation. Working in the transitional justice mechanism is itself a challenging task. I think, what human rights defenders are concerned about is independent and credible nomination process, since the success of the transitional mechanism depends on its independence and autonomy. The current ordinance fails to provide a credible nomination process. For example the Ordinance has a provision to form a selection committee under the chairmanship of the retired Supreme Court chief Justice; however, the selection committee will have to make recommendation for the appointment of the members of the Commission on the basis of the consultation with political parties. The requirement of the Ord-

As it has made all serious human rights violation and crime under international law amnestiable and empowering the commission to recommend amnesty, the Ordinance represents the culmination of a grand political bargain struck between the political parties, and the proposed Commission is likely to be a vehicle for ensuring that those responsible for gross human rights violations and crimes under international law committed in the course of Nepal’s decade-long conflict will not be held accountable.



nance to consult political parties makes the selection Committee toothless. On the other hand, the use of phrase “high level commission” in the Ordinance instead of “an independent commission” as was used in the previous bill makes this commission more political mechanism, as other Commissions of Inquiry used to be.

● ***How do you see the role of opposition parties in this process?***

Some political parties are also opposing the proposed ordinance; however, they are yet to put forth their views publically. To my analysis, these parties have opposed basically the process of bringing this ordinance rather than its contents. Some of the leading figures of the parties such as the Nepali Congress (NC) and the United Marxist Leninist (UML) implicitly support the bills because they do not want to address the conflict related incidents committed in the past and are with the mentality that country should move ahead without taking into consideration what happened in the past.

● ***What would you say about the ordinance in relation to granting amnesty, exonerating the perpetrators of armed conflict and providing justice to the conflict victims?***

The Commission is empowered to recommend the granting of amnesties for all serious human rights violations within its remit, including those constituting crimes under international law – such as torture, enforced disappearances, war crime, genocide and crimes against humanity. Amnesties that allow those suspected of criminal responsibility for crimes under international law to escape accountability violate international law and contravene the Supreme Court’s decision in several cases where the Court stated that those found of guilty of enforced disappearance cannot be amnestied and pardoned.

On the other hand, in relation

to the persons subjected to enforced disappearances, I would like to take it as a ‘hopeless ordinance’. The Supreme Court in the case of Rabindra Dhakal vs. government of Nepal, in June 2007, directed the government to criminalise enforced disappearance in accordance with the UN Disappearances Convention, and to ensure that amnesties and pardons would not be available to those found guilty of the crime. This ordinance, however, does not criminalize enforced disappearances whereas the bills proposed earlier would do so. In such a situation, even if the commission recommends for prosecuting the perpetrators of enforced disappearances, no legal provision is in place to do so.

● ***Data have revealed that Maoist cadres were victimized more than others during armed conflict. However, the Maoist-led government itself has attempted to form a commission that is likely to grant amnesty to the perpetrators of their cadres. Why, do you think, the government has made such an attempt?***

It is happening in many countries not only in Nepal. Political parties in many countries forget the sacrifice of their cadres. The Maoists want to remain in power rather than being serious on the issues of their cadres. The Nepal Army and the Maoist party which used to take each other as enemy have converged on many issues now. There are many examples to justify this. The promotion of Raju Basnet and withdrawal of the case of Bal Krishna Dhungel, who was accused of killing a person in Okhaldhunga district, can be the examples in this connection. It is high time the conflict victims who were the cadres of the Maoist party in the past think whether their party is struggling for power or for addressing their socio economic issues.

● ***Don’t you think that the commission formed through this ordinance will have limited power?***

Amnesties that allow those suspected of criminal responsibility for crimes under international law to escape accountability violate international law and contravene the Supreme Court’s decision in several cases where the Court stated that those found of guilty of enforced disappearance cannot be amnestied and pardoned.

Yes, I do. If you look at the mandate of the purposed commission under the Ordinance, you will find the scope of the ordinance is very limited compared to the previous ones.

This ordinance significantly narrows down the mandates of the TRC by confining it to look into only the cases of serious human rights violation, whereas the Bill on the TRC which was registered in the parliament had given power to the TRC to look into any cases of human rights violations. This Ordinance, on the one hand, allows the commission to conduct an inquiry only in the cases of “serious violations” and, on the other hand, it deliberately excludes the jurisdiction of the commission over the violation of “economic and social cultural rights” and also excludes any matter under consideration in the courts. Hence, this Ordinance narrows down the scope of the commission thereby failing to adequately address the underlying causes and patterns of violations.

● ***The interim constitution of Nepal 2007 and the CPA had decided to form an independent commission but the commission proposed by this ordinance provides that the Attorney General or the government lawyer assigned by him or her are authorized to file the cases. Doesn't this provision seem a bit discretionary as well as government-centric?***

The section 28 provides that the Office of the Attorney General, on the recommendation of Government of Nepal, may decide to or not to file a case, but this provision is meaningless since the Commission has been excluded from making recommendations for the prosecution of those whom it might reasonably find, responsible for serious human rights violations. This also violates the Attorney General's constitutional power, as it would have to be dependent on the recommendation of the Government. Therefore, this provision seems “ornamental show piece”.

● ***So, even if the proposed commission is formed, implementing its recommendations is challenging, isn't it?***

Generally, the recommendations of commissions are persuasive rather than mandatory. However, the recommendations of the transitional justice mechanisms have to be taken as mandatory. The problem is that many commissions were formed in the past in Nepal but some of them even did not publish their reports and the recommendations of such commissions were not taken seriously by the concerned agencies. For instance, the recommendations of the powerful Rayamajhi Commission were not implemented and the persons who were recommended to be prosecuted on charge of involving in many cases are being promoted by the government now. Therefore, I doubt that the commission formed through this ordinance would be able to solve the issues related with transitional justice.

● ***How can the conflict victims get justice then?***

Conflict victims should pressurize the concerned parties and bodies to address their issues and oppose if a flawed commission is formed. There are also international instances in which such types of commissions were formed, but were opposed by conflict victims. Transitional justice issues are complicated. If victims do not get justice, they keep on sticking for their cause. There are some crimes which cannot be excused even by the victims. Some minor issues can be granted amnesty. However, it seems that some of the conflict victims are trying to excuse perpetrators due to fear and attraction of blood money. In order to ensure justice for the conflict victims, the ordinance in question should be dismissed and new bills should be tabled in a democratic way through a legitimate process.

There are some crimes which cannot be excused even by the victims. Some minor issues can be granted amnesty. However, it seems that some of the conflict victims are trying to excuse perpetrators due to fear and attraction of blood money. In order to ensure justice for the conflict victims, the ordinance in question should be dismissed and new bills should be tabled in a democratic way through a legitimate process.



# Verification of Conflict Victims: A Nepali Legal Perspective

## 1. Introduction

There lacks uniformity on the actual statistics and reality about the citizens of the conflict victims even today whereas years have passed by following the formal beginning of peace process in the country. Given that the major political parties in the country are committed to justice of the conflict victims and permanent peace and stability, and that some of the efforts have been made on victim reparation, the question of verification of the conflict victim must be taken into consideration seriously. Considering the inevitability of forming the Truth and Reconciliation Commission (TRC) and the pending ordinance put forth by the government of Nepal, this aspect becomes more pertinent in our context. The ordinance on the TRC has been a debatable one; those opposing the ordinance have heavily criticized it saying that it is wrongful, impractical, incomplete and immature. The commission formed for the purpose of truth and justice of the conflict victims should succeed in recommending for justice including reparation and compensation to the victims. Similarly, such the commission should be able to bring the perpetrators and violators of human rights to justice.

It is being based on these aspects in general and on the would-be-formed

TRC in particular that this write-up has been developed. The contents included in this article might sound anachronistic to some readers. However, this article has been written by being guided by the unflinching belief that the TRC must be formed eventually and verification of the conflict victims will be again an issue for the TRC purpose. Hence, theoretical aspects of verification and reparation of the conflict victims as well as the practice and developments relating to their issues have been taken into consideration in this article. Hopefully, this article will add to the available literatures on conflict and transitional justice related issues.

## 2. What is Conflict?

In a simple sense, conflict is a relationship between two or more parties (individuals or groups) who have, or they think they have, incompatible goals.<sup>1</sup> In a dynamic society, 'conflicts are a fact of life, inevitable and often creative'.<sup>2</sup> However, conflict may turn into violence or destruction if not taken seriously.

## 3. Conflict in the Context of Nepal

Conflict, in this article, denotes the armed conflict viz., "people's war" waged by the CPN (Maoists) from 14 February 1996 to April 2006 in Nepal in the pretext of liberating people from the feudal state mechanism. 'Conflict victim' denotes the directly affected or victim-

The ordinance on the TRC has been a debatable one; those opposing it have heavily criticized the ordinance saying that it is wrongful, impractical, incomplete and immature. The commission formed for the purpose of truth and justice of the conflict victims should succeed in recommending for justice including reparation and compensation to the victims. Similarly, such the commission should be able to bring the perpetrators and violators of human rights to justice.

\* Dr. Khanal is Associate Professor of Law, T.U and Advocate at the Supreme Court of Nepal.

1. Simon Fisher et. al., *Working with Conflict: Skills and Strategies for Action (2000)*, Zed Books Ltd., Cynthia Street, London N1 9JF, UK and Rook 400, 175 Fifth Avenue, New York, NY 10010, USA. P. 4.

2. Ibid.

## “We Want Justice”

Conflict victims and their families are still hopeful that they will be ensured justice. They have understood the provisions of the transitional justice mechanism included in the Comprehensive Peace Agreement as the reliable means in this connection. Following the dissolution of the Constituent Assembly, the government of Nepal has taken step towards forming the truth and reconciliation commission and the disappearances through an ordinance. INFORMAL had collected stakeholders' perspectives on the Ordinance. Different individuals working for conflict victims in an organized way had expressed their views. Excerpts:



**Janak Raut**  
Chairperson  
*Conflict Victims' Society For  
Justice- Nepal*

As the Ordinance on the TRC has been put forth by the government at a time when parliament does not exist in the country it has to be invalidated. The caretaker government should not have dared to bring such type of ordinance as per its discretion.

It was brought by the government without consulting with the conflict victims. Therefore, its process is illegitimate. Also, the government did not publicize the ordinance before recommending the president for its approval. I think, the ordinance is one sided. I, therefore, do not see any guarantee that

this will do justice for the conflict victims. Currently, the Ordinance is pending at the President's. We have even requested the President not to approve it but it will be unfortunate if he endorses without revising its contents. Hopefully, he will heed our concerns and problems.

This Ordinance seems to have been brought so as to exculpate the perpetrators of armed conflict and it is politically motivated at the same time. As they were also involved in the human rights violations during armed conflict in the past, other political parties too do not want to form the commissions in reality. They are scared that the would-be formed commission on the TRC and on the disappearances if formed by adopting due process it might punish them. Many commissions formed by the government in the past failed since their recommendations were not followed by the political leaders. If the commissions in question are trying to be formed on the basis of the political division, these will also fail. As these are supposed to provide justice to the conflict victims based on the transitional justice, they should be quite different

from those commissions formed in the past.

The interim Constitution of Nepal 2007 and the CPA provides that an independent commission would be formed to investigate into the incidents committed during insurgency in the past. Although legislations to investigate into the general incidents related with the criminal activities are in place in Nepal, no legal provisions are there to investigate into the incidents of enforced disappearances. Hence, a commission as such is indispensable. Conflict victims, in addition to many organizations working for them, have been advocating for separate two commissions. We have also urged the government to include the cases of enforced disappearance under the criminal cases as per the international standards.

The current ordinance on the TRC has proposed that Attorney General can be active while implementing the recommendations of the commissions. In our country, Attorney General is appointed by the parties in governance. So, I doubt these



ruling parties will prosecute their own leaders and cadres who were involved in grave human rights violations in the past. Politically and comparatively, the number of victims representing the UCPN Maoist is more than that of other political parties. Therefore, the party should have been sensitive towards victims' issues. Surprisingly, however, the party has disregarded its own cadres and the conflict victims in general.

On behalf of the conflict victims, I would like to ascertain that conflict victims are not seeking for any space in the commissions. Our concern is that the commissions as such should not be formed to exonerate the perpetrators of grave human rights violations without victims' permission. However, at least one member from among the conflict victims should be included in the commission because he/she knows the problems of the conflict victims more than other outsiders do.

We are still hopeful that the government will take positive steps for us. We are also optimistic that political parties will resolve our issues sooner or later. The sooner the better. The family members of the victims are looking forward to performing their beloved members' final rituals as per their cultures. Many family members are still awaiting justice. If the government goes against our pains and concerns, we will organize national and international campaigns to ensure that we are we will be justly dealt.



**Suman Adhikari**  
*Chairperson*  
*Conflict Victims' Society, Nepal*

We, the conflict victims, have opposed the name of the commission itself. The Nepali phrase used in the title of the commission does not strictly mean that the government is forming a commission to investigate into the persons subjected to enforced disappearances, rather, it gives an impression that the commission is set to investigate into the persons voluntarily disappeared during armed conflict. This ordinance is different from the previous two bills tabled by the government in the parliament, which we had accepted with slight changes. The government, this time, has proposed only one commission by merging the commissions on disappeared persons and the TRC. We were not consulted while preparing this ordinance. It seems that the government has tried to exonerate the perpetrators rather than prosecuting them. However, as the ordinance is still pending at the office of the President, we should not be that much anxious in this regard. Also, conflict victims and their organizations have reached an agreement that they would not accept the ordinance until and unless it is revised as recommended by the

conflict victims.

Concerned stakeholders are not seen to have been serious towards the issues of conflict victims. The Maoist party which is one of the sides of the armed conflict in the past and which now leads the government, is also not providing justice to its party cadres victimized during insurgency. As the conflict victims were compelled to undergo similar mental, emotional and physical situations during armed conflict, we tend to see the issues of the conflict victims holistically and do not divide the issues based on political ideologies. Other parties have either forgotten or used our state of affairs tactically. They raise our issues just for the public consumption especially to win public sentiment. So far as the current pending ordinance on the TRC in relation to the non-Maoist parties is concerned, they have implicitly accepted the ordinance. Hence, these parties too do not seem to be in favor of bringing the human rights violators to justice.

We simply want justice. We want to know the truth and to get reparation, sustainable peace and the rule of law, which are also the components of the transitional justice. We want the perpetrators of the gross human rights violations not be exonerated. These all should be possible only through legitimately formed TRC and other related commissions. Hence, we are against any commissions that are formed on our issues through ordinance. We know that the commissions formed in this way will never provide



justice to the conflict victims. However, conflict victims, over time, are seen to have been divided in line with the corresponding party politics. As we cannot stand through division unity is essential.

As we believe in the rule of law, resorting to violent means for justice is not acceptable for us. We are optimistic that we will get justice one day. We will never backtrack from our genuine demands; rather, if we are not heeded by the government, it might be pertinent for us to expect solidarity and support from the international communities to have our demands fulfilled.



**Ram Kumar Bhandari**  
Chairperson  
*National Network of Families  
of Disappeared and Missing*

**C**omprehensive Peace Agreement (CPA) has mandated to form two separate commissions i.e. truth and reconciliation commission and the commission on disappeared persons. However, present ordinance brought by the government on the Truth and Reconciliation Commission has merged these two concepts. Hence, we have viewed that the

commission formed in this way will only exonerate the perpetrators of armed conflict by leaving several other transitional justice related issues aside.

Political parties are trying to exculpate the perpetrators of grave human rights violation committed in the past in the pretext of reaching political consensus. We organized several informal talk programs among the stakeholders with the aim to show how the TRC Ordinance is not victim-friendly. However, opposition parties did not condemn the government's move relating to the TRC. It is because some of the parties in addition to the one in government were also the perpetrators when it comes the issue of armed insurgency in the past. Therefore political parties are trying to exhaust conflict victims by prolonging transition.

Similarly, conflict victims have also been divided; they are playing the role as the interest groups of different political parties. I am also one of the members of the families of the disappeared persons. We want to know the whereabouts of our beloved members. If they were killed in the jail or custody, we have to be shown graves as deaths have many things to do with our cultures. The government is not serious about our concerns.

We, the families of the disappeared persons, have laid emphasis to address the cases of disappeared persons taking them as a crime against humanity. The Supreme Court (SC) of Nepal also ordered the government to form an independent commission as per the international standard to address the cases of disappeared

persons. The SC order was one of the best orders for the conflict victims. However, the bills proposed by the government in the past and also the present ordinance do not include these concerns. In our opinion, the ordinance has not been issued to address the concerns of the conflict victims and, therefore, we have spoken publicly that if the government does not hear our concerns, we will boycott the mandate of the Ordinance. We are lobbying, advocating for and organizing various campaigns to pressurize the government for the purpose.

The mandates of the existing constitutional bodies such as National Human Rights Commission (NHRC) have been shrunk by the government. It has not implemented the recommendations made by the NHRC. Therefore, the commissions formed as per this ordinance will also be ineffective. The commission proposed by the government is likely to give pardon to the perpetrators of the insurgency. The ordinance has been brought to reconcile the victims and the perpetrators rather than to investigate into their cases. However, we will never accept the commissions that are formed under the control of the perpetrators.

During armed conflict in the past it was impossible for us to be united. We could not raise our voice in unison. Situation has changed over time. We are now better united and are supported by many national and international organizations. Our concerns and issues are slowly moving towards different

national and international societies. Nepal is not alone now. The issue of peace process is also connected to the international standard. Many cases of disappeared persons have been tabled at the Human Rights Committee of the United Nations.

I never imagine such type of commissions can be formed as per the ordinance proposed by the government. We have also handed over a memorandum to the President. He has assured us that he would not pass the ordinance unless the conflict victims agree with it. In this context, I would like to request the concerned stakeholders to change the nature of the discourse of conflict victims. We are waiting for justice, not the bad commissions.

We are in favor of the bills on the TRC and the Disappeared Persons. The TRC Ordinance in question should be dismissed and new bill should be passed in a democratic way ensuring that conflict victims such as the families of the disappeared persons are accounted for. We oppose the present ordinance also because the proposed ordinance was worked out inside Singh Durbar without victims' participation. There was no participation of the concerned stakeholders and the representatives of different organizations that have been working for conflict victims. There should be victims' participation in all the processes of forming such commissions. The issues should be led by the conflict victims. Active participation of civil society members; human rights defenders, among other stakeholders,

should be ensured while forming such commissions.



**Rubi Shrestha**  
*Conflict Victim*

The TRC is directly related to conflict victims. However, this ordinance has not taken the conflict victims into account. They want their participation be ensured in all the processes of formation of commissions that are meant for the conflict victims. We have opposed this ordinance mainly because we were not consulted while preparing it.

The ordinance on the TRC was brought by the government following the dismissal of the CA just to overshadow the issues of conflict victims. If political parties were really interested to address the issues of conflict victims, they would, of course, converge on the issue seriously. They have underrated the contribution of the conflict victims. All conflict victims are with the similar problems does not matter which warring side was responsible for the victimization. Therefore, the issues of the conflict victims should not be politicized. However, rather than taking steps towards supporting victims by bringing the perpetrators to justice the latter are being hailed by political parties.

Establishing the TRC the

way it has been tried will not be possible. Court should speak on this issue. It can at least put forth its idea relating to the criteria the commission as such has to fulfill. The perpetrators of serious human rights violations should be punished following the decision of the commissions and those who were not involved in the incidents of serious human rights violations can also be exonerated. These all should be done on the basis of the nature of the incidents. The commissions in question should be provided with the mandate to decide which incidents are serious and which are not.

I am a member of the UCPN-Maoist party. Waging war was not easy for us. However, our leaders' patriotic views and speeches incited us in such a way that individual life for us was meaningless in relation to the broader national issues. Therefore, we were ready to sacrifice our lives for the sake of nation but my party has failed to fulfill its so many promises including the promise on the guarantee of food, shelter and cloths to all people. Over time, our party led the government and surprisingly, the Constituent Assembly (CA), which was primarily the result of the CPN-Maoists' efforts, dissolved during Maoists premiership itself. My husband was disappeared and killed while working for the party during wartime. I was about 21 years old at that time. It is really difficult for a woman to live in the society without her husband. However, I am still hopeful that I will get justice one day.

*Views collected by Ramesh Pd. Timalsina*

ised individual and his/her family, guardian, or the dependent victim-ised due to conflict.

#### 4. Effects of Armed Conflict and Efforts for Transformation

Armed-conflict has caused tremendous effects in the country. It has caused bodily, psychological and substantial losses i.e. death and disappearance of citizens, loss or destruction of wealth and property, rape and torture and other cruel, inhuman or degrading treatment or punishment etc. Likewise, the process of provocation, mobilization and acceleration of war and its strategies stirred emotions unprecedentedly in Nepal's history. The warring sides did not seriously consider the minimum standard of human rights and international humanitarian laws, rule of law and fundamental rights of the people during the period. The conflict, however, ended with the signing of the Comprehensive Peace Accord (CPA) between the government of Nepal and the UCPN (Maoist) on November 21, 2006. This contributed to end direct conflict but the political agreements signed among the stakeholders following the CPA gradually transformed Nepal's armed conflict into peaceful solutions. Similarly, some steps are seen to have been initiated relating to the question of livelihood, restitution, reconciliation, socialization and access to justice of the conflict victims and the appropriate action (punishment) to perpetrators. However, how the conflict victims have been ensured transitional justice in their actual lives is still researchable and disgruntles are on the rise for not punishing the perpetrators.

Many reports and descriptions have been prepared on the loss of lives and property in the country. However, these reports

lack completeness and uniformity. Similarly, questions have also been raised as to the credibility of these reports. The UCPN (Maoist) has claimed that more than 5,000 people have been disappeared by the government side but the party has not substantiated its claim. Likewise, the government has been repeatedly cheating the relatives of the disappeared, the judiciary and the national and international sectors. The facts disclosed one after another have raised doubt whether both the parties have revealed the actual data or have wanted to cover it<sup>3</sup>. Such the tendency has added to the pains of the conflict-affected people besides denying their access to justice.

Variation in the data or deception on revealing true reality about the situation of the disappeared and conflict victims' families has made the post-conflict Nepai context complex. Complexity exists in the country due to the lack of reliable investigation mechanism on disappearances. The highly demanded Truth and Reconciliation Commission has not been formed yet. Although the process to form it is pending for the time being, it is hoped, the Commission will be formed in the near future. Therefore, it is pertinent to discuss the legal perspective on the verification of conflict victims including the verification process required for the verification of the people killed and subjected to enforced disappearances as well as the physical and psychological aspects of the conflict victims. This process has to be adopted in such a way that victims will be justly dealt and their families will receive maximum benefits by ending the bad culture of impunity for the respect and guarantee of human rights, democracy and justice. Although the act of verification of conflict victims might be

painful for some, it plays a very important role for justice administration and dispensation for the victims. In the absence of reliable and authentic evidence, it will be very difficult to achieve the objectives of fulfilling justice administration.

According to Black Stone, 'evidence' means to disclose, clear or determine the conflicting fact, or to prove something against it. In legal sense, an evidence is a sign of such facts, which the justice orders to show in the process of means of evidence (verbal, written or proof of evidence) within the periphery of law in the judicial process.<sup>4</sup> Thus, the identifying or verifying the conflict victims or mapping the effects of conflict in a right, clear, reliable and uniform way is not only necessary or sensitive for the victims but also for the delivery of real justice in the society.

#### 5. Meaning and Definition of Verification

Verification has three meanings:

1. A confirmation of truth or authority;
2. the evidence of such a confirmation; and
3. A formal assertion of validity.

In other words, 'verification' is an act of verifying or determining the happened or believed fact, incident, hypothesis, or principle. Thus, verification is the act of correctness, truth, and authenticity. 'Verification', in the Comprehensive Peace Accord, has been defined as 'a subject of preparing actual data, verifying army, militant and weapons by the UN. However, in this context, verification mainly includes the act of giving authenticity (including the certificate of victim) to conflict-victim and their family by identifying and determining them.

Verifying conflict victims is

3. Punya Prasad Khatiwada, "Verification of Conflict Victims: Need, Challenge and Measure," *Conflict Victims and Justice*, Human Rights and Democratic Forum, (FOHRID), Kathmandu: March 2008, pp. 47-64.

not the last action taken towards victim reparation; rather, this is the beginning. Nevertheless, it plays an important role for referring to the past, present and future of the victims. Verification is more than checking individuals' names. Details about the victims including their name, surname, age, permanent or temporary addresses, educational status, contact address, properties description, criminal acts, news dissemination, and the individual description should be verified.

## 6. Process of Verification

The act of verification of the conflict victims is the aspect of the procedural law in which the subjects of the evidence law like the process of verification of the evidence of conflict-victim and the matters that appear in the process of collection, type, evaluation, burden and way of proof appear significant. In this respect, the acts of inspection, detection and identification are taken to ascertain and for the compliance with agreed measures. In some conditions, the act of demanding or acquiring more information may be done in relation to the reports or data of victim which are obtained by the verification group but not ascertained, while in others, the group has to decide whether to give authenticity or not after sending it to the upper stage of decision making. Likewise, if there is a need to take actions immediately or to protect or preserve information, they should be presented to the concerned authority.

The act of verification generally follows the general principles of surveillance, which includes the systematic collection, analysis and interpretation of data and their dissemination to those who need information for action.

## 7. Necessity and Importance of Verification of the Conflict Victim

- The act of verifying and disclosing the facts about the effects of conflict is the first step to justice, and the most important condition for resolving conflicting situation. Verification of the conflict victims is a starting point for their reparation, for the reconstruction of the conflict-affected areas, for the development, peace, and democracy and for the reliable and systematic judicial guarantee.
- This process makes the concerned authorities and stakeholders mindful towards the access and guarantee of victims to justice and sustainable livelihood so that the victims and their families will feel to have been dealt with dignity respectfully.
- To follow and respect human rights and humanitarian laws
- To rehabilitate and re-socialize the conflict victims
- To provide reparation to the conflict victims with necessary assistance and compensation
- To identify the guilty or perpetrator and to take action against them
- To increase brotherhood, reconciliation and understanding for ending the sentiment of retaliation and misunderstanding
- To control the misuse that take place in the name of conflict victims and to ensure that target groups will be guaranteed the facilities and provisions supposed to be provided.

## 8. Verification as a Strategy

The government of Nepal and political parties in the country have made their commitments

to address the problems of the victims of armed conflict including enforced disappearance, displacement, violation of human rights and insecurity. For addressing the problems properly, justly and in a humanitarian way, it is necessary to address the act of verification of the conflict victims as a strategic method. Verification significantly guides the concerned stakeholders clearly and helps to distribute resources, economic programs, peace dividends and reparation of damaged infrastructures. Therefore, the act of verification should be done by adopting due policy, mechanism and process in a reliable and participatory way.

Verification of the conflict victim may be a difficult and controversial subject because conflict tends to affect people directly and indirectly. On the other side, we will be nearer to the reality while measuring the corporal/physical and material pain but measuring the mental or psychological effect and the pain arising out of the indirect effects are not easy to measure. So, in spite of the fact that verification of conflict victim generally is done based on physical or material effect or loss, psychological effects induced due to conflict cannot be ignored.

The matter of verification of conflict victims is one of the parts of transitional justice. "Transitional justice is a way to address past human rights violations so that nations and their people can move forward towards sustainable peace and reconciliation. It refers to four specific areas of judicial and non-judicial activities that are often used when countries move from autocratic rule to democracy or from armed conflict to peace: 1) truth-seeking, 2) prosecutions, 3) reparations to victims, and 4) in-

4. Rajit Bhakta Pradhananga, *An Introduction to Nepalese Evidence Law (2063)*, Bhrikuti Academic Publications, Kathmandu, p.40.

stitutional reform”.<sup>5</sup> Likewise, the main objectives of transitional justice is to support state authorities, halt the on-going human rights abuses, investigate the crimes committed in the past, identify those responsible and impose sanctions on perpetrators, provide reparations to victims, prevent future abuses, preserve peace and foster individual and national reconciliation and preserve press freedom on all these issues.<sup>5</sup> For these objectives to materialize, it is urgent as well important to enact an appropriate law and to make provision for impartial and effective justice towards minimizing impunity, for providing justice to the victims and for taking action against perpetrators. For this, a separate and transparent judicial body is required.

Thus, the verification of the conflict victims can be done mainly on the following bases-

1. Corporal and physical damage
2. Individual base of the victim: victim, his/her family or dependent
3. Age group, sex, caste/ethnicity
4. Social and economic condition
5. Geographical area/sub-area
6. Political area etc.

Victimization during conflict or armed conflict may be the result of various causes. For example, criminal intention, fear and threat due to political thought, terror, property confiscation, blame of spying or exploitation and encounter can be some of the blames for victimizing. Therefore, various bases may be adopted for the verification of the victims. Verification on the basis of the spirit and articles of the Universal Declaration of Human Rights can be one of the bases in this connection. Hence, human rights violation or abuses can be appraised on the basis of following aspects:

1. Life, freedom and security of person
2. Cruel, inhuman and degrading treatment
3. Arbitrary arrest, detention and deportation from country
4. Freedom of thoughts and expression and,
5. Freedom of peaceful assembly and association.

Similarly, according to international humanitarian laws, verification may be based on:

1. violence on personal life, health physical and mental condition, especially, cruel behaviors including murder or killing, torture or other types of physical and psychological punishment including mutilation,
2. collective punishment/penalty,
3. hostage-taking,
4. terrorist movement/act
5. disrespect or abduction of personal dignity, especially, degrading behavior, rape, compulsory prostitution and any other disrespectful acts.
6. any kind of slavery and slave trade
7. theft and robbery.

#### **9. Duties and Rights in Relation to Conflict Victims**

- identification and proof of actual victim,
- respect of the victims' contribution,
- victims' security and socialization,
- victims' need identification,
- Receiving right advice and
- access to justice are the major rights and duties in relation to conflict victims.

#### **10. Directive Principles of the Verification of Conflict Victims**

- Security of the victim and witness,

- Remedy to victim,
- Responsibility of accused,
- Advocacy in favor of the victims,
- Ending of possible adversity in the future,

#### **11. Basic Aspects of Verification**

- Reliability,
- Security and secrecy,
- Diagnosis of physical and mental inability,
- Linguistic problem,
- Behavior toward the victims and their empowerment/strengthening,
- Understanding and ability to understand,
- Cooperation, good wishes, assistance/and coordination,
- Capacity to identify the fake or possible fake victims,

#### **12. Provisions Relating to Verification of the Conflict Victim**

There lack separate, clear, and special laws to verify the conflict victims and address their problems. However, the major laws that can be utilized for the aforementioned purpose can be listed as follows:

##### **A. The Interim Constitution of Nepal, 2007**

##### **I. Provisions relating to the Inquiry Commission**

Article 33 of the Interim Constitution of Nepal 2007 has a provision about the liability of the state under the liabilities, directive principles, and policies of the state in Part 4 of the constitution. Article 33 (Q) mentions about the matter of compensation to be provided to the families of the victims based on the inquiry commission formed in relation to the persons subjected to disappearance during the period of armed conflict. Article 33 (S) is

5. [http://nepal.ohchr.org/en/resources/publications/TJ%20brochure\\_E.pdf](http://nepal.ohchr.org/en/resources/publications/TJ%20brochure_E.pdf): OHCHR Nepal/12/04/2007.



related to the responsibility of the state to establish a high-level truth and reconciliation commission to investigate the perpetrators of the serious violation of human rights and the persons involved in the crime against humanity and to create the situation of conciliation in the society.

## **II. Articles that Provide Right to Form Commission**

According to the restricted provisions of Articles 106(1) and 110(1), the government of Nepal in consultation with the judicial council may dispatch Chief Justice or judges for the work of the judicial investigation for a fixed or special duration for law and justice related research, investigation on the matter of national concern. Likewise, there is a provision that when a case is filed in the court, the order or decision given by the court in the process of the suits should be followed or obeyed by all. Therefore, it is clear that the court has the right to form a commission or a committee to inquire, investigate, or give any order or to make any decision relating to the conflict victims and to follow that would be the duty of the government of Nepal and its inferior bodies or officials.<sup>6</sup>

## **III. Provision Relating to National Human Rights Commission**

The Interim Constitution of Nepal 2007 has made a provision relating to the National Human Rights Commission (NHRC) in a separate chapter as a constitutional body. The constitution has provided that the commission can investigate the incidents relating to human rights violations and recommend for the action against the accused, can recommend for the departmental action against the responsible official and can recommend for the registration of case

in the court against the violators of human rights. Similarly, it can recommend for the improvement, amendment and enactment of the laws relating to human rights, can recommend for the execution of the laws relating to human rights and can keep record of the human rights violators after publicizing their names. Likewise, in the same article, there is the restricted proviso that the NHRC does not have jurisdiction in the matter of the jurisdiction of the Army/Military Act. However, the clarification or the restricted sentence states that there is no restriction to take action in the subject matter of the violation of human rights and humanitarian laws.<sup>7</sup> Hence, it is clear that the NHRC deserves the capacity to inquire and investigate in relation to the conflict victims.

## **B. Military (Army) Act, 2006**

The government of Nepal can form an inquiry commission in accordance with the Inquiry Commission Act, 2006, to submit a report on matter of a public concern relating to the person under the jurisdiction of this Act. It is clearly mentioned that the duty, function and power and other provisions shall be as determined by the Act.<sup>8</sup> With this provision, the commission can be formed relating to the crime/wrong deeds defined by the Military Act.

Likewise, the Military Act has made a provision that there will be a committee to inquire or investigate in relation to specific matters/crimes including disappearance, while the right to first hearing and the decision of such cases filed by the committee is provided to the Army/Military Special Court formed in accordance with the Clause 119 (1).

## **C. National Human Rights Commission Act, 1997**

This act has made a provision that the Commission's main duty is to protect and promote human rights. For the fulfillment of its duty, the Commission, based on the application or complaint made by victim or any other or informant that is to be acknowledged by the commission from any other source or on the commission's self-conscience, can perform inquiry or investigation on violation of human rights.

## **13. Efforts and Practices of Verification and Reparation**

Some governmental and non-governmental initiatives are seen to have been launched with respect to the reparation of conflict victims based on the available data on casualty recording and documented profiles of the disappeared people. These initiatives were based on the available data and information collected without adopting authentic process of verification. However, there were several inquiry commissions and political commitments relating to the verification of the people killed, subjected to disappearances and injured during people's movement especially during armed conflict. The ensuing some topics will discuss these commissions and commitments.

## **A. High-level Inquiry Commission Formed After the Peoples' Movement– II (2006)**

The cabinet of the Seven Party Alliance formed a high-level inquiry commission on May 5, 2006 for the investigation of the incidents of human rights abuse and violations committed during the autocratic rule that started after the royal takeover on February 2, 2007, and to find out the perpetrators. The functions of the com-

6. Priority Plan for Peacebuilding Fund (PBF), Nepal 2008; United Nations Nepal P. 7.

7. The Interim Constitution of Nepal 2007, Article 116 (1) and Article 115.

8. Ibid, Article 132 (4).

mission were: (1) to find out the truth-fact by performing inquiry on the rights violations including the damages and losses of the lives and property committed during the peaceful peoples' movement conducted by political parties and on the misuse of the national treasury, power and authority committed during the period. (2) to find out under whose decision, order, operation, direction, excitation, inspiration, planning/and cruelty the incidents mentioned in the point no. 1 were carried out and what type of loss, damage, misuse and violation occurred during the period. (3) to submit a report with advisory opinion and recommendation on what type of action should be taken against whom by the government in this relation; and (4) to use/apply all the rights under the said Act by the commission to perform function as mentioned in above points.

However, as the inquiry commission was formed amidst weaknesses and insufficient legal mechanisms, it was clear that the commission was formed only for the propaganda and as a trick to minimize peoples' grievance and aggression, not for the objective outlet. Similarly, the move in this connection was apparently guided by political and populist strategy only. The commission itself was divided while submitting its report. In addition, it had made fragile recommendations and comments. Upon the submission of the report, doubts were expressed that the government would implement the recommendation made by the commission. As there were not any strong base to be sure of the proper implementation of the report, the government made the fate of the submitted report like that of the Mallik Commission. However, in a dramatic way, it was stated that action would be taken through the Commission for the Investigation

of Abuse of Authority against some of those responsible and that departmental action would be taken against some others.

### **B. Others**

For the investigation of the disappeared citizens, committees were formed in 1990, 2004, and 2006 and they published the situation of some of the persons subjected to enforced disappearances during political movements and armed conflict. Likewise, there have been made commissions on some of the incidents like Gaur Murder. Nevertheless, the commissions have been either ineffective or the reports submitted by them have not been implemented. Similarly, their functions are incomplete, non-transparent, and unclear too.

The NHRC seems to have been studying and analyzing the incidents of human rights violations of the country under the National Human Rights Act, 1997. However, due to the lack of de facto legal authority, and resources, among others, it has not succeeded to do the works effectively as desired and expected. Similarly, an Inquiry Action-Team was formed as per the order of the Supreme Court on finding the whereabouts of Rajendra Dhakal from Gorkha, Bipin Bhandari, Dil Bahadur Rai from Kathmandu and Chakra Bahadur Katuwal from Okhaldhunga districts who were allegedly subjected to enforced disappearances by the state. However, the team could not submit a clear and effective report. Likewise, international institutions/organizations including the Kathmandu based Office of the United Nations High Commission for Human Rights were involved in the verification, reparation and analysis of conflict victims' issues on their own scruples and facilitation.

### **14. Political Deals, Commitments, Practices and Concerns**

- For the elimination of the monarchical dictatorship, a 12-point agreement was signed in India between the seven-party coalition and CPN (Maoist) party on November 22, 2005. Both the parties of the agreement were committed to respect the norms and values of human rights and to take steps forward based on the provisions of the agreement. However, their commitments were not translated into practice seriously and the warring sides of the past could not make victim reparation and transitional justice as well as human rights perspectives the central agenda while addressing the problems of conflict victims.
- The government led by major seven parties, CPN (Maoist) and other political parties organized a summit for ending the armed conflict and expressed their commitments in black and white. An 8-point agreement was signed between seven political parties and Maoists on June 16, 2006. The agreement reiterated that the provisions of the 12-points understanding made between the government and the Maoists would be followed and executed honestly besides abiding by the code of conduct of ceasefire. Furthermore, they expressed their commitment to the concept such as freedom of people, fundamental rights, human rights, the rule of law and to perform their activities according to their commitments. Despite their strong commitment to enact the interim constitution, no formal special and concrete decisions were made relating to the conflict victims except some monetary help.
- The decision made by the meet-

ing of the supremos of Seven Parties and the CPN (Maoist) on November 8, 2006 stated that a high level commission would be formed to make inquiry about the persons subjected to enforced disappearances by both the State and the Maoists and to publish it. Similarly, decision was also taken on accelerating the process of restituting the captured house and property to the rightful owners etc. Decisions were taken as to managing proper relief and rehabilitation to the families of the persons killed due to armed conflict and to those wounded and disabled due to this process, providing relief to the families of the disappeared based on the report of the Investigation Commission. Similarly, launching special programs for the rehabilitation of the displaced, compensating for the damaged private and public property, reconstructing the structures damaged during armed conflict were some other decisions made at that time in relation to the management of conflict victims. Likewise, decisions were taken as to establishing a high level Truth and Reconciliation Commission through mutual consent on the the serious violations of human rights, crimes against humanity and creating a reconciling environment.

- The Interim Constitution of Nepal, 2007 mentions about the conflict victims under the part dealing with the directive principles, policies, and responsibilities of the state.
- The 23-point decision of the supreme leaders of the seven major parties reached on December 23, 2007 at the Prime Minister's residence at Balu-

watar was committed to form an investigation commission on enforced disappearances and Truth and Reconciliation Commission. Similarly, it was mentioned in the decision that a high level monitoring committee would be constituted for the effective execution of the consensus reached through the CPA and since then, and to form a high level peace commission in accordance with the CPA.<sup>9</sup> In addition, clear provision was made to submit a preliminary report within one month since the investigation commission started its work. Similarly, a provision was there as to providing relief package to the families of the persons subjected to enforced disappearances based on the report of the investigation commission.<sup>10</sup>

Decision no. 10 of the agreement was on requesting the NHRC as well disappearance investigation commission to monitor these overall processes.

- Despite the fact that various commitments agreements, decisions and constitutional provisions were in place on the verification and reparation of conflict victims; political parties were reluctant to translate these provisions into practice. More than 5 years years have passed by since the 10-year long armed conflict waged between the state and Maoist rebels ended. However, the country still suffers from political instability and weak governance, which analysts say is mostly due to constant tussle between Nepal's biggest political parties.<sup>11</sup>

## 15. Non-Governmental Efforts

Various human rights related national and international

non-governmental, professional organizations and civil societies have been working on the verification and reparation of the conflict victims. Similarly, some efforts have been made in the study and investigation of the effects of the armed conflict. However, their efforts are not free from criticisms and weaknesses despite their utmost efforts targeted for the conflict victims.

## 16. Efforts by the Victims

Relatives of the direct victims of armed conflict have been continuously launching various pressure-creating activities for fulfilling their demands including the inquiry of the relatives, relief, compensation, rehabilitation, and justice. In this course, victims have been making their voice louder through various organizations.

## 17. Conclusion

The systematic verification of conflict victims is considered as a new subject. In fact, verification is giving authenticity to conflict victims after identifying them. Its objective is not only to give assistance or compensation but also to manage for the due reparation and take legal proceedings. This process especially provides transitional justice, assures of a situation for non-repetition of violence and human rights violation in which minimization and generalization of the grievances is possible. However, the issues such as seriousness of the incidents and their secrecy should be kept into consideration and interim assistance should be provided as per necessity. Similarly, assistance or compensation should be provided by classifying the victims besides identifying actual culprits and violators of human rights. This only will make the victims and their families feel that something is being done for them.

9. Clause 140 (1) and (2) of Military Act, 2006.

10. See: Point No. 6 (A), (B) and (F) of the 23 points decisions reached between the supreme leaders of the then seven political parties on December 23, 2007.

11. <http://www.insightonconflict.org/conflicts/nepal/stories/>: Reuters AlertNet: 'Political instability undermining development' (9th October 2009):



# Nepal's Deepening Political Crisis

## 1. Introduction

Nepal has plunged into an uncertain political and constitutional phase after rival political parties failed to reach an agreement on a new constitution in the Constituent Assembly (CA) by May 27 deadline. The 601-member CA elected on April 10, 2008 to frame a new constitution was abruptly dissolved without producing a new constitution even after four years of its costly exercise. Prime Minister Dr. Baburam Bhattarai, from the Unified Communist Party of Nepal (Maoist), speaking on a national television announced that the CA would be dissolved. He said he would be leading a caretaker government to organize November 22, 2012 elections for a new CA to draft the constitution. "Political consensus is still needed to move ahead," Dr. Bhattarai expressed in his mid-night address. He later began seeking opposition support for his government while immediately made an alliance of 13 political parties including United Democratic Madhesi Front (UDMF) to neutralize opposition move. The fresh election, however, requires approval from major parties, the Election Commission, and an amendment of Interim Constitution 2007 from the parliament which has already been dissolved.

Prime Minister's move, moreover, contravenes the term of five-point agreement reached between the major parties — UCPN (Maoist), Nepali Congress (NC), Communist Party of Nepal Unified Marxist-Leninist (CPN-UML) and UDMF—on May 3, 2012 stipulating: a) all member of the cabinet will resign in favor of a national unity government formed within 2 days; b) within three days all issues pertaining to constitution drafting, state restructuring, forms of governance, etc will be settled; c) a new constitution will be promulgated before May 27, the incumbent prime minister will leave office before May 27 in favor of a national unity government under Nepali Congress Party to conduct elections within one year; d) peace process will be completed before the formation of new government; and e) top leaders will hold regular meeting. Efforts started to be seen towards capturing the state<sup>1</sup>, remove any need of parliamentary oversight and accountability, weaken dissident faction within Maoists and impose authoritarian rule.

## 2. Opposition Maneuvers

A coalition of 19 political parties including NC, CPN-UML, Madhesi Jana Adhikar Forum-Nepal, Mad-

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1. Dr. Prakash Chandra Lohani, Co-Chairman of the Rastriya Janashakti Party speaking to *Hindu Daily* on May 29, 2012 said, "I see it as the third attempt by the Maoists to capture the state power. The first was during army chief episode; the second during the May 2010 strike; and this is according to Bhattarai's road map of taking over power by crushing state institutions." NC President Sushil Koirala on May 30 blamed foreign intervention for the dissolution of CA while Dr. Ram Sharan Mahat too blames the Maoist strategy of state capture as a cause of CA's demise.

**The Maoist-Madhesi-ethnic combine rejected this and demanded the adoption of 14 state model, passed by majority of CA members of state restructuring committee, or the 10 state model proposed by State Restructuring Commission manned by partisan group of experts. NC, CPN-UML and Bahun-Chhetri Society opposed the ethnicization of state arguing that it does not fit with secular national polity and overlapping presence of various ethnic groups with no one holding dominant majority.**

hesi Jana Adhikar Forum-Democratic, Rastriya Prajatantrik Party and scores of fringe party leaders promptly condemned the undemocratic move of Dr. Bhattarai as a "state capture," asked him to immediately resign and decided to organize nationwide protest campaigns. They have lodged a strong protest with the president, terming the move as unconstitutional. The dissident faction of Maoists led by Mohan Kiran Baidya too opposed the Prime Minister and party chairman Puspa Kamal Dahal's deviation from socialist line, failure to deliver constitution and peace, demanded their resignation and proposed "round table assembly" to complete the remaining tasks of constitution drafting. The radical passion of fractious parties, contentious demands and activities of non-state actors, militant youth wings of ethnic groups, social movements of critical masses of sub-national forces, caucus groups and armed non-state actors for sectorial demands including self-determination have made the Nepali state fragile, unable to achieve even classic public goods such as security, order and basic needs.

In this context, President Dr. Ram Baran Yadav neither accepted nor rejected the proposal of Dr. Bhattarai's for a new CA election but seriously engaged in consultation with political leaders and constitutional experts to determine the future course of Nepali politics without colliding with the Prime Minister. On May 29 President Yadav suggested Dr. Bhattarai to create positive political environment for consensus among the parties and stay as care-taker government until the formation of new one. Referring to Article 38 of the Interim Constitution 2007, President's statement the same day added that the Prime Minister loses the post of chief executive automatically when he loses CA membership. Similarly, the Supreme Court on May 30 directed the government to clarify within 10 days its decision to hold another CA election on November 22.

This was yet another impediment in Nepal's lingering transition from active monarchy to secular, federal democratic republic. The country suffered a decade-long guerrilla war by Maoist rebels that ended in 2006 when the Maoists signed the peace accord, joined the government, established itself dominant political party and headed the coalition governments twice. But top leaders of mainstream parties could neither develop multi-party consensus for a new social contract for its diverse people—103 caste and ethnic groups and over 90 languages nor abolish the culture of impunity and strengthen democratic institutions capable of delivering good governance. Major cause of failure was the lack of a common ground between the top leaders on the nature of single-identity based federalism versus multi-ethnic provinces.

NC and CPN-UML favored multi-ethnic federal states while Maoists, Madhesi and ethnic groups across the party lines formed a strong caucus group to press for single ethnic identity-based federal provinces. Opponents of this idea argued that such a structure would only deepen ethnic divisions and revert the country into old habits of protracted conflict. The Maoist-Madhesi-ethnic combine rejected this and demanded the adoption of 14 state model, passed by majority of CA members of state restructuring committee, or the 10 state model proposed by State Restructuring Commission manned by partisan group of experts. NC, CPN-UML and Bahun-Chhetri Society opposed the ethnicization of state arguing that it does not fit with secular national polity and overlapping presence of various ethnic groups with no one holding dominant majority. It can do no justice to micro minorities' right either and make federal provinces economically and administratively viable. As per CA regulation every Article of the constitution required either consensus or the approval of two-third majority of CA members which 14 and 10 state model clearly lacked.

Nepal's Supreme Court had ruled out the government's proposal to extend the CA's term beyond May 27, 2012 which had already been extended four times. Trust deficit between Nepal's four biggest political forces; Maoists, NC, CPN-UML and their mutual recrimination, excessive lust for power than constitution making and a lack of accountability to power are mainly attributed to their failure to produce a new constitution. Many CA members claim that they were denied proper role in the CA forcing them to form ethnic, women, Dalit, Tharu and other caucus groups both within and outside the CA as leverage to influence the constitutional process. The top leaders habituated for long in small group behind-the-scene maneuvers also did not follow the constitutional process of "public consultation" at the grassroots level and a series of horizontal dialogues across the political spectrum for setting unresolved 117 constitutional issues. The root of the crisis lies in shift of political game from consensus to majoritarian politics following CA election of April 2008 which established the Maoists the single dominant party and began to polarize the political process. The Maoist also shifted the anti-monarchy consensus mediated in New Delhi, India in 12 point pact of 2005 to the new logic of contradiction first with monarchy, then NC, then other parliamentary parties to push what it called "transformational agenda" for people's republic and shifted strategic partnership with Madhesi, ethnic groups, indigenous people and Dalits to erode the electoral base of NC and CPN-UML — former in Terai and latter in ethnic communities as ethnic groups are thinking to set up a new party. Orga-

nizing a press conference, Maoist chairman Puspa K. Dahal blamed the "reactionaries" for opposing a federal constitution. The collapse of CA marked the failure of top leadership to meet the aspirations of Nepalese citizens for a new social contract and exposed their crude instinct for power rendering the CA to a mere "talking shop" with no capacity to institutionalize democratic achievements.

### 3. Political fallout of Geopolitics

The collapse of CA portends the continued social and ethnic revolts, fractious power struggle in each party, political instability and deepening constitutional crisis in Nepal which will deteriorate the situation in a small state wedged between China and India — the Asian power rivals, who are often motivated by incompatible ideologies and interests and fearful of third country meddling in their vulnerable geopolitical underbelly hectoring human rights, democracy, ethnic self-determination and free-Tibet activities. India's ministry of external affairs Syed Akbaruddin said, "We are closely monitoring development in Nepal" and worried about the erosion of 12-point Delhi agreement signed in 2005 for anti-monarchy agitation and possible explosion of ethnic turmoil in Nepal which might have undesirable effect in multi-ethnic India too. China hoped political stability and progress in Nepal through consensus adding support to "efforts of Nepalese in safeguarding independence, sovereignty and territorial integrity." On May 29 United Nations Secretary-General Ban Ki-moon called on "all political parties and stakeholders to reaffirm their commitment to the spirit of Comprehensive Peace Agreement

and safeguard the achievements of the past several years." the UK permanent Under Secretary, Simon Fraser, termed the dissolution of CA a "set back" and added, "It is our strong position that we will support this region and Nepal, which has a strategic location." On May 31, the Kathmandu-based EU Missions together with Embassies of Norway and Switzerland expressed disappointment over the failure of the political parties to agree on a new constitution and urged them to forge consensus for peace, stability and constitution.

### 4. Conclusion

Civil society groups in Nepal suggested the President to organize broader all-party dialogue to address the constitutional void and restore consensual rule. Improving national security situation, increased outreach of state-bearing institutions in society and reviving the economy must follow the inner-party democratization process and establishing the conditions of justice for marginalized communities and people. Nepalese leaders have just been successful to resolve the future of Maoist combatants. But to move to positive developments in constitutionalism in the future requires forming a national unity government, addressing conflict residues, breaking the grip of poverty and underdevelopment and creating civic culture in the political parties for the compromise of legitimate interest. In the absence of a collective national vision, the aspiration-fed leaders have made the de-radicalization of Nepalese society difficult. Only embracing co-operative policy beyond power equation, habit-breaking and constitutional behavior of leadership can drive Nepal for peaceful norm-governed democratic order.





# Is Nepal on the Verge of Ethnic Conflict?

(An Internal Displacement Perspective)

Before the expiration of the Constituent Assembly (CA) on 28 May, 2012, Sano Maiya Lamichhane (name changed), a resident of Kirtipur Municipality – 3, Kathmandu, was getting intolerant with the numbers of *Bandas* (shutdown strikes) announced by various agitating ethnic and regional parties/communities of Nepal. During the month of May alone, the agitating forces announced a total of nineteen incidences of *bandas* by which Nepal remained 'shut' for twenty two days. Ms. Lamichhane underwent hardship due to the *bandas* and she had to struggle a lot to manage normal time for her to buy foodstuffs required in her kitchen every day. The story of Lamichhane applied to almost all the Nepalese households during the period.

During the last "revived tenures"<sup>1</sup> of the CA, shutdown strikes were announced almost daily in Nepal. Some groups and parties called on such the shutdowns supposedly for "integrated Nepal" and some others, as they said, for the "identity of nationalities under federal structure<sup>2</sup>." Unfortunately, the *bandas* were called on even simultaneously by more than one group/party. Sano Maiya and even the cadres and support-

ers of *banda* wished and still wish to live in a *banda*-free country. However, her wishes are unlikely to come true easily. "We have no option but to adopt *banda* as pressure creating means", says one of the portfolio members of the *Nepal Aadibasi Janjati Mahasag*<sup>3</sup> that leads the civil society forums of Nepal's ethnic communities.

## 1. Background to Post CA Election-Bandas

After Nepal was constitutionally declared a *Federal Democratic Republic of Nepal* in 2007 following the success of 19-day long People's Movement 2006, debates on the types of federal structures that Nepal required to go for emerged and got vibrant. However, discourses in academic and political level were going on for long in this connection. State restructuring was the main agenda of the Comprehensive Peace Accord (CPA) signed between the two major conflicting parties– the then CPN (Maoist) and the government of the seven political parties which, earlier, had signed a historic 12-point) in Delhi, India.

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1. I would like to use this phrase because the CA reached situations of dissolution before extending its tenure several times and expired ultimately without writing constitution.

2. The CA was dissolved without writing the new constitution and thereby leading the ongoing peace process in a precarious state. Due to wider differences among the political stakeholders of Nepal on the intricacies encompassed by this notion was taken as one of the major causes of unexpected expiry of the CA.

3. Nepal Federation of Indigenous Nationalities (NEFIN), an umbrella organisation of indigenous peoples/ nationalities of Nepal.

up a Federal Democratic Republic of Nepal based on state-restructuring principle were some of the provisions of the CA. Similarly, ending all types of monarchic system of governance and carrying out investigation on the killed, wounded, disappeared, displaced and the grave violation of human rights by an independent body and writing a new constitution through the CA and army integration were the major provisions of the CPA. The provision of the CPA especially state restructuring issue now provided space to discuss the mode of delineating internal political boundaries of Nepal.

The CPA paved way for writing the interim constitution based on which the historic CA election was possible even amidst various hurdles from different stakeholders of Nepal.<sup>4</sup> The CA formed 10 different thematic committees for drafting the different parts of the constitution. One of them was the State Restructuring and Division of State Power Committee. After long discussion with the CA members under the Committee, other stakeholders as well as with the experts, the Committee unanimously agreed that political parties would discuss federal structure by being based on 'identity' and 'capability'.

Accordingly, the committee with majority of members proposed 14 provinces for Federal Nepal. However, it could not clearly reach conclusion as to which basis to choose between *identity* and *capability*. The CA members within the Committee had listed *national/community-based; linguistic; cultural; geographical* and *historical* bases as the indicators for *Identity* and *economic inter-relations; status of infrastructures; availability of natural resources and administrative feasibility* were put forth as the bases of capability. But they had no consensus on many of these indicators.

Some CA members opposed the proposal of 14 provinces which, the members claimed, were "ethnicity" based. The names of the proposed provinces such as *Limbujan, Kirat, Newa, Tamsaling, Magarat, and Tamuran* were ethnicity based nomenclature for them. The CA expired at a time when such the debates were heatedly being churned up and the concerned groups were taken to the streets resorting to violent means. Following the expiry of the CA, concerned political parties and groups seem to have forgotten the issues for the time being, however, in reality, the undercurrent of the debate is so deepened that Nepal, it can be said, is "on the verge of ethnic war", awaiting timely, proper and lasting resolution of these grave concerns. If not resolved prudently, possible conflict, for sure, is going to increase the number of displaced people in Nepal apart from taking toll on daily normal lives and security of the Nepali people across the country. This is to note that we have already witnessed thousands of people displaced, especially from the *Tarai region*—the southern plain of Nepal. The hill origin *Brahmin* and *Chhetri* people have been targeted mainly during the *bandas* especially called on by ethnic agitating forces. In fact, aggressive ethnic agitation and retaliatory moves were emanated from the debate on state restructuring.

As the debate on the mode of state restructuring was about to reach climax and as the political parties were "about to finalize the contents" of the new constitution, the government following the spirit of the CPA as well as the intensifying demand of the ethnic agitation<sup>5</sup> formed a High Level State Restructuring Recommendation Commission and mandated the Commission to work based on the following aspects:

- Strengths and weaknesses of the

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4. Madhes Aandolan, Janjati Aandolan, Aandolan of the people from Karnali and so many similar kinds of unrests and uprisings took place. Therefore, government was compelled to reach agreements with the agitating forces for the sake of the CPA and the interim constitution.

5. In fact the major political parties were not in mood to form this recommendation commission but due to the pressure of the ethnic agitation, the commission was formed based on an inclusive policy.

The Commission included representatives/experts from almost all the agitating forces. Most probably due to the diverse nature of it that the Commission, unfortunately, could not produce an integrated and consensus based report on state restructuring. Accordingly, the Commission submitted two separate reports due to differences among the commissioners on the background of 'identity' and 'capability'.

model of 14 provinces prepared and proposed by the State Restructuring and Division of State Power Committee under the Constituent Assembly;

- Strengths and weaknesses of the model of six provinces prepared and proposed by some members of the CA within the same committee; and
- Issues raised by the CA members during discussion hours in the CA regarding federal structure of Nepal.

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Debate over delineating federal Nepal based on *identity* and *capability* has increased tremendously with the potentiality of prolonged ethnic tension that may result in huge number of displacements. Until the dissolution of the CA, the debates between *identity* and *capability* had been ensued as an ethnic chaos, seemingly uncontrollable. The agitating forces announced strikes almost daily, sometimes covering the

**Table 1: Total incidents of strikes in Nepal between January and May 2012**

Month	Incidents	Days of Banda
January	10	11
February	2	1
March	5	4
April	3	5
May	19	22
<b>Total</b>	<b>39</b>	<b>43</b>

Source: Adapted from <http://www.nepalbandh.com/index.php?date=20120521>.

whole country and regionally and locally some other times. Data updated by Nepalbandh.Com<sup>6</sup> shows 39 incidences of shutdown strikes in Nepal during the past five months (January –May 2012).

## 2. Where Was the Fault?

Despite being the main basis of state restructuring, federalism did not enter the political discourse during almost four years of the CA tenure. Even the CPN Maoist, which claims itself as the "crusader" of federalism in Nepal, did not initiate open discussion in the CA as well as among its political cadres and activists. Other political parties too seemed reluctant about spearheading debate on the issue. As a result, the discourse on federalism emerged in the country as a priority of the regional forces, including "indigenous nationalities", *Madhesi* and the *Dalits*. The initiatives by these regional forces opened the issues of federalism for discussions and debates, which contributed to enhanced understanding of the issues involved, but could not project and present any viable solution to them.

Nepali people from all walks of life were hopeful that the discourse on federalism would proceed based on democratic norms and values. However, contrary to this belief, regional forces,

6. This website is in place to notify the concerned as well as the general public. It regularly updates information regarding *Bandh* (strikes) in Nepal.

emerged in the name of ethnicity, language and community led the discourse in an agitating way. Agitation itself is the right of everyone. However, seriousness on how to properly accommodate democratic values and principles in the agitation was felt to have lacked.

### 3. New Trend of Displacement: The Early Warning Signs

Although the impacts of the displacement due to 10 year-long armed conflict is gradually resolving in Nepal, Internationally Displaced Persons (IDPs) themselves do not want to be termed as IDPs because they have been excluded from various policies and programs of both government and non-government sectors<sup>7</sup>. Increase in the number of IDPs has continued especially from 2007 onward when the Madhesi groups in the Tarai region started to protest over the lack of progress in the implementation of the peace process and the lack of opportunities for political and social integration. This violence forced thousands of people, mostly Pahadis, from their homes (IDMC, 2011)<sup>8</sup>.

Nepal is also exposed to several types of natural and human-induced hazards. A wide variety of physiographic, geological, ecological and meteorological factors contribute to the high level of hazards. Disaster induced displacement has been observed for the past 5-6 years as a growing trend. In 2008 an estimated 180,000 people were displaced by floods (Ibid).

During the conflict period, Nepali organisations involved in advocacy, relief and rehabilitation programs, faced problems in ascertaining the actual number of IDPs and their specific locations of settlement. Various organiza-

tions have put forth varied number of IDPs. These organizations claim that the number of IDPs in Nepal ranges between 30,000 and 500,000 (IDMC, 2010).

### 4. Conclusion

The post CA election shutdowns in Nepal were linked to the debates on identity issues that emerged and got intensified being embedded with the provisions in the CPA. As the CA and the political parties failed to genuinely discuss the identity related issues as per the spirit of the CPA, the discussion on the issues seemed to be the agenda of the non-political groups and the stakeholders not having representation in the CA. This fact misled the discussion on the true spirit of identity, ultimately providing space for ethnic distrust, aggression and violence especially through shutdown strikes. By the time few days were remaining for the CA to be dissolved, ethnic tension reached climax giving an impression that Nepal now would indulge into prolonged ethnic conflict. However, the apprehension of the citizenry and even of the political leaders could not prove true with the dramatic expiry of the CA. This expiry has taken heavy toll on the future of the Nepalese, however, it has, at least for the time being, avoided possible ethnic clash. Having said this, it is not to construe that Nepal has recovered ethnic and communal congeniality. Rather, the undercurrent of ethnic tension is being fermented waiting for even fiercer outburst with the possibility of resulting in further number of IDPs and new mode of internal displacement.

This fact misled the discussion on the true spirit of identity, ultimately providing space for ethnic distrust, aggression and violence especially through shutdown strikes. By the time few days were remaining for the CA to be dissolved, ethnic tension reached climax giving an impression that Nepal now would indulge into prolonged ethnic conflict.

7. Further details can be obtained from Khatiwada, P.P. (2012). *Internally Displaced Persons in Nepal: More Issues, Less Heard*. [www.internaldisplacement.org](http://www.internaldisplacement.org).

8. IDMC (2011). *Around 50,000 people remain displaced (July 2010)*. [http://www.internal-displacement.org/idmc/web-site/countries.nsf/\(httpEnvelopes\)/1949E98C81942B55C12571FE004D8821?OpenDocument](http://www.internal-displacement.org/idmc/web-site/countries.nsf/(httpEnvelopes)/1949E98C81942B55C12571FE004D8821?OpenDocument) (accessed 2 November 2012).

# Human Rights Education in Nepal's School Level Curriculum and Textbooks<sup>1</sup>

*(Inclusion and Implementation Status)*

## 1. Background

Article 26(2) of the Universal Declaration of Human Rights (UDHR) states, "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

Once countries become state parties by signing the international instruments on human rights, there arise obligations for them to translate the provisions of these instruments into practice. Therefore, state parties are obliged to abide by the international instruments also on the basis of the spirit of "Pacta Sunt Servanda" (treaties have to be respected and abided by). These instruments are also with the provisions on human rights education. State parties, therefore, are obliged to formulate educational policies, curriculum and textbooks for schools also by being guided by the provisions of the international human rights instruments signed by them. Also, provisions on human rights and human rights education are found in Nepal's various educational and cur-

ricular policies and in the policies made for children.

The Three-Year Interim Plan 2067/68-2069/70 B.S. is going on in Nepal now, which contains some of the educational strategies as well. Implementing School Sector Reform Program effectively, resolving the problems seen in teachers' management and educational administration with clear action plans and undertaking contemporary changes and reforms in the methodologies, teaching learning materials, quality and curriculum of all levels of education are some of the educational strategies of the Three-Year Interim Plan of Nepal. These strategies seem to have attempted to address some of the human rights related issues by including and implementing human rights education in the educational processes ranging from curriculum development to implementation.

Nepal's democratic polity is undergoing a precarious state. As democracy is inherently a weak polity, how it gets consolidated depends, to a great extent, on the active participation of conscious citizens. Democratic polity is not merely a process of casting vote periodically. Rather, so many other aspects are embedded with it. Human rights education, which evolves and gets consolidated

Since the democratic movement of 1990 and thereafter, INSEC has been continuously raising voice on the issues of women, the Dalits and also on torture, arbitrary arrest as well as enforced disappearances. Similarly, the contribution of INSEC to political freedom and the freedom of speech in Nepal is remarkable.

1. Executive summary of the research report titled "Human Rights Education in Nepal's School Level Curriculum and Textbooks (Inclusion and Implementation Status)" published by INSEC in 2012. Full report (Nepali version) can be downloaded from <http://www.insec.org.np/pics/1352350856.pdf>. English version of this report is being published soon.



only under the democratic polity, can contribute towards strengthening sustainable and fellow-feeling based society. Therefore, it seems pertinent to review Nepal's school curriculum and textbooks, and the implementation status of human rights education based on the international human rights instruments that embody provisions on human rights education. It was by being guided by this very belief that this research was done.

## 2. Objectives of the Study

This study had following objectives:

- to identify the inclusion and implementation status of human rights education related subject matters in school level curriculum and textbooks.
- to identify pro- human rights, anti-human rights and the paradoxical subject matters included in school curriculum and textbooks
- to analyze the policy-wise bases of inclusion of the human rights education related subject matters in the school textbooks
- to analyze teachers' and students' knowledge on human rights, human rights education and the human-rights friendliness of school environments
- to prepare foundation for advocating for further inclusion of human rights education in school curriculum and textbooks.

## 3. Rationale of the Study

Two decades have passed by since Nepal became a party to the major international human rights instruments. The Interim Constitution of Nepal 2007 has

enshrined education as one of the fundamental rights. As a member of the UNO, Nepal is obliged to respect and abide by article 26 of the UDHR and articles 28 and 29 of the Convention on the Rights of the Child. The delegates of the World Education Forum held in Dakar in 2000<sup>2</sup> were agreed to ensure the engagement and participation of civil society in the formulation, implementation and monitoring of strategies for educational development. Similarly, *Balbalika Sambandhi Rastriya Niti 2069 BS*, (National Policy on the Child) the National Curriculum Framework for School Education in Nepal 2007, the three- Year Interim Plan of Nepal 2067/68-2069/70 BS and the Three- Year Human Rights Action Plan (Fiscal Year 2067/68 – 2069/70) have incorporated provisions on human rights education. Similarly, the review report on human rights situation of Nepal had made recommendation during the Universal Periodic Review (UPR) 2011 to include human rights education in school curriculum. This study was conducted by taking these concerns and realities into consideration.

## 4. Research Methodology

It is an analytical and explorative study. Both primary and secondary data which were generated through interview, workshops, observation and also through textbooks analysis were used in this study. The data collected in this way were analyzed based on the international instruments on human rights education and the national policies and provisions on it. A total of 25 districts of Nepal viz. Jhapa, Morang, Sunsari, Siraha, Sankhuwasabha, Rautahat, Chit-

wan, Lalitpur, Kavre, Ramechhap, Tanahun, Myagdi, Rupan-dehi, Nawalparasi, Gulmi, Dang, Banke, Pyuthan, Bardiya, Surkhet, Kailali, Kanchanpur, Dadeldhura, Doti and Baitadi were selected for the study based on the purposive sampling. Accordingly, a total of one hundred schools, four from each district, were selected for the study, however, filled up questionnaires were collected from only 99 schools. The number of schools selected in each district was four (three governmental and one private/institutional) whereas at least three teachers (two male and one female) were asked questions. The teachers from lower secondary and secondary levels were given more priority while administering questionnaire. Hence, a total of 309 teachers (including three teachers with disabilities) were asked questions. Among the total teachers, 110 were female and 199 were male.

Also, data were collected from 1018 (including 12 students with disabilities) students studying in grades 6, 7, 8, 9 and 10. A total of minimum 8 and maximum 12 students were selected from each school in an inclusive way. Of the total students, 514 were boys and the remaining 504 were girls. Before deploying them to the assigned schools, data collectors were trained and given orientation on how to handle questionnaire. Two separate questionnaires were developed for teachers and students. A total of 59 questions that were prepared being based on the objectives of this study were included in the questionnaire that was set for the teachers whereas there were 27 questions in the questionnaire set

2. See article 8(iii) of the Dakar Framework for Action, Education for All: Meeting our Collective Commitments, Adopted by the World Education Forum Dakar, Senegal, 26-28 April 2000

for the students. Similarly, school textbooks written for grades 6 to 10 and published by government authority and private publishers were reviewed. The information obtained after the review of these books and also the information got from the three workshops held in Nepalganj, Pokhara and Dhankuta targeting possible all the stakeholders were the major sources of data. Likewise, various books, articles, the treaties and covenants of the UN, newspapers and study reports were used as the secondary source of data. Hence, this study was both quantitative and qualitative.

The data collected in this way were entered into the Census and Survey Processing System (CSPro) and were processed as per the requirement. However, processed data were analyzed with the help of the Statistical Package for Social Sciences (SPSS<sup>+</sup>) and presented through figures and tables.

## 5. Achievement of the Study

Pro-human rights, anti-human rights and paradoxical contents were found in the school textbooks prescribed for grade 6, 7, 8, 9 and 10. However, pro-human rights contents were found more than anti-human rights contents. Looking into the contents of these books through the provisions enshrined in the international instruments related to human rights and the rights of the child and women concerning their education, health and the environment, the contents included in these books were found to have been human rights-friendly. Human rights related contents were found even in the books other than the subjects such as social studies, civic education and moral education. Such

contents were found to have included in the languages subjects. However, there were very few lessons dealing directly by giving lesson titles such as "Human Rights", "Child Rights" or the rights of the particular groups. The issues of peace and conflict were found to have been raised only in a lesson (grade 10, social studies); however, these issues are not dealt in detail in the lesson too. Contents reflecting gender discrimination and disrespect to particular professionals and not having political correctness were also found. Likewise, some lessons were found having used honorific terms in such a way as if these terms are used differently based on professions and class of people. The issues that have to be dealt as rights were found not dealt accordingly. Either due to carelessness of the writers or due to the fact that textbooks are not updated over time, the reviewed textbooks were found to have contained wrong information as well as unrevised contents. Such the wrong and unrevised contents were found more in the privately published textbooks than in the textbooks published by the government.

This study revealed that teachers and students of Nepal are highly positive towards human rights and human rights education. Teachers were found giving highest priority to right to life, however, on average; they gave more priority to economic, social and cultural rights than to civil and political rights. Stakeholders expressed mixed reaction (positive and negative) as to the inclusion of human rights education in school curriculum and textbooks and its implementation. However, overwhelming majority of the stakeholders was for the inclusion of human

rights education. Likewise, the stakeholders were of the view that human rights related activities had to be reflected in the extra-curricular activities of schools as well. Teachers were found to have laid emphasis on developing human rights education through school based formal teaching learning processes whereas the stakeholders of the workshops underscored the need of including human rights in the curriculum beginning from basic level of school system. The stakeholders were with the view that human rights violations are taking place in schools unstopped and that the incidences of such the violations are more in private/institutional schools than in government schools.

Eighty six per cent of the students were found to have a little knowledge about human rights. Students from the schools where human rights and child rights related programs were launched in the past were found more knowledgeable on human rights issues than the students from the schools where such programs were not implemented. Similarly, school textbooks were found to have been used by the students as the main source of gaining knowledge on human rights and the rights of the child. About two-third of the schools selected in this study were found to have fulfilled the demands put forth by the students. Provision of sports items, organizing excursions, management of separate toilets for the girls and boys and organizing extra-curricular activities were the major fulfilled demands. Teachers were found to have possessed the belief that the end result of the human rights education included and to-be included in the school curriculum and textbooks is

to contribute to the broader democratic process in the country. They were also found to have underscored the need of including human rights education related contents in the textbooks by putting rights on an equal footing with duties. Similarly, a big portion of teachers (11 per cent) were of the view that their schools never raised issues as to teaching students in a human rights-friendly and child-friendly way.

This study revealed that gender discriminations exist in school premises and classrooms in one way or another. Students reported to have felt gender discrimination the most especially in the matter of allocating responsibilities by teachers to girls and boys. Inter-ethnic/racial congeniality among the teachers was found normal; however, caste based discriminations such as behaving the Dalit students humiliatingly and with discriminations, not allowing them to participate in picnic programs and worshipping rituals organized at or by their schools were found existing in schools unabated. This study also showed that students tend to tease and nickname their classmates with disabilities as per the nature of the latter's physical disabilities and that schools do not involve the students with disabilities in the extra-curricular activities. Tellingly, students from the social groups that are normally assumed as the most oppressed in the Nepali society were found more knowledgeable on discriminatory behaviors at schools.

"School as Zone of Peace", the study showed, was perceived by teachers as running schools peacefully in a safe environment without banda and strikes. It was also found that the stakeholders

demand school level students be kept away from political activities and participation and that there be adopted some legal provisions against inflicting corporal punishment on students at schools.

### Conclusion and Recommendations

- As the school textbooks from grade six to grade ten were found to have contained pro-human rights, anti-human rights and paradoxical contents; the last two types of contents included in the textbooks have to be corrected and removed
- Wrong information were found to have been included in school textbooks either due to the lack of competence and carefulness of the textbook writers or due to the lack of timely revision of and update in the textbooks. Once "revised" is written and revised date is mentioned on the page that informs about an update of the book, the contents included in the books should not remain unrevised. As such problems were found more in the textbooks published of privately, concerned publishers have to take responsibility to address these problems, the concerned regulatory government bodies should undertake effective monitoring and private school owners and the teachers too should be careful towards these problems
- Among the topics related with human rights and liberal democratic process such as human rights, child rights, duty, peace and conflict, racial discrimination, human and girl trafficking, good governance, rule of law, corruption, impunity, election system and processes, women's

empowerment, international instruments on human rights, refugee problem, Geneva conventions, the UNO; not all of them were found included in the reviewed textbooks. Similarly, those included in the textbooks were not organized an integrated way. As the aforementioned issues play significant role and contribute to build law abiding and, personally, socially and professionally responsible citizenship required for the national development; these topics have to be included especially in the social studies subject under a comprehensive chapter. The notional depth of these issues has to be increased in line with the grade of the students. As not all the students have to study these topics at their higher level studies in Nepal, the concentration of these topics should be more in the textbooks meant for grade ten students.

- As some of the contents that require to be discussed also as the issues related with rights have not been dealt accordingly, these issues have to be explained through rights perspectives.
- As ensuring the availability of sufficient instructional/educational materials, resources and trainings as well as interactions were understood by the teachers as the best way of implementing human rights education at schools and as teachers were found in favor of developing human rights education through school based formal education, teachers have to be provided training on human rights
- As the percentage of the teachers viewing the human rights related contents included in the teachers' training courses as in-

The provision of the National Curriculum Framework for School Education in Nepal 2007 to set partnership mechanism/approach by making wider representation of stakeholders such as women, ethnic groups, Dalits, persons with disability, parents, teachers, human rights activists as well as child rights experts in the process of developing curriculums and curricular materials is praiseworthy.

sufficient was very high, human rights related matters should be added to the teacher training courses in such a way that the added contents are sufficient enough to teach the human rights related contents included in the school textbooks. Teachers trained on human rights and human rights education should be knowledgeable at least about the concept, principles, international instruments and programs of human rights

- As school textbooks were seen as the first source and self-study as the second source for the students to gain knowledge on human rights and child rights, schools should be equipped with reference materials on human rights
- As the stakeholders who participated in the regional workshops organized in the course of this study were with the grievances that corporal punishment is still in practice at schools and as students and the stakeholders viewed, with examples, that various forms of discriminations still exist at schools; it has to be ensured that there are proper and effective legal provisions in place against corporal punishment and that these provisions are implemented effectively. Similarly, the concerned government bodies has to take steps as to discouraging and minimizing various forms of discriminations that take place within school premises and classrooms
- As "School as Zone of Peace" was found to have been understood and defined by teachers and stakeholders subjectively and, given that the government of Nepal has already declared school sector as peace zone; concerned authority has to ensure notional and definitional clarity of "School as Zone of Peace" and disseminate information on the activities that are prohibited within and outside school premises.
- As the percentage of teachers believing in the role of human rights activists on disseminating human rights education was high, governmental policies and programs should be encouraging for the institutions/organizations that work on human rights and human rights education targeting schools. Similarly, the organizations imparting human rights trainings to teachers should be further active in order to ensure easy access of teachers and the concerned stakeholder to the issues related with human rights and human rights education
- Teachers and concerned stakeholders were found to have understood banda, strikes, chaos and the insecure situation faced by schools as politically embedded issues. Concerned bodies have to take steps towards resolving these problems and have to work towards keeping school students away from political participation and activities
- The provision of the *National Curriculum Framework for School Education in Nepal 2007* to set partnership mechanism/approach by making wider representation of stakeholders such as women, ethnic groups, Dalits, persons with disability, parents, teachers, human rights activists as well as child rights experts in the process of developing curriculums and curricular materials is praiseworthy. Concerned authorities have to be more heedful as to addressing general concerns raised in relation to the effective implementation of this provision.
- As concerned stakeholders were found to have understood that the degree of physical punishment and child rights violations are more in the private schools than in government schools, intensive studies have to be carried out in this connection.

# 2012 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia

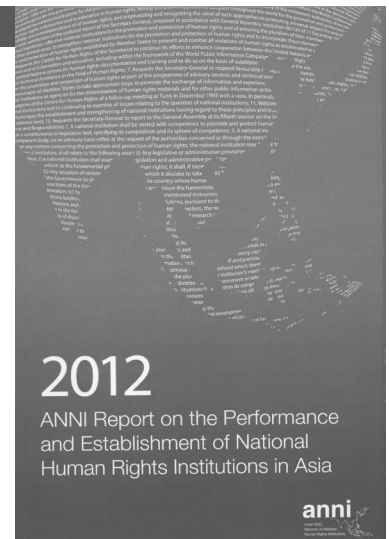
As its title suggests, this report summarizes the performance of the National Human Rights Institutions of 13 countries- Bangladesh, Burma, Hong Kong, India, Indonesia, Japan, Malaysia, Maldives, Nepal, South Korea, Sri Lanka, Taiwan and Timor Leste- in Asia. This is a compilation of the reports from these countries, which analyzes the current mandate, jurisdiction, resources and capacity of the human rights institutions of their respective countries. It has also tried to analyze the human rights violations and the major challenges faced by these countries. On behalf of Nepal, the Executive Director of INSEC, Bijay Raj Gautam has contributed with a report titled *Nepal: Prolonged Transitional Period Warrants Challenges for National Human Rights Commission*, which has analyzed in detail about the mandate, resources and the implementation status of the recommendations of the National Human Rights Commission (NHRC), Nepal.

Reports from some of the countries mention that women human rights defenders are facing challenges to work at local level and some others have shown the implementation status of the

recommendations made by the respective human rights institutions as the problem. The report has focused on the measures taken for improving human rights situation of the countries. Analysis of difficult working environment in the countries which are undergoing a prolonged transition as well as political instability is another important aspect of this report. Analyzing the jurisdiction of the national human rights institutions of every country, the report has also taken special consideration about the mandate, effectiveness and independence of these institutions.

According to the report, no substantial progress has been observed in human rights sector in all countries concerned. Due to the lack of effective implementation status of the recommendations made by the human rights institutions in Bangladesh, people have continued to be the victims of killings including extrajudicial ones, mob violence, torture and disappearances.

The report reveals that human rights situation of Burma is not satisfactory. The human rights activists there are still subjected to threat, arbitrary detention, and government surveillance on charge of involving in the political activi-



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ties. In Hong Kong, following the election to the Chief Executive of the country, human rights situation is reported to have been worsened. Media have been censored and their reports are yet to be implemented by the concerned agencies there.

According to the report, Maoist insurgency, custodial torture and violence, untouchability and violence against minorities are reported to have been some of the serious human rights issues in India whereas torture, inhuman and degrading punishments, among others, are the serious concerns that the human rights defenders are raising in Indonesia. As there is no National Human Rights Commission in Japan, demands are being raised for establishing it. However, activists are deliberating intensively as to which type of commission to establish in the country. The report on Malaysia says that human rights situation is degrading over years. Gross discrimination against LGBTs, police brutality, violation of right to freedom of association and expression are the major challenges that Malaysian

people have been facing. It is said that the government of Malaysia is also reluctant towards the promotion and protection of human rights. In the same manner, extrajudicial arrest and the issues related to the consolidation of democracy are the major concerns that the human rights activists have been raising there.

The report submitted by INSEC on behalf of Nepal states that the human rights situation of Nepal is worsening due to non-implementation of the recommendations of the NHRC and prolonging transition. Due to the insufficient human resources and financial crisis, the NHRC has been facing more challenges to accomplish its goals efficiently. Similarly, extrajudicial killings, enforced disappearances, arbitrary detention, custodial torture, violence against media personnel and organizations and the criminal activities have been reported as the main barriers in Sri Lanka for the protection and promotion of human rights. The report also reveals that due to the lack of national human rights mechanism, the

government does not have special effort to improve human rights situation in Taiwan. The report from Timor-Leste states that the violation of the rights of the child, gender based violence and impunity are the major incidents of human rights violations. The efforts made towards these issues are reported to have been hampered by insufficient resources, inadequate capacity and the lack of accountability of the concerned agencies.

This report has also discussed the role of civil societies, NGOs and other organizations for the promotion and protection of human rights with special emphasis on the necessity of the independence of Human Rights Commissions in every country. It has provided an opportunity for the human rights activists, defenders and other concerned individuals and organizations to understand human rights situation and challenges in the Asian region besides providing an opportunity for the respective governments to know the human rights situation of their countries.

*Reviewed by: Binod Gautam*

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