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Vol. 31, No. 2, April-June, 2011



**Community Level
Reconciliation:
Post-Conflict Context**

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Develop Infrastructure for Reconciliation through Local Peace Committees

Nepal's armed insurgency ran from the top to the grassroots level especially being manifested and configured locally. So, it was felt imperative immediately after the signing of the peace agreement that some sort of local level reconciliation forum needed to be formed in the post-conflict situation in the country. Accordingly, Local Peace Committees (LPCs) were formed at the district level. However, these committees were not complete on themselves as many issues and debates were supposed to be resolved through Truth and Reconciliation Commission.

The Commission supposed to be formed as enshrined in the CPA is yet to be formed and demands for the formation are still on the rise. The LPCs have nominal existence in the districts; however, concerned ministry and the political parties have hyped the Committees as an achievement toward reconciliation whereas such committees work only as prerequisites for the creation of reconciling environment in the society by and large. If the LPCs are able to maintain and promote reconciling environment at the grassroots level, national level reconciliation will be eased. But, LPCs are full of constraints to function effectively.

The LPCs lack independent decision making mandate so grievances are there that the committees are not provided with "teeth" to bite. Similarly, when some groups of peacemakers are optimistically working for the reconciliation, efforts are also there to blur the past by dividing and polarizing the stakeholders. Furthermore, "othering" the groups is still a tendency and prioritized attempt. New issues, which are contrary to the already signed agreement, have been put forth. This has also affected the efforts at the local level. Political parties have emphasized collective "forgetting and burying the past". They have also tended to ignore the past in search of immediate solution of the problems oblivious of the fact that such a tendency always leaves possibility of repetition of the past. Interpretations are also there reconciliation is whitewashing the atrocities and crimes of the past by allowing space to the colossal villainy in the future.

Despite these context and constraints, the LPCs are required to orient their activities for far reaching-effect on political engagement, neighborly harmony and economic enterprises of the warring groups, especially of the victims. Also, the efforts of the LPCs have to be concentrated being wary of the fact that local communities' links and relations were strained or broken during the violent past so there need attempts accordingly.

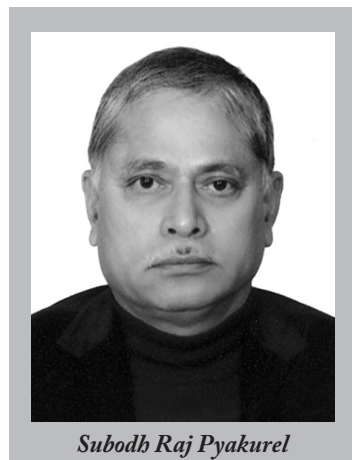
The government seems reluctant especially in the matter of digging truth on the people subjected to enforced disappearances whereas it is necessary the dreaded secrets of the past have to be brought to public sphere and limelight. In such a situation, important as it will be to give amnesty in the cases of minor incidents, if national consensus can be made on this, of violence; punishing the felons cannot be ignored. This process, at the same time, should totally wipe out the possibility of spiral of intergenerational vengeance and feud that might possibly appear in the Nepali society. It should also end the possibility of cyclical nature of violence in the community. Above all, victims should feel secure that new dark cloud won't appear over them in the future.

Although there exist peace committees in almost all the districts, national lobby that the atrocities of the past be given amnesty has channeled down to the local level and getting vociferous there as well. The arguments that seek blanket amnesty do not carry weight. However, trouble makers or those guided by the biased political will are still trying their best to coerce the public into obeying their will. They have explicitly demonstrated their tendency to act as per the see saw of power. Such a tendency will be detrimental for the future of the country. The members of the LPCs, being the peacemakers, have to be wary in these matters well. They have to be able to manage the excessive authority of the groups through dialogues amicably. Restoring moral fabric of pre-conflict situation in the locality should be the target of the LPCs.

LPCs' efforts should assure the people that the ongoing reconciliatory process at the community level might be gradual but never reversible. Once the LPCs maintain a gradual pace of positive development in the ongoing peace process, at least at the local level through the contribution in reconciling local communities, they should concentrate their overall efforts towards pressuring the central stakeholders for the establishment of Truth and Reconciliation Commission with due legal procedure and international standards, by making an effective and result-yielding Truth and Reconciliation Commission a reality.

TRC

in Relation to Community Level Reconciliation



The Comprehensive Peace Agreement (CPA) of Nepal was unable to envisage the future political discourse and its implications. Instead, it was signed as a mere political commitment to hold the election for the Constituent Assembly, declare Nepal a republican state and federalize its political division. The local and national contradictions between the people on various aspects, political behavior of the past and new strategy of dealing with the historical discriminatory patterns were hardly discussed and incorporated. Similarly, the agreement was signed at a time when doctrinal differences of the parties had been momentarily dormant for the sake of peace in the country. However, the stakeholders of the agreement were heedless that a time would come following the signing of the agreement whereby political parties had to move ahead with their own political ideologies.

In the beginning of the discourse it seemed like both the conflicting parties took the matters easily. This made the election for the Constituent Assembly and formation of government possible. However, as the time passed by, the political parties in the country ceased to show the spirit of peace agreement. Prevailing

socio-economic structure and gradual reformation was not in the agenda. Socio-economic transformation and strategies for the purpose were not planned at all. Stakeholders did not take such issues into context in order for them to arrive at an accurate resolution of the problems. Everything was left to the mercy of the new Constituent Assembly alone, as if formation of the assembly

After introduction of *loktantra*, there has increased antagonism and distrust among the political parties and such a situation has channeled down to the local level. For better or worse, the parties especially the Maoists are at the helm of crisis. They are getting into deeper crisis due to internal problems. Inter-party contradictions have reached an extreme point. Multi-tendencies

For better or worse, the parties especially the Maoists are at the helm of crisis. They are getting into deeper crisis due to internal problems. Inter-party contradictions have reached an extreme point. Multi-tendencies have emerged in the party due to power politics.

was the panacea. The parties failed to understand at the time of signing the agreement that direct hostility or unexpressed hostile relation of the warring period could be manifested in a different form even after the peace process so provisions to manage such problems needed to be translated into practice. The behavioral aspect was neglected and the need of adjustment was hardly thought of.

have emerged in the party due to power politics. However, the party has continued its efforts to dwarf all other political schools of thoughts. The Maoists are in confusion. The issues like how to convince their cadres for a U turn policy of changing the society and the state peacefully and how to get rid of the Barack and Army culture, which is deeply rooted in the mindset of the cadres are the

major problems for them. The cadres whose sacrifice brought the party to the current height of recognition and politics have also been the problem for them now. Unfortunately, all these realities have hampered, if not risked, peace process and have dealt the conflict-victims and their families unjustly.

Despite the fact that Local Peace Committees (LPC's) are constituted in almost all the districts, being guided by the Comprehensive Peace Agreement, it is not sure whether or not such committees will be able to create foundation for the establishment of the TRC, supposed to be formed. The LPCs are more a politically balancing forum than finding common understanding on identifying the root causes of and

have to be given immunity. Moreover, the LPCs have tended to handle development projects deviating from their principles and principal roles.

The LPCs were established with a view to create foundation for TRC. However, views have also been heard that LPCs are synonymous to the TRC. The LPCs can never be tantamount to the TRC but the former can play complementary roles for the establishment and success of the TRC.

Perpetrators and victims are divided on the party line. Forging trust and congenial relationship between all LPC members and victims is the challenge now although many coordinators of the LPCs have been viewing that there has been a conducive environment at the

Creating understanding, realizing the crimes committed in the past and being ready to forgive will create a better reconciling environment at the local level. This is possible only when the political and social infrastructures are ready. Most important factor is structured plan of reparation which includes the reliable guarantee of non-repetition of atrocities of the past. However, people doubt sometimes that the TRC will be constituted. We have political and constitutional agreement and assurance. So, sooner or later, the state will be bound to establish it. This is the situation now that both the warring parties are dilly-dallying because they are reluctant to establish such a commission. They are doing so also to enjoy immunity. Being the formulators of law, the leaders have tendency to remain above the law. This has been another cause of delay.

The TRC can create foundation for reconciliation through political, individual and social level of dialogues. It can give knowledge to the development works to address aspiration of the local people. But, investigation, prosecution and adjudication cannot be replaced by TRC. The document of reconciliation prepared by TRC can be an instrument to repeal charges against perpetrators. However, annulment should take place only after applying the judicial values properly. Once the TRC is established and it starts operating, things have to be accomplished as desired by the conflict victims, their families and the civil society. This is because we the advocate of human rights and justice are fully aware of the fact that the international obligation does not allow immunity to the criminals of serious crimes, crime against humanity, genocide, war crimes and the torture perpetrated against anyone who is not involved in war directly.

Perpetrators and victims are divided on the party line. Forging trust and congenial relationship between all LPC members and victims is the challenge now although many coordinators of the LPCs have been viewing that there has been a conducive environment at the community level for lasting peace and reconciliation.

preparing concrete plan for conflict resolution. People have understood this reality well. As a common forum for interaction and sharing, these Committees will and have to be the door to enter into the reconciliation process at the later stage when Truth and Reconciliation Commission is established.

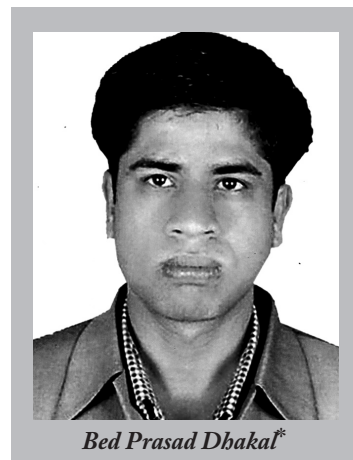
The leaders and actors assigned to drive the LPCs are not aware of the role and philosophy of reconciliation well. For the conflicting parties, it's been a mechanism to facilitate the issues out of court's proceedings. Quite often they expect their cadres

community level for lasting peace and reconciliation.

Politically and constitutionally, there has reached an agreement among the stakeholders in the country for the formation of TRC. However, one should be clear- the TRC does not and cannot replace the judicial process; rather, it complements the latter assuring that criminals of the conflicting era will not enjoy immunity. The TRC also establishes foundation for reconciliation and gives pardon, if needed and consensus built.

INSEC's

Current Effort for the Community Level Peace and Reconciliation



Background

The decade long armed-conflict in Nepal caused thousands of deaths, subjected thousands of people to disappearances and orphaned and widowed many. It incurred the loss of unaccountable amount, destroyed infrastructure and stunted the economic development in the country. Statistically, according to INSEC, 13,233 people were killed, 1006 were involuntarily disappeared and 785 were injured during the conflict. There were crimes against humanity and gross violation of human rights in the insurgency. The conflict affected the people from all strata of socio-economic life but the poor and vulnerable groups including women, children and elderly were affected more.

After the Comprehensive Peace Accord (CPA) signed by the Seven Party Alliance (SPA)-led government and the Communist Party of Nepal (Maoist) on 22 November 2006, both the parties committed themselves to structural transformation of the Nepali state and society through a democratic and peaceful means. The accord

was followed by conclusion of the Constituent Assembly (CA) elections, formal end of the monarchy, election of the President as the head of the state and the formation of the Maoist-led government. During the course, from the CPA to elections of the CA, all the political parties, including the Maoists reiterated their commitments to promote reconciliation in the conflict-hit societies and provide appropriate reparation to the victims. However, the issues of conflict victims have not been adequately addressed.

Conflict victims are still awaiting responses for reconciliation and reparation. Although a 'new phase' of peace process has started after the CA elections, the wounds and scars left behind by the armed conflict have not been healed yet. The peace process so far has not been able to address social reconstruction and reintegration needs. Reconstruction of demolished infrastructure is also not heeded well. The problems of Internally Displaced Persons (IDPs) have not been resolved. Concerns for women, children, elderly and youths, and those most affected by the conflict lag far behind. There is no common forum for conflict victims

especially in rural parts of the country to share their problems, discuss and advocate for their issues.

INSEC was quite vigilant during the war time especially in the matter of deterring both the warring parties from killing and torturing innocent people. Similarly, it pressured against them to abide by the rule of war and respect international humanitarian laws. Recording of the rights abuses and violations was carried out with high priorities. INSEC was a staunch advocate of the view that the ongoing conflict could be pacified only through dialogues and political understanding. Since 2002/3, INSEC started undertaking peace initiatives across the country especially by concentrating its focus on the Mid-Western and Far-Western parts. Similarly, peace building campaign was implemented in the Mid and Far western regions in 2006 and it lasted for 30 months. The program was largely successful and got wide acclaim from the local communities.

Lately, since June 2010, INSEC has launched a project entitled Grassroots Initiatives for Rights, Democracy and Peace in 10

* The writer is Documentation Officer under Grassroots Initiatives for Rights, Democracy and Peace Project at INSEC

districts as an endeavor for peace in the post-conflict situation in the country. Basically, the project aims to create a situation of peace and harmony in the society by making a fresh attempt to address the concerns of conflict victims and also by making them aware of the provisions accorded by the government for them. Similarly, the project aims at empowering them, at a time when the government has not formed any concrete mechanism for transitional justice at the local level. In what follows, INSEC's initiative for peace, conflict related problem solving, reconciliation and social order in the post conflict environment of the country will be discussed.

What Encouraged Us to Launch the Project?

The country was going through a political transition, it does not mean that national context of the country between the period we launched this project and now has changed notably, however, political actors were only centered on the formation of government and power sharing deals. Subsequently, the issues and concerns of those seriously affected by the armed

that reconciliation efforts from non-government actors and civil society reached to those people at the lowest rung of the socio-economic life and affected by armed insurgency. Similarly, it was essential to organize conflict affected people into groups and enhance their capacity and other existing local institutions to take measures necessary for promotion of peace, democracy and reconciliation at the local level. Facilitation of inter-group dialogue and confidence building among community people was also urgently needed.¹

Although various provisions were made for the conflict victims in the CPA, those provisions were not implemented. Similarly, mechanisms for transitional justice like Truth and Reconciliation Commission, Commission on Disappearances were not formed. The concerns of the conflict victims couldn't receive proper priority. The conflict victims were with differing political beliefs; however, they were without any common platform to share their concerns. In such a context, the project aimed to take a fresh initiative to organize the conflict victims in a common forum so that they could discuss and raise their concerns to the

Main target groups of the project are conflict affected people (from both conflicting parties), political parties, civil society members and CBOs of 10 districts of the country. Siraha and Sankhuwasabha in the Eastern Region, Kavre and Rautahat in the Mid Region, Nawalparasi and Myagdi in the Western Region, Surkhet and Dang in the Mid-Western Region, and Kailali and Baitadi in the Far Western Region were chosen as the project districts. These were among highly conflict-affected districts of the respective regions. The districts were selected by taking the number of killings as a strong indication that people there were affected more and in many ways. Various other factors such as geographic location (one district each was chosen from the hilly and the plain part), accessibility of the districts in terms of project management, strength of the presence of INSEC in the different districts and the existence of other INSEC programs/projects in the districts were considered while selecting these districts.

Activity and Mechanism

The major activities under the project are formation of reconciliation forums (RFs)-VDC Level Reconciliation Forums (VRFs) and District Level Reconciliation Forums (DRFs) in the project implemented districts and VDCs. VRFs comprise of 9-15 members representing the victims of the armed conflict, community members including elderly people who are well respected in the community. The forums have been formed in a democratic and inclusive manner. Similarly, the DRFs consisting of 9-15 members and having the representation of the victims of the armed conflict, people representing conflicting parties; political parties, women and other marginalized people have been formed in each

Subsequently, the issues and concerns of those seriously affected by the armed conflict were receiving least attention. As a result their hopes and expectations were dwindling away every day. In such a situation, it was imperative that reconciliation efforts from non-government actors and civil society reached to those people at the lowest rung of the socio-economic life and affected by armed insurgency.

conflict were receiving least attention. As a result their hopes and expectations were dwindling away every day. In such a situation, it was imperative

responsible authorities and service delivery agencies, ultimately being able to solve their problems.²

1. RDP Project Document prepared by INSEC

2. Report of Baseline Survey conducted by INSEC under RDP Project

program implemented district. At least one representative from each VRF has been included in every DRF to maintain linkage between the VRF and DRF.

After VRF/DRF formation, trainings were conducted for the members of those forums. The trainings incorporated various issues including basics of human rights, conflict management, post-war peace building, conflict mediating skills and details about the project activities and its intended objectives, among others. Institutional capacity of VRFs and DRFs has been enhanced with the development and practice of code of conduct, network guidelines and action plans by organizing meetings. Now, the reconciliation forums are enhancing their capacities with monthly meetings. The RF members have been discussing various issues in the monthly meetings.

INSEC District Offices and Regional Offices have been publishing newsletters on the quarterly basis by covering activities of the reconciliation forums. The newsletters have been distributed to RF members and other stakeholders regularly. Issues of conflict victims have been raised at grassroots level with the publication and dissemination of the newsletters. The newsletters have been published incorporating the RFs' efforts for reconciliation, truth seeking, justice and the best practices of the other countries. Government plan, policies and provisions for conflict victims have been incorporated in the newsletters. A total of 120 newsletters are supposed to be published within the project period and 30 such newsletters have been published so far.

Other activities that have been carried out under the project are mobilization of RFs through forum theatres, community reconciliation assembly, sending public letters to

the families of conflict victims, public sharing meetings by victims and their families, greeting campaign on special occasions and festivals. Similarly, workshops on the issues faced by the

VDCs and districts regularly. At regional level, there is coordination with regional level stakeholders like regional administrators, CDOs and various organizations working in the

Increasing the livelihood opportunities is possible only if the financial institutions, government line agencies and vocational institutions work together for the welfare of the conflict victims. So, coordination and linkages have been established with the concerned agencies to endorse the conflict victims' plans wherever possible.

conflict affected people are conducted. These activities have been organized at VDC, district and regional level regularly.

Media mobilization is another important activity under the project. One FM radio station from each program district has been airing radio programs covering the activities of the RFs, their initiatives, the issues related to peace, social harmony and reconciliation. A radio airs two episodes of such program every month in each program district. Similarly, there are five TV talk show programs and reconciliations and peace related articles writing etc.

Coordination and Linkage

The RDP district team is in constant coordination with the INSEC Regional Offices and District Offices for the implementation of the project activities. In addition, the district teams carry out their activities in coordination with local government agencies, private organizations, civil society, political parties, human rights activists, journalists and other stakeholders. Similarly, meetings of RDIF Partner Organizations (POs) have been held in the project implemented

respective regions. At the central level, the RDP central team and INSEC management are in constant touch with various organizations and service delivery agencies to contribute to the initiatives of the conflict victims and their issues.

The project team is concerned on the entrepreneurial development for improving livelihood opportunity of the conflict victims and their family members. Increasing the livelihood opportunities is possible only if the financial institutions, government line agencies and vocational institutions work together for the welfare of the conflict victims. So, coordination and linkages have been established with the concerned agencies to endorse the conflict victims' plans wherever possible. Various organizations have been consulted for collaborating and coordinating with the project team in terms of assisting the conflict victims in getting better livelihood opportunities as well as other supports.

Gauging Achievement and the Stakeholders' Perception

Review of the project³ has clearly indicated that the project has been heading to achieve its objectives.

3. As shared in RDP Review meeting held in Dhulikhel, Kavre from June 23 to 25, 2011

It has been receiving overwhelming responses from the stakeholders. They are responding to the initiatives taken by INSEC District Offices and reconciliation forums. Evaluation is there that this project is yielding good results and guided to achieve its objectives. The local institutions are taking the initiatives of reconciliation forums positively. Conflict victims have been organized and they are sharing their pain, suffering and problems openly. The RFs have become common platforms where the victims meet monthly and discuss the progresses and proceedings over the issues discussed in the previous meetings. The conflict victims have been organized. A total of 595 persons—348 male and 247 female have been organized through the reconciliation forums in 10 districts and 40 VDCs. The RF members are from both the conflicting parties and have started holding dialogues and using RFs to share their pains, suffering and problems. RF members have been empowered, made aware and familiarized with the government provisions. The RF members are aware of the government provision of relief

provision of relief. Conflict victims have started claiming relief from the service delivery agencies.

Issues of conflict victims have been raised at the grassroots and district level vociferously. Government agencies, political parties and other stakeholders have responded to the initiatives taken by RFs and INSEC District Offices. VDCs, District Development Committees (DDCs) and District Administration Offices (DAOs) have started extending support to VRFs/DRFs and conflict victims. Children of conflict victims have started getting support from District Education Offices (DEOs) and local schools in the program implemented VDCs/districts. INSEC District Offices, in coordination with its Regional Offices, local agencies and donors, have initiated constructing structures like monuments and peace parks in memory of the victims of the decade-long armed conflict. The victims and perpetrators have started holding dialogue and heading towards reconciliatory paths through VRFs and DRFs in project districts and VDCs.

Nine conflict victim widows

conflict are able to receive Rs 100000 each from government offices in various districts including Kailali, Rautahat, Baitadi and Nawalparasi while a conflict victim who lost his left leg in the insurgency is capable of receiving Rs 100000 from the government office in Surkhet. In the same token, six conflict victims who were injured during the conflict have received 40,000 each from the DAO in Baitadi. Likewise, 22 conflict affected students have been admitted to various schools in Rautahat with their monthly fees waived. Similarly, 28 conflict-victim children received scholarship from DEO in Rautahat, Myagdi, Kailali and Nawalparasi districts.

VDC level reconciliation forums in Siraha, Sankhuwasabha, Kailali, Baitadi, Nawalparasi, Surkhet districts have received financial support amounting to Rs 200000 to conduct trainings for VRF capacity building, Dalit uplift, women leadership, promotion of child rights and so on. In the same token, at least 130 conflict victims from Rautahat, Myagdi, Kavre and Nawalparasi districts attended various trainings in coordination with the agencies like the Council for Technical Education and Vocational Training (CTEVT), Local Peace Committee and Nepal Red Cross Society. The trainings provided skills for making candle, learning Solar PV technique, tailoring, driving and so on.

Moreover, a peace monument is under construction with the initiation of INSEC District Office in coordination with INSEC Mid-Western Regional Office in the premises of Tulsiapur Municipality in Dang. It has been planned to inscribe the names of the persons killed and involuntarily disappeared during decade long insurgency from Dang in the peace monument. The monument construction has been a good example of unity among political parties, civil

Conflict victims have been organized and they are sharing their pain, suffering and problems openly. The RFs have become common platforms where the victims meet monthly and discuss the progresses and proceedings over the issues discussed in the previous meetings.

meant for the families of those killed and involuntarily disappeared during the conflict. Similarly, conflict victims and single women (widows) are also aware of the provision of relief meant for them and their children. In the same token, those injured, detained, abducted and tortured during the armed insurgency also know about the

have received Rs. 25000 each from District Administration Office (DAO) in Siraha and Kailali districts. Ten conflict-victim children have been admitted, with the provision of free education up to grade ten, to two private schools in Siraha. Similarly, 25 families of conflict victims whose members had been killed during the

society and local stakeholders to remember and pay homage to those who lost their lives and got disappeared during decade long conflict. It has been estimated that it will take Rs. 600,000 to complete the construction work. Various organizations including Tulsipur Construction Entrepreneurs' Association, Dang District Development Committee, Tulsipur Municipality and INSEC have extended support for the construction of the monument.

There are overwhelming numbers of positive responses from the stakeholders. "After INSEC implemented the project in the district, I am now aware of the provisions of relief and reparation to the conflict victims. I am familiar with reconciliation and psychosocial counseling and several other issues," said Man Kumari Ranjit of Banepa, Kavre. She said that she is aware of the provisions of transitional justice after she joined DRF. Her husband, Rajbhai Ranjit was involuntarily disappeared by the then CPN-Maoist and his whereabouts are still unknown. She further added, "After the disappearance of my husband, I used to be confined to my home, feel isolated and get angry with people who approached me but now I am capable of sharing my feelings to others and my confidence has increased after I attended the trainings given by INSEC on various issues."

Another victim affiliated to Anaikot VRF in Kavre, Manju Gautam, whose husband, Biplav was killed in a clash in Khotang in February 2004, said, "I feel that life could not go ahead remembering the pain only. Therefore, I am involved in reconciliation through Anaikot VRF which has become an appropriate platform to share my pains, sufferings and discuss the way forward." Conflict victims have also been saying that they are feeling relatively relieved and the society has been listening to

their concerns after they joined the reconciliation forums. Forgetting the bitter past, conflict victims are actively involved in adjusting themselves in the society in the post-conflict scenario in the country. "I realized that the financial support provided by the government is nothing compared to the love and affection we get from the society," Sharmila Parajuli, treasurer of the Bishupurkatti VRF said. She had lost her husband as he was killed when the then Maoists attacked Lahan Bazaar in Siraha on August 28, 2003. She said that there is the need for a common forum to the conflict victims to share their pains and sufferings and the RF has become the best medium for her. She is not alone to suffer the conflict induced pain in the district. According to INSEC data, 112 persons were killed and 18 were subjected to enforced disappearances in Siraha during the armed insurgency.

The description in the box overleaf portrays vividly how the INSEC run project has been a great help to the families of the conflict victims.

Our Efforts are Not Free of Constraints

We have faced some challenges in course of putting efforts for the local level peace and reconciliation. We have been putting efforts towards normalization of relation among the conflicting groups in the past and the stakeholders. However, high expectation of victims from the program launchers is a kind of challenge. The conflict victims are in dire need of economic packages. Also, there exists differing understandings about the concept of reconciliation among the project stakeholders. Subjective interpretation of the concept and often inability of the perpetrators to internalize the concept of reconciliation in the truest sense is another challenge.

What has been experienced during our work in the local level is that non-involvement or politically biased opinions of the representatives of political parties in VRF often appear as a challenge to make consensus on providing relief to the conflict victims. Subjective interpretation of lasting peace and reconciliation has been one of the hindrances for easy reconciliation. INSEC is dedicated more on rights-based policy intervention and it puts pressure on the concerned authority to provide justice to the victims. However, going to the contact of the victims is to collect a bitter experience that they put forth their basic needs first. They demand direct monetary support. While working in the field at the community level we have seen the victims burst into tears. It seems that basic needs have victimized them more than the armed conflict in the past. Although government has formulated policies and provisions meant for them, these have not been channeled down to the targeted groups in many places. Bureaucratic nuisance, unawareness among the people, carelessness of the concerned authorities, stalemate due to local political feud, difficult process for receiving reliefs are primarily responsible for the hindrances. People from the rural and remote locations shared their problem with us in many instances that the amount that takes for the victims to collect the amount provided to them is more than the actual amount they receive.

Moreover, national politics is directly affecting local issues, posing a challenge to convince people at the grassroots level. Delay in formation of mechanisms of transitional justice at the local level is hampering reconciliation efforts at the grassroots level. There is tendency to reconcile at the local community but mechanism and reliable system is necessary to be built up. In some of the places we

Chandrika Chaudhari of Amarath VDC in Nawalparasi said that a letter sent by INSEC District Office opened his way to claim relief for the disappearance of his son.

As a part of sending letters to the conflict victims and their families to inform those who received letters about government provisions of relief and facilities, INSEC Nawalparasi had sent letters to 26 victims on November 30, 2010.

Of them, some came into the contact of INSEC District Office. Chandrika was among them who approached the district office. Chaudhari said that his son Baijanath who had gone to attend a computer class to Bardaghat on April 21, 2005 did not return home. He urged INSEC District Office to help him in searching for his missing son. His son had attended SLC exam from Janata Secondary School, Dainaha and was taking computer class as he had been waiting for the results.

"I searched for my son everywhere and urged to different administrative bodies including police administration, District Administration Office and the Maoists to help in the search, but to no avail. No authority responded my urges and concerns," said Chandrika.

"When I urged the police administration, it said that my son might have joined the Maoists. Then, I went to the Maoists. But, they did not help me," Chandrika said. His son disappeared when he was 20. He was the second son in the family and was dear to all family members.

According to Chandrika, all parties are selfish. They do not work for people's problems. He does not believe that his son is alive. However, he has an ultimate wish of performing the final rites if he gets the dead body of his son.

INSEC District Office informed about the concerns of Chandrika to the District level Peace Committee and urged to provide relief for the disappearance of his son as per provision. As a result, Chandrika got Rs 100000 from the District Administration Office.

district level. Our efforts through this project are honestly concentrated on providing relief to the conflict victims by receiving support from the locals, political parties and service delivery agencies. We are equally aware that such initiatives ultimately have to make the government responsible for the conflict victims, their needs and other issues related to them.

Dialogues have been established among the victims and perpetrators through the RFs. Their hostile relation of the past has been gradually turning into amicable one as they are coming close through reconciliation forums. The conflict victims have been reconciling through various activities like street dramas, public sharing meetings, reconciliation assemblies and public letter exchange programs launched under the project. Similarly, the reconciliation forums have become common platform to the conflict victims to share their pains and sufferings to relieve themselves from their hardships. The victims are gradually adjusting in the society and the society has started to accept and respect them. Moreover, the RFs, INSEC District Offices and Regional Offices and RDP Central team are in constant touch with the conflict victims and helping in every initiative of the RF and conflict victims.

If the livelihood aspects of the conflict victims could be addressed in coordination with local agencies, it would partially make a foundation of transitional justice to the conflict victims at the grassroots. It would be easy to the government to implement program of relief and reparation in the long run. The project has been established as a good model to reach to the victims, raise their problems at the grassroots as well as district level and intervene into the national politics for peace and reconciliation.

experienced that perpetrators' presence and behavior is arrogant. However, the conflict victims and their families have been anxiously waiting for justice. As the time has passed by the conflict victims' hopes have started to turn into despair because assurances from the political and other stakeholders have proved to be hollow.

Conclusion

Despite some challenges, the efforts of INSEC towards local level peace and reconciliation have been instrumental for the speedy healing and problem solving of the conflict affected people. Although reconciliation after the violent conflict is a long process and it takes longer

time to address the problems of the conflict victims, the reconciliation forums formed in the ten program districts and VDCs have been functioning effectively and yielding good results for reconciliation and harmony in the society.

The conflict victims are relatively empowered and they have now better access to the service delivery agencies. Several victims, their family members and children have been receiving relief, reparation and scholarship from the service delivery agencies at a time when mechanisms for transitional justice have not formed yet. The issues of the conflict victims have been raised at the

Truth Commissions: Whose Truth and What Cost?



Gopal Krishna Siwakoti, PhD*

Doctrine of a Truth Commission

Peace without justice becomes a hollow dream and reconciliation in the absence of reparation is a futile exercise. Absence of visible conflict is not the end of the hostility in the society. The victims, survivors and their family have to deserve satisfaction before moving towards the path of reconciliation and satisfaction. This can be attained only by exploring the truth, exposing the crimes, naming the perpetrators and reforming the malicious state institutions involved in systematic, widespread and gross violation of human rights and the rules of engagement.

The world has witnessed many forms of conflict, from rifts between tribes of one community, large scale atrocities to arbitrary war. Whatever is the case, destructive and violent conflict leaves deeper wounds than just those visible from the surface. Internationally, countries emerging out of conflict or decades of human rights violations have the experience of espousing a process of transitional

justice which is a set of approaches that societies and countries often adopt during a period of transition. Transitional justice establishes a more progressive and non-violent setting in order to deal with the atrocities of the past and create a conducive atmosphere for lasting peace and reconciliation in the future.¹ These could include a combination of approaches such as truth telling, reparations, prosecution of perpetrators, reconciliation and institutional reform, among others.

The creation of a truth commission in any society implies that there exists a *drama* and intimate misfortune which deserves, in some measures, to be brought into the open². But, creating such a commission is the start of a realization that in the country there is a living society which is the protagonist of its own history, and that history is relatively unknown. The formation of truth commission also demands an examination of the past such that the identity of the nation and the foundations of its future development can be assured. A transitional mechanism is a solid

bridge to pass through a stream of injustices. A commission is created because there is something that cannot be assimilated by our memory and also because in a given society there is a need to investigate that past. It is necessary to examine the evidence so that the history that we are used to believing is what was in fact experienced by society and can, therefore, be accepted.

TRCs have often worked in the principle of restorative justice - providing amnesty provisions for perpetrators if they could satisfy certain conditions laid down in the legislation establishing the commission³. But, in certain cases, as in the cases of forced disappearances, the approach of prosecutorial justice has to be adopted where criminal prosecution and punishment are followed after the truth finding phase. As Kofi Annan in March 2003 stated, "There are times when we are told that justice must be set aside in the interests of peace. It is true that justice can only be dispensed when the peaceful order of society is secure.

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1. Gopal Krishana Siwakoti, Creation of the TRC, The Himalayan Times, November 12, 2010
2. Salomo'n Lerner Febres, Truth Commissions Worldwide, International Review of the Red Cross, Volume 88 Number 862 June 2006
3. Melbourne University Law Review Association, Inc. The South African Truth and Reconciliation Commission: A Suitable Model to Enhance the Role and Rights of the Victims of Gross Violations of Human Rights, 27 Melbourne U. L.R. 334, August, 2003

But, we have come to understand that the reverse is also true: without justice, there can be no lasting peace".⁴ Thus, it is obvious that victims of serious rights violation can get justice and

justice mechanisms help guarantee the non-repetition and satisfaction to the victims/survivors. Truth commissions arise from an experience shared by society, when the victims include not

The truth commission is not a complete way of compensating the victims or to be set-up simply on the demand of the victims. It is rather a society-driven process to start the reparation process, something which aims to re-establish the true historical and social identity of all people as a whole.

reconcile effectively.

The consistency of the work that a truth commission can carry out derives from the need felt by the whole of society, which demands some sort of justice through a reliable recollection of what happened, and not simply by those who were victims.⁵ The truth commission is not a complete way of compensating the victims or to be set-up simply on the demand of the victims. It is rather a society-driven process to start the reparation process, something which aims to re-establish the true historical and social identity of all people as a whole. It's a time-tested fact that truth commissions are created not just in response to demands for truth and justice from those who were direct victims of abuse but from all political, social actors from both the domestic and international fronts.

Considering that blanket amnesty to rights violators invite vicious cycle of violence and the perpetrators are further encouraged to repeat the similar or even heinous crimes, establishment of transitional

only those who were directly affected, when the whole of society has been traumatized and the course of normal life has been significantly altered.⁶ It is a duty, therefore, of those who govern and those who have responsibility for the country's progress to accept these demands, examine the past and respond not only to the victims but to the whole society, which has also been wounded.

The thrust behind the establishment of such a commission is to explore a mechanism in affording victims an opportunity to relate the violations they suffered. Similarly, taking of measures aimed at the granting of reparation to, and the rehabilitation and restoration of the human and civil dignity of the victims of violations of human rights is the other motive. Reporting to the nation about such violations and victims; the making of recommendations aimed at the prevention of the commission of gross violations of human rights; and for the said purposes to provide for the establishment of a Truth and Reconciliation Commission,

a Committee on Human Rights Violations, a Committee on Amnesty and a Committee on Reparation and Rehabilitation; and to confer certain powers on, assign certain functions to and impose certain duties upon that Commission and those Committees; and to provide for matters connected therewith.⁷

The TRC would provide a historic bridge between the past of a deeply divided society characterized by strife, conflict, untold suffering and injustice, and a future founded on the recognition of human rights, democracy and peaceful co-existence for all Nepali citizens irrespective of color, caste, class, belief or sex. It is necessary to establish the truth in relation to past events as well as the motives for and circumstances in which gross violations of human rights have occurred. It is essential to make the findings known in order to prevent repetition of such acts in the future. In the pursuit of national unity, the well-being of all Nepali citizens and peace require reconciliation between the people of Nepal and the reconstruction of society as well.

Rationale for a Truth Commission

The most straightforward reason to set up a truth commission is that of sanctioned fact finding: to establish an accurate record of a country's past and thus help to provide a fair record of a country's history and its government's much-disputed acts.⁸ Leaving an honest account of the violence prevents history from being lost or re-written, and allows a society to learn from its past in order to prevent a repetition of such violence in the future.

But "fact finding" is perhaps an inaccurate description of investigations

4. UN Secretary-General's Statement to the Inaugural Meeting of Judges of the International Criminal Court, The Hague, Netherlands, 11 March 2003

5. Salomo'n Lerner Febres, Truth Commissions Worldwide, International Review of the Red Cross, Volume 88 Number 862 June 2006 Volume

6. www.icrc.org/eng/assets/files/other/irrc_862_lerner.pdf

7. <http://www.justice.gov.za/trc/legal/bill.htm>

8. Fifteen Truth Commissions--1974 to 1994: A Comparative Study. Priscilla B. Hayner, Truth Commissions Worldwide, International Review of the Red Cross, Volume 88 Number 862 June 2006

which often end up confirming widely-held beliefs about what has happened and who is responsible⁹. In many situations that warrant a postmortem truth commission, the victimized populations are often clear about what abuses took place and who carried them out. In many civil conflicts, including both authoritarian military repression and full-blown civil wars with a strong armed opposition, much of the violence is carried out either with explicit acknowledgment of the responsible parties (political kidnappings, public announcements of groups or individuals that are targeted, etc.), or by uniformed personnel who leave witnesses to acts such as disappearances or mass killings¹⁰. While not true in every case, a general understanding of who did what during a period of violence is usually well accepted by the civilian population within a country.

Given this knowledge, the importance of truth commissions might be described more accurately as acknowledging the truth rather than finding the truth. "Acknowledgement implies that the state has admitted its misdeeds and recognized that it was wrong," writes Aryeh Neier.¹¹ Juan Mendez, then Director of Americas Watch, writes, "Knowledge that is officially sanctioned, and thereby made 'part of the public cognitive scene'... acquires a mysterious quality that is not there when it is merely 'truth.' Official acknowledgement at least begins to heal the wounds."¹² An official acknowledgment of the facts outlined in a truth commission report by government or opposition forces can play an important psychological role in recognizing a 'truth' which has long been denied.

Truth commissions are usually

set up during or immediately after a political transition in a country—which may be in the form of a gradual democratization, as in Chile and South Africa, a negotiated settlement of civil war, as in El Salvador, a military victory by rebels, as in Uganda and Chad, or a rapid democratic opening after repressive military rule, as in Argentina and Uruguay. A truth commission can play an important role in a transition, either by affirming a real change in the human rights practices of the government and a respect for the rule of law in the country, or by helping to legitimize or strengthen the authority and popularity of a new head of state, or both.¹³

Of course, a commission can also be set up by a government to manipulate the public perception of its own tarnished image, in order to promote a more favorable view of the country's human rights policies and practices¹⁴. This is particularly likely when a government is under international pressure to improve its human rights record. Given the mandate of commissions, by definition, to look at the past rather than the present, it is easy for a new government to justify not being subject to the investigations of the commission, while professing improved human rights policies. Any current abuses are therefore conveniently overlooked by the commission. Given this dynamic, it is not always immediately clear whether a government's commission is more a political tool or an accurate reflection of change. The first truth commission in Uganda and the truth commission in Chad are the cases in point.¹⁵

It certainly is not assured that the existence of a truth commission

will make the repetition of similar human rights abuses less likely in the future. One cannot claim that acknowledging and disclosing the truth about past abuses, or punishing those responsible for abuses, will necessarily deter future abuses. The same can be said of the contrary view, sometimes argued by proponents of amnesties, that an amnesty promotes reconciliation, while if a government making a transition to democracy attempts to punish those guilty of past abuses, it risks allowing those people to seize power again. Either outcome is possible. Whether the guilty are accorded amnesty or punished is only one among many factors that affect the pattern of events in any country.

But the expressed intent of most truth commissions is to lessen the likelihood of human rights atrocities reoccurring in the future. This is stated in many commission reports, or even written into commissions' operating mandates. The titles of one governmental and three independent non-governmental Latin American reports reflect this sentiment—the now well-known *Nunca Mas* (Never Again). A commission can perhaps help reduce the likelihood of future abuses simply by publishing an accurate record of the violence, with the hope that a more knowledgeable citizenry will recognize and resist any sign of return to repressive rule.

More concretely, truth commissions can contribute to the future with specific recommendations for reform. Not all commissions make recommendations, but commission reports have included recommendations covering military and police reform, the strengthening of democratic institutions, measures to promote national reconciliation,

9. Ibid

10. Ibid

11. By Neil J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, US Institute of Peace Press, 1995

12. Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity*, Routledge, 2001

13. Supra note at 11

14. Ibid

15. Ibid

reparation to victims of the violence, or reform of the judicial system. In most cases, these recommendations are not obligatory (with the exception of El Salvador), but they can provide pressure points around which the civilian society or the international community can lobby for change in the future.¹⁶

Most human rights organizations and activists feel that the contributions of a truth commission process outweigh the political risks involved, or indeed that a full truth-telling is necessary before real healing can take place. "Self-investigation, self-observation, is critical," comments a Chilean human rights lawyer who worked on the El Salvador Truth Commission. "It's always very clear that the government doesn't want to do it; but it is an obligation that they cannot ignore. In Chile and Argentina, they had commissions in order to forget the past, to turn the page afterwards. But the trick is, how not to close the book ... Commissions aren't perfect, but what do you do without them?"¹⁷

Truth Commissions: An Overview

A truth commission includes four primary elements. First, a truth commission focuses on the past. Second, a truth commission is not focused on a specific event, but attempts to paint the overall picture of certain human rights abuses, or violations of international humanitarian law, over a period of time. Third, a truth commission usually exists temporarily and for a pre-defined period of time, ceasing to exist with the submission of a report of its findings. Finally, a truth commission is always vested with some sort of authority, by way of its

sponsor, that allows it greater access to information, greater security or protection to dig into sensitive issues, and a greater impact with its report.

Since the spring of 1993 publication of the report of the United Nations Commission on the Truth for El Salvador, there has been a marked increase in interest in truth commissions. Partly as a result of the widespread attention brought to the El Salvador report, truth commissions--official bodies set up to investigate a past period of human rights abuses or violations of international humanitarian law--are being considered for a number of other countries now in the midst of political transition.

Although truth commissions have become increasingly popular, they are still relatively under-studied. Except two or three well-known commissions in Latin America, there has been little comparative research in this area, despite a multitude of questions. No definition or defining parameters of truth commissions have been identified. There has been little exploration of the constraints, limitations, and challenges common to such official truth-seeking bodies, and no serious look at what objectives such commissions can realistically be expected to fulfill.¹⁸ And while new truth commissions are now being developed there has of yet been no comprehensive survey of the past truth commissions.

In fact there are many more examples of truth commissions than is generally realized. Through a description of a number of truth commissions that have existed to date, a comparison of some of the key issues highlighted by these commissions will be made here.

The Commission on the Truth for El Salvador (commonly known as the "Truth Commission") is in many ways a classic truth commission: the commission, established as part of the peace agreement between the government and armed opposition in El Salvador, was given eight months to write a report outlining the extent of human rights abuses and violations of international humanitarian law over twelve years of civil war in El Salvador.¹⁹ The commission staff took testimony from witnesses or victims of violence, investigated a number of cases in great depth, and compiled statistics on the tens of thousands of cases brought to its attention. The commission's final report describes the widespread abuse against civilians by the armed forces and by death squads and, although in significantly lower numbers, the abuses by the armed opposition. The report also points out parties responsible for the violence, highlights the failings of the judicial system, and recommends measures for reform. As many have noted, the Truth Commission report in the end confirmed what many people, particularly Salvadorans, have long accepted as true, but official acknowledgement of the widespread abuses was important in itself.²⁰

The Truth Commission in El Salvador was the first such commission to be sponsored by, paid for, and staffed by the United Nations. The idea for this truth commission was based on the experiences of Chile and Argentina, the most well-known previous cases of national human rights commissions set up to investigate the past. Less well known, however, are at least twelve other such commissions in other countries--a total of at least fifteen such commissions to date.

16. *Reconciliation in Divided Societies: Finding Common Ground* By Erin Daly, Jeremy Sarkin-Hughes, University of Pennsylvania Press, 2007

17. *Supra* note at 11

18. *Criminology, Penology, and Police Science Abstracts*, Volume 36, Issues 4-6, Kugler Publications, 1996, the University of Michigan 1 Oct 2009

19. *Supra* note at 11

20. *Ibid*

In addition to Argentina and Chile, governmental commissions have been set up in Uruguay, the Philippines, Chad, Bolivia, Zimbabwe, Ethiopia, Germany, and Uganda (where there have been two). Two separate truth commissions were established by the African National Congress (ANC) to evaluate the ANC's record of abuses in its detention camps throughout Southern Africa.²¹

Future Direction

There are, of course, clear limitations to truth commissions. Most importantly, as a general rule, truth commissions do not have prosecutory powers such as the power to subpoena witnesses or bring cases to trial, nor do they act as judicial bodies to pronounce individuals guilty of crimes.²² Those commissions that have publicly named the individuals responsible for certain acts generally state clearly that these are not judicial decisions. Truth commissions also generally do not investigate current human rights conditions. They do not, therefore, fill the need for a permanent human rights commission or agency responsive to present day rights concerns.

Truth commissions can play a critical role in a country struggling to come to terms with a history of massive human rights crimes. A number of the commissions outlined above have been notable successes: their investigations welcomed by survivors of the violence and by human rights advocates alike, their reports widely read, their summary of facts considered conclusive and fair. Such commissions are often referred to as serving a "cathartic" effect in society, as fulfilling the successful. Some have been significantly limited from a full and fair accounting of

the past--limited by mandate, by political constraints or restricted access to information, or by a basic lack of resources, for example--and have reported only a narrow slice of the "truth." In some cases truth commission final reports have been

society at large, punishes every wrong and thereby helps in the prevention of crimes and human rights abuses²⁴. So long as the states are capable, fair and willing to bring the alleged perpetrators of human rights abuses to justice, international law does not

Truth commissions can play a critical role in a country struggling to come to terms with a history of massive human rights crimes.

kept confidential.

In Nepal too, the creation of the TRC should also be seen in the context of international obligations of the state. Given the painfully protracted political transition, the chances of massive compromise on justice are quite likely between the giant violators of the past who have become glorious victors of the present peace process. The two bills on the formation of the TRC and Disappearance Commission are left in limbo due to the politics of appeasement and compromise in the name of consensus building.

International law, including the international human rights law, has evolved at least four obligations of the states they are dealing with the issues of transitional justice²³. First, the states should tell the truth, the whole truth about what happened during the conflict. This is the right of the victim and the society at large. Second, the states must investigate, prosecute and eventually sanction, of course, attaching due regard to the principles of fair trial and without resorting to vengeance. A corollary to this is the positive obligation to establish a system of justice that acts fairly, attaches due consideration to the rights of the accused, victims and

permit international community to interfere in the domestic affairs of the concerned state. Third, the state has a duty to repair and compensate the victims for the loss. This includes not only monetary compensation but restitution, resettlement and rehabilitation. While access to justice and fair treatment, restitution, compensation and assistance towards recovery are the rights of the victims encapsulated in the 1985 UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, a more recent UN repertoire used in the context of transitional justice is "reparation" which along with compensation, rehabilitation also includes "satisfaction" and "guarantee of non-repetition".²⁵ "Satisfaction" comprises full public disclosure of the truth, disclosure of whereabouts of the disappeared, restoration of dignity of victims, public apology, judicial and administrative sanction, and commemorations and tributes. When the transitional justice mechanisms are designed and they function in accordance with the above doctrine, then the society may attain the long-cherished aspiration of durable solution to conflict, harmony and the society based on rule of law, accountability and democratic order.

21. Fifteen Truth Commissions--1974 to 1994: A Comparative Study. Priscilla B. Hayner, Truth Commissions Worldwide, International Review of the Red Cross, Volume 88 Number 862 June 2006

22. Supra note at 11

23. www.thehimalayantimes.com/fullNews.php?...

24. *ibid*

25. Supra note at 1



Local Peace Committees could not Yield Result as Expected

The Local Peace Committees (LPC)s have nominal existence in the districts. Some have hyped such existence as a big success whereas views are also there that the Committees have not been effective given the interparty conflict at the central level. Moreover, conflict victims have not been justly dealt. In this context INFORMAL had talked with the former Minister for Peace and Reconstruction Rakam Chemjong, who had assumed the post comparatively for longer period. An edited version:

INFORMAL: Do you think an enabling environment for reconciliation has been created at the local level in the absence of Truth and Reconciliation Commission?

There develops acrimony among people during conflict. As a group hurts the other, people are engulfed by distrust, which results in instability in the post-conflict situation as well. This situation necessitates Truth and Reconciliation Commission. Those involved in felonies during the conflict should be disciplined whereas giving amnesty to the minor crimes might also create a situation to reconcile. But, it is quite essential to make sure that those who lost their beloved family members during the conflict and are suffering from consequential pain should feel they are justly dealt. We could not get desired result from the Peace Committees. They could not yield result as expected also due to the fact that they lack judicial and administrative mandate. Peace Committees are not self-contained and capable to decide

on the issues of creating conducive conciliating ambience. So, Truth and Reconciliation Commission is required.

INFORMAL: Do you think the conflict-affected people have begun normal socio-economic life?

NR. 100000 was given to each family of the people killed and subjected to enforced disappearances. Similarly, disabled people are given some amount based on percentage of their disability. I don't think this is a complete amount. Following the formation of Truth and Reconciliation Commission the victims will be repaired. Whatever they have received so far is only the relief amount and is not sufficient to sustain their livelihood or to utilize for the income generating enterprises.

INFORMAL: How would you assess the access and relation of the conflict victims and their families with the District Level Peace Committees?

Peace Committees have been carrying out the functions

such as identifying and confirming the conflict-victims, recording their details and have also been assisting in distributing reliefs. I don't think these committees can carry out more than these jobs. Victims and their families are in congenial relationship with the committees. This is primarily because the committees are for the help of the victims and their families.

INFORMAL: How did you play your coordinating role as the Minister for Peace and Reconstruction in this connection?

When I assumed my office as the Minister for Peace and Reconstruction, Peace Committees were yet to be established in more than 20 districts. Of the committees formed prior to my appointment, only about twenty were active. I was bent on my aim that Peace Committees in all the districts had to be formed. As a result, Peace Committees were formed in almost all the districts except in 3-4 districts. I had my utmost endeavor to make the committees further resourceful and

active. I experienced during my tenure that the committees were carrying out their work effectively especially by assisting the victims and their families in the matter of providing reliefs and keeping their records.

INFORMAL: How was the inter-party cooperation or hindrance in this connection?

When I was in rule as the Minister for Peace and Reconstruction, the UCPN-Maoists were in opposition and they either had non-cooperation or hindrances against the Government. As was mentioned above, Peace Committees could not be formed in 3-4 districts; it was mainly due to non-cooperation of the Maoists. The Maoists should not have hindered the way they did by juxtaposing the issues covered by the committees with the broader political disagreements, which they had with the government. This was unfortunate.

INFORMAL: What do you think will create a better environment for reconciliation?

So far as reconciliation between the victims and perpetrators is concerned, the former has to be provided justice first. The perpetrator has to apologize to the victim especially in the cases of minor crimes and incidents. If a victim understands that his /her perpetrator/s are really sorry to the former after realizing the crime they committed, the victim can forget what happened in the past. This will also open up favorable environment for the reconciliation. The Truth and Reconciliation Commission has the responsibility to create such an environment. After intense discussion with the stakeholders, we had tabled a bill on the enforced Disappearances in the parliament, unfortunately again; this has not been passed yet.

INFORMAL: Why has it been difficult to pass the bills on Truth and Reconciliation and on the Disappearances?

When we were in the

government, these bills were not discussed in the Legislative Committee. I frequently requested to the Chairperson of the Legislative Committee, but she did not want to initiate discussion on these bills. She represents the UCPN-Maoist party, which had the policy not to help the government. Such crucial issues of the post-conflict transition should not have been pended due to political prejudices.

INFORMAL: To which level of solution, do you think, these disputable issues have reached to now?

Discussions have taken place in the Legislative Committee to form a small group for discussion on the bill but the committee is not ready to discuss and pass the bill.

INFORMAL: Which is more important for the reconciliation, immediate needs or security of the future?

Lasting peace in Nepal cannot be guaranteed until and unless transitional justice is provided. The victims have immediate problems. At the same time, they should be able to see their secure future. So what I think is that establishment of commissions on Truth and Reconciliation as well as Disappearances is the precondition now.

INFORMAL: How are the feelings of the victims and their families? What did you find during your tenure? Do they still feel revengeful, want to forget the past or are with similar other feelings?

They are with both told and untold feelings. It doesn't mean that those families whose members are subjected to enforced disappearances, killed or disabled do not have a feel of revenge at all. They are full of pain and discomfort. It is still likely that such feelings might turn into revenge. So, it is essential to provide justice to them.

INFORMAL: What do you think, as the former Minister for Peace and Reconstruction, are the issues accomplished so far, remaining still and also the problematic aspects regarding reconciliation in the society?

Reconciliation is a political issue as well. So, it demands understanding accordingly. However, there is the lack of political understanding in the country now. Even after the extension of the tenure of the Constituent Assembly twice, people doubt that constitution will be written. In such a situation, transitional justice and peace process are affected negatively. Also, such situation hinders the issues such as reconciliation, justice to the victims and punishing the perpetrators. The problem or solution of such issues is directly hinged on political understanding or misunderstanding. The UCPN-Maoists is in the government now, however, discussion on the bill has not been initiated yet. Probably, this is due to the fact that the Maoists have not understood or have undermined the importance and need of such a commission whereas almost major issues to be addressed by the TRC are remaining unresolved.

INFORMAL: Do you have any more to express on reconciliation process in the post-conflict Nepal?

- To heal the pain and problems of the conflict that exist in the post conflict situation in the society and also for the lasting peace, establishment of Truth and Reconciliation Commission and Commission on Disappearances is a must. Peace committees have to be activated in such a way that they will be able to forge friendly relationship among the parties and also manage conflict at the political level. Or else, it will be difficult to create an enabling environment in the society for the reconciliation.

*As interviewed by
Gopi Krishna Bhattarai*

Creating Local Governance in Nepal: Unitary Mind but Federal Concept¹



*Padma P. Khatiwada, PhD**

Background

Constitutionally and politically as well, consensus has been reached in Nepal on writing new constitution giving it a federal structure. Such an agreement is the result of the peace process that began in 2006 following the success of 19 days' popular movement. The Constituent Assembly (CA) formed under the mixed electoral system constituted ten Thematic Committees and one Constitutional Committee and then embarked on a journey to write new constitution. Among the committees, the Committee on State Restructuring and Distribution of State Power is one, which has been assigned the responsibility to identify the bases for state restructuring and propose federal structure accordingly.

Three years has elapsed since the CA initiated constitution writing business. Despite an ambitious plan of promulgating the new constitution within two years (that lasted on 27 May 2010), many disputable issues

are remaining still unresolved. State restructuring committee too has not been able to settle many disputes relating to state restructuring. However, the committee has submitted its draft concept paper to the Constitutional Committee amid differences of opinion. The Constitutional Committee has the mandate to review the Committee's draft and seek views of the CA members in endorsing the provisions proposed in the draft.

This is the situation now that the tenure of the CA has been re-extended by three months following the end of its extended one year on 27 May 2011. Left not more than one month now for the termination of the re-extended three months' period, the CA members are still wrangling over the differing points and several notes of dissent, many of them are related to the state restructuring, which were voiced and written before submitting the reports to the Constitutional Committee. This article has attempted to present and analyze the issues of differences raised in the report of the

Committee on State Restructuring and Distribution of State Power.

Debate over the Three Tiers of Federal Structure

The Committee on State Restructuring and Distribution of State Power has proposed three tiered federal structure for Nepal: federal, provincial and local. This proposition will end the existing unitary structure of five development or administrative regions, 14 zones and 75 districts replacing with a newer structure. Similarly, 3,915 Village Development Committees (VDCs) and 58 Municipalities¹ will be restructured. The major political parties in the country have made consensus on the tiers of the federal structure. However, some civil society and lobby groups mainly led by the Federation of District Development Committee (FoDDC)² have demanded at least four tiers, i.e. to include the structure of district. They claim that Nepal has been ruled for long taking the district as one of the important administrative units

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1. The original version of this paper was shared among the Participants of Practitioners Course 2011 on Decentralisation and Local Governance (28 March – 8 April 2011), at Institute of Federalism, Fribourg, Switzerland. Suggestions received there have been incorporated in this version.
2. Recent changes in the VDCs and Municipalities have not been taken into consideration here. Change has taken place increasing the number of municipalities thereby the number of VDCs has decreased.

and demanding that infrastructures be developed accordingly. They have been demanding that existing 75 district headquarters and their structure should remain intact. According to them “the concept of district in the federal structure will further strengthen the spirit of the decentralization” (Sapkota, 2011).

Functionality of All the Organs of the State at the Local Level

The Committee has proposed all the three organs of the state: legislature, judiciary and executive both in the federal and provincial levels assuming them as the main basis of strong local governance. The committee has also prepared a list of rights and responsibilities of all the three levels of federal structure proposed to enlist in a separate annex of the new constitution which can be a milestone for establishing strong local entity with autonomous power. The proposition that there will be an Elective Council to exercise how the legislature, judiciary and executive can be made effective at the local level will be a challenging task for the local representatives.

Special Structure at the Local Governance

Provision of Special Structure at the local level is another new step being introduced in the forthcoming constitution. The committee has proposed three main regions at the local level namely Autonomous Regions (targeting ethnic communities), Special Regions (targeting dalits) and the Region under Protection (targeting the minorities such as Muslim, and the ethnic communities like Raute, Chepang, etc). The committee has prepared a list of 23 communities targeted under the Special Structure³. The dilemma here seems to be how the coordination and

cooperation among each other will take place in the same local area where at least four different structures of local governance have been proposed. In the absence of clear mandates for all types of the structure in the local level, it is highly likely that conflict is unavoidable.

The committee has also prepared a list of rights and responsibilities of all the three levels of federal structure proposed to enlist in a separate annex of the new constitution which can be a milestone for establishing strong local entity with autonomous power.

Formation of Province

The Committee on State Restructuring and Distribution of State Power has given a rough sketch of 14 provinces which has brought out a lot of debates and confusions in the political sphere of Nepal. As the committee members themselves have said that they “did not have sufficient time to do enough exercise and seek consensus” due to the deadline given by the CA Chairperson, it is better to call the draft submitted by the committee as the “rough sketch”.

The Committee has clarified in its document that the main basis of the federal structure will be *Identity* and *Capability*. These two criteria put forth by the Committee with regard to implementing the basis of federal structure have aroused many curiosities among the concerned groups. Those demanding ethnic based provinces give the meaning for the *identity* as only the *ethnic identity* and those against it are saying that the names of the provinces should not touch any ethnic recognition, so should remain neutral. There is also a group among some political party leaders, civil society and the academia

that the identities like *Limbuwan*, *Khumbuwan*, *Nerwa*, *Tamsaling*, *Magarat* and *Tamurwan* are not only the ethnic identities but also the social, cultural and economic ones. The Committee has however not clearly defined these two terminologies in its draft. Another argument made

in this proposition is that even the targeted ethnic communities will not be satisfied by these names of the provinces because in almost all the proposed territories of the provinces the targeted ethnic community is in minority. For example, the Limbus in Limbuwan province are 26 per cent and the Newars in Newa province are only 26 per cent and so on.

Insufficient Exercise toward Creating Local Governance

The Committee’s task looks incomplete because it has given comparatively less priorities to the local governance issues. Although preparing a list of the rights to be exercised by the local, provincial and federal level can be taken as a good exercise of the Committee, it has not clarified how these powers are exercised by whom and under what modalities. The spirit of the draft gives more priority to creating province and less to the economic, social and cultural issues of the local level. It has not been able to identify the stakeholders who deserve these rights to be exercised in the local context.

The Committee has proposed

3. The FoDDC was created under the structure of Nepal’s old unitary structure – District Development Committee (DDC). The elected representatives are in the FoDDC.

to set up all the mechanisms such as names of the VDC or Municipality, their numbers and the regions by forming a high level commission within one year of the promulgation of the constitution. Until that period the existing mechanisms will be

proposed some provisions which are related to the essence of democracy. The President or Vice-President at the local level is not eligible to fight for the post more than twice. Separate provision has been proposed by the Committee to finalize the procedures

This Committee seems to have tried to institutionalize democracy mainly through the principles of decentralization and devolution. To materialize this concept, the Committee has proposed to form autonomous local bodies.

active. The Committee has also proposed a list of 20 rights in the local level including municipal police, cooperatives, operation of FM radio stations, local tax and the taxes related with property house, automobile, service, tourism advertisement and land revenue.

Provisions Proposed by the Committee for the Local Governance

This Committee has proposed some provisions regarding the executive power in both the provincial and local levels. The Committee has proposed the executive power in the provincial level under the provincial cabinet. During the state of emergency, or during the time of the federal regime, the executive power remains solely with the chief of the province. As per the Committee's exercise, the executive power at the local level will remain with the Council of Ministers. In every structure of the local governance, there will be at least one executive head and a deputy in each structure of the local governance who will have the tenure of five years.

Some Provisions Related to the Essence of Democracy

The Committee on the Forms of State Governance has also

of the election to the portfolios in the local level. The election system will be based on the First-Past-the-Post (FPTP) (70%) and Proportional Representation (30%). The President and the Vice President will be elected on the FPTP system and the President will appoint the members as per the seats allocated for the political parties based on the votes they receive in the election. The Political parties have to fight candidacy for the election giving due care of the ethnicity, caste, geographical coverage and sex. There will be a body of 5-11 persons in the municipal areas whereas in the VDC level, this number ranges from 5 to 7. The Committee has also provisioned a legislature at the local level but it lacks details on the issues such as what form it will have, how this will be created, and particularly, what roles and responsibilities it will have.

Some Problematic Issues

This Committee has not been able to sort out some crucial issues like what type of state governance will be adopted in the federal level, which election system will take place for the federal legislature, whether or not there will be the structure of the district and the rules and procedures for the formation of Council of Ministers in the federal level and so

on. This Committee seems to have tried to institutionalize democracy mainly through the principles of decentralization and devolution. To materialize this concept, the Committee has proposed to form autonomous local bodies. However, the Committee's draft is not clear on how these autonomous bodies are created in the local level and it is also not clear whether these bodies will be formed under legislative or executive power.

Similarly, this committee has proposed two types of courts at the local level. The first will remain at the local level and it will be termed as local court. The second will be formed at the district level and will be termed as district court. For the appointment of judges in these courts, a special committee having the representatives from both local and district level has been proposed. This proposal has established the structure of district in the federal tier.

Conclusion

Constitution writing effort in Nepal is fully influenced by the concept of unitary mind. The Interim Constitution 2007 has guaranteed the federal structure as the main basis of state restructuring. The political parties, however, are following the old tradition of formation and reshuffling of the government. The two years' time period allocated for the constitution making was also so short compared to the experiences of the other countries that wrote their constitution through the Constituent Assembly. Although the tenure of the CA has been re-extended by three months following the termination of the earlier extended one year's period, progress so far is not as per the popular expectation. The exercise so far reflects the scenario that political parties are more concentrated on shifting from the centre to the province, however, there lacks necessary seriousness and intense exercise towards this end.

‘Positive Attitude is Developing in the Community’

*The Truth and Reconciliation Commission supposed to be formed has not been materialized yet. Politically balancing Local Peace Committees (LPCs) are formed at the community Level but there lack meaningful efforts of the Government for the community level peace and reconciliation. Grievances are there that the LPCs have not been effective in their objectives. In this context INFORMAL had collected views from the **District Coordinators of the LPCs** on efforts, achievement and constraints of the LPCs. Edited Version:*

Shiva Narayan Mehata

Coordinator, District Peace Committee, Sunsari



I don't think a conducive environment can be created easily at the local level in the absence of Truth and Reconciliation Commission. Seemingly, environment for the reconciliation at the local community level is congenial but it is not so in the practical sense. However, reconciling environment in the Sunsari district, compared to the environment in other district, is good.

As it takes time to heal the pain and problems of the conflict era, socio-economic life of the victims is not notably satisfactory. However, efforts are there from the Peace Committees to make the socio-economic life of the victims convenient. There still exists a situation that the conflict victims and perpetrators live in a malicious relationship. However, such a relationship

has improved gradually.

We, the responsible people of the Peace Committee, are attempting our best to reconcile the victims and perpetrators by creating trust between them. Victims have been registering applications at our office and we have been seriously carrying out investigation based on their application before making recommendations to the concerned authorities. So, the victims are in close contact with the Peace Committee. However, problem lies with fact that the decisions made by Peace Committee have to reach to the Ministry for Peace and Reconstruction through the Chief District Officer. This has been a lengthy process in the matter of providing help to the victims. Not to sit together for the discussion, reluctance to listen to others and also the mentality of the perpetrators that despite their crimes and mistakes they are living scot-free are some of the problems at the grassroots level for reconciliation.

Reconciliation and security are interconnected when it comes to the matter of post-conflict situation of the warring groups. So, promises of the government have to be translated into reality. Given the failure or reluctance of the government to keep their promise, situation might go even worse as the conflict-victims

are still with the feelings of retaliation.

Ever since I assumed my office as the Coordinator of the Peace Committee, I have been working wholeheartedly for the conflict victims and reconciliation. I have been able to form 18 VDC level local Peace Committees so far and details of the people subjected to enforced disappearances, killed, injured and abducted during conflict are being collected. However, peace committees are not formed in 31 VDCs and 3 Municipalities. Provided that no hindrances are there towards our mission, such committees will be formed in six months' time now.

Rajesh Shah

Coordinator, District Peace Committee, Rautahat



It's wrong to assume that local communities will be reconciled in the absence of Truth and Reconciliation Commission. It's primarily because conflict victims are requesting more for justice than relief.

Outwardly, it seems the conflicting parties of the past are ready to reconcile, however, reality speaks slightly otherwise. Since their perpetrators have not been penalized yet, the conflict victims are unhappy. This has added to the pain of the victims. Demands are there that the perpetrators should be punished through the Truth and Reconciliation Commission.

The victims and perpetrators were not ready to sit together in the past but this is not the situation now. They discuss and share their issues in different platforms provided by different institutions and organizations. They have tended to forget the bitter past over time and advocated for peace and reconciliation. Their priorities now have concentrated on how to ascertain their and children's secure future. Socialization has increased. We have felt that their involvement in different

discussion forums provide them with a sense of relief and an environment for forging trust at the same time. When it comes to the matter of access of the victims to the Peace Committees, the former were not in better contact with the latter but situation has changed now.

So far as better environment for the reconciliation is concerned, government should launch programs for economic growth and sustenance. Locally promoted programs of victim assistance and reparations are necessary. Above all, formation of Truth and Reconciliation commission is indispensable. Reluctance of the perpetrators to apologize publically for the crimes and the mistakes they committed in the past, deprivation of government-provided relief amounts, in some cases, and immunity enjoyed by the perpetrators have created problems for the reconciliation.

Our learning while working in close proximity to the conflict victims has it that security of the future is more important than immediate needs for them. This might be so due to the fact that supports are there now from different organizations but education of their children, sustenance and economic problems are more important for them. Victims are not with a sense of vengeance but have been demanding their perpetrators be punished.

Once I assumed office as the coordinator of the committee, many pending applications of the victims were recommended and forwarded to the ministry. VDC level Peace Committees are formed and different skill and income generating programs are implemented for the victims. Various campaigns, in coordination with different organizations are launched for the victims and reconciliation in the local community.

Subash Chandra Giri

Coordinator, Local Peace Committee, Nawalparasi

Despite the fact that Truth and Reconciliation Commission has not been formed yet, we have been working at the local level for reconciliation. Having said this, it does not mean that we have been able to achieve fully. Government has to come up with a special economic package for the support of the conflict victims and their families. The level of trust and



understanding among the conflict victims, their perpetrators and other stakeholders in this district is good. The conflict victims here are in a close contact and easy access to the Local Peace Committees. Such committees are

formed in majority of the VDCs in the district.

If the conflict victims can be provided with income generating opportunities or the jobs, this will enhance a better reconciling environment in the district. Conflict affected people are with the grievances that they lost their beloved people and are in trouble due to the activities of the opponents. Immediate needs as well as security of the future are equally important in the case of conflict victims. For this, government has to provide with jobs to them as this will solve their present problems as well as of the future. Conflict victims have shown tendency to reconcile, however, economic betterment of the victims has to be guaranteed.

Tulasa KC

Coordinator, Local Peace Committee, Dang



Despite the fact that Truth and Reconciliation Commission is yet to be formed, achievements are there towards reconciling local communities. Comparatively, we have more congenial environment for the reconciliation and attempts

are there at the locality to reconcile. However, it has been difficult to work as per the objective of the peace committees. If the Truth and Reconciliation Commission was formed by now, it would be easier.

Conflict victims are able to live better socio-economic life these days. Positive attitude is developing

in the community. Economic support, which the victims have received, although it is nominal, has helped the victims. Provided that the state provides opportunities to the conflict victims in all its bodies with high priorities, life of the victims could be better.

It has been possible through the efforts of the peace committees that the victims and perpetrators have been able to sit together for the discussion seeking understanding whereas they would fear against each other and would deny outright to meet in the past. They are also better trusted now. The victims as well as the perpetrators are in better relation with the Peace Committees at least through trainings, interaction and similar other programs. We have been putting efforts for the formation of peace committees at the local level. Having said this, it does not mean that we are free from challenges and complexities. Our obstacles and complexities regarding reconciling environment in the society are the result of the fact that the stakeholders have failed to act as per the spirit of the Comprehensive Peace Agreement. For the better reconciling environment in the communities, stakeholders have to stick to the norms of the Comprehensive Peace Agreement, Truth Commission has to be set up and the role of civil society should be visible towards this end.

Necessity of the present is more important for the reconciliation because present always gives birth to the good or bad future. If present needs of the victims are better addressed, future certainly will be free of risks. It's wrong to assume that the victims are guided only by the sense of revenge. But, it is natural hurt minds sometimes tend to opt for this means. Such tendencies can be managed by addressing the problems of the victims. Generally, the victims are trying to forget the past, get justice now and live a friendly life in the future.

Gobinda Raj Joshi

Coordinator, Local Peace Committee, Kailali

It's true that it has been difficult, in the absence of Truth and Reconciliation Commission, to expose truth about the victimization that took place during



the conflict in the past. Issues and concerns of many of the victims and their families are still suppressed. As a result, many victims are not ready to put forth their problems. This has debarred many victims and their families from receiving relief and

has also hampered to create a conducive environment for the reconciliation. Conflict victims are waiting for the creation of an enabling environment whereby they could resume their normal socio-economic life, but to no avail.

Not all the conflict victims have access to the Peace Committees. Of the 42 VDCs and two municipalities in this district, Peace Committees are formed in both the Municipalities but in only 26 VDCs. Reliefs provided by the government have not reached to the access of many victims. Captured houses, land and properties are not restituted yet. How can we think of normal socio-economic life of the victims in such a context? However, some positive changes are felt following the formation of Peace Committee in the district.

Provided that the Peace Committee, local political parties, civil society and the other stakeholders converge on the issues of post conflict problems, there can be an environment for forging trust between victims and the perpetrators. It is necessary now that stakeholders have to analyze the bitter and antagonistic incidents of the past appropriately and seriously. We have carried out such jobs in some of the VDCs of the district, Dugauli and Pahalmanpur to name some.

So far as the access of the conflict-victims to the Peace Committee is concerned, we have been recording their details and updating as well. Not all the victims have opened up themselves. We are in need of support from the political leaders and cadres in the matter of forging better relationship between the victims' side and the perpetrators. We have been putting our efforts towards this end. Once we are able to form Peace Committees in the rural areas of the district, access of

the victims to the Peace Committee will be easy.

Better reconciling environment can be created if reconciliation is understood more as a psychological problem. All the stakeholders have to take the issue accordingly. National scenario also affects this process. So, constitution has to be written with in the extended time, political parties have to create enabling environment. We have been doing our best at the local level but it seems that our efforts are limited.

To reconcile a post-conflict society, people have to have faith on the political parties. Victims have to be assured that horrific and bitter past won't repeat. Perpetrators have to be punished; they have to publicly apologize for what they did or should be given amnesty. However, only the Truth and Reconciliation Commission can take such decisions. Structure and mandate of the Peace Committee does not allow deciding such issues.

It has been found out while dealing with the conflict victims that security of the future is more important for them than immediate need fulfillment. They want to be assured of their future; however, it does not mean that they are free from immediate needs and problems. In some of the cases, victims have expressed anger stating that they would resort to vengeance but such tendency has to be managed prudently.

Things have been underachieved, contrary to our aim. Also, structure of the peace committee has been a hindrance in this regard. It has been only a common platform for the discussion but lacks its independence. As the tenure of a coordinator is for only six months, it is impossible to accomplish works as intended. Concerned bodies have to think of addressing such problems faced at the local level. The Peace Committee has not been efficacious also because different political interests are there in the committee. Moving ahead amidst such different interests and ideologies is really challenging and peace committees also suffer due to lack of resources.

Views expressed here were collected by Sukdev Chaudhary, Bipin Gautam, Narayan Parajuli, Shalikram Musaphir and Sur Bahadur Pariyar.

Annex 1: Rights of Federal State

S.N.	Subjects
1.	Defense and security related
2.	Central Police Force
3.	Central Bank, Fiscal policy, Monetary Policy, Foreign grant, assistance and loan
4.	Central Telecommunications, distribution of radio frequency, television and postal service
5.	Customs, excise duty, VAT, Institutional income tax, passport, visa, postal service, tourism fee, service tax
6.	Royalty from natural resources
7.	Management of central civil service
8.	Central Bureau of Statistics
9.	Large scale central power houses, irrigation and other projects
10.	Central University, central library
11.	Central Health Policy
12.	Affairs relating to Federal Legislature and Executive
13.	International trade, exchange, port, quarantine
14.	International and Inter-state civil aviation
15.	Foreign and diplomatic affairs and relating to United Nations
16.	International treaty, extradition and international border management
17.	Management of national train and national highway
18.	National intelligence and investigation
19.	Supreme Court, Constitutional Court
20.	Citizenship, visa, immigration related law
21.	Nuclear energy and space related issues
22.	Commissions of central importance including the Election Commission, National Human Rights Commission, Commission for Investigation of Abuse of Authority, Public Service Commission, National Women's Commission, Inclusive and Representative Commission, Dalit Commission, National Planning Commission, Indigenous Nationalities Commission, Madhesi Commission, Commission for the upliftment of highly minority, marginalized and backward region etc.
23.	Defense and Offensive
24.	Arms, and related to ammunition production factory
25.	Metereology
26.	Mine excavation
27.	Insurance policy
28.	Formulation of Criminal law
29.	Intellectual property (including patent, design, copy right)

30.	Any subject unstated in the list of rights of federation, province, local level and autonomous region or any issue not started in the common list and subjects not mentioned in this constitution and laws formulated in line with this constitution.
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Annex 2: Rights of Province

S. N.	Subjects
1.	Provincial main law
2.	Police, administration and law and order
3.	Bank and financial institution, cooperatives, foreign assistance in grant and loan with the consent of the centre.
4.	Radio, FM, Television
5.	Personal income tax, business tax, land revenue, remuneration tax, land and housing registration tax, automobiles tax, entertainment tax, advertisement tax, tourism and agriculture tax, service tax
6.	Royalty from natural resources
7.	Management of provincial civil service
8.	Provincial statistics
9.	Provincial level hydro power, irrigation and other projects
10.	University, higher education, library, museum
11.	Health service
12.	Provincial legislature, and related to local governance and special structure
13.	Inter-provincial business
14.	Provincial civil aviation
15.	Provincial railway and provincial highway
16.	Federal Investigation Bureau
17.	Hydro project, irrigation project
18.	Provincial court, family court and juvenile court
19.	Citizenship and passport management
20.	Provincial level commissions
21.	Land management, documentation of land and determination of land revenue taxes
22.	Mine excavation and management
23.	Insurance management and operation
24.	Protection and use of language, culture and religion.
25.	Utilization of forest and water within the province.
26.	Agriculture and animal husbandry, industrialization, entrepreneurship, transport, production of alcoholic products, construction and buy and sale.
27.	Books and printing press
28.	Management of Trust

Annex 3: List of Common Rights.

S.N.	Subjects
1.	Criminal and civil legal procedure, verification and oath (legal status, public work and documentation and judicial process)
2.	Supply of essential goods, price control, quality and monitoring
3.	Preventive detention relating to security of the state, management of prison and arrest and law and order.
4.	Transfer of convict, detainee and prisoner from one state to another
5.	Formulation of law relating to family affairs (related to wedding, hand-over of property, diverse, and protection of groups on the verge of extinction, adoption, heir, joint family matters
6.	Acquisition of property, acquisition and creation of rights
7.	Relating to contract, partnership and agency
8.	Related to Bankruptcy and insolvency
9.	Medicine and chemicals
10.	Economic and social planning, family planning and population control
11.	Social security and employment, trade union and issues relating to rights and disputes of Industrialists and workers
12.	Medicine, legal and other professions
13.	Vital events like documentation of death, birth
14.	Water ways
15.	Relating to communications
16.	Relating to archaeology, historical monuments and museums.
17.	Relating to industries and mines and physical infrastructure
18.	Licensing of casino, lottery, automobiles
19.	Fire and control of natural calamities, relief and rehabilitation
20.	Tourism, drinking water and sanitation
21.	Relating to film and cinema hall
22.	Insurance
23.	Poverty alleviation and industrialization
24.	Scientific research, science and technology and human resource development.
25.	Utilization of jungle, animals, birds, Himalayas, national parks and water resources spread between provinces.
26.	Management of national and inter-state level environment
27.	Land policy

Annex 4: List of rights of Local Level

S.N.	Subjects
1	City police, community police
2	Cooperatives
3	Operation of FM stations
4	Local tax, property tax, house tax, automobile tax, service tax, tourism tax, advertisement tax, land revenue tax
5	Royalty from natural resources
6	Management of local services
7	Local statistics and documentation
8	Local level development projects
9	Primary and secondary education
10	Basic health and sanitation
11	Management of local bazaar
12	Local road, villager road, agriculture road
13	Local court, mediation and arbitration
14	Citizenship, distribution of passports and documentation management
15	Distribution of land and housing certification
16	Agriculture and animal husbandry
17	Management of elderly citizens, disabled, women, single women and helpless
18	Collection of unemployment data
19	Management of agriculture, operation and control
20	Registration of vital events like birth, death and others

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Withdrawal of Criminal Charges: Mockery of National Framework and International Commitments

Introduction

The governments in Nepal have withdrawn and tried to withdraw the cases filed against those charged with various offences, including serious charges filed before the period of insurgency. Such acts and attempts, which have been dared due to politicization of crimes and pressure to withdraw the cases against criminals, clearly breach the national and international obligations of the state. The cases have been withdrawn at a time when growing impunity has been obstructing the criminal justice system in the country also challenging the state obligations towards rule of law as created by national and international laws. Blanket withdrawals of the cases filed against the cadres of political parties have long been a mainstay of negotiations between opposition political groups and the government. This article will deal with the incidents of case withdrawal in Nepal in the pretext of being of *political nature* linking such

trends to national and international obligation of the state. Also, attempts will be there to analyze how the acts or trials of withdrawal are against the obligation of the state.

Incidents of Withdrawal

In October 2008, the UCPN-M led government withdrew 349¹ cases charged against numerous political parties' cadres, including two senior members of the cabinet, saying that it was necessary to do so to promote peace process and fully implement the Comprehensive Peace Agreement (CPA)². The provision of the CPA does call for the withdrawal of cases but they need to be the cases brought against individuals "due to political reasons"³. According to the report of OHCHR-Nepal the Council of Ministers subsequently recommended the withdrawal of at least 41 additional cases. Successive governments have come under pressure from different political parties, armed, indigenous and ethnic groups demanding that criminal cases

against their supporters be dropped. More than one third of the 41 cases reported by OHCHR also deal with allegations of murder or attempted murder.⁴

Similarly, the CPN UML-led coalition Government also withdrew 288 cases in 2010. Withdrawal of the cases under political guise is seemingly legitimate but this promotes impunity and backs an increase of criminal activity in the country.

The cases approved for withdrawal by the Maoist government included a significant number of cases filed by the state agencies against Maoist leaders and cadres during the period of conflict, while the sanctioned withdrawal by the CPN-UML government was done under pressure from the Tarai-based political parties, mainly regarding incidents that occurred after the signing of the CPA.⁵ National and international actors consistently requested that the Government justify its rationale for all of those withdrawals. The National Human Rights Commission

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1. Out of 349 cases, 99 murder cases, 12 occurred after peace agreement, Nepal Human Rights Year Book, 2011, INSEC
2. Memo of Ministry of Law, Justice and the Constituent Assembly Affairs, dated 27 October 2008.
3. Clause 5.2.7, Comprehensive Peace Accord Concluded between the Government of Nepal and The Communist Party of Nepal (Maoist) on 21 November 2006
4. *Remedies and Rights Revoked: Case Withdrawals for Serious Crimes in Nepal*, OHCHR-Nepal and National Human Rights Commission of Nepal, June 2011
5. 'Government withdraws some 300 murder, arson cases', Republica, 17 November 2009 http://www.myrepublica.com/portal/index.php?action=news_details&news_id=11876

(NHRC) condemned the withdrawals and the Supreme Court of Nepal ruled that withdrawal decisions must be subject to an independent review by the courts. NHRC further noted the numerous cases withdrawn by the Government are clearly criminal in nature which cannot be linked with politics. It has also suggested the Government needed to consult the Commission prior to withdrawing the cases involving human rights violations, especially the ones on which the NHRC already conducted investigations and recommended actions accordingly.

On June 2, 2011, during Nepal government's consultation on the Universal Periodic Review, EU states raised their serious concerns over the government's plan to withdraw criminal cases. They said that the plan for the withdrawal was based on a mistaken and distorted interpretation of the CPA and urged to ensure that police investigations and criminal cases be allowed to proceed without political interference.⁶ During the session of the Human Rights Council, while adopting the outcome document on Nepal on 7 June 2011, similar concern about the ramifications of

National Framework

Nepal is a party to numerous human rights treaties, which obligates the State to investigate and prosecute human rights violations; however, even after becoming the party to these treaties, Nepal has been withdrawing cases of human rights violations and serious crimes. From the Rana regime and the royal regime, where the charges used to be withdrawn through decree of Prime minister or the King⁸, and after the establishment of democracy to the election of the Constituent Assembly, every regime has enjoyed impunity through the withdrawal of criminal charges on their political cadres. Neither the constitution nor any of the legislations in the country have provision for withdrawal of cases.

Case withdrawal and political protection to the criminals has paralyzed the criminal justice system and rule of law. State has the duty to conduct impartial investigation on criminal cases, prosecute alleged perpetrators and punish them as per the criminal laws in the country. If the state fails to fulfill this duty, crime and violations increase thus it promotes impunity. Nepal has clearly breached

withdrawn the criminal charges of those involved in serious and gross violation of international human rights and humanitarian laws, it is not wrong to state that impunity has been institutionalized in the country. Serious crimes such as theft, drugs trafficking, rape, murder, disappearance and the cases of crime against humanity have been withdrawn. A large number of cases of human rights violations that occurred during the armed conflict are withdrawn in the name of political consensus.

Interim Constitution

According the Interim Constitution the President on recommendation of the Council of Ministers may grant pardon to convicted persons and suspend, commute or reduce any sentence imposed by any court (including special and military courts) or by any other judicial or quasi-judicial, or administrative authority or institution.¹⁰ As a twist of this provision, even the perpetrators of serious crimes under national and international law – including enforced disappearance, torture and rape have been pardoned or in the process of pardoning.

Although article 166 (3) of the Interim Constitution 2007 mentions that the "Comprehensive Peace Accord" concluded between the Government of Nepal and the Communist Party of Nepal (Maoist) on November 21, 2006, and the agreement relating to "Monitoring of Arms and Army Management" reached on December 8, 2006 are exhibited in Schedule 3, it does not independently form a part of law that is enforceable by the courts. The

As a twist of this provision, even the perpetrators of serious crimes under national and international law – including enforced disappearance, torture and rape have been pardoned or in the process of pardoning.

the case withdrawal were raised by national and international actors including numerous members of the UN, INGOs and NGOs.⁷

these obligations by withdrawing the cases pending for further investigation at different courts. As the governments formed after the democracy in 1990 to the current government⁹ have

6. Ambassador's remarks on human rights, 02 June 2011, <http://ukinnepal.fco.gov.uk/en/news/?view=Speech&id=604902782>

7. Statement by United Kingdom, Denmark during the 17th session of Human Rights Council, 7 June 2011

8. Withdrawal of the serious crimes cases and impunity in Nepal, FOHRID report, p 12

9. Interim government of 1990, government of Nepali Congress (1991-1994), nine months government of CPN UML (1994-1995), coalition government of Nepali Congress, Rastri Prajatantra Party and Sadhabana Party and government led by CPN- Maoist formed after the election of Constituent Assembly

10. Article 151, Interim Constitution, 2007

Supreme Court in case of *Madav Basnet et al V. Prime Minister Puspa Kamal Dahal et al.* has interpreted that the CPA, though persuasive as a means of interpreting the Constitution, is not legally enforceable in the courts independently.

National Legislations

The State Cases Act 1990 is only the legislation that deals with the withdrawal of criminal charges in Nepal. The Act authorizes the government to withdraw the cases filed by the Government subject to permission from respective district courts. If a case is withdrawn, the criminal charge or governmental claim ceases to exist and the accused is freed from criminal charge.¹¹ The Act provides neither procedural nor substantive safeguards against arbitrary withdrawals of cases.¹² The only limitation is that no withdrawal is permitted if a case involves a matter relating to private property.¹³ As the existing provision of the State Cases Act allows for the withdrawal of criminal charges, it clearly breaches the right to an effective remedy, ensured by numerous human rights instruments, which Nepal is legally bound to respect.

On 17 August 1998, the government brought the “Procedures and Norms to be Adopted While Withdrawing Government Cases-1998” also known as ‘1998 Standards’ clarifying the nature of the criminal cases that qualify for withdrawal and the process to be followed. According to the provision the criminal cases were categorised into two – of political nature¹⁴ and general cases.¹⁵ The

Standards provide that the second category of offences shall only be withdrawn in the rarest of instances by taking circumstantial evidence, any prior criminal history of the accused, social standing of the accused, and other related factors, including whether the case is filed with a motive of political vengeance or malicious intent into account.¹⁶

The Draft Bill on Criminal Procedure Code, 2010 proposes some important amendments to the State Cases Act. Except in some instances as specifically prohibited by law, the draft does not permit case withdrawal for a significant number of crimes, including murder, rape, abduction and enforced disappearance.¹⁷ In contradiction with the international standards, serious offences such as torture, physical assault and illegal detention are not listed in the exempt categories.

The Draft Code also requires the adoption of detailed procedural rules for governing the withdrawal process, as well as mandatory hearings in the respective district court to decide whether or not to allow the withdrawals in question, and a prohibition of case withdrawals at the appellate level. These legal requirements would provide important check and balance to prevent the arbitrary withdrawal of criminal cases.¹⁸

Although the Draft Bill on Truth and Reconciliation Commission (TRC) 2010 does not contemplate criminal case withdrawals, the draft allows the TRC to recommend amnesty for “any person found guilty under this Act”. However, section 26 (2) of the draft prohibits amnesties for: “any kind of

killing after taking [the person] under control”, “killing of unarmed persons”, “torture”, “enforced disappearance”, “rape”, and “abduction and hostage taking”. The list of exceptions fails to include numerous serious crimes and violations under national and international law.

Role of Judiciary

Judiciary has established number of jurisprudence on arbitrary withdrawal of criminal charges by the government. While the Supreme Court had earlier passed a number of strong judgments reaffirming the need to proceed with investigations and prosecutions, there have recently been some worrying judgments, indicating that the court may be persuaded by arguments that transitional justice mechanisms are an appropriate substitute for the standard criminal justice process.¹⁹

Initially, judiciary sent clear directives through its rulings to deal the cases by civilian courts under standard criminal procedures. The court had viewed that reasons for the withdrawal of cases were not permissible. This was a strong stand against the move of the government that promotes impunity in the country. For the first time in 1995, the Supreme Court, in the case of *Government of Nepal v Dil Babadur Lama*, decided that before granting permission to the Government for the withdrawal of cases, the court should investigate whether the intention is for good cause or not. Similarly in 2008 in the case of *Government of Nepal v Debendra Mandal*, the Court found that its consent is necessary to proceed with case withdrawals, including for

11. State cases Act, Article 29

12. Supra note at 4

13. Supra Note at 10

14. Section 3, 4 and 5 of the Crime Against State Act -1989

15. Cases filed under existing laws of Nepal, including homicide, corruption, rape, robbery, drug peddling

16. The 1998 Standards, Nepal Government Policy Document, Criteria 2.

17. Section 116(2) of the Draft Criminal Procedure Code proposes a provision prohibiting withdrawal of a number of serious crimes under domestic law.

18. Supra note at 4, 12

19. *Evading Accountability by Hook or by Crook*, Advocacy Forum, June 2011, p. 2

upholding victims' access to justice and right to an effective remedy. The court has reaffirmed the victim's right to justice, and the corresponding responsibility of the judiciary to ensure justice on cases of violations of human rights and humanitarian law in the case of *Government of Nepal v Gagandev Raya Yadav* in 2007.

Now-a-days, judiciary seems to be more confused about the power of the executive, which has been putting forward the logic in regards to granting amnesty that transitional justice mechanisms are an appropriate substitute for normal criminal investigations and trials that have been reflected in some recent verdicts passed by courts regarding case withdrawals, particularly in the cases filed before the signing of the CPA. Going contrary to its own earlier rulings, there are several recent decisions in which the Supreme Court granted interim orders to halt proceedings in the cases dating back to the conflict period. The court cited Article 33 (q) of the Interim Constitution and clause 166(3) of the CPA while doing so.

While responding to the public interest litigation case of *Madhav Basnet et al v Prime Minister Puspa Kamal Dahal et al*, the Court issued an interim order preventing the further implementation of the Council of Ministers' decision of 27 October 2008 that recommended the withdrawal of 349 criminal charges. The Court based its interim order on the fact that the CPA provides only for the withdrawal of cases filed with political motives, while the list of cases recommended for withdrawal included numerous charges seemingly unrelated to political offenses.²⁰ Delivering its verdict in *Madhav Basnet et al* on 23 February 2011, the Supreme Court maintained

that any decision of the Government of Nepal recommending a withdrawal of criminal cases under the State Cases Act must be fair, reasonable and just.²¹

From the above mentioned decisions of the court, it is deducible that the courts lack uniformity in their decision. The verdict of the Supreme Court in the case of *Madhav Basnet et al* differs from its own earlier position in the interim order in the case of *Madhav Basnet et al v Prime Minister Puspa Kamal Dahal et al*. In few instances, despite the recognition of district courts' competence to rule on the matter, there is still a lack of uniformity among their considerations of whether or not to endorse cabinet decisions on case withdrawals. This means that district courts do not comply with Supreme Court rulings in a uniform fashion, which has undermined the authority of Supreme Court decisions.²²

The Supreme Court in February 2011 scrapped the government decision to withdraw cases filed against murderers of Kanchanpur-based journalist Prakash Singh Thakuri and the Nepali Congress cadre Netra Lal Shahi in Humla district saying that the government first needed to take permission from district courts and it is only the district court that has the right to decide whether or not to give permission to the government in this regard. Thus, the apex court does not have power to decide such cases.

The Supreme Court, however, reversed this strong position in its final decision in this case on 23 February 2011, where the Division Bench decided that the decision of the Government to withdraw the 349 cases was lawful as per the case withdrawal policy standard (1998

Standards) and Clause 5.2.7 of the CPA; the petition was consequently quashed. The Supreme Court in this case seemed to confirm the broader definition of "political crime" as argued by the pro-amnesty camp; in that, a case committed during the conflict will, prima facie, be of a political nature and come under Clause 5.3.7 of the CPA. Despite this disappointing ruling, it is to be noted that the Supreme Court emphasized in its judgment that the District Court must carefully and in good faith, on a case by case basis, consider its final decision whether to accept or refuse a case withdrawal. It remains to be seen what position the district courts will uphold as the withdrawal applications flow in.²³

The Supreme Court has expressed diverse and contradictory opinions through its verdicts regarding case withdrawal. On the ground of difference in the nature of each case, the court has interpreted the law in different ways. Courts must take the issue seriously as the verdicts of the courts are of great value for the effective remedy and delivery of justice to the victims. To ensure full justice, the judicial sector should develop uniform standards on the matter.

International Guidance

Guarantee of effective remedies to the victims of human rights violations are the International obligation of the state. Numerous international human rights treaties, which Nepal is a party to, obligate the state to respect and ensure a wide range of human rights for individuals in its jurisdiction. Nepal has ratified the International human rights framework such as the Universal Declaration of Human Rights, International Covenant on Civil

20. Supra note at 4, 12, 18

21. Ibid

22. Ibid

23. Raju Prasad Chapagai, 'Withdrawal of Criminal Charges and Other Forms of Amnesty in Nepal: Reflections on the Relevant National and International Legal Framework', National Judicial Academy Law Journal, 2010, page 186.

and Political Rights; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). So, it is legally bound to implement. Those treaties explicitly impose an obligation on Nepal to provide effective remedies for abuses of the rights and freedoms they contain,²⁴ whether committed by government officials or private citizens. Act of withdrawal of cases restricts the government obligation to prosecute the persons involved in criminal cases. Amnesty to the perpetrators could jeopardize the rights of victims to get justice and remedy.

Treaty Obligation

Article 2 of the ICCPR obligates states to “respect and ensure” the rights provided by the covenant, and the Human Rights Committee has observed that States must prevent not only abuses of Covenant rights by agents of the State, but also violations caused by “permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”²⁵

In the case of *Sharma v. Nepal*,²⁶ the Human Rights Committee found the Government of Nepal to have violated the victim’s right to liberty and the prohibition on torture or cruel, inhuman or degrading treatment in conjunction with the right to an effective remedy.²⁷

In January 2011, following up on its views in the *Sharma* case, the Human Rights Committee sustained that Nepal is under an immediate obligation to carry out an investigation and prosecute, try and punish those held to be responsible, including separately from nascent transitional justice mechanisms, so as to avoid an ongoing denial of the complainant’s right to an effective remedy.²⁷

The Supreme Court of Nepal ruled similarly in its June 2011 decision in the case of *Sushil Pyakurel, et al. v Right Hon’ble Prime Minister Jhala Nath Khanal et al.*, finding that thorough and effective investigations through the criminal justice system cannot be deferred to non-existent transitional justice mechanisms.²⁸ The Supreme Court further observed that it must implement both the ICCPR and the UDHR in its rulings, implicitly including the right to an effective remedy through impartial investigations.

Similarly the Convention against Torture obligates States to criminalize, investigate, prosecute and provide effective remedies for torture or cruel, inhuman or degrading treatment or punishment.²⁹ The committee on Torture, in 2005, suggested government to “take effective legislative, administrative and judicial measures to ensure that all allegations of arrest without warrants, extrajudicial killings, deaths in custody and disappearances

are promptly investigated, prosecuted and the perpetrators be punished. In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the investigation.”³⁰

The Committee on Torture submitted a list of issues to the Government of Nepal in November 2010, raising specific concerns regarding impunity that may result in due to recently proposed case withdrawals.³¹

Concerns of UN Special Procedures

Numbers of United Nations Special Procedures have raised their concern on the obligation of the government for investigation and prosecution of the serious human rights violations.

UN Special Rapporteur on Torture in its report submitted to the 62nd session of the Commission of Human Rights in 2006 expressed its concern on the lack of prosecutions in the face of mounting and credible allegations of torture and other acts of ill-treatment.³²

The Special Rapporteur on extrajudicial executions in its report to the Human Rights Council voiced that under human rights law, the State is not only prohibited from directly violating the right to life, but is also required to ensure the right to life, and must meet its due diligence and obligations to take appropriate measures to deter, prevent, investigate,

24. ICCPR, Art. 2.3(a) requires States parties to ensure that victims of violations of the Covenant, “have an effective remedy”; CAT, Arts. 13 and 14 guarantee the rights of torture victims to redress, including effective remedies and reparation.

25. Human Rights Committee, General Comment No. 31 on the nature of the general legal obligation imposed on State parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, para. 8.

26. Case of the disappearance and presumed death of Surya Sharma by the security forces, during the conflict period

27. Follow-up Progress Report of the Human Rights Committee on Individual Communications, 5 January 2011, CCPR/C/100/3; see Nepal, “Remedy recommended” and “Further action taken or required”

28. Supra note at 4, 12, 18, 21, 22

29. Article 4, 12, 7, 13, 14 of CAT

30. Committee against Torture, Conclusions and recommendations of the Committee against Torture — Nepal, 13 April 2007, CAT/C/NPL/CO/2, para. 24

31. List of issues prior to the submission of the third, fourth and fifth periodic reports of Nepal, 17 February 2011, CAT/C/NPL/3-5, para. 3 0.

32. E/CN.4/2006/6/Add.5, 9 January 2006, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/101/19/PDF/G0610119.pdf?OpenElement>

prosecute and punish perpetrators.³³

UN Principles

The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment state that those potentially implicated in such violations should be removed from any position of direct or indirect power or control over victims, witnesses and families, pending disposition by an independent legal process.

Universal Periodic Review

During the review of Nepal under the Universal Periodic Review (UPR) in January 2011, numerous member states of United Nations raised their concern on impunity, specifically government's unwillingness in addressing the past by prosecuting the perpetrators of gross human rights violations. Nepal has accepted recommendations of the UPR such as to ensure that perpetrators of human rights violations, both of the past and present, are brought to justice in line with international standards of fairness; to tackle impunity by investigating and prosecuting human rights violations and abuses committed by state and non-state actors of the conflict; to start investigation of all outstanding allegations of human rights violations committed during or after the conflict and to bring perpetrators to justice in proceedings which meet international standards.³⁴ The state has the responsibility to fulfill all obligations as committed at the international forum to ensure justice to the victims of violation. However, contrary to these commitments, government is promoting impunity by creating

environment for the perpetrators to escape from justice.

International Humanitarian Law

Any of the cases considered for withdrawal that involve the conduct of members of armed forces during internal armed conflict in Nepal also created the Government's obligations under international humanitarian law (IHL). Being a state party to the Geneva Convention, both the security forces and the CPN-M are bound by Common Article 3 of the Geneva Conventions. Therefore, the state has a major obligation to prosecute the crimes committed during the 10 years long internal armed conflict in Nepal.

Conclusion

The government's intention to withdraw criminal cases terming them *political in nature* is one more step toward impunity and blatant disregard of the victim's rights. Considering Nepal as a party to the International Covenant on Civil and Political Rights, which mandates each State to ensure that victims of human rights violations have rights to effective remedy, withdrawing cases of rape, torture or murder would undoubtedly constitute a breach of Nepal's international obligations. Similarly, it has also breached the commitments it has taken during the Universal Periodic Review to end impunity by "addressing the past and maintaining the rule of law at present," reject any action promoting the impunity which fuels instability and insecurity in Nepal.

Mass withdrawal of criminal charges by squashing commitments to human rights, justice and peace is a clear denial of justice to the victims. Such acts have disastrous effect on rule of law. The practice has only promoted immunity in the country providing

impunity to the criminals from the due process of investigation, prosecution and punishment. Politically motivated withdrawals of cases have constituted a breach of the government's obligations under international law. Withdrawing criminal cases amount to granting amnesty for conflict-related crimes including gross human rights violations. Case withdrawals have supported to protect politically connected individuals from criminal accountability and encouraged climate of impunity in the country. The government has responsibility to investigate and prosecute serious crimes alleged in the withdrawn cases as well as to provide effective remedies for those found to have suffered from abuses. Withdrawal of criminal cases by the government affects the transitional justice process. Continuation of this may result in general amnesty from prosecution and punishment to the perpetrators recommended by the Truth and Reconciliation Commission (TRC) and Disappearance Commission, supposed to be formed in the future.

The national legal framework, judicial guidance and the practice in relation to case withdrawal do not comply with the international standards and principles that impunity for serious violations of human rights and international humanitarian law is impermissible under international law. Provisions of the State Cases Act permit withdrawal of criminal charges in relation to any of the crimes under domestic and international law which is a clear breach of international legal obligations under several treaties, including the ICCPR. The Government must cease withdrawing cases and focus on accountability, guaranteeing victims' access to justice, security and implementation of the rule of law rather than creating environment to foster impunity.

33. Report of the Special Rapporteur on extrajudicial executions to the Human Rights Council, 20 May 2010, A/HRC/14/24, para. 46(d).

34. Points 106.35, 106.38, 108.24, Report of UPR Working group, <http://daccess-ods.un.org/TMP/5904240.html>



*Roshani Shrestha**

Does Remarriage Matter for Reintegration of Single Women?

1. Background

With the political change of April Revolution of 2006, Nepal is in the process of socio-economic transformation. All the excluded groups have been raising their voice seeking identity and respectful representation in the state institutions. So, social transformation from many angles is demanded in this transitional phase from many angles, especially from the excluded and marginalized groups. Single women's group is one of the excluded groups. Single women's status in Nepalese society is quite miserable. They are treated in an unfair manner, discriminated and excluded in many socio-religious functions. Society imposes many taboos on them. One of the most influencing factors of such discriminatory practice is the socio-cultural pattern which is based on patriarchal norms.

We have been constantly hearing for years of equality and abolition of gender based discrimination, mainstreaming the voice of voiceless and marginalized people. Political leaders, state representatives and also the civil society have been raising this issue

as their agenda in different programs and via various media; however, it is believed that there has not been any significant change in such excluded people's lives. Field research only reveals what sorts of life such people have been living. In this context a field research entitled "Reintegration of Single Women in Nepalese Society: A Case Study from Pokhara" was carried out in Pokhara in 2010 aiming to find out what matters for the reintegration of single women¹. This article has been prepared based on the findings of that research on perception of single women on remarriage and what matters even more than remarriage for their reintegration in the society socially and psychologically.

2. Relational Dichotomy between Men and Women and the Taunted Single Women

There exists a teaching in Nepalese society as in other societies that "men and women are two sides of the same coin and one is incomplete in the absence of another". However, women are not enjoying equal rights in many societies and so is the case in ours as well. The condition of single women is much worse than

other women. Men are given more importance considering them superior to female in many societies and Nepalese society is not an exception in this type of perception of men-women relational dichotomy. Females are considered inferior, submissive particularly in patriarchal society. "Patriarchy is a power relation in which women have a subordinate status as workers whose production is exploited and appropriated by men" (Majupuria 2007: 68). Whatever the socio-cultural norms a society has, that greatly affect the lives of people in a particular society. Single women in Nepalese society too have been facing many obstacles and adversity created by such gender based dichotomy as our society is also based on patriarchy. Such social norms and values have made them victim at home itself at first and then in society. This has taunted them and discarded at many rituals and ceremonies, assuming as bad omen.

Patriarchy treats male and female differently creating hierarchy between them, giving higher position and role to males and presenting female as lower and submissive creature. Kamala Bhasin points out

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1. The research was done by following research methodology. As this article is the modified version of the research, details on the methodology have not been included.

about this patriarchal notion that treats women as subordinate to men “because of patriarchal ideology and system, gender relations everywhere are unequal and hierarchical; women

Instead of providing emotional support during the plight, their own family remains indifferent, intensifying the single women's sorrow. Although they live with their own people, they hardly

Socio-cultural practices have confined single women's life into much limit curtailing their involvement in many of social and cultural life. They are viewed as bad omen and often taunted by their family members as responsible for their husband's death.

are subordinated and discriminated against” (2004: 7). This is how we can see male domination in patriarchal society. As Nepal is also one of the countries ruled under patriarchy, females' position and role is not equal to that of the males. Single women's situation is rather worse. They are doubly marginalized and discriminated- as women and widows at the same time.

It's true that both husband and wife can be single after the death of another but the case of widower is much better than that of widow in our society. A widow must endure painful transition immediately after the death of husband. Women for Human Rights (WHR) Single Women Group sketches the picture of single woman's life as “the death of a woman's husband marks the painful transition from a wife to a single woman that relegates her to a state of physically alive and socially dead (WHR 2008: VIII)”. Society ignores the fact that being widow is not their choice rather an accident or unwanted incident. Then, with this incident of losing husband, their new life begins with struggle, suffering and discrimination.

Socio-cultural practices have confined single women's life into much limit curtailing their involvement in many of social and cultural life. They are viewed as bad omen and often taunted by their family members as responsible for their husband's death.

get anyone to share their sufferings with. Mostly, they are tortured, exploited and discriminated within the family and society. They become lonely within their own family and relatives. So, they are obliged to walk alone a dreadful life ahead shouldering full responsibility of their children and old in-laws, if any.

Single women are not treated as ordinary human being rather as bad omen in the society. If a person is about to begin a journey and s/he happens to meet a widow, either s/he calls off or puts off the journey. It's because appearance of a single woman while starting good works is assumed as bringing misfortune to that person in case s/he proceeds ahead. They are the same women before or after losing husband but the socio-cultural behavior towards them get completely different with their change in status from ‘*Sadharwa*’ (married woman) to ‘*Bidharwa*’ (widow).

3. Overview on Socio-Economic and Cultural Practices on Single Women

3.1 Perception on Use of Red Color

There are many factors that play key role to miserable lives of single women. Socio- cultural practice is mainly responsible for it since it excludes them making prone to violence. Right after the death of husband, our traditional practice demands to discard their red attire, red *chura*, red *pote* (glass bead) and *sindur*

(*vermilion powder*), *mangalsutra*, which are the token of marital life, away because they can't use it after being declared as widow. Society ignores the individual right to choose color, dress and so on. Rather, they are made to follow whatever are the existing socio-cultural practices, whether they prefer it or not. On the contrary, there is no any such practice of imposition and taboos on widowers in terms of choice of color or dress and so on. According to Uprety and Adhikari, “The dress code at widowhood is introduced in a shocking manner by flouting the bangles with a pebble and wiping out the vermilion. Red color is the disallowed thing, which makes them suffer as widows all the time.” (2009: 25) If the widowers have the right to enjoy any color they prefer then the widows also should have the right in this matter.

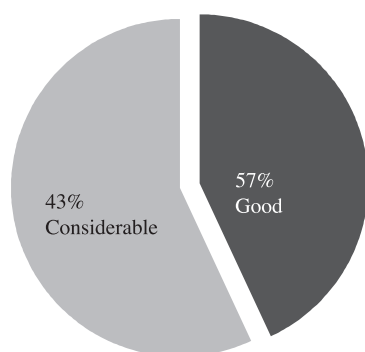
Widows are forced to live a pitiable life. How they have to begin a pathetic condition right after their husbands' death and how she is obliged to live a helpless life has been expressed in the experience of a single woman as follows as the representative experience of the single women in general.

I lost my husband when I was young. As I sat full of trauma, my family members and neighbors surrounded me. Some took off bangles, some forced me out of red colorful attire and some smeared my vermilion. I was thus proclaimed a widow. In just one day, my life totally transformed conferring to rigid rituals and strict taboos to be followed in the society. (WHR 2005: 30)

The social and cultural practices are so strictly followed. It does not allow single women to feel that they are also human being and need psychological support while enduring shock of the demise of their husbands. They are forced to live a transformed life of a widow full of

Figure: 1

Perception on Using Red Color



Source: Field Study 2010

taboos and confinement.

In a field research carried out in Pokhara in 2010, it was found out that almost all the single women prefer their individual rights to choose color to the societal imposition or taboos of living colorless life.

Not a single woman involved in the research favored the idea of discarding red color forcefully. There were no any single women in favor of discarding red color forcefully. More than half of them took the idea of using red color positively whereas slightly less than that perceived it as considerable though they were not interested using it themselves. Society should not snatch any individual's freedom to choose color on the basis of gender or marital status or whatsoever. So, all respondents had the opinion that use of red color must be the sole choice of single women themselves.

3.2 Domestic Violence Inflicted on Single Women and their Resistance Level

Single women are not only discriminated at social and religious ceremonies but also at home. They become the victim of different kinds of domestic violence in family. Abusive relationship in the family especially with the in-laws is common. They are forced to live in such a

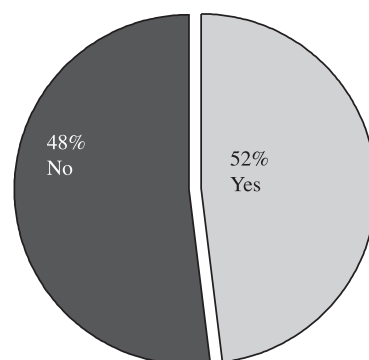
relationship, incurring greater toll on their self-esteem over the passage of time. Gradually, they feel depressed and anxious paralyzing their capacity. One of the issues raised during the research was whether or not the single women faced domestic violence. The finding was that more than half of the respondents reported they had undergone domestic violence. The per cent of domestic violence survivor was fifty two. In this way the research data shows the respondents survive a lot of discrimination and violence at home. They suffer from verbal abuse and scolding much. Similarly, some are not provided food and tried to be expelled from home or some are falsely alleged. They are blamed for the cause of their husbands' death and obliged to suffer from domestic violence. Different types of domestic violence that the single women have been inflicted with have been presented below in figure 2.

The data reveals that verbal abuse and scolding has the main type of domestic violence suffered by nearly fifty two per cent. Single women reported they were not given food and were attempted to expel from home. Allegation against them is one of the major ways of abusing them. The research was also aimed to find out how the level of resistance and reaction against the discrimination was among the single women. Their educational level was taken into consideration for the purpose.

Education level among the respondents was found greatly influencing their resistance level. Illiterate, literate and under SLC respondents' resistance was found considerably lower than that of the SLC graduates and higher degree holders. Only nearly one third of illiterate respondents could resist against discrimination. Almost the same ratio was found with literate and under SLC graduate respondents. But, the level of resistance seemed higher among the single women of SLC graduates, as sixty per cent of

Figure: 2

Domestic Violence



Source: Field Study 2010

them resisted against discrimination whereas all the Intermediate and Bachelor level passed single women were found strongly resisting against discriminations. Thus, the education level of the single woman could be considered a major factor for making them conscious and strong and also for raising voice against discriminatory practices existing in the society.

3.3 Property Ownership

Discussion in the preceding paragraphs shows that education plays an important role in bringing change in any one's life and so is the case with single women as well. But, in the context of Nepal, there is a huge gap in the literacy rates of male and female though the female population is more than that of male. As society prefers sons to daughters. Its influence is largely seen in the education sector as well. Huge gap in male and female education also gives clear picture of the

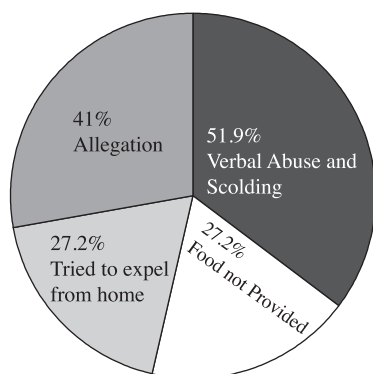
Table 1:
Types of Domestic Violence Inflicted against Single Women

Violence	Per cent
Verbal Abuse and scolding	51.9
Food Not provided	27.2
Tried to expel from home	27.2
Allegation	41

Source: Field Study 2010

Figure: 3

Types of Domestic Violence Inflicted against Single Women



Source: Field Study 2010

existence of gender discrimination in education. When female do not have good education, they lose control over economic resources too. Accordingly, male and female status and position in the society is determined. "Male and female economic participation are strongly influenced by the educational levels, status and position of men and women in any given society and/or community" (Bruyn 1995: 16). So, females are much dependent on males. Single women, when their husbands were alive, also need to rely on their husbands due to the lack of education and skills. "Most of the single women who were economically dependent on their husbands have little or no skills to stand on their own feet" (WHR 2008: 2).

Single women have little access to the share of property that they are entitled to get from their husband's family because the family

seems reluctant to provide them. The family is rather ready to give her share as the guardian of minor assuming that she could remarry after receiving her share from the husband's family. However, if a widower is remarried and he divides the property it is easily accepted. Society views widow and widower from different eyes full of male hegemony and discrimination, which needs to be changed.

Although most of the single women are aware of the legal provision on their share of property, their access to it is comparatively low.

The chart given above shows the finding of the study that only fifty seven per cent of them have legal ownership whereas some thirty one per cent own their property's ownership by their family members and twelve percent even by others. The respondents were found with the opinion that single women themselves should have the right to enjoy their property.

3.4 Perception on Remarriage of Single Women

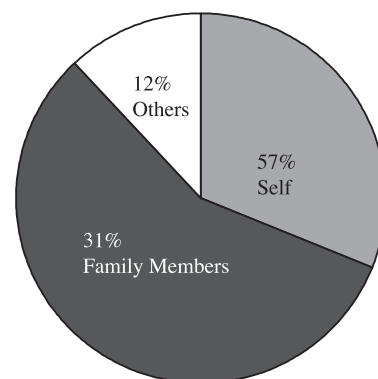
Marriage is the sacred knot tied between male and female to form a family. Both husband and wife are equally important for running their life. They are like the two wheels of the same cart. However, we have more number of widows than widower in Nepal. The main reason behind this is that widower's marriage is easily accepted whereas widow's is not. According to census 2001 the number of widows exceeds the number of

widowers at every age group. For example, twenty five per cent of women aged sixty years and above were widowed. The corresponding figure for males was only nine per cent.

Creating favorable environment and policy for single women's marriage without hurting their dignity at all is required. The chart given below is the finding of the same which shows their positive perception towards remarriage. Nearly eighty two per cent of the respondents considered remarriage as good whereas very nominal of them, just eighteen per cent, perceived it as bad. Although larger portion of single women have

Figure: 4

Legal Ownership of Land



Source: Field Study 2010

positive attitude towards it, it is far behind the practice and many of the single women, despite their desire to remarry, are living a single life. Socio-economic level of our society does not encourage for their remarriage.

Government of Nepal tried to encourage single women's remarriage and declared NRs fifty thousand cash incentive for the couple if a person married a widow. This, however, was a hurting decision to the dignity of single women, as the concerned people viewed. Accordingly, WHR filed a lawsuit against the policy saying the decision treated single women as commodity in the market labeling the price. WHR wrote, "The

Table 2:

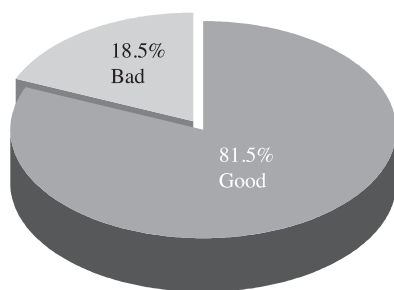
Single Women's Resistance against Discrimination

Qualification	Yes (in per cent)	No (in per cent)	Per cent
Illiterate	33.3	66.7	30.6
Literate	40.0	60.0	30.6
Under SLC	30.0	70.0	20.4
SLC	60.0	40.0	10.2
Intermediate	100	0	4.1
Bachelor	100	0	4.1
Total	38.8	61.2	100

Source: Field Study 2010

Figure: 5

Single Women's Perception on Remarriage



Source: Field Study 2010

policy of government of Nepal under the social security through its annual fiscal policy of 2009 awarding NRs fifty thousand to the new couple of single woman has converted single woman to a commodity” (WHR 2009: 2). Government of Nepal was obliged to cancel the policy of cash incentives finally. The Supreme Court of Nepal nullified the cash incentive of NRs fifty thousand for widow-married couple as state sponsored dowry².

Remarriage may bring change in single women's life to some extent; however, remarriage is not the only way out. Personal interest and favorable societal ambience is of paramount importance in regards to widows' marriage. Many young women are obliged to live single life because of unwelcoming environment for their marriage. Provided that a favorable environment is created for it, the number of widow remarriage would increase gradually and there

wouldn't be discrimination on widows and widowers in remarrying, if they wish for. Just providing monetary support is not enough unless there is psychological support to the single women.

3.5 Government Policy on Single Women's Recognition and Empowerment

Despite so many discriminatory practices, there are some encouraging parts in the laws and government policy. The constitution has tried to secure the rights of any marginalized and disadvantaged group. In the preamble of the Interim Constitution of Nepal, 2007, there is determination of ending any sort of discrimination based on gender. Similarly, the rights of women have been clearly mentioned in the same constitution. In the fundamental rights section, under the 'Rights of Women' in Article 22, it is spelled out that no physical, mental or other form of violence shall be inflicted on any woman, and such an act shall be punishable by law.

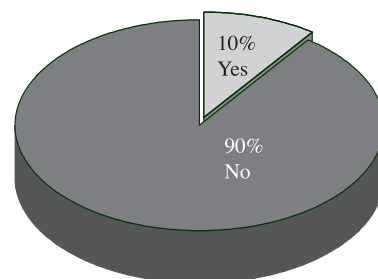
Likewise, the issue of single women has been clearly addressed in the State Policies as it is spelled out in Article 34 that the state shall pursue a policy of making special provision for social security for the protection and welfare of single women, orphans, children, the helpless, the aged, disabled, incapacitated persons and tribes on the verge of extinction. The state policy to end discrimination on the basis of gender and so on deserves

praise. But, at the same time, the government must ensure that the policy has to be implemented yielding positive change in the targeted group's lives. However, the introduced policies are limited only on papers in most of the cases. For the practical implementation of the policy, the targeted group must be aware of it and its impact in their lives. The research shows that single women are aware of the government policy for them such as widowhood stipend, age bar on it, remarriage incentives etc. but are not much aware of the other policies.

The figure shows large portion of single women being familiar with the government policy.

Figure: 6

Information on Government Policy



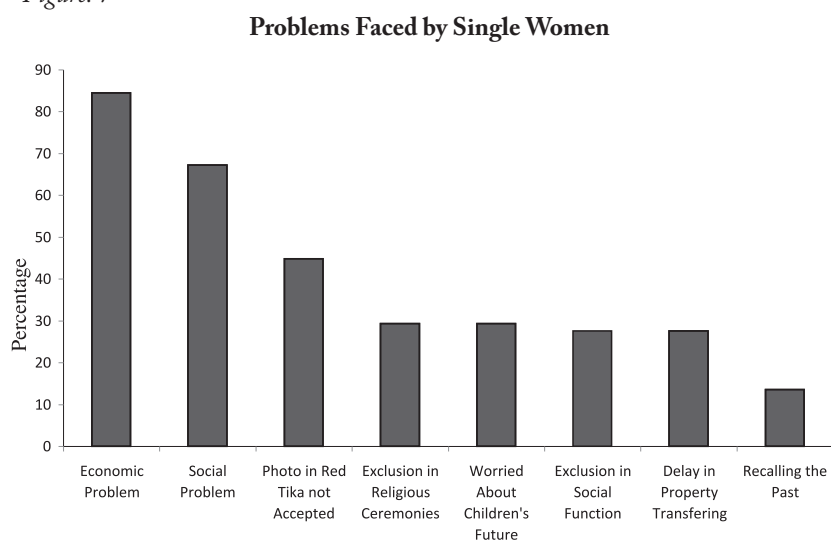
Source: Field Study 2010

It's very much necessary that government policy has to be favorable to address and meet their problems and needs only then we can expect constructive change in the society. State needs to carry out in-depth study on single women's situation and impact of the introduced policies also being ready to amend the policies in accordance with the concerned people's demands. One of the changes brought in the existing practice by the government is nullification of the age bar for widowhood stipend. According to the previous policy single women should have been sixty years old to enjoy widowhood

Personal interest and favorable societal ambience is of paramount importance in regards to widows' marriage. Many young women are obliged to live single life because of unwelcoming environment for their marriage.

2. The Supreme Court of Nepal nullified the cash incentive of Rs 50000 for widow married- couple on January 19, 2010. The Court held this policy as the state sponsored dowry that would further victimize the single women.

Figure: 7



Source: Field Study, 2010

stipend. The Supreme Court of Nepal has nullified the age bar and has given verdict to provide the stipend very soon observing single women's economic status and other factors³. This initiation deserves praise though the amount seems quite nominal in the present context to fulfill any basic needs. Budget of the fiscal year 2011/12 has declared providing widowhood stipend from the very day of being a widow⁴. It is a justice to them partially, however, if the state takes further initiation to increase the widowhood stipend Rs 500 per month to a bit significant amount meeting their basic needs at least it would be

decisions that are introduced without extensive consultation with single women may not be effective. There should be awareness about the policies among the public and the targeted groups prior to the implementation. This only yields efficacy of the intended policy. State should keep its eye on the practicality of the policy and its impact in society.

Single women are facing different sorts of problems; however, the economic problem is vicious among them. The findings of the research show various problems faced by single women and economic problem being the prime one followed

The government's efforts or decisions that are introduced without extensive consultation with single women may not be effective. There should be awareness about the policies among the public and the targeted groups prior to the implementation.

much beneficial for single women as well as for their dependents.

The government's efforts or

by social problem i.e. socio-cultural practices.

There is the lack of reliable data of single women in the country. So, record must be fairly maintained. Similarly, many of the single women suggested providing job for themselves or for their children, and providing skill developing programs. Although remarriage may contribute to some extent in their life, it was not taken as the prime concern. Similarly, they preferred job and skill developing trainings. Various suggestions given by the single women are given below.

The disintegrated data of single women on the basis of age, education level, geographical region and caste may help the government to figure out proportion of their data and also to locate the areas of concerns while formulating policy. So, the respondents strongly suggested to have discrete data of the single women and also demanded they be consulted extensively prior to the formulation of any policy for them.

4. Conclusion and Recommendations

Despite the fact that single women in Nepal are largely excluded, the level of awareness has upraised among them at least on the provisions and policies put forth by the government. Education level and economic empowerment were highly rated by the single women as the means of empowering them. It was found that educated single women stood vocally against discrimination whereas such tendency was fairly low in the case of the women of low level or no level of education. Thus, the education level of the single woman could be considered major factor for making them conscious, strong and able to raise voice against discriminatory practices existing in the society.

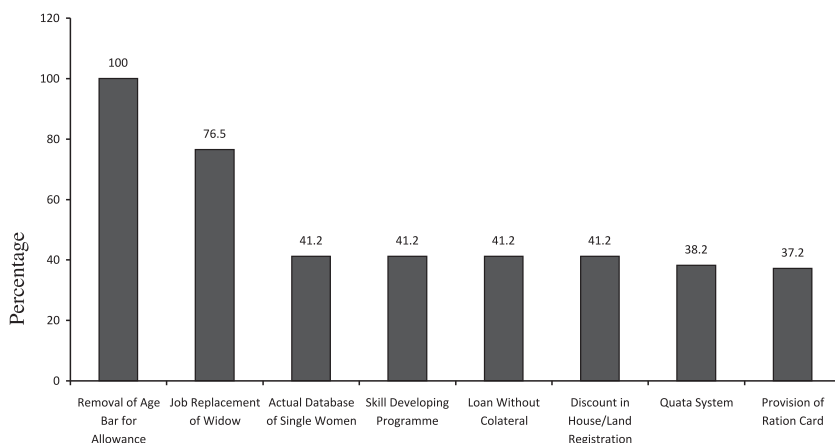
Eighty two per cent respondents were in favor of

3. The Supreme Court of Nepal has nullified the age bar for widowhood stipend on March 10, 2010. The court has given order to the state that it should be provided to all widows observing their economic condition

4. Budget Speech of the Ministry of Finance, Government of Nepal, for the Fiscal Year 2011/12 on July 15, 2011.

Figure: 8

Suggestion by Single Women



Source: Field Study, 2010

remarriage of the single women. However, not all of them were ready for remarriage. The causes behind this were the responsibility towards their children and stereotypical perception of their in-laws and the society. All of the respondents placed the economic empowerment of the single women for their reintegration. They had the opinion that unless their social surrounding and economic status is changed, remarriage only can't work. Thus, change in the perception of society on remarriage of single women and their economic empowerment should be highly prioritized by the family, society and the state.

State has taken some initiatives to bring single women in the mainstream of the state. However, such initiatives are not sufficient and effective to address their issues. It was found that failure of the policy adopted by the government is mainly due to exclusion of the targeted group in policy making phase. So, the concerned must be always consulted prior to the introduction of any policy for the single women.

Government must be careful while introducing policies relating to the empowerment of single women and such policies and decisions should mollify their problems rather than intensifying them. Single women's dignity and choice should be a central concern of any policy and decisions. Empowered women can bring change in their own lives, their children's lives and its positive impact can be seen in the society in a broader sense. So, remarriage only should not be the focused point of the state although widow remarriage can be one of the ways of empowerment. The main concern of the single women, as this research showed, is economic betterment rather than remarriage. So, the government must launch different programs for the empowerment of single women so that they can stand on their own; can make their dependents live a good life with good education, envisioning bright future. Along with the government's intervention, only the changed role and perception of the family in the matter of perceiving single women as a dignified human being can reintegrate them in the

family and society in the truest sense.

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Minefield Free Nepal and The Future Challenges



A milestone was achieved in Nepal's peace process when the last remaining minefield laid during the decade-long armed conflict was cleared in Phulchoki, Lalitpur on June 14. Prime Minister Jhala Nath Khanal and Army Chief Chhatra Man Singh Gurung pressed a button to detonate the last of the landmines laid under the ground. With clearance of all the 53 minefields laid across the country, the United Nations declared Nepal as a minefield-free country. This made Nepal the second country in Asia to be officially declared minefield-free after China.¹

Antipersonnel mines are munitions designed to explode from the presence, proximity, or contact of a person while Explosives Remnants of War (ERW) refer to ordnance left behind after a conflict. The armed conflict left Nepal contaminated with landmines and ERW, mainly Improvised Explosive Devices (IEDs). The Nepal Army has destroyed all remaining 10,941 mines from the ground. This remarkable achievement followed another milestone when

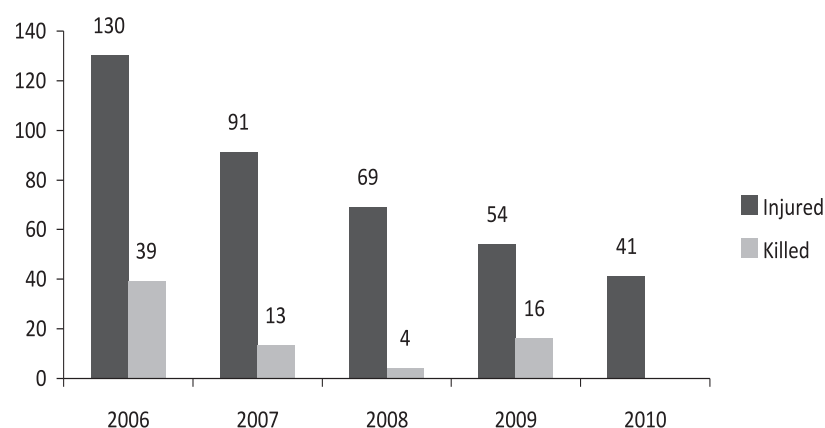
52,617 IEDs and other explosive devices collected by the Maoist Army across nine cantonment sites were demolished by the Maoist Army with UN support in late 2009. Both the Nepal Army and the Maoist Army have shown their cooperation in the implementation of their commitment under the Comprehensive Peace Agreement (CPA).

Fulfillment of CPA Commitment

The commitment expressed in the CPA had paved way for the country

to rid of threats from landmines and ERW. Point 5.1.4 of the CPA signed between the government and the then CPN-M on 22 November 2006 states that "both sides shall assist each other to mark landmines and booby-traps used during the time of armed conflict by providing necessary information within 30 days and defuse and excavate it within 60 days." This unrealistic timeframe envisaged in the CPA could not be met as the NA undertook humanitarian demining in compliance with international

Fig 1: Casualties from Victim-activated explosions by year (2006-2010)



* The writer is affiliated to INSEC

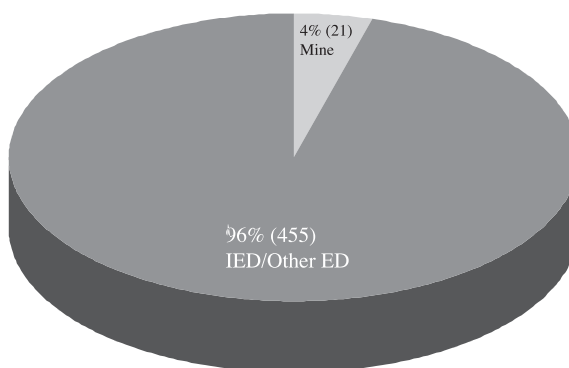
1. http://www.the-monitor.org/index.php/publications/display?url=lm/2010/es/Mine_Action.html

clearance standards which requires very strict safety procedures, special training, special management, highly sophisticated equipment, expertise in rapid medical evacuation, specific insurance policies and a very good quality management mechanism. The hostile terrain and climatic constraint for demining were also reasons for the clearance operations to be incomplete in the stipulated timeframe. The landmines were laid in dense tropical vegetation, often on difficult slopes that were exposed to landslide. The deminers could only work during the dry season. After starting clearance of the minefields, which were laid with a pattern, mapped and fenced, in 2007, the Nepal Army gradually increased its team of deminers to four platoons and completed demining in 2011. The Nepal Army has cleared 170 IED fields out of 275 laid by the then RNA as of June 2011 and is expected to clear the remaining by the end of 2011. The Nepal Army used antipersonnel mines to protect military installations and physical infrastructures during the conflict. All IED fields laid by the Nepal Police and APF during the conflict time have been cleared since 2007.

As per the Agreement on Monitoring and Management of Arms and Armies of 8 December 2006, the Maoist Army has carried out the demolition of IEDs. Section 4.1.2 of this agreement states: '[...] All improvised explosive devices will be collected at designated sites a safe distance from the main cantonment areas [...] Unsuitable devices will be destroyed immediately. [...] The parties, in consultation with the UN, will determine a timeline and process for the later destruction of all improvised explosive devices [...]' The adherence by both sides to their commitment to destroy these explosive devices can provide impetus for the implementation of other commitments

Fig2:

Casualties from Victim-Activated Explosions by Types of Explosive Device (January 2006-July 2011)



of the CPA – Integration and rehabilitation of Maoist combatants, setting up of Truth and Reconciliation Commission, Commission on Disappearance, among others.

Casualties

Landmines are victim-activated and indiscriminate in nature. Whoever triggers it becomes its victim. The unexploded ordnance (UXO) which failed to detonate as intended and the abandoned explosive ordnances (AXO) that has not been used during the conflict, like landmine, pose serious threat to civilian's lives even decades later. Nepal had the bitter first-hand experience of

the conflict. A large number of IEDs used by the Maoist Army scattered in many districts in fields, forests, private houses, roads, etc. are responsible for the majority of civilian casualties. The latest victim was Bikram Saud, 12, of Binnebasini VDC-7 in Achham, who was killed when he mistook a socket bomb for a plaything on 15 July. Another Kabita Saud of the same place found the device which was swept by a nearby river in Binnebasini VDC-7 and handled it mistaking it for a toy.²

From January 2006 to July 2011, 476 casualties from victim-activated explosions (IED, Mines and other ERW) were reported, of

After starting clearance of the minefields, which were laid with a pattern, mapped and fenced, in 2007; the Nepal Army gradually increased its team of deminers to four platoons and completed demining in 2011. The Nepal Army has cleared 170 IED fields out of 275 laid by the then RNA as of June 2011 and is expected to clear the remaining by the end of 2011.

the effect of these explosive devices as they continue to injure and kill civilians five years after the end of

which, 79 were killed. Data collected by INSEC show 169 casualties in 2006, 104 in 2007, 73 in 2008, 70

2. <http://www.inseconline.org/index.php?type=news&cid=8661&clang=en>

in 2009, and 41 in 2010 in victim-activated explosions. Out of the total, 254 (53%) were children and less than 5% of all casualties are mine victims.³ 19 casualties have been reported with seven deaths from January-July 2011.⁴ Majority of these casualties are caused due to dangerous activities such as tampering and majority of mine victims are woman who were collecting fodder, water or firewood. Though there is a constant decrease in the number of casualties and incidents, the threats from explosive devices can only be eliminated after strengthening the four pillars of mine action – Mine risk education, Stockpile destruction, Advocacy and Victim Assistance – as the other pillar clearance of mines and ERW has already been achieved.

Numerous armed groups still using IEDs have also added to contamination. More recent violence involving autonomy-seeking groups in Tarai region has been adding IED contamination, with new incidents being reported once or twice a week. IEDs used in such incidents are newly-made, not those leftover from earlier conflict.⁵ These groups under political veil are using IEDs while carrying out criminal activities in Tarai.⁶ The explosive devices left scattered by such groups have increased incidents from IEDs in Tarai. Dinesh Yadav, 20, of Dhanusha was injured on 14 May 2011 when an IED went off as he was grazing buffalo at Agjewa in the same VDC-2.⁷ Similarly, rampant use of IEDs in Tarai for various criminal purposes continues to create terror among the civilians. Janatantrik Tarai Madhes Mukti Party detonated a pressure cooker bomb in front of the District Police Office, Banke main gate in Nepalgunj Municipality-13 on June

17 as a “warning to the traffic police for harassing Madhesi people in the name of traffic checking”.⁸ While the threat from the ERW has not been eliminated, casualties will continue due to the new contamination by Tarai outfits.

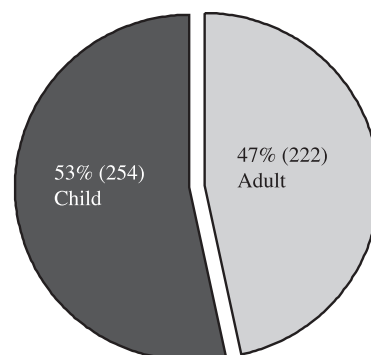
Ban Policy

Nepal is neither a signatory to the Anti-Personnel Mine-Ban Treaty nor to the Convention on Certain Conventional Weapons. Both these treaties address the issue of landmine and ERW. 156 states have already signed the Mine-ban treaty. The 1997 Mine Ban Treaty provides the best framework for governments to alleviate the suffering of civilians living in areas affected by antipersonnel mines. Governments who join this treaty must stop the use, stockpiling, production, and transfer of antipersonnel mines immediately. They must destroy all stockpiled antipersonnel mines within four years, and clear all antipersonnel landmines in all mined areas under their jurisdiction or control within 10 years. As Nepal still holds some anti-personnel landmines in its stock, being a party to this instrument would compel the government to destroy its stockpile. In addition, States Parties in a position to do so must provide assistance for the care and treatment of landmine survivors, their families and communities, and support for mine/ERW risk education programs to help prevent mine incidents.

The only international legislation explicitly covering ERW in general is Protocol V of the Convention on Conventional Weapons (CCW). While its provisions have been recognized as insufficient to address the problems caused by cluster

Fig3:

Casualties from Victim-Activated Explosions by Age
(January 2006-July 2011)



munitions, Protocol V does establish general responsibilities for ERW clearance, information sharing to facilitate clearance and risk education, victim assistance, and for support to mine action. Protocol V establishes a special responsibility on the users of explosive weapons to work to address the post-conflict humanitarian problems that these weapons may cause.

National Ownership of Mine Action

Efforts continue by the Government, UN and other stakeholders to strengthen the national ownership of mine action in Nepal. A mine action office with the Ministry of Peace and Reconstruction (MoPR) is set up and started its operation as the government focal point for coordinating mine action.⁹ Nepal's MoPR led the development of a five-year national strategic framework for victim assistance by the government and key national and international stakeholders.¹⁰ The Mine Action Joint Working Group (MAJWG), now chaired by the MoPR, coordinates

3. INSEC Surveillance System

4. <http://www.inseconline.org/pics/1310986508.pdf>

5. http://www.the-monitor.org/index.php/cp/display/region_profiles/theme/523#_ftnref2

6. INSEC Human Rights Yearbook 2011, P127

7. <http://inseconline.org/index.php?type=news&cid=8223&clang=en>

8. <http://inseconline.org/index.php?type=news&cid=84678&clang=en>

9. <http://www.mineaction.org/country.asp?c=129>

10. http://www.the-monitor.org/index.php/publications/display?url=lm/2010/es/Casualties_and_Victim_Assistance.html

mine action activities, including mine and ERW risk education, and victim assistance. The working group's members included the Nepal Army and police forces, UN agencies, International Committee of the Red Cross (ICRC), INSEC, national and international non-governmental organizations. Mine Risk Education (MRE) infused into other educational activities has been conducted in schools of various districts with the Department of Education. These concrete steps demonstrate the government's ownership of mine action.

Another example of the government taking ownership of mine action was its official letter sent to the Landmine monitor urging to delist Nepal from landmine manufacturers. Landmine Monitor 2010 removed Nepal from its list of landmine producers, following two official declarations that Nepal does not produce antipersonnel mines. In December 2009, the Minister for Peace and Reconstruction told States Parties at the Second Review Conference that Nepal does not produce landmines, and in June 2010, Nepal wrote to the Monitor that "Nepal does not produce any kind of antipersonnel landmines."¹¹

Future Steps

Advocacy against the use of landmines, IEDs; initiation of risk education, clearance of scattered IEDs, victim assistance is the next challenge for Nepal. Though the Nepal Army has done away with its minefield, there should be advocacy from NGOs urging the Nepal Army to destroy its stockpile. Efforts should be made by the NGOs in generating awareness

about the need to become state party to the mine ban convention and CCW. The statement made by Nepal Workers and Peasants Party Chairperson, Narayan Man Bijukshe on July 15 shows lack of knowledge on the lawmakers part about the importance of clearance of minefields. He had claimed that the country has already been formally declared landmine free but the cost Nepal will have to pay will be of colossal dimensions in terms of national security.¹² The lawmakers need to be made aware that land mines and IEDs continue to exact a toll on the innocent, still years after the end of war. Such explosive remnants have killed or injured more than 300 civilians since the signing of the Peace Agreement in Nepal.

NGOs provided much of the services to survivors from victim-activated explosions from evacuation, emergency medical treatment to rehabilitation. The government and mine action bodies need to take concrete steps to improve services for casualties of victim-activated explosions, other persons with disabilities, or their families. The government should implement the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which it is a state party to as this treaty is considered to "provide the States Parties with a more systematic, sustainable, gender sensitive and human rights based approach by bringing victim assistance into the broader context of persons with disabilities."¹³

IED Risk Education and IED disposal efforts are essential to cope with ERW and post-conflict contaminations in order to minimize the number of casualties. The number

of casualties in victim-activated explosions has been on the decline in recent years, which the UN Resident Coordinator Robert Piper attributed to MRE, "More than any other single factor, it is arguably progress in the mine risk education that has led to the sharp reduction in the number of casualties over recent years, with a drop of 40 per cent from 2009 to 2010," said Mr. Piper.¹⁴ The Ministry of Peace and Reconstruction and its new Mine Action Section should continue leading this important work, earlier delivered by UNICEF and its partners.

Conclusion

A minefield free Nepal is an incredible achievement. With completion of mine clearance, a critical component of the peace building process, Nepal has the opportunity to be declared a country free of landmines by disposing the anti-personnel landmines in the Nepal Army's stock. A circular by the UCPN-M to all its war-time cadres to report the location of IEDs that have been abandoned in civilian's home during the conflict can prevent casualties. This will certainly save lives and limbs. This is because incidents of explosions occurring inside houses due to abandoned IEDs have been surfacing. Increasing use of explosive devices in the Tarai has caused large number of civilian casualties in recent years. As most of these IEDs are brought from India taking advantage of the porous Nepal-India border, the government needs to strengthen its security measures in the southern belt to prevent illegal transport of explosives and take strict action against those using them.

11. http://www.the-monitor.org/index.php/publications/display?url=lm/2010/es/Ban_Policy.html#footnote-5835-33-backlink

12. <http://www.telegraphnepal.com/headline/2011-06-16/landmine-free-nepal-wrong-decision-under-foreign-pressure>

13. http://www.the-monitor.org/index.php/publications/display?url=lm/2010/es/Casualties_and_Victim_Assistance.html#footnote-5835-64-backlink

14. Remarks by Robert Piper, UN Resident & Humanitarian Coordinator to Nepal on the occasion of the celebratory event on Nepal becoming a minefield free country

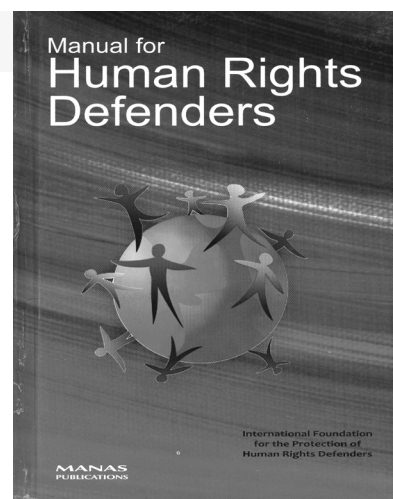
Manual for Human Rights Defenders

As the title suggests, this is a book written with the aim to improve strategies for the protection and security of the human rights defenders. Divided into twelve brief chapters and foreword written by former UN Secretary General's Special Representative on Human Rights Defenders, Hina Jilani, this is a useful manual for the human rights defenders to assess their level of risk at the time and place of difficulty.

It has covered a range of issues regarding safety of the human rights defenders. Informed decisions about security and protection, threats assessment, vulnerabilities and capacities are dealt. Similarly, security incidents have been defined and analyzed by suggesting the ways for preventing and reacting to possible attacks in the field. Other issues connected with the human rights defenders such as preparation of security strategy and the assessment of the provisions of the defenders' security at their organizational level have also been closely analyzed. Measures for improving security at home, at work and also while in the field is the other aspect of dealing in the book. Similarly, women human rights defenders and their specific problems are the other concerns. Also encompassed by the book is the issue of communications and information technology in relation to security of the human rights defenders.

This book has vividly discussed the methods of context and stakeholder analysis; the self-questioning and brainstorming in relation to gauging security situation in the field. Similarly, risk assessment, its methods and strategies are discussed in detail with examples, charts, graphs and tables. Stating that there are the sources, objectives and means of the expression of threats; efforts are made in the book to differentiate between 'making' and 'posing' threats. Security incidents are defined. Contention in the book is that knowledge on security incidents is important as it might provide, if could be analyzed properly, sufficient information to change the activities of the defenders, avoid possible threats, alter programs and put off or modify the long term strategies of the organization. This book also provides with the ways of instantly reacting to a security threats or handling the situation in a wait-and-see manner. Surveillance and counter-surveillance strategies in the case of hostile environment and the rules to follow in such a situation are also discussed in detail.

Socio-political work space, tolerance, dissuasion, deterrence, adaptability and drafting and implementing the plans accordingly are focused. Concept of security wheel and its components are prescribed for assessing. Sounds simple, but, there is also a chapter in the book on what



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sorts of physical aspects of office and home are secure for the human rights defenders to work at and live in. Other issue raised in the book is what to do while coming under fire, facing with landmines and unexploded ordnance. Finally, a guide to communication related security problems and ways of avoiding and handling them are discussed focusing on talking, talking over telephone, internet use and safe emailing, among others.

Some of the chapters are not explained in detail and they lack contents as per the expectation of the readers. Reading critically, there are many areas for revision. However, this can be a useful manual for those who work at the forefront in the field as human rights defenders. This book can be equally beneficial for the administrators, human rights agencies and others who are associated with the protection of human rights directly or indirectly.

Reviewed by Binod Gautam



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