

INFORMAL

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**Tarai-Madhes Waits for
Peace and Order**



ADIEU KISHUNJI !

INSEC family deeply mourns the sad demise of former Prime Minister of Nepal, statesman, freedom fighter and staunch democrat **Mr. Krishna Prasad Bhattarai**. He was a man of multifaceted personality, an indomitable leader untarnished by any scandal and highly principled politician. His demise is a great loss for the democratic practice and human rights movement in the country.

May his soul rest in peace!



Advisors

Subodh Raj Pyakurel
Bijay Raj Gautam

Editor

Dipendra Prasad Pant

Contributors

Raju Paswan
All Regional Offices

Graphic Design

Gita Mali

Management

Bimal Chandra Sharma

Cover Photo

Amrit Giri

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E-mail : informal@insec.org.np

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Tarai-Madhes is waiting for Lasting Stability

Human rights violations are intense in the country and so are the socio-economic problems. No geographical regions in the country are exception in this regard. However, Tarai-Madhes has suffered from such problems relatively more. Human rights issues in the region have been overshadowed by the agendas, which are propelled by power politics and raised in a politically crafty manner.

Crimes have not abated in the Tarai-Madhes. To live in the thick of criminal events has been a compulsion of the people there. So much so that bombs have been kept inside the public vehicles with the drive to explode and harm ordinary people. This has compelled people in the area to live amid an increased insecurity and terror. With the explosions on the public vehicles, fear has further intensified in the region that the ordinary people might face atavistic challenge of explosion and violence. Disorderly feel of the past has haunted general life in the southern plain

Different agreements were reached between the Government and the Madhes-based political parties in the past to solve the problems believed to have been existing in the region for long. However, implementation level of the agreements is not satisfactory. So, there has emerged a central issue: What is the meaning of agreements if they don't serve the true purposes rather than momentarily sweeping aside the long existing problems of the people? Not to start dialogues with the stakeholders meaningfully and honestly has been the largest roadblock to stabilization and reliable peace in the region.

Tarai-Madhes is full of problems. The UCPN-Maoists still continue to take political reprisals. Lands seized by them have not been restituted. Tellingly, most of the incidents of land seizure occurred in the Tarai-Madhes. The Tarai movement that carried, to some extent, an anti-hill feel has deteriorated social fabric. Following the signing of the Comprehensive Peace Agreement, the general life there became the victim of human rights abuses and violations, which still continue through killings, abduction, arson and vandalism. Such acts, however, are felt to have been abated now relatively but human rights situations ahead of us in relation to the Tarai-Madhes are full of challenges.

Kathmandu has failed to take notice of the ordinary people's trials and tribulations. It has also failed to look into the problems of Tarai by going a layer down the crust of politico-economically active groups. Poverty, lack of education, humble living standard, disease and huge struggle for two square meals exists as a great challenge whereas the region is quite resourceful. It does not mean that such problems do not exist in other parts of the country but the problems in the Tarai-Madhes are waiting for specific treatments. People in the Tarai-Madhes are uncomfortable with the Kathmandu-centric vantage point of the non-Tarai based political parties and also with the power-centric move of the Tarai-Madhes's political leadership. Putting forth the issues of Tarai to hit high government posts and forgetting the issues while in governance has been a norm. This is a blatant dishonesty against the people living in the Tarai-Madhes. Protests and uprisings in the region waxed and waned as the political and power equation in the country swung between one political block to the others. However, such contractions and expansions did not count and address the grievances of the masses manifested through the protest and uprisings.

The tendency of the Tarai Madhes-based political parties to intermittently arouse the general life just to fulfill their vested interests and bargain with Kathmandu cannot be an honest endeavor towards empowering the Tarai-Madhes and guaranteeing human rights. The best way to address the overall problems, including human rights concerns, of the Tarai-Madhes is for the Tarai-Madhes based political parties themselves to take the lead honestly by taking civil society into confidence.

Ongoing Transition in Nepal

The Challenges ahead and the Human Rights Concern*

Subodh Raj Pyakurel & Dipendra Prasad Pant

Introduction

There have been regime changes in Nepal on several occasions through uprisings and organized popular movements. The power shifts from the Rana oligarchy to the king and the political parties especially the liberal Nepali Congress in 1951, the defeat of the party-less Panchayat regime introduced by the King Mahendra and its replacement by parties in 1990 and the extirpation of the authoritarian king Gyanendra in 2006 were experienced in the country while being propped up by the people.

Following the formal end of a decade long armed insurgency waged by the Maoists against the state on 22 November 2006 Nepal is undergoing a transition from the authoritarian past to democracy.¹ The transition to democracy is full of problems and complexities involving various factors and actors. Nepal's present transition to democracy has also been equally complex; primarily because of the

multiplicity of discourses that has surrounded it. The chasm between the political parties has widened. The myopic and shortsighted political society has hyped the change as an end itself. Neither of the big parties is without internal tensions and contradictions. The Janus-faced Maoists, since its entry into peaceful democratic mainstream has adopted a deceitful policy by portraying one set of feelings and acting under the influence of ulterior another.

Furthermore, political stalemate in the country has been protracted unnecessarily and undesirably increasing the chances that such stalemate will ultimately polarize the parties as the groups that subvert or co-opt the transition. In addition, the present transition is compelled to proceed while being intertwined with the ethnic, nationalist, regional, radical as well as religious discourses and it also has the convoluted task of taking the incompatible political forces of

the past together. In this context, this write-up discusses the present transition and human rights situation in Nepal taking the multiple aspects like the negotiated peace process and subsequent problems, crimes, the failure to keep commitments, neighboring countries and the possible constraints to improve the human rights situation in the country into account.

Negotiated Peace and the Post-Conflict Problems of the Parties

The transition to democracy in Nepal, actually, had begun through the Comprehensive Peace Agreement to embark a shared future leaving behind the sheer divisions of the past. It is pertinent to quote Bloomfield here in this regard.

"A negotiated peace may open up the possibility of a process designed through negotiation between equals. In this case, though one side may pressure amnesty for its members and supporters as the price of its agreement to support existence while the other is pursuing justice and punishment as the price of its support. Lacking absolute control, neither side will achieve its goal in this." (Bloomfield: 2003)

Developing in line with the view of Bloomfield, the present transition to democracy has been the peace versus justice controversy. The UCPN Maoist wants blanket amnesty for its violations and offenses committed in the course of the war or afterwards putting forth its logic that it has adopted a democratic course. And, the other political parties² want the violations and offenses committed by the Maoists in course of the war or afterwards to be punished and the

* This article was published by Think India Quarterly in its October-December (2010) issue.

1. Many believe that Nepal is in transition to democracy however our contention in the ensuing pages tries to state that Nepal's transition is likely to head more towards uncertainty rather than democracy.
2. Other political parties' implies differently in the pre and post Constituent Assembly (CA) election contexts. Before the election it referred to the major seven political parties and at present this refers to about two dozens out of 27 political parties having representation in the CA.

Maoists shun organizational structure like that of a warring party.

To reconcile, a society has to move from a divided past to a shared future. But, post conflict Nepal has remained divided. The political leaders don't have any motivation for building future to ensure that the past doesn't return. Responsible actors in the country have been unable to manage the issues that create social division and make democracy defunct. As per Bloomfield (2003), a set of fair procedure for peacefully handling the issues that divide a society (the political and social structures of governance) and a set of working relationship between the groups involved are necessary for a

building congenial relation among the major political parties is full of challenges almost insurmountable for the political parties. So, questions have started to be raised as to whether or not Nepal has embarked on a safe and democratic transition.

Looking into the present transition of Nepal through the benchmarks that are required to exist in a post-conflict country, we have ample space to doubt that the present transition will certainly lead to democratic consolidation. It is believed that negotiation of peace from above and peace building form below have to function effectively in a post-conflict country. However, the peace negotiation has been breached,

Passing through the transition towards consolidating democracy by building congenial relation among the major political parties is full of challenges almost insurmountable for the political parties. So, questions have started to be raised as to whether or not Nepal has embarked on a safe and democratic transition.

functioning democracy. Nepal has failed to establish and consolidate a dual foundation for a functioning democracy³. To quote the UN, "in many cases, including Nepal and Pakistan recently, crises of legitimacy have prompted transitions from authoritarian states. But consolidating democratic practices has proven more difficult... although negotiated power sharing may avoid or help end conflict, cycles of protest and repression may follow"⁴.

Passing through the transition towards consolidating democracy by

either by transgressing the letter and spirit of the already signed agreements or by not fulfilling the obligations arising from the agreements⁵.

At the grassroots level, there have been continued killings, beatings and unabated feuds over the local resources, administrative control and power politics, especially among the youth wings of the political parties. Thereby, challenging the incipient peace building effort and the achievements to date. As per the INSEC data base 2,732 persons have

Table 1. The Incidents of Beating in between 22 November 2006 to 31 December 2009 and the Perpetrators

Beatings	
Perpetrators	Total
ANFSU	20
ANNISU (Revolutionary)	157
CPN(UML)	82
Maoists	1314
MJF	121
Nepal Student Union	11
Nepali Congress	129
Rastriya Jana Morcha	29
VC Force	3
Young Communist League	788
Youth Force	78
Grand Total	2732

been beaten and 66 persons have been killed in between 22 November 2006 to 31 December 2009. The data below, however, is exclusive of the beatings and killings by the other political, semi-political and armed groups that are not considered as the main political forces in terms of the 12-Point Understanding and the Comprehensive Peace Agreement.

This shows that breaching the negotiations signed at the central level and giving continuity to the

Table 2. The Incidents of Killing in between 22 November 2006 to 31 December 2009 and the Perpetrators

Killings	
Perpetrators	Total
CPN(UML)	1
Maoists	22
MJF	31
Young Communist League	10
Youth Force	2
Grand Total	66

3. Working relationship among the political parties has been badly deteriorated. Failure of the parties to elect a new Prime Minister for the 16th time, prolonging the country's political crisis and putting the nation at risk of running out of money is the worst example of deteriorated working relation among the political parties in Nepal. At a time when the public services, like schools, government hospitals and governmental offices were almost running out of budget, new budget has been presented through ordinance whereas there is legitimate legislative parliament in the country for bringing budget.

4. Human Development Report 2010, page 69.

5. There will be a detailed discussion regarding the non-fulfillment and the breaches of the CPA later in this article.

anti-peace building activities at the local level has put the transition period of Nepal in jeopardy. Political forces seem to have been distracted from the prime duty of writing the constitution and their failure to act sincerely as the democratic transition demands. The post-conflict situation of a country demands peace and reconciliation as an immediate task and the development as the long term strategy. However, expecting the convergence of the political parties has been a distant dream given the present inter-party relations in the country.

In what are nowadays termed 'post conflict societies' the pattern is generally that the warring sides negotiate a settlement in the form of new structures for governance. Almost always these structures are democratic so, former enemies - often having a long history of violence between them find themselves faced with implementing the new negotiated structures for the future management of their differences on a minimally cooperative basis. One of the biggest obstacles to such cooperation is that, because of the violence of the past, their relations are based on antagonism, distrust, disrespect and quite possibly, hurt and hatred⁶. This political philosophy and international experience also unfailingly applies to the non-cooperation and the intensifying distrust among the political parties in Nepal now. Similarly, the current political ambience in Nepal is the result of an interplay of the overriding issues the parties agreed to earlier⁷ at a time when the king overplayed his hand by usurping power. The agreements, it seems now, were not reached in the parties' own volition taking the Nepali people as the centre of agreements, rather, the party politics and interests were at the center. To be more specific, internecine party politics and the detrimental effects the parties had

during the armed conflict against each other has repelled them now, rather than attracting them to reconcile.

Reconciliation has not been easy in Nepal. The disqualified discharges and the ex-combatants who are not registered in the camp and are working as political cadres have posed difficulty to reconciliation. Of the 4008 disqualified combatants discharged so far, it's still unknown how many of them have returned to their place of origin and are in interaction with the victims they perpetrated. Many full-fledged ex-Maoist combatants are still under the hold of the Maoist party as full-fledged political cadres and are living a collective life. However, sooner or later, they will have to return to their community of origin. This home

Besides, post-conflict Nepal is full of many other challenges despite the fact that it has made progress very sluggishly over time. 'The establishment of broadly representative nature of the CA and the discharge of 4,008 disqualified Maoist combatants offer a glimmer of hope. Still, the state's response to proliferating non-state armed actors, ethnic armies, militant youth wings of various political parties and identity based social movements is highly skewed, not systemic. As a result, a deadlock in the centre and high dynamics at the periphery continue to serve as bottlenecks to focus on long term vision of peace, constitutional state, good governance and an early recovery from human recession.' (Dahal: 2010)

Many full-fledged ex-Maoist combatants are still under the hold of the Maoist party as full-fledged political cadres and are living a collective life. However, sooner or later, they will have to return to their community of origin.

coming could become a source of re-traumatization for the surviving victims if no explicit measures with respect to reintegration are taken and a reconciling environment at the grassroots level are created.

'Reconciliation involves the creation of the social space where both truth and forgiveness are validated and joined together, rather than being forced into an encounter in which one must win out over the other or envisioned as fragmented and separated parts (Lederach: 1997) The problem in Nepal is that the parties, especially the UCPN Maoist, want to prevail over others rather than moving ahead hand in hand with other political parties making truth and forgiveness compatible.

To have high dynamics at the periphery is the underlying cause of the entire problems in Nepal. A decade long armed conflict was the result of these very dynamics. However, the deadlock in the centre, a result of the excessive yen of the political parties, has debarred a solution to these complex problems, whereas especially the Maoist party has attempted its utmost to lead the government at any cost. If we agree that radical ideology and the people's discontent, especially that of the minorities, were at play during the climactic point when the Maoists started the war against the state, the Maoists' naked struggle for power and control over the ethnicities is not unnatural because 'Conflicts which used to have strong ideological

6. Hachhethu, et al. 2008. page 11

7. 12 point understanding was the base for the political parties, depending on which the king finally was extirpated from the power.

dimensions or which expressed deep popular or minority discontents have tended over the years to degenerate into naked struggles for power ... or to control the ethnic and national identity of the state” (Luckham, 2003:21)

At a macro level, Nepal's post-conflict order has been hampered by indecision, dilemma and disputes between dichotomies. To quote Dahal (2010), ‘the dilemma between conflict management and conflict resolution (also transformation), dissolution of feudal land system versus recognition to property rights, provision of social security versus weak tax base of the state to subsidize welfare benefits, commitment to universal values of democracy versus old political culture of patronage, rights-based discourse on democratization versus increasing militarization of society, constitutionalism versus popular sovereignty, realistic policies versus populist trap etc exposes the obvious gaps between promise and practice of Nepalese political leadership”

Transition and Crimes in Nepal

International experience shows that crimes pose a threat to the post-conflict situation of a country. Nepal isn't an exception in this regard. As per the database of INSEC, a total of 1713 persons have been killed in between 22 Nov 2006(the date of signing the Comprehensive Peace Agreement) to 5 Nov 2010 where 1313 persons were killed in the Tarai districts. Of the total killed, 152 persons were killed by the state and 155 persons have been killed by the Maoists and their affiliated

organizations. Similarly, during the period a total of 2359 persons were abducted whereas 1433 were abducted in the Tarai districts.

Very seriously, crimes have been badly politicized and politics has been criminalized. The line between political activities and criminal activities is increasingly blurring. Felons have not been punished due to politicization of crimes and criminalization of politics. Not a single criminal behind serious crimes has been prosecuted in spite of the courts', the Supreme Court included, orders to prosecute⁸.

The incumbent government has implemented a Special Security Plan with special focus on peace and security situation in the Tarai region as per the government's commitment to end the culture of impunity, protect human rights and fulfill the desire of the people to live peacefully by improving the law and order situation in the country⁹. Viewing in terms of the number of crimes in the country, the plan has been relatively efficacious. 551, 541 and 473 persons were killed in 2007, 2008 and 2009 respectively. Only 126 persons have been killed in between 1 January 2010 to 5 Nov 2010. This shows a decreasing trend of killing in the country but it is not commendable.

Nepal has many problems regarding security situation in the country. The army is bound to be confined in the barracks due to CPA; the role of the Armed Police Force is unclear as to the general peace and security situation in the country and the Nepal Police has been used as a political tool and crimes have been

politicized often providing political protection to certain criminal activities. Similarly, lack of logistic resources, the inadequate specialized training and public distrust in the police have been collectively responsible for the weak security situation in the country¹⁰. Apart from this, police has been the victim of the vulnerability of the transitional phase on the matters of utilizing full capabilities in the course of maintaining peace and security in the country.

So, it will be really difficult for the government to normalize the situation. Worry still exists that Nepal will fail towards delivering the basic services needed to ensure human security, respect for human rights and maintain law and order in the country slowly. Crimes and insecurity are still likely to erode the nominal gains made in establishing a culture of human rights and respect for the rule of law. Checking and improving these entire situations is directly connected with political parties but, ‘we are in transition’ is often the response from the responsible political parties as if democratic accountability and the rule of law are luxuries that can be postponed until order and security are restored.

Failure to Keep the Commitments

The Comprehensive Peace Agreement was an ideal mechanism agreed upon by the major political parties. It was a base and opportunity towards establishing a democratic set up, respecting human rights and reconciling the opposite warring forces in the country. The provisions in the agreement had encompassed

8. The apex court had forwarded the text of its January 3 verdict on September 5 to Okhaldhunga court for prompt execution of the verdict that slapped a 20-year jail term on Balkrishna Dhungel, the Unified CPN-Maoist Constituent Assembly member and ordered confiscation of his property for killing Ujjan Shrestha in 1998. Dhungel has not been arrested yet. Similarly, District Court of Kavre issued an arrest warrant against the four accused including Major Nirajan Basnet on 31 January 2008 for their involvement in killing Maina Sunar. District Court of Kavre on 13 September 2009 ordered the Nepal Army to suspend Major Nirajan Basnet in accordance with Section 66 (3) of the Army Act 2063. Despite the arrest and suspension order of Kavre District Court, the accused continued his service with full protection from Nepal Army. Instead of giving effect to the court's orders, he was deployed to the UN Mission in Chad. Later he was vetted and repatriated to Nepal. Mr Basnet has not been prosecuted. These are the exemplary cases only.

9. See Nepalnews.com, 22 October, 2009 for detailed explanation of the Minister for Home Affairs on need of implementing Special Security Plan

10. For further detail see ‘Public Report 2007 on the Findings of Nepal Police- Civil Society Dialogue’, United States Institute of Peace, Washington DC

all the urgent issues to be actioned to strengthen democracy. The agreement was human rights-friendly as well. It was correctly thought at the time of reaching the agreement that human rights situation in the country largely depends on the implementation or non-implementation of the Comprehensive Peace Agreement.

However, its implementation is very disappointing. No concrete steps have been taken towards management of armies and arms.¹¹ Although there have been discussions for 3 years, the integration and rehabilitation of the Maoist combatants is yet to be made a reality. Even the seemingly less complicated process of rehabilitating the disqualified Maoists combatants (including 2,973 minors) took a considerably long time to begin. Point 4.7 of the agreement states, 'Both sides shall not recruit additional military forces or shall not transport arms and ammunitions and explosives or conduct military activities against each other...' but the Nepal Army(NA) issued a recruitment appeal in October 2008 creating a huge controversy. The NA claimed that it was only filling its vacant positions.¹² However, this was disputed by the UCPN-Maoist. Similarly, PLA combatants have been arrested on numerous occasions for carrying weapons outside the Maoist army cantonments.¹³ Although, no further incidents of recruitment from either side are recorded afterwards, this episode has shown the failure of the stakeholders to stick to the

agreements and has created political debates and turbulence at the same time.

The phenomenon of enforced disappearances has been widespread in Nepal, particularly during the decade long insurgency. According to the United Nations Working Group on Enforced and Involuntary Disappearances, during the armed conflict, Nepal recorded the highest number of enforced or involuntary disappearances in the world. According to INSEC's database 1,006 persons disappeared between February 1996 and November 2006. Yet, no concrete steps have been taken to investigate or make public the status of the disappeared despite the commitments made by both sides¹⁴. Hundreds of cases of the disappeared during the conflict have not been properly clarified or investigated still.¹⁵ Despite the continued promises and commitments from the government, a Disappearances Commission is yet to be formed. The Disappearances (Crime and Punishment) Bill that was promulgated as an Ordinance on February 10, 2009 drew huge criticism as it did not comply with international standards or the Supreme Court guidelines. The government tabled the Bill on Offences and Punishment of Disappearance, 2066 at the legislature parliament on April 20, 2010 for the investigation of persons abducted and disappeared during the Maoist Conflict.

Although both sides agreed

not to keep anyone under arbitrary detention, kidnap or take anyone as hostage, this provision is widely violated by the UCPN-M cadres by abducting people. From the date of signing of the CPA to August 2010, INSEC has recorded 772 cases of abductions by them. The draft Truth and Reconciliation Bill issued by the Government in July 2007 was widely criticized for not meeting international standards. Furthermore, there has been little effort by the Government to prioritize the reform of the Bill to ensure a credible and effective Truth and Reconciliation Commission.

Similarly, the commitment to form a National Peace and Rehabilitation Commission hasn't been fulfilled. Thus, the constant assurances to set up the two Commissions, intended to support the victims of conflict as mentioned in the Comprehensive Peace Agreement, haven't materialized. In spite of the directives given by the Supreme Court in April 2007 and the recommendations made by the UN Committee on Economic, Social and Cultural Rights to prioritize special programs for Kamaiyas, as of July 2009, out of 27,000 freed Kamaiyas some 9,600 are yet to be rehabilitated. Promises of a separate Landless Commission to solve the problems of the landless people in Nepal are yet to materialize.

The adoption of a policy to introduce a scientific land reform

11. Point 4.4 of the CPA states that the Interim Council of Ministers shall work to supervise, integrate and rehabilitate the Maoist combatants.
12. INSEC has been monitoring the peace process based on the CPA. As per its monitoring report – Commitment vs. Reality, the issue was brought to the Supreme Court and during the hearing on March 8, 2009, the PLA also decided to begin recruitment, in order to fill positions which were vacant after UNMIN disqualified PLA personnel. The Court issued interim orders to both the NA and the PLA ordering them to stop the recruitment process. In its final verdict, the Court held that the NA must not carry out any recruitment. Again on April 19, 2010 Nepal Army opened its recruitment process for 271 positions in 40 different technical positions. And, finally, the Supreme Court (SC) refused to issue a stay order against the recruitment drive initiated by Nepal Army, on May 12, 2010.
13. INSEC'S Monitoring Report 2010 -Commitment vs. Reality 2010
14. See INSEC's, 'Impaired Accountability: State of Disappearances in Nepal Brief Assessment of Implementation of UN WGEID Recommendations', August 2008.
15. Point 5.2.3 of the CPA deals with ceasefire and states - both sides agree to make public the information about the real name, surname and address of the people who were disappeared by both sides and who were killed during the war and to inform also the family about it within 60 days from the date on which this Accord has been signed. Similarly, the point 7.3.2 of the agreement deals with right to life and mentions- both sides shall, respecting fully the individual's right to freedom and security, not keep anyone under arbitrary or illegal detention, kidnap or take as hostage. Both sides agree to make public the status of every disappeared person and held as captive and inform the matter related there to their family members, legal advisors and other authorized persons.

program by ending feudal land ownership and a policy to provide land and other economic and social security to the economically backward classes including landless, bonded labors and pastoral farmers are provided for in the CPA. 'Land reform' has always been embedded with and has been the catchphrase of the political parties while in struggle for a democratic set up but establishing the land reform commissions, just to make defunct after achieving power has been the trend. So, demand for land reform and a distribution policy are not new in Nepal. However, reform is now termed *Scientific Land Reform*. The late 1950's governing administrations of all political hues had pronounced land to the tiller redistribution necessary to abolish feudalism and advance economic transformation. Yet they have as persistently failed to achieve these objectives¹⁶.

Should the Neighbors be Responsible should the Peace Process further Protract?

Nepal's democratic transition has been perceived by many to link with neighboring countries as well. Because of the conjuncture with the neighboring big countries, which have the capacity to influence the global politico-economic powers, Nepal's situation, to some extent, will certainly be affected by them. Our national consensus, interest and diplomatic aptitude are of paramount importance in the matters of getting benefits from

the neighbors especially in this phase of transition. The tendency of the responsible political party to receive benefits by drawing the neighbors into controversy is unfortunate. If we want the neighbors to act as per our vulnerability, we also have to be able to understand their concerns. "While Nepal anticipates its two immediate and powerful neighbors India and China to understand the vulnerability of a small country and respect its independence, sovereignty and territorial integrity, it is in the national interest of Nepal to become sensitive to the security concerns of its big neighbors and take appropriate measures to prevent and curb all kinds of hostile operations against them"¹⁷.

In retrospect, however, there have always been disputes among the political actors in Nepal regarding the perception of the neighboring countries. Similarly, the neighbors too perceived Nepal differently during different situations. However, it seems that especially after the peace process started, the relation between Nepal and the neighboring countries has started to thaw with internally and externally volatile dynamics. There has been a hectic amount of diplomatic activities and exchanges of visits¹⁸ but the expressions of diplomatic and political concerns by the countries provide space to doubt that we will have a normal relation with the close neighbors. It seems that the cold war mindset has revived to haunt the political actors

especially the Maoists. If this is true, the Cold War mind-set of Nepal that perceives India and China as opposing forces will be detrimental for Nepal because the result of such a mindset will never be for regional ties, economic interdependence, diplomatic exchanges, mutual benefits and coexistence. Political actors now are not aware of the fact that Nepal has right to deepen its relationship with its neighbors but one relationship does not have to come at the cost of the other. If only Nepal can realize this and act accordingly, we will be able to manage the transition to democracy successfully. And, the failure of the political parties to conclude the ongoing peace process as per the spirit of the CPA will cause the level of trust placed in the parties to plummet.

Fulfilling the Long Existing Popular Expectations: Still a Distant Dream

The failure of the changed political system of 1990 to meet the high expectations of the Nepalis bred a brooding sense about their future and aggravated discontent simultaneously, ultimately setting the stage for armed conflict. The armed conflict that swept across the country, beginning in 1996, was seen as a response to poverty, injustice, regional disparity and other structural deficiencies and ill-management. "The change of political system in 1990 brought about high hopes and expectations in the people that in the new polity there would be,

16. See Willy, Chapagain and Sharma's overview in the findings of a scoping study on land reform for DFID Nepal, 2008. As per the research Nepal's formal land reform started since 1951 and many attempts have been there afterwards. However, these attempts either have gone ineffective or led to formation of commissions which could not come up with any concrete way to reform and got defunct with the political system change of even in the change of governance. Interim Constitution pledges compensation for land losses due to enforcement of a scientific land reform 'by doing away with the feudal land ownership', special socio-economic security programmes including positive discrimination for landless squatters, bonded labor & tillers, women and disadvantaged groups. Notably also ruled that no case could be brought as to whether these actions implemented or not (Art. 36). The three Year Interim Plan defines scientific land reform, lists 20 broad targets (e.g. including irrigation) including establishment of a High Level Land Commission, 50% discount on transaction fees when land purchased by woman or member of a deprived class land to 200,000 landless, rehabilitation support for 13,244 freed Kamiyas, plan to relocate Guthi land administration to districts etc. Several land reform Commissions have also been formed but have failed to yield result.

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

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

among others, no political prejudice, no nepotistic administration of opportunities and no centralization of power...politics was criminalized with frauds and rigging in elections and political opposition was silenced with the abuse of state administration and bureaucracy” (Karki and Kattel: 2007)

The violation of human rights in the country was a routine during the Panchayat regime. Especially towards the end of the 80s it got even more dismal¹⁹. However, the restoration of democracy provided sufficient ground for the political actors in the steering seat of governance to work for a better human rights situation in the country and to proceed by accepting the human rights approach to development. The actors failed to do so. The economy was left at the mercy of unbridled market competition, minimizing the role of the state to regulate and control whereas two things- redistribution of wealth, power and status of the individual, groups and community in a just manner for the societal good; and the human rights approach to development and social justice were of high importance.

At a time when Nepal was in need to boost the rural and agrarian economy, targeting the low income classes who were finding it increasingly difficult to survive, the state couldn't be an active development partner and honest implementing agent. The liberal economic policies adopted from the last years of the Panchayat regime, especially since the restoration of democracy in 1990, incorporated liberalization, privatization and structural adjustment. The Nepali Congress led governments prioritized this. Development became asymmetrical,

a large portion of investment, mostly from the foreign resources mainly as loans, benefited especially a small section of the population in the urban areas adding affluence to an already rich class. As a result, the Maoists led insurgency received space and support to rouse the people in the rural areas and minority sectors.

As the insurgency intensified, the adopted development practices turned further inefficacious and the social dynamics that were waiting for the equitable treatment became more complex worsening the security and human rights situation in the country. The post CA election strategy of the Maoists now affirms that they are endeavoring to fill up the vacuum appeared in the country following the exit of the authoritarian monarchy from the state affairs. Their activities have posed problems to solve the long existing socio-economic problems and human rights concerns. Hence, except the political changes and the constitutional assertion for the problems created by the social dynamics, no progress has been made so far. Nepal is undergoing transition without initiating any concrete steps against the problems that existed in the country once they surfaced in the 1990s. So, if the government fails to solve these problems prudently, rights situation in the country will go even worse in the near future.

Nepal's democratic struggle and popular participation in the struggle has always been propelled by the demand of humanitarian governance that requires social justice as the benchmark in a concrete sense. By the time Nepal saw the unprecedented mass uprising in 2006 these issues were vociferously

demanding. Democratic governance, rule of law, social justice, good governance and respect of human rights, elimination of region, caste, class and sex based inequalities, among others, were the demands during the uprising. But, parties have undermined the demands even after the establishment of Loktantra in the country.

Long-Run Move and the Constraints to Speed Up

To borrow the words from Amartya Sen, 'the world has moved on since 1990'²⁰. So has Nepal since that year compared to the sluggish development prior to 1990. We have to acknowledge that Nepal has come a long way in the long run. According to the Human Development Report 2010 Nepal ranked the 138th country in terms of the HDI rank with the 0.428 HDI value. It is very encouraging for us that Nepal has stood first in terms of HDI improvement rank. The HDI value change is also encouraging.²¹ Sectors like communication, forests and education are improving. "That Nepal is one of the fastest movers in the Human Development Index (HDI) since 1970 is perhaps surprising in light of the country's difficult circumstances and record of conflict...the gap between Nepal's life expectancy and the world average has narrowed by 87 per cent over the past forty years. By contrast economic growth was modest and due to lack of jobs many Nepalese were compelled to seek opportunities abroad."²²

What has been achieved can equally be attributed to the INGO (International Non-Governmental Organization) development practices;

19. Public Security Act, Organizations Control Act and Treason Act were in action to curb the anti- palace and pro-democratic activities. A trifling fault could be interpreted as an offense deserving punishment. As an absurd instance of punishment Bhup Nidhi Pant, the journalist and lawyer in Pokhara was arrested twice in six months and charged with treason on both occasions. His first 'crime' was to publish king's photo with black ink smeared around the face and second was to misspell Queen Aishwarya's name in vernacular Nepali. For more detail see the book "Nepalese Political Behavior" by Ole Borre, Sushil R Pandey and Chitra K Tiwari, page 23.

20. In introduction to Human Development Report 2010, 20th Anniversary Edition.

21. According to Human Development Report 2010 there has been continuous increase in HDI value. In the years 1980, 1990, 1995, 2000, 2005, 2009 and 2010 there were 0.210, 0.316, 0.344, 0.375, 0.400, 0.423, 0.428 HDI values respectively.

22. Human Development Report 2010, page 54.

this has led to a heightened sense of human rights among the people and an increase in local participation. Often the private sector and governmental authorities understand human development and human rights in isolation oblivious to the fact that human development focuses on individual and group empowerment; and human rights, on structural safeguards. Human rights and human development have much in common but it seems that Nepal has failed to understand this fact even though it is a state party to many international conventions and protocols that have given legal status to the normative

constraints. Basically, corruption, human rights violation, crimes and the consequences of the possible natural disasters caused by the global climate change will be the prime factors for our socio-political and economic retardation and underachievement. Transparency International (TI), the global coalition against corruption, has ranked Nepal 146th out of 178 countries surveyed in the Corruption Perception Index (CPI) 2010, making it one of the most corrupt countries in the world. Nepal slipped three positions down this year. Last year, Nepal was ranked 143.^{rd24} In terms of human rights violation Nepal

that only 75 to 80 per cent of the total development budget -Rs 22 billion received in the last fiscal year has been spent and a large amount of the spent funds is unaccounted for²⁶. In the name of forging consensus, the budget allocated for the local bodies either has been frozen or unaccounted for. There has been no political representation at the local bodies for a long time. Political parties have not expressed any worries about the vacuum in local governance.

It is highly likely that possible calamities and their consequences and the failure of the government to protect natural assets will increase the probability of the further degradation of the situation in the country. Nepal reporter to the BBC News has, to take an example in this context, revealed through a field investigation in the western part of Nepal that Nepal faces massive deforestation, mainly because of corrupt bureaucracy fuelled by prolonged political instability. The study shows that several routes are being used to illegally transport logs across the border into Indian territories. As India takes steps to protect its forests in the fight against climate change, timber smuggling from Nepal is on the rise, say the Nepali conservationists and officials²⁷.

Similarly, a report prepared jointly by the United Nations Environment Programme (UNEP), the Centre for International Climate and Environmental Research (CICERO) and the International Centre for Integrated Mountain Development (ICIMOD), following a two-year pilot assessment, states that Nepal, which is normally known for its water abundance has experienced extreme droughts, some

Political uncertainty is and will be the main problem in Nepal. Even if politics takes an order towards democratic consolidation in a dramatic way, the route towards consolidating democracy is full of constraints.

claims of human rights. To quote the Human Development Report 1994²³ "Human security is a child who didn't die, a disease that didn't spread, a job that was not cut, an ethnic tension that didn't explode in violence, a dissident who was not silenced. Human security is not a concern with weapons- it is a concern with human life and dignity". The failure to understand this has posed problems in our efforts to establish human rights based development approach in Nepal.

Political uncertainty is and will be the main problem in Nepal. Even if politics takes an order towards democratic consolidation in a dramatic way, the route towards consolidating democracy is full of

has the score 4, in the UN designed score range from 1-5 where less score means better human rights situation in a country.

Similarly, the reports prepared by watchdogs like the Commission for the Investigation of Abuse of Authority (CIAA) have shown that in the absence of elected representatives, a large amount of government budget allocated to local bodies has been misused with the involvement of a handful of local political leaders and civil servants²⁵. The report says rampant bribery, cartels and other corrupt practices undermine competition and contribute to massive loss of resources for development in Nepal. Officials at the Ministry of Local Development here concede

23. for further detail see Human Development Report 1994, page 22

24. The TI's Corruption Perception Index (CPI)-2010 released globally on 26 October 2010.

25. The Kathmandu Post 26 October, 2010.

26. *ibid.*

27. For more detail see *Nepal's Forests 'Being Stripped by Indian Timber Demand'* By Navin Singh Khadka Environment reporter, BBC News, Nepal accessed on November 21, 2010.

lasting for years²⁸. The arrhythmic climatic features, droughts and floods experienced in the country in the recent years indicate that Nepal is one of the countries to be badly affected by the global climate change.

Conclusion

Nepal is undergoing a transition from its authoritarian past; however, it can't be taken for granted that the transition will go towards democracy. Looking at the present transition of Nepal through the benchmarks required in a post-conflict country, one can not be assured that the peace process will surely succeed. To reconcile, a society has to move from a divided past to a shared future. But, post conflict Nepal has remained divided. Both truth and forgiveness are not validated and joined together but hatred, aggression; distrust and non-cooperation have engulfed the political actors. This has been the prime hindrance against establishing political order in Nepal. Breaching the negotiations and giving continuity to the anti-peace building activities has put the transition period at jeopardy.

Nepali society has not been demilitarized. Although the CPA provided the basis for demilitarizing Nepali society, no concrete steps have been taken towards this end. It seems that militarism is only momentarily dormant. Crimes have replaced militaristic violence. The CPA, idealistically, is human rights-friendly as well. However, its implementation is very disappointing and so is the human rights situation in the country. The parties have failed to stick to the already signed treaties and accords. The political actors are oriented towards producing more fissures rather than resolving the existing problems and precluding emergence of further problems. Even after a long period of striking the

peace accord fear still looms large that parties might undo the ongoing peace process. The unnecessarily and undesirably protracted peace process hints at this danger.

It is highly likely that such a situation will erode the nominal gains made in establishing the base for the culture of human rights and respect for the rule of law. Checking and improving these entire unwanted situations is directly connected with political parties but their naked struggle for power has underrated and shadowed the burning issues at hand. Political uncertainty will be the main problem in Nepal. Even if politics takes a shift towards democratic consolidation, the course towards consolidating democracy is not free from restraints. Basically, corruption, human rights violations, crimes and the consequences of possible natural disasters caused by the global climate change will be the prime factors for our socio-political and economic retardation and the degraded human rights situation in the country.

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Democracy as a Mode of Conflict Resolution in Nepal



Introduction

The inclusion of all ethnic, religious and socio-cultural groups in the mainstream politics and in all layers of decision making has become one of the crucial aspects of the democratization of political power in Nepal following the Jana Andolan-II. Most of the Nepalese political parties have advocated inclusive democracy in pre and post Jana Andolan periods as a mode of resolving various types of conflict in Nepal. Initiation of substantive reforms to include the marginalized groups and form shared governance which is both just and peaceful was the demand. Power sharing is a popular means of settling high-intensity political conflict. For the stability of the sound mechanism of democracy, however, democratic values, institutions and processes are also required. Since Nepal's conflict is multi-layered, only a functioning state can improve its multi-level engagement with society, contain the spoilers of peace and push for post-conflict peace-building initiatives. Creation of an inclusive public authority is the key to strengthen state's linkages and outreach in society (Menocal, 2009:4).

The signing of the Comprehensive Peace Agreement (CPA) between the government and the Maoists on November 21, 2006 formally ended a decade-long internal civil war, promised state restructuring to address the nation's 'class, ethnic, regional and gender problems' and set up a competitive, democratic, political system which can provide civil liberties, fundamental rights, human rights, press freedom, and the rule of law. The agreement set an example in conflict resolution and attracted the attention of the world. New Nepal sought 'political, economic and social transformation and management of conflict'. The CPA declared the end of the armed conflict that claimed over 13,000 lives; left thousand wounded, displaced and traumatized. The then Prime Minister Girija P. Koirala and CPN (Maoist) Chairman Puspa Kamal Dahal (Prachanda) affirmed their full commitment to implement the historical CPA and proclaimed that the nation entered into a new era of democracy, peace, security, progress and stability.

The United Nations, European Union, India, China, United States and other countries hailed the Peace Agreement. People expected that the

implementation of the CPA would address the "root causes of conflict" and unfold post-conflict measures of reconstruction, rehabilitation, justice, reconciliation and peace. One of the means chosen for conflict resolution is the transformation of the conflict-prone relationship between political parties into peaceful cooperation and attain a threefold objectives: to draft a new constitution by the elected 601-member Constituent Assembly (CA), achieve stable peace and initiate peaceful social change through inclusive reform measures. Despite these lofty goals, however, implementation of the CPA met critical barriers as political parties could not be able to cope with the two key challenges of the changing societies in Nepal—'conflict management and modernization' through 'governmental stability and social cohesion' (Spiess, 2009:6).

This paper intends to analyze how far the political parties of Nepal have internalized the concept of inclusive democracy in their legal, policy and institutional behavior in a real sense as exclusion, alienation, subordination and exploitation were regarded as major structural causes of conflicts in Nepal. This paper also

* Associate Professor, Political Science, Tribhuvan University

explains various issues of inclusive democracy among political parties, the outcome of the election and post-election political tendencies as a way of conflict resolution and the opening of new conflict lines and their possibility of mitigation and then draws conclusion.

Political Dynamics, Inclusion and Reduction of Grievances

Political inclusion is a means to reduce tension and a key to the resolution of conflict in society. In a country of minorities like Nepal, monopoly of power by a single group undermines the whole system and triggers factionalism, anti-institutional social movement and conflict. The Maoist People's War was started in 1996 by putting forth 40 grievances and mobilizing various groups of people around these. The methodology in the beginning was reformist and, building on its success, it escalated into a low-intensity conflict confined into Rolpa, Dolpa and the surrounding areas. As the Government's response was counter-productive, the war gradually expanded, engaged the Nepal Army and became high-scale and spread all over the nation. With this escalation, the war also became more violent. The gradual withdrawal of the state from society by the various governments in the 1990s, followed by the cut in subsidies to peasants, the privatization of industries, communication, health, education and the control of local bodies by all-party committees weakened the state's authority and legitimacy in society.

The reduced presence of the state in society facilitated the deepening of the conflict. Studies pointed out many root causes of the conflict, such as the inability of various Governments to resolve them due to personality differences between political leaders of various parties, frequent deadlock, and failure of communication between key actors

including the king and the inability of third parties to mediate. Nepal's political dynamic is shaped by the continuous power struggle between ruling parties and the parties in opposition; agitated social groups seeking resources, power, rights and identity and the operation of 109 armed political and criminal groups thus vitiating security, law and order and service delivery. The non-resolution of many contentious issues has added fuel to the fire of this dynamic.

When several rounds of negotiations failed to terminate the war, the Seven Party Alliance and CPN (Maoist) signed a 12-Point

were undertaken to define the Code of Conduct for the ceasefire, suspend the monarchy, bring the property of the previous King under government control, change the name of the Royal Nepal Army into the Nepal Army (NA), bring the NA under civilian control and declare the state secular. The demand for federalism began with the Madhesi movement while the first meeting of the CA declared the country to be a republic. Drafting a new constitution by the elected CA has been one of the main topics on the agenda of the CPN-Maoist, as articulated into its 40-point demands. Similarly, the signing of the CPA placed constitutional change and an

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Agreement for a joint street agitation. Accordingly, the parliamentary parties and the 'People's War' dislodged King Gyanendra's direct rule. Mass movement has been utilized as a mode of conflict resolution in Nepal because negotiation between the rival groups and back channel communication and mediation efforts¹ failed to produce a positive outcome. During and after April 2006 a mass political movement, a number of political issues and agendas including inclusive democracy have been raised by the major political parties of Nepal. After the restoration of House of Representatives in 2006 and the formation of the new government following the success of the movement, new reform initiatives

effort to tackle deep-seated economic and social inequalities at the heart of peace building (International Crisis Group, 2007:1).

Accordingly, the ruling Seven Party Alliance began negotiations with the Maoists and brought them into mainstream politics by including them in the drafting of the Interim Constitution and including them in the interim parliament and government. In June 2006 an Interim Constitution Drafting Committee, composed of 6 men, was formed to draft a new constitution. As there were no Dalits, no women and no ethnic representatives on the Committee, it sparked a political movement for an "inclusive law making process." Later 10 more names

1. by Sir Jeffrey James of the UK, Samuel Tamrat of the UN and Swiss and Norwegian mediators.

were added into it but it was short of extensive public participation, public opinion formation and ownership. The Interim Constitution was promulgated on January 15, 2007 by the House of Representatives, which then dissolved itself and opened the way for the formation of a 330-member interim legislature which also required the judges to swear an oath to it. Many criticized it saying that it compromised judicial independence. Similarly, it also resurrected Nepal's old politics of negation as those parties and individuals who opposed the April movement were excluded from the interim legislature and those other than the SPA had to register with the Election Commission with a petition of 10,000 signatures of voters. The Interim Constitution has tilted power to the executive (International Crisis Group, 2007:9) and against the judiciary considering the judiciary

members were selected by the Council of Ministers on the recommendation of the parties. Candidates for the closed list of parties included five groups of people— Madhesi (31.2 per cent), Dalit (13.0 per cent), ethnic and indigenous people (37.8 per cent), backward regions (4. per cent) and others (30.2 per cent) whereby the quota for women from all groups was allocated at fifty per cent.

The election, based on these inclusive provisions, introduced a silent social revolution as it enfranchised many previously underrepresented groups and changed the political equation as the Maoists commanded more seats than the two big parties; the Nepali Congress and CPN-UML combined, brought in new parties; Madhesi Janadhikar Forum (MJF), Tarai-Madhes Loktantrik Party (TMLP) and Sadbhavana Party (SP) and also saw the decline of old parties

indigenous people are interested to have “prior use” rights on land, rivers and forests to compensate for their historical deprivation and in order to build a shared future.

The CA election established the CPN (Maoist) as the single dominant party in the CA but just short of a simple majority to form the government on its own. Three factors contributed to the transformation from rebel into democratic politics— mass support in the election, international legitimacy and the tendency of leadership to come to power through election rather than conflict (Dahal, 2010:2) while a lack of coherence between hard and soft lines in the party's central committee put it in the dilemma of whether to resort to “state capture through revolt” or turn into a civilian party. However, following the Palungtar Plenum, the party has decided to opt for revolt. The post-election phase demonstrated an unwillingness of the Nepali Congress (NC) government to hand over power to the elected authority without changing the game from consensus to electoral majority. The NC, in fact, bargained with the Maoists for the posts of President, Home and Defense Ministries which the Maoists rejected and claimed its own leadership over them. As a result, four months after the election, the Maoists formed its coalition government with the support of the CPN-UML while the NC unwillingly remained in opposition and worked for an alternative to the Maoist government. The collapse of consensus politics by major parties marked the beginning of ideological, policy and personality differences and conflict (Dahal, 2010:2). There was also a shift in coalition politics—while the NC, CPN-UML and Madhesi Janadhikar Forum elected President, Vice-President and Speaker, the CPN (Maoist), CPN-UML and MJAF together elected a Maoist Prime Minister on August 15, 2008. Unable to manage the multi-party regime, the Maoist led coalition government,

The Organization of Backward Classes are demanding justice while indigenous people are interested to have “prior use” rights on land, rivers and forests to compensate for their historical deprivation and in order to build a shared future.

and bureaucracy conservative less open to democratic change and social transformation. This undermined the separation and check and balance of power, politicized public institutions and saw the operation of the government without an opposition party. Politics of negation offers a new possibility for alienation and conflict.

After much debate the election of the 601-member Constituent Assembly (CA) took place on April 10, 2008. The election system adopted was a mixed one; 240 members were elected on the basis of geographic constituencies based on first- past-the post, 335 members were elected through a proportional election system based on party lists and 26

run by former leading figures of the Panchayat regime; Rastriya Prajatantra Party (RPP), RPP-Nepal and Rastriya Janashakti Party (RJP). These changes reduced some of the grievances and conflict, but it also opened new lines of conflict as old classes could not adjust to the new reality of change due to the loss of power and those with less representation found a cause to fight for. They are struggling to constrain the social transformation. Similarly, out of 103 ethnic and caste groups in Nepal, 20 minorities did not have any representation and, therefore, they appeared vociferous in their demands, visibility and representation in the CA. The Organization of Backward Classes are demanding justice while

however, stayed in power for nine-months only.

New Lines of Conflict and Their Resolution

The Maoist government suffered a split after its decision to sack the then Chief of the Nepal Army R. Katwal. The decision was disapproved of by its coalition partners and was reversed by President Dr. Ram Baran Yadav. This forced Prime Minister Puspa K. Dahal to resign, began calls for “civilian supremacy,” “national independence” against Indian support to the NA and explored the possibility of “state capture” through the mobilization of a mass upsurge. In contrast, inter and intra-party conflicts also delayed the formation of Government led by the CPN-UML leader Madhav Kumar Nepal who also resigned on June 30, 2010 under the pressure from his own party and the UCPN (Maoist). Sixteen rounds of elections took place for the new Prime Minister but without any success. Politics of negation and a lack of confidence barred any mutual trust for a consensus-based Government. Finally, Jhala Nath Khanal from the CPN-UML was elected as the PM but his Government too has failed to take full shape so far.

Major conflict lines in Nepal are: the sharing of state power, state restructuring and federalism, the right to self-determination, the prior use rights on land, forests and rivers, the form of government (parliamentary or presidential), the autonomy of judiciary, the determination of the size of the integration of the Maoist combatants in various spheres including security, address the problems of conflict victims, returning the property seized by Maoists during the war, the dismantling of the paramilitary structures of the Maoist affiliated Young Communist League, and the democratization of the Maoist party and the Nepal Army, etc. The Maoist entry into politics also spilled the state-centric Maoist conflict into

a diverse society as political parties could not establish many of the institutional pillars of peace needed to mitigate conflict and begin with post-conflict reconstruction, rehabilitation, reconciliation and democratization, rehabilitation and integration of the armed force.

The demands for the restructuring of the Nepalese state with special emphasis on federalism, proportional representation, electoral reforms and inclusive democracy have increased with the semi-militant Madhesi movement and the social movements of ethnic groups and indigenous people. These movements were based on identity and the concept of citizenship equality. All the Madhesi parties together demand for ‘One Madhes, One State,’ which

inclusive state policy and addressing them one by one. These will open the possibility for conflict resolution. Political stability largely depends on the ‘negotiated compromise’ among the functional groups of society and their political parties (Hueglin, 2003: 61).

The inclusionary politics of various groups has unleashed the issue of inner party democracy. It is a solution to the problem of structural injustice where all the party leaders of major parties are Bahuns. The resentment of Chhetris has to be considered legitimate because despite their majority share in population (19 per cent) they are less represented in the CA. This alienation may become a source of future conflict. Mainstream political parties have also failed to

Geography unites Madhes, while the religions of Hindu, Muslim and Buddhist divide them. Culture unites them while three languages spoken in Tarai; Maithili, Awadhi and Bhojpuri divide them. Concern for common identity unites them while class, caste, gender and communal discrimination divide them.

is rejected by all other political parties and the Tharus living in Madhes. Geography unites Madhes, while the religions of Hindu, Muslim and Buddhist divide them. Culture unites them while three languages spoken in Tarai; Maithili, Awadhi and Bhojpuri divide them. Concern for common identity unites them while class, caste, gender and communal discrimination divide them. The Tharu people consider themselves as ‘indigenous’ and insider while considering others as ‘outsiders’ All these factors promise that the only common identity they can forge with others is the ‘civic identity of citizenship’ and the ‘national identity of Nepali’ while including their grievances into

encourage the proper representation of the marginalized and vulnerable groups and minorities in various committees of parties including central committees. As a result, they have remained disadvantaged groups (DAGs) and powerless so far in Nepalese politics and accordingly, women, Madhesi, Jananati and Dalits remain underrepresented in every layer of governance and decision making process thus leaving them dissatisfied and inclined to aspire for social movement and political agitation. The mass mobilization of social groups without representation is a strategy of conflict escalation not conflict resolution. Durable peace can only be built in the framework of social

justice, inclusion and participation. The ongoing political instability in Nepal has opened major fault-lines of conflict:

1. Factionalism in each mainstream party into three groups² makes them difficult to generate national political will and work to implement national tasks. Historical distrust at inter and intra party level indicates that negotiated resolution of conflict in Nepal will remain protracted. The minimization of spoilers of peace in each political party is a key to create a conducive environment for meaningful dialogue and compromise.
2. The mainstream parties fear the Maoist's takeover of state and

all these demands will turn it into a parliamentary party which might alienate its radical components.

3. The UCPN (Maoist) fears that parliamentary parties are bent on sabotaging the CA in favor of a presidential rule and its agenda of secularism, federalism and republican state. It views that by delaying the structuring of the state they want to run the old politics of status quo as it undercuts the possibility of giving people a sense of change, disclosure about the whereabouts of disappeared people and a consensus government under its leadership.
4. The Maoist and Madhesi Parties' demand for the democratization of the Nepal Army generated

complicated both constitution drafting and the peace process. Only a balanced foreign policy can ensure confidence in Nepalese leadership.

5. The NA and the Madhav Kumar Nepal led Government blamed the UNMIN as becoming a 'close ally of Maoists' and tried to limit its mandate to monitor only Maoists arms and armed forces while exonerating the NA from its monitoring. They also blamed the UNMIN for equating the Maoist People's Liberation Army (PLA) with the NA and denying the NA the ability to assume a legitimate role in national affairs. The UNMIN Chief Karin Landgren blamed the parties' weakness in unresolved leadership and said, 'The peace and parliamentary processes appear discredited, sending a discouraging signal to existing and emerging groups' (2010:7). The UNMIN exited from Nepal without completing the army integration whereas there still exists complexity in the matter of managing the problems of the Maoist combatants.

Inclusive democracy presumes that 'those affected by the decision have the right to be included in the decision-making process.' Political inclusion in the party committees is a democratic means to reduce the grievances of the party cadres, voters and general citizens as it increases the social base of the party.

have set preconditions for the Maoists to convert into a civilian party: the integration of Maoist combatants, the dismantling of the para-military wing of its Young Communist League, return of the property it seized during the armed conflict to its rightful owners and the acceptance of democratic principles including political pluralism, autonomy of judiciary, free press and human rights, etc. They are ready to support the Maoists to lead the government if these preconditions are met. The problem for the Maoists is that the fulfillment of

fear in the mind of the Indian government which considers it as the single bulwark against the Maoist takeover of the state and opposed the integration of combatants into the NA. The Maoist 'nationalist' platform and criticism of India's movement in recent days have generated security sensitivity as Nepal is located between the Gangetic belt of India and Chinese weakness, Tibet, which gravitated the attention of the great powers in Nepal's politics and their connections with various issues in Nepal based on certain interests. This has

Representation of Various Groups in the Central Committee of Political Parties

Inclusive democracy presumes that 'those affected by the decision have the right to be included in the decision-making process.' Political inclusion in the party committees is a democratic means to reduce the grievances of the party cadres, voters and general citizens as it increases the social base of the party. Exclusion fuels alienation and conflict. Table 1 below shows that Hill Bahuns, which consists of only 12.7 per cent of the total population of Nepal, have disproportional representation (40 per cent) in all three major political parties'

2. In CPN (Maoist) one can find the difference among Prachanda, Kiran and Dr. Baburam Bhattarai; in CPN-UML the lines of differences stand among Madhav K. Nepal-K. P. Oli, J. N. Khanal and Bam Dev Gautam, in Nepali Congress the different lines are represented by Sher B. Deuba, Sushil Koirala and Bhim B. Tamang. Madhesi Jana Adhikar Forum which suffered split is not cohesive now.

Table 1; Representation of Various Caste/Ethnic Groups in Major Political Parties' Central Committee

SN	Political Parties	Bahun	Chhetri	Newar	Women	Madhesi	Janajati	Dalit	Total
1	Nepali Congress	26	11	5	6	5	6	1	60
	%	44	18	8	10	8	10	2	100
2	CPNUML	45	6	6	21	18	13	6	115
	%	40	5	5	18	16	11	5 6	100
3	CPN-Maoist	50	22	10	14	9	24	2	131
	%	38	17	8	11	7	17	2	100
4	MJF	-	1	-	2	24	-	1	28
	%	-	2	-	10	84	-	4	100
5	TMDP	-	-	-	8	46	-	1	55
	%	-	-	-	14	84	-	2	100

Source: Various Political Parties' Offices

(the NC, CPN-UML and CPN-Maoist) central committees. The next dominant groups are Chhetris and Newars which constitute 18 per cent and 5.6 per cent of the total population respectively but occupy 13 and 7 per cent seats in parties' central committees respectively. These three groups, which constitute only 35 per cent of the total population in the country, have obtained 60 per cent of seats in the central committee's members in the three major political parties. As a result, the remaining 40 per cent of the seats go to the 65 per cent of the remaining population.

Women which constitute over 50 per cent of the population have only 13 per cent of seats. Janajatis which have 37.2 per cent of population have only 14 per cent of seats in the central committees of the mainstream parties. Madhesis who total 33 per cent of the population have only 10 per cent representation; Dalits who account for 13 per cent of the population have only 3 per cent representation. Despite the commitment of the parties to proportional representation, representation remains highly imbalanced. This shows the caste, not the class, oriented nature of the political parties in Nepal which is the main obstacle for inner party democracy and the transformation of

the Nepalese society. All the Madhesi parties have been formed in the name of inclusion but they discriminate Dalits, women and the 33 per cent of population of the Hill community residing in Tarai. For example, the MJF has allocated women 8 per cent, hill people 4 and Dalits 4 per cent of seats in its central committee. It is predominantly dominated by Yadavs who constitute 45 per cent in the Central Committee of the party. The share of Yadavs in national population is only 3.9 per cent. The TMLP is a party dominated by high castes Madhesi, Bahuns and Chhetris. They constitute 30 per cent of the party's Central Committee. This imbalanced sharing of civic power does not promise much for moderating the grievances of the people for legitimate space and lasting resolution from political conflict. Political power becomes authoritarian if it holds more power than its representative capacity.

Search for social and political equality has often served as a weapon of the weak in society to democratize their status and reduce the amount of structural injustice and cultural violence in society. In the case of women, there is the reflection of patriarchy, a perpetuation of violence in society, to use the words of Johan Galtung, the famous peace

researcher. The poor representation of marginalized groups might make them search for different parties with the agenda of the democratization of society and an interest in uprooting the structural causes of conflict. The social groups of Nepal already demand social representation in politics to stand for more than political representation through political parties. Many countries with a segmented political culture have, therefore, adopted inclusive democracy as a solution to conflict.

Distributional conflict is a low cost exercise of the marginalized to increase their power, influence and identity but caste and class polarization can decrease this power and become a new source of conflict. The NC, CPN-UML, and CPN-Maoist are major political parties and they can play a significant role in the inclusion of DAGs in the decision making process in the polity. They have an insignificant number of representation for DAGs in the central committee as the caste and gender orientation of leaders seems obvious. These parties are also dominated by high caste Bahuns despite their share of only 12 per cent in the national population. This trend is followed by the TMDP also where high caste Madhesi elites dominate the party. Its effect is obvious as all

high caste persons voted for another high caste presidential candidate Ram Raja Prasad Singh while all Yadavs voted for his rival Dr. Ram Baran Yadav. The MJF is dominated by Yadav which became the cause of its split. Therefore, these DAGs are continuously raising their voices for inclusion. They think that inclusion is an important aspect in democratic theory and practice and a means to address legitimate grievances and conflicts. The past 13 years in Nepal has also shown that violence was and still is associated with the exclusion of these DAGs. The role of these DAGs and marginalized groups in peace, democratization and development is emerging as the main agenda of the day because none of these processes

participation of all linguistic, socio-cultural, ethnic, regional and religious minorities and groups is must. The goal of the stabilization of the democratic values cannot be realized until the political parties themselves encourage inclusive democratic values within their organizational networks and activities and enlarge their representative base of power. The exclusion of women, Madhesi, Janjati and Dalit and other ethnic minorities has resulted in their identity-based social movement, engagement with more radical parties and violent outbursts in different parties across the country. The political parties as representative institutions have to encourage their participation in the party structures, in the government

have not effectively promoted them. Political parties also have to play a significant role in discouraging the discriminatory policies and practices of the state and in introducing and encouraging the concept of IR in their own organizational network and policies, if needed, through reservation in their membership structure. (e.g. in the Central committee).

The Interim Constitution, 2007; Inclusive Democracy and Political Parties

With the promulgation of the Interim Constitution of Nepal, 2007, the concept of an inclusive democracy and state restructuring, ending all types of gender, caste, ethnic and regional discriminations existing in Nepalese society remained on the agenda. But the beginning of the Madhesi movement in the southern plains and the Adibasi Janajati and Dalits in all parts of the country in 2007, has raised some serious issues regarding the participation and representation of these groups in the layers of the administration and decision making process. The seven parties' coalition government and CPN-Maoist leadership held several rounds of serious discussions. As a result of which the then PM. Late Koirala's address to the nation, more particularly to the agitated groups, proved to be placating and hence became a historical declaration in the annals of modern Nepalese history. In reference to this, a ministerial level committee was convened by Mahanta Thakur, Ministry of Agriculture to hold dialogue and to find a lasting solution to the ongoing agitation (FFA, 2007: 1).

The political parties have to adopt some practical measures in resolving the issue in the changing political context. The marginalized groups including women, Madhesi, Adibasi Janajati and Dalits in the Interim Legislative/Parliament tried to address some of the concerns. The representation of excluded groups in

The goal of the stabilization of the democratic values cannot be realized until the political parties themselves encourage inclusive democratic values within their organizational networks and activities and enlarge their representative base of power.

can become sustainable in a real sense without their active support and participation. But one critical prerequisite for such inclusion is the question of inner-party democracy or their inclusive representation among the political parties, which is emerging as another major agenda after the April mass movement.

As table I suggests, the status of inclusiveness within these parties is far from satisfactory. These parties are exclusionary in terms of the representation of women, Madhesi, Adibasi, Janajati and Dalits. These DAGs are being traced back mainly to the domination of the Hindu elites in the evolution of the Nepali state and their hegemony role in the existing power structure and the patriarchal culture of the Nepali society. In any democratic political set-up the even

mechanism, and in constitutional and other bodies such as the National Planning Commission.

Some of the political parties have raised the issue of inclusive democracy and state restructuring very seriously in the post-Jana Andolan-II period. They are saying if needed then a system of reservation for these excluded groups until they become able to stand on their own feet should be introduced. Nepal is a constitutionally declared multilingual, multiethnic, multi-religious, and multicultural pluralistic society and an inclusive democracy but this cannot exist without the adequate representation and participation of these groups. The political parties after the April mass movement have made some provisions to encourage the concept of inclusive representation (IR), but they

the Interim Legislative/Parliament is dismally low. Out of 329 members of the Interim Parliament/Legislative, the women, Madhesi, Janajati, and Dalits occupy 17.6, 21.6, 15.5 and 4.6 per cent respectively. The CPN-Maoists has given adequate representation, that is, 37.3 per cent to women, 25.3 per cent to Madhesi, 22.9 per cent to Janajati, and 14.5 per cent to Dalits which is comparatively better than that of the NC and CPN-UML. Moreover, without the representation of the CPN-Maoist in the Interim Parliament, the inclusion of the excluded groups in the Interim Parliament would be even more pathetic than it is now.

Issues, Problems and Challenges

In order to materialize the concept of inclusive democracy in practice in post-April 2006 Nepal, a number of problems and challenges exist. The absence of political commitment on the part of larger parties, absence of sufficient awareness among the excluded people and the concerned stakeholders, the lack of a responsive political and administrative culture are some of the principle bottlenecks to this. For a long time in Nepalese history, the weak representation of women, Madhesi, Adibasi, Janajati and Dalits in the leadership of political parties rendered them ineffective in their role in decision making. This created a huge gap in the polity and low stake-holding of those who were excluded. Addressing this gap requires not only a change in party law to allow for representation, but also more responsibility and responsiveness. The exclusion of the bulk of the population from political parties not only triggered an anti-institutional political movement but also resulted in the creation of their own institutions for collective action. The proliferation of Dalit, Tharu, Madhesi, Women and Janajati-based organizations and their unity across the party line has eroded the effectiveness of political parties and

increased extra-party networks. Many donors are funding such cross-party network thus weakening the party structure. There is a positive side also as it is fostering overlapping interests which are crucial for inventing the 'common ground' necessary for conflict resolution. There is a need to expand the scope of inclusive representation in some important aspects: to improve the number of representation in party apparatus at both local and central levels, the political parties should declare an agenda for the excluded group or DAGs; women, Madhesi, Adibasi, Janajati and Dalits; review the role of the political parties in

tool of conflict resolution. But, the inclusion of groups must be matched with individual rights granted by the human rights instruments, the 'rights of minorities' as well as the 'protection of weaker sections' in society. In a country of minorities where no group can claim more than 18 per cent of a share in the population, an institutional mechanism must be evolved to provide all the groups with participation in the resources of the state as it helps provide them ownership. Inclusion helps to overcome alienation which is a major source of deprivation, rebellion and conflict. Still, several measures are needed:

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parliament/legislation in terms of their accountability, responsibility and responsiveness, open party committees for debate and collective decision making and encourage party's potential for social integration. In this context, it is also essential to understand the question of the study of inclusive democracy in political parties in four dimensions. They are: voice, representation, articulation of policy platforms and performance.

Conclusion

In a culturally, socially, linguistically and religiously segmented societies like Nepal social inclusion provides a means to reduce alienation, exclusion and many 'violence producing causes'. The distribution of power among groups is a major

Firstly, social inclusion also provides a sense of belonging to the political system and augments the capacity building for previously excluded groups. This is essential for their stake-holding in the peace process. The inclusion and even and just participation of the marginalized and vulnerable groups (e. g. women, Madhesi, Adibasi Janajati, Dalits, Muslims and other small ethnic groups e. g. Raute, Chepang Jhangar), the powerless and voiceless DAGs in mainstream politics, and in all layers of governance and decision making has to be addressed very practically in the changed political context. In light of the ongoing Madhesi, Dalits, Adibasi and Janajatis' social movement, there is a need to expand the constitutional base of politics,

the institutional base of political parties and governing institutions. Compared to the question of the Madhes, the problems of other social groups are different. The resolution of the Madhesi problems requires a number of measures: integration of the mainstream moderate forces into dialogue with the radical armed groups of various hues; identity related groups need to be brought into peaceful dialogue while criminals need to be brought under the framework of law and order. The disengagement of mainstream parties' tendency to protect criminals, the delay judgment of the courts and youth unemployment have to be tackled as soon as possible so that "street does not become an alternative parliament and court" to listen to grievances and resolve issues.

Secondly, a negotiated settlement of issues helps to achieve durable peace, democracy and development. A number of strategies have to be pursued: first, multi-party negotiation for breaking the deadlock existing at various levels such as execution of consensus, monitoring of the implementation of consensus, and round-table high level dialogue for breaking all remaining contentious issues including the restoration of local bodies, establishment of local peace committees and many institutional pillars of peace, etc. In addition, civil society should draft a "common ground paper" with confidence building measures, negotiated compromise and bring democratic values to it. The international community also has to act as a creative catalyst for facilitating ways to resolve the multi-level and multi-layered issues and conflicts. As well as this, the post-conflict reconstruction, rehabilitation and reconciliation measures have to be strengthened to address all sources of structural injustice and redistributive measures should be initiated to allocate the benefits of peace dividends to all sections of society.

Thirdly, to strengthen and

effectively implement the concept of an inclusive democracy in practice, a number of recommendations could be put forward which will reduce the greed of certain groups to remain in power, address the grievances of the excluded and reduce the amount of conflict:

- The political parties have to demonstrate a democratic culture in their attitude and behavior so that the concept of an inclusive democracy can be better realized through the compromise of various groups where no single group is able to form government and settle disputes;
- In order to make party cadres aware of the concepts of an inclusive democracy and state restructuring, civic education programs have to be conducted throughout the country on a massive scale so that they do not trample the rights of others to coexist just because the 'other' is in relative minority;
- The political parties, including the larger ones, have to demonstrate a culture of tolerance and an attitude of respect towards the concept of inclusive democracy as a mode of conflict resolution of multi-cultural society and maintain a balance between three groups of rights—individual rights, groups rights and human rights.
- Similarly, it also requires a balance between the legislative and executive power akin to a system of checks and balances to prevent the tyranny of the majority.

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Human Rights Situation in the Tarai-Madhes: Urgency for Immediate Response



1. Introduction

Nepal has been continuously standing as an independent country. Although a small and least developed country, its ethno-cultural dimensions and natural resources are pride of Nepalis. Located between two giant economies and military powers with ideologically rivaling Asian states—China and India, Nepal is maintaining balance with them. However, it was open to the outer world only after being the member of United Nations.

A range of literature on Nepal's socio-economic and cultural life is available nationally and internationally. However, before the Tarai Uprising in 2006, the southern plain part of Nepal was not able to draw attention of Nepali or foreign scholars and neither was it a matter of national debate. So, little is known about the Tarai's geographical, historical, economic as well as cultural characteristics despite the fact that Tarai comprises 15 per cent of country's total area and is home to 31 per cent of Nepal's population.

This neglect is particularly striking because the Tarai is the backbone of state's economy, producing about 59 per cent of nation's gross domestic product and about 76 per cent of the government's revenue.¹

Geographically, Tarai means a flatland stretching from the foothill of the Himalayan region in the north to the Vindhya Mountain in the south. The term 'Madhes' itself is derived from Sanskrit word 'Madhyadesh' that implies to the Gangetic plain and the inner Madhes area bordering India to the southern side and spreading north up to the foothill of Siwalik range. The Tarai region, which is mostly a flatland, is geographically and culturally distinct from the hills². The words 'Madhes' and 'Madhesi' have been debatable in the present context of Nepal especially in terms of state restructuring as well as political perspectives. 'Madhes' is geographical area referring to the plain land to the southern part of Nepal but 'Madhesi' representing respective cultural and linguistic features, dress

as well as practices owned by people.³ Many scholars would like to use the term 'Tarai' instead of 'Madhes'. However, Even the Madhes-based regional political parties lack clarity regarding which term to use.

The rebel groups of Tarai such as 'Janatantrik Mukti Morcha Tarai' (JTMM) and its splinter group Jwala Singh led JTMM did not use the term Madhes in their groups' name. Similarly, Tarai Cobra, Tarai Elam, Tarai Mutki Morcha etc also did not use the term 'Madhes'. The parliamentary party called 'Tarai Madhes Loktantrik Party' led by Mahanta Thakur also could not leave the term 'Tarai' in its party name. There lacks clarity as to whether to use the terms 'Madhes' and 'Tarai' interchangeably or these terms refer to distinct entities with definitional differences.

Some people view that these terms do not refer to a unitary or a homogeneous region either in terms of geography, politics or culture. Most

* Mr. Acharya is affiliated to NHRC, Nepal

1. Frederick H. Gaige, *Regionalism and National Unity in Nepal*, with an Introduction by Arjun Gunaratene, Himal Books, Second Edition 2009, Kathmandu, Nepal, Page xiii
2. Vijay Kanta Karna, Senior Journalist, **MADHESH AND MADHESI: A GEOGRAPHICAL AND HISTORIC PERSPECTIVE-Nepal**, March 20, 2007, available online at <http://madhesi.wordpress.com>,
3. Padam Lal Bishwokarma and Malla K. Sundar, (eds) 'The Concept Relating to State Restructuring: Issues of Dalit and Madhesi' Kathmandu, Nepal. 2062 B.S.

importantly, the Tarai caste (primarily the Yadavs, Kayastha, Brahmins, Rajputs and to some extent Muslims), whatever the commonality of their politics, cannot be assumed to share the same politics as the Tharus who explicitly distance themselves from the Madhesi identity.⁴ Tharus too preferred not to be called as Madhesi. The principal Tharu organization called 'Tharu Kalyankarini Sabha' violently protested against the government decision to incorporate them within the definition of Madhesi people. Due to the violence,

the past always suspected Madhesi people's political and national loyalty. The blame was that the latter were loyal to India and it was based on the Madhesi people who either emigrated to the Tarai from North India about more than two centuries ago or who were already settled in the region when it was incorporated into the Nepali state.⁵ Some of the Nepali politicians thought at that time that independence of Nepal or territorial integrity could be threatened, but, it is a fact that migration of people is a natural phenomenon, it happens

elite.⁶

The rulers of Nepal especially the King Mahendra adopted the National Integration Program in every aspects of peoples life. While the Ranas had been little concerned with the questions of national identity, this was the matter of central concern to the King's government after the King became a direct ruler in 1960 following coup. Then national integration became one of the dominant buzzwords of Panchayati era. Due to 109 ethnic groups and at least 93 languages used in Nepal, it is accepted as the most heterogeneous country in the region. With the increased literacy and political empowerment especially after April 2006, Nepal's ethno-linguistic and geographically marginalized people are clamoring for rights and autonomy.

After the restoration of democracy in 1990, various marginalized communities including Madhesi people gradually unified themselves for their rights as did by the pahadi community people. And, following the second popular movement, Nepal's political regime has drastically changed, the state being a republican. Many marginalized groups have raised their voices. Of the multiple sources of grievances, the conflict over land is a vital grievance that animates the politics of the plains. Following the malaria eradication program in the 1950s, the state-encouraged people especially the people from the hills migrated to the Tarai in a large scale. While this served to ease landlessness in the hills, both the Tharus and Madhesis lost land to hill migrants, creating deep resentment and that was further compounded by landless Tarai People deriving little or no benefit from either state-sponsored settlement programs or the government's land reform initiatives.⁷

Many marginalized groups have raised their voices.

Of the multiple sources of grievances, the conflict over land is a vital grievance that animates the politics of the plains. Following the malaria eradication program in the 1950s, the state-encouraged people especially the people from the hills migrated to the Tarai in a large scale.

the government was compelled to withdraw its decision. According to the census 2001, interestingly, the Tharu population is the single largest community and represents about 7 per cent of the state's population. The Muslim community also raised their voices for incorporating them within Madhesi whereas their respective religion and cultures prohibited to be subsumed within other Hindu people. This shows that the word Madhes and Madhesi cannot represent the whole southern plain in Nepal extending from east to west.

2. The Unsatisfactory Issues of Madhesi People

The ruling elites of Nepal in

everywhere and people migrate from one place to other for various reasons- one of them being better life and secure future. Nepal is a culturally heterogeneous country with dozens of ethno-linguistic groups scattered across its rugged and sprawling territory, but of all that heterogeneity, the most significant to the state has been the Tarai region and its people. The Tarai is important economically; it produces most of Nepal's GDP and government revenue and is home to nearly half the population. If Nepal loses control of the Tarai, the country should face greater challenge to its political survival. Thus, political loyalty of the Tarai population has always been of deep concern to the ruling

4. Frederick H. Gaige, Regionalism and National Unity in Nepal, with an introduction by Arjun Gunaratnen, published by Social Science Baha, Kathmandu, Nepal, Page xiii

5. ibid

6. ibid

7. ibid

“Tarai-Madhes has been Engulfed by Injustice and Violence”

The human rights situation in the Tarai-Madhes is not good. People still fear that violence of the past might recur. Explosions and abductions are not uncommon. Governmental indifference towards the rights abuses and violations continues. In this context INFORMAL had collected view points from across the country on the problems of the Tarai-Madhes. The representative and edited views:

Nageshwor Prasad Singh
Advocate, Biratnagar



The human rights situation in the country is further deteriorating. We don't see any meaningful attempts from the Government of Nepal towards the protection and promotion of human rights in the Tarai-Madhes. The government has failed to provide knowledge to the ordinary people on human rights. Similarly, ordinary people are compelled to face the human rights abuses and the resultant pains perpetrated by criminal groups. Surprisingly, the Government has been a silent spectator and, sometimes, even the governmental agencies have abetted the criminal activities being attracted by economic benefits. This has deprived the people to enjoy their rights. Tarai-Madhes has been engulfed by injustice and violence. Killings, donations and extortion sprees and the corruptions are deeply rooted. Ordinary people have not felt the presence of the Government in the region. One can easily predict how the human rights situation is like under such circumstances.

Each state has to guarantee that its people will live in a society where there is a guarantee of peace, security and a social structure without discriminations. However, the Government of Nepal has failed to guarantee this to the people of Tarai-Madhes. The Tarai uprisings of the past were the result of people's long-collected grievances. There are and were several Madhes-based parties in the Governance even after the uprisings but the problems of the Tarai-Madhes have not been resolved, rather, crimes have been committed in broad day light. There is direct or indirect involvement of police administration in many of the criminal cases committed in the Tarai-madhes region. Similarly, ever since the Maoists started war against the state and Jaya Krishna Goit carried out his armed activities in an underground way for the rights and benefit of the people, there started groupism within the parties and those who joined the parties for the economic benefits resorted to killing, violence, extortion and abduction for ransoms. Such activities have continued hindering the ordinary people to enjoy their rights unobstructed. These continued criminal activities have forced many rural people to leave their places of origin for their safety.

Open border is one of the causes of increasing criminal activities in the Tarai, however, it is difficult to affirm that this is the only one cause. I assume, criminals have been benefitted in two ways. First, it is easy for the criminals to transport weapons due to openness and,

second, it is equally easy to go beyond the border after committing crime in Nepal. Many crimes in the region are the result of internal and local causes.

All the political parties of the country have endeavored to hit high governmental post and earn. Tarai-based political parties too cannot be exception in connection with this. Many Madhesis sacrificed their lives and many others were disabled during Tarai uprisings, however, the Tarai based parties are using the plight of the people as a means of earning. I don't think the Madhes based-parties have been helpful to guarantee the rights of the Tarai people. The other parties such as the UCPN-Maoists and CPN UML should also be equally responsible for the protection of rights of the people in the Tarai region. If the Tarai-based parties try to discourage the criminal activities that are taking place in the region, they can minimize the activities. The Tarai-based political parties are also responsible for the degrading human rights situation in the region.

The incidents of explosions that have recently taken place on public vehicles can never be tolerated. These do not have political motives as well but have terrorized people. If the Government realizes the spirit of the people's movement II and the uprisings in Tarai-Madhes, long existing problems of the Tarai-Madhes can be resolved. We have to have our efforts to resolve the problems constitutionally. The problems related to the Tarai-Madhes cannot be addressed through formulation of laws only. People of Tarai are not sure that rhetoric and practice of the political leaders in Governance will resolve the problems. The agreements reached between the Government and the Madhes based political parties in the past have to be abided by. Formulation of laws for resolving the problems of the Tarai-Madhes will be pertinent if only the issues addressed by the agreements are incorporated in the new constitution.

Manoj Bachan
Vice President,
Human Rights Alliance, Kathmandu District Branch

The human rights situation in the Tarai districts is critical. Incidents of rights violations take place every day in almost every district. Whether that be the Morang district in the east or Dang and Kailali in the west, there occur incidents every day. Perpetrators of grave rights violations have not been punished. State has failed to respond these incidents due to high level of impunity in the country. The state has been so weak or irresponsible now that it has failed to look into the

issues of the Tarai-Madhes sensitively. Of the 109 criminal groups active in the Tarai-Madhes, some of them bear political agendas but at the lowest level the situation is criminalized badly. Tarai-Madhes has been a region with the worst human rights situation in South Asia.



The scope of human rights has been widened. Besides civil and political; economic, social and cultural rights; human rights encompass rights to development, self-determination and access to service and resources. Depriving the youths in the Tarai-Madhes of participating in mobilizing the resources available in the region has also created problems. Extrajudicial killings or armed conflict get connected with such deprivation one way or the other. Localizing development can localize conflict and solve it slowly. The problems of the Tarai-Madhes can never be solved through armed rebellion and the use of army and police. The situation now is that despite deployment of police and armed forces, crimes have not been abated in the region.

Open border is one of the causes of crimes in the Tarai-Madhes; however, this is wrong to assume it as the main cause. Madhesis lack access to the resources available in their region. They also lack access at the decision making level. They have failed to initiate their development as per their needs. Open border seems to be allowing the criminal activities; however, such openness has benefitted the state mechanism one way or the other. So far as the role of the Tarai-Madhes based political parties are concerned, they represent only 23 per cent votes in the Constituent Assembly whereas 77 per cent is the share of the national parties. So, there is stronghold of the national parties in the region. When we talk about the Tarai-Madhes based political parties and their roles in bettering human rights situation in the region, the parties have been unable to address the rights situation of the region. Most of the parties in the Tarai-Madhes are formed based on the Madhes movement. So, neither have they been completely institutionalized nor are in the capacity to address the problems seen in the region. However, the Maoists, Nepali Congress and CPN-UML have stronghold and, if interested, they can

address the problems efficiently. But, the problem is that the parties have not perceived the existing rights problems of the Tarai-Madhes as their own. Madhes based elites are there in the parties but they too have not come out of their corresponding party line in the matter of perceiving the issues of the Tarai-Madhes.

The latest incidents of explosions that occurred in the Tarai-Madhes are criminal activities. These have to be stopped at any cost. However, these explosions bear some sort of dynamics. The changes experienced in the central level politics fluctuates the degree of the incidents of explosion in the Tarai-Madhes. The impacts of explosions are seen in Kathmandu. So, the explosions should not be seen in isolation taking them as the problem of the Tarai-Madhes alone. Owning responsibility of the explosions by one particular party over telephone is one thing and testing authenticity is quite another. We have never probed into the authenticity of the claims.

The problems connected with the Tarai-Madhes have to be solved constitutionally and legally. If we really are trying to address the problem of armed conflict in the Tarai-Madhes through democratic tools and address the voices of inclusion, we have to pass through four theoretical steps. Firstly, we have to have constitutional and legal changes, Secondly, there has to take place structural changes, thirdly there needs capacity building and then only we can make the state mechanism inclusive. The problem of the Tarai-Madhes is not that much big neither is the problem of the armed groups. It's wrong to expect peace in the Tarai-Madhes by endorsing agreements with some particular armed groups. This trend will never solve the problem. So, the problems of the Tarai-Madhes have to be solved legally and constitutionally.

The problem of the Tarai-Madhes is the problem of this country. Constitution has to be promulgated and federalism has to be demarcated based on the spirit of the Tarai-Madhes movement.

Dr. Bishwo Kalyan Parajuli

Associate Professor,

Prithvi Narayan Campus, Pokhara

We cannot get a clear situation of human rights in the country by isolating the rights situation of Tarai-Madhes. Human rights situation in the country refers more to the rights situation in the Tarai-Madhes. So, we have to understand accordingly. Nepal is a state party to different conventions; however, implementation level is in a sorry state. Constitution writing process has failed to gain momentum and the whereabouts of

the people subjected to enforced disappearances are still unknown. The issues such as guarantee of security and the human security, among others, have remained unaddressed. Precisely, anarchy and impunity has flourished taking advantage of transitional period and people are unsure of their rights due to fear and insecurity.

We have to first understand socio-cultural structure of the Tarai-Madhes before understanding the overall situation of human rights there. Any conclusive remarks made about the Tarai-Madhes without understanding these aspects will be incomplete as well as false. Human security, untouchability, the problems of the religious minorities, identity of the Madhes and Madhesis and their social and cultural rights are the main human-rights related problems of Tarai-Madhes. Similarly, discriminations against women, dowry system, the linguistic issues, unsatisfactory educational situation, the soaring unemployment, series of explosions, abduction, killings and the resultant terrors are the other problems of the Tarai-Madhes.

Due to the factors such as the provision of open border between Nepal and India, lack of education and unemployment, the criminal activities have not been checked in the Tarai-Madhes. Rather, these activities have been intensified in the backdrop of lack of education, poverty and unemployment. The protracted transition and the unstable state mechanism has further nurtured such activities in the region. It's the political leadership of Madhes, who has to create an environment for the guarantee of human rights in the region. Similarly, the political leadership has to play role for the implementation, protection and promotion of human rights. It is worth mentioning here that in the absence of political will power of the Madhes-based political parties criminal activities in the region cannot be controlled. There has to come commitments from the political parties as to protecting human rights by checking criminalization of politics and politicization of crimes.

The incidents of explosions that have occurred in the region recently are the criminal activities aimed at keeping the country unstable and taking advantage inappropriately of the transition. The democratic government that is formed following the end of present



transition will control such activities easily. As the country is in the transitional period, problems exist not only in the Tarai-Madhes but also everywhere in the country. So, intense, serious and special interactions have to be held with the grassroots people and civil society. Discussions have to be held about the constitutional provisions regarding the problems of the Tarai-Madhes only after determining the form of governance and restructuring the state. The representation and inclusion of Madhes is necessary in every sector of national life. The Tarai-Madhes, which is known as the 'Granary of foodstuffs' and famous for forest, has been suffering from environmental degradation and desertification gradually. So, it is urgent that besides exploiting resources, we have to come up with a long-term plan for the wise management and renewal of the resources there. This will work as a basis to avoid possible human rights related problems that will emerge in the future.

Bishwajit Tiwari
President,
Banke District Court Bar Association



Human rights situation in Tarai is not satisfactory, it's critical. There are many rights related problems in the region; numbers of problems have engulfed Tarai. However, impunity, unemployment, lack of education, poverty and the mismanagement resulted from political instability are directly linked with the problems here. Disregard to rule of law and flouting law are not uncommon. The agencies meant to maintain law and order do not seem responsible for their assigned jobs. At the same time, political leadership also does not seem to be assisting in bettering law and order in the region. The incidents of explosions that have occurred lately in the Tarai can never be affirmed. These incidents have cowed the general life in the plain geography that extends east to west to the southern part of Nepal. Such incidents are directly responsible for the human rights violations of the people living in the Tarai-madhes. Many of the factors and actors responsible for degrading rights situation in the Tarai region can be controlled via the existing laws and also

by formulating legislation. However, people here are too optimistic that the problems in the Tarai-Madhes will be answered once a new constitution is promulgated in the country. The Government of Nepal has to come up with an action plan to solve the overall problems faced by the people of Tarai. This only will solve the problems such as impunity, unemployment, lack of education, poverty and the mismanagements resulted from political instability.

Shiva Raj Pandey
President, Appellate Court Bar Association,
Kanchanpur

The overall human rights situation in the Tarai-Madhes region is critical and in a sorry state. There are many human rights related problems in the region. However, armed criminal groups and their activities have been the main problems in the region now. Tarai



has been a playground for the armed groups, which are having their activities under the political cover. Open border is mainly responsible for the criminal incidents that occur in the region. However, as we do not see the impact of open border in all parts of the Tarai, the presence and proliferation of armed groups in the Tarai-madhes region who have proximity with the armed groups across the border is mainly responsible for the on- going criminal activities in the region. So far as the cooperation and non-cooperation of the Madhes-based political parties as to controlling crimes and guaranteeing human rights is concerned, the roles of the political parties in the Tarai-Madhes are not stable. Situation in the region is further worsening gradually. The latest incidents of explosion on the public vehicles targetting the ordinary people are indicative of this fact. The incidents of explosion are the result of activation of the armed groups that are indifferent towards human rights. Views have been expressed that the existing problems of Tarai have to be solved through the new constitution but I don't believe the overall problems of the Tarai-Madhes will be solved constitutionally alone.

- As collected by INSEC's Regional Offices

Some of the people analyzing that the state's goal was to create in the Tarai a population whose loyalty would thus act as a counterweight against the people of the plain whose loyalty was questioned.

One of the rebellion leaders in Tarai J.K. Goit tries to explain that Tarai region was the Madhesi peoples' ancestral land. According to him, 'Tarai people made the land of Tarai fertile by using their blood and sweat, and also fighting against terrible diseases like malaria and other wild animals such as tiger, bear, snakes etc. But those occupied land was snatched from the real owners of the land, who were Tarai people and was captured and distributed to the royal family members, relatives, armies, officers and other employees as gifts, Birta, Math, Jagir etc and Tarai people, who were the real owners of the land, were compelled to work as land tillers.'⁸ The lands accumulated by the landlords, left barren for long, encroached by squatters and seized by the UCPN-M have been one of the debatable issues in the Tarai even today.

3. Exclusion of Madhes and Madesis in State Mechanism

Once Nepal was declared a Republican State, many communities started to claim their rights. Especially Madhesi People have been demanding they be given an equal status in the state mechanism and "One Madhes, One state" be guaranteed with autonomy while restructuring state. According to them there are various discriminations against Madhes and Madhesi people. They think it's high time to raise their demands genuinely. In the ensuing pages, I would like to

discuss some of the contentious issues, which Madhes-based elite people have raised in different forums.

A. Language and Culture

'Until 1958, Tarai residents (plain people) as well as the Indians were required to stop at the border town of Birgunj to obtain passport before proceeding to Kathmandu. The passports were then checked at Chisapani Garhi en route to Kathmandu. Before 1951, one's nationality appeared to have been

for separating as well as discriminating Madhesi as outsider. This mindset to some extent continues until now.

B. Poverty

According to the World Bank's observation, Nepali People living under the absolute poverty line are currently estimated to be 31 per cent. However, about 46 per cent of Dalits, 41 per cent of Muslims and 33 per cent of indigenous Janajati population are below the poverty line.¹¹ Together, these three major

Once Nepal was declared a Republican State, many communities started to claim their rights. Especially Madhesi People have been demanding they be given an equal status in the state mechanism and "One Madhes, One state" be guaranteed with autonomy while restructuring state.

determined primarily by linguistic basis. Nepalese subjects were the "hill folks" who spoke Nepali or hill languages such as Newari, Magar and Gurung etc. For this reason passports were not required for them while traveling to Kathmandu valley from the eastern or western hills.⁹ The elite in Governance suspected Madhesi people's loyalty but they never suspected the loyalty of Sherpa as well as other residents hailing from the northern part. The state respected the latter's language; dress, and cultural practices but Madhesi language, culture and dress were not recognized.¹⁰ Thus, in early 1950s language was the major factor

ethnic groups have 52.6 per cent of the total Madhesi population. This indicates that a large proportion of Madhesi households are excluded from the mainstream development.¹² Poverty itself is the main factor of exclusion; the poor people could not afford basic education, primary health care, sanitation practices and decent housing.¹³ The fact also indicates that the Tarai districts which have higher proportion of Madhesi population have much lower socio-economic index values compared to the districts where hill people are in dominance.

Some of the Madhesi intellectuals express their grievances

8. Jaya Krishna Goit, History of Tarai In Nepal, Nepalese Rule in Tarai, available at <http://madhesi.wordpress.com/2007/04/04/history-of-terai-in-nepal/>

9. Vijay Kanta Karna, Senior Journalist, MADHESH AND MADHESHI: A GEOGRAPHICAL AND HISTORIC PERSPECTIVE- Nepal, March 20, 2007, available <http://madhesi.wordpress.com>

10. Upendra Yadav and J.P. Gupta, 'The Concept Relating to State Restructuring: Issues of Dalit and Madhesi' in Padam Lal Bishwokarma and Malla K. Sundar, (eds) Kathmandu, Nepal

11. World Bank Report on Nepal 2006, available at www.worldbank.org/Nepal

12. Vijay Kanta Karna, Senior Journalist, MADHESH AND MADHESHI: A GEOGRAPHICAL AND HISTORIC PERSPECTIVE- Nepal, March 20, 2007, available <http://madhesi.wordpress.com>

13. Sharma and Shah, Per Capita Budget Allocation and Primary Sector Development Index, 2002- New ERA, ICIMOD 1997

in this matter. According to them, the government and political institutions have been advocating and focusing poverty reduction programs mostly in the hills and mountains convincing the donors that only the hills and mountains have large number of poor people. It appears that until now, the politicians, policy makers, decision makers and national planners, who are themselves hill origin people, have ignored the socio-economic and developmental issues of the Madhes.

C. Land Ownership

It's a fact that acquisition of land assets is linked to citizenship issues. Since the knowledge of writing and speaking Nepali language was the clause in the Citizenship Act of 1960s for obtaining citizenship certificate, it was intentionally formulated to deny citizenship to Madhesi. The Madhesi, who have been living in Nepal for several generations, are denied citizenship certificate due to their incompetency in Nepali language and without citizenship, land registration was impossible hence so many Madhesi are landless.¹⁴ Landlessness has become a major problem among Madhesi community. The recent report indicates a grave situation particularly in Dalit, Janjati and Muslim ethnic community; about 37 per cent of Dalits, and 32 per cent of Janjati households do not own agricultural land while 41 per cent of Muslims are landless. About 79 per cent of Mushar, a Dalit community, do not own land; they have the lowest literacy rate of 7.3 per cent.¹⁵

D. Education

The literacy level of the

Madhesi is only 38.4 per cent as compared to 65.6 per cent for the Pahadi group. There is, however, substantial difference in the literacy level between hill Dalits (47.9 per cent) and the Tarai Dalits (23.4 per cent) who are on the lowest rung of socio-economic development ladder. Similarly, the literacy rate of Janjatis of Inner Tarai and Tarai together is only 50 per cent as compared to 58.7 per cent for Himal and 63.2 per cent for Hills. The literacy rate of Tarai castes (including Muslims and excluding Janjatis and Dalits) is only 35.2 per cent as compared to 72.0 per cent for hill castes groups. Thus, the literacy level of hill castes is more than twice that of Madhesi castes.¹⁶ This data points out the existence of a wide disparity in literacy rate between the Madhesi and Pahadi populations of Tarai. 'The average literacy rate of the Pahadi origin groups living in the Tarai region is 54.5 per cent, while that of Tarai origin population living in the Tarai region is 26.4 per cent. The wide gap between the Pahadi and Tarai origin population in the Tarai region is a serious matter for addressing the dissidents of state and making the state inclusive.'¹⁷

E. Protection of Madhesi Language and Culture

The government did not have policies to protect languages other than Nepali language for many years. Nepali language was made national and official language. Even though the Constitution of 1990 and present Interim Constitution 2007 clearly express the rights to a national language¹⁸ and every community can use their local or mother tongues in

local government offices, there is a gap in practice. Similarly, there are the provisions of receiving education in mother tongues and rights to protect mother tongues to protect and promote their languages and cultural practices and these rights have been declared as fundamental rights. However, grievances are there that conducive environment has not been created by the government as provisioned in the constitution. The Tarai based local languages especially Maithali, Abadhi, Urdu etc, the people in Tarai-Madhes believe, have not been protected and promoted by the state. Madhesi people's dress *Dhoti, Kurtha and Gamcha* are not respected, it has humiliated in practices, but in the same manner other indigenous communities' dress except *Daura and Surwal* have been promoted and respected by the state in various ways.¹⁹

F. Exclusion

Madhesi have very low representation in various state mechanisms. Three castes/ethnic groups namely Brahmins, Chhetris and Newars have dominated the civil service in the country. In 1991 these three castes constituted 36 per cent of total population in Nepal but occupied 89.2 per cent of position in civil service, while Madhesi community accounted for 32 per cent of population but occupied only 8.4 per cent of position in civil service. This indicates that Madhesi people have been highly discriminated in government services. It is interesting to note that in 1971 these three castes had occupied 89 per cent of posts in civil services. Thus, the pattern of civil service has not much

14. Vijay Kanta Karna, Madhesh and Madhesi: A Geographical and Historic Perspective-Nepal, March 20, 2007, available <http://madhesi.wordpress.com>

15. ibid

16. Dr Devendra Chhetry, 'Educationally Disadvantaged Ethnic Groups of Nepal', a research report submitted to MIMAP Project of APROSC and IDRC, in December 1996.

17. Upendra Yadav and J.P. Gupta's article published by Padam Lal Bishwokarma and Malla K. Sundar, Edited 'The Concept Relating to State Restructuring: Issues of Dalit and Madhesi' Kathmandu, Nepal. 2062 BS Page 112

18. Article 5(1) The Interim Constitution of Nepal, 2063,

19. Upendra Yadav and J.P. Gupta's article published by Padam Lal Bishwokarma and Malla K. Sundar, Edited 'The Concept Relating to State Restructuring: Issues of Dalit and Madhesi' Kathmandu, Nepal. 2062 BS Page 112

changed over the past twenty years having these Brahmin, Chhetris and Newars dominating the civil service over the years and it is very unlikely that this trend will change in the near future²⁰ Out of the total 1,012 manpower involved in 91 international organizational agencies in 2001, there were 142 (14.1 per cent) Foreigners, 817 (80.7 per cent) Pahadis and 53 (5.2 per cent) Madhesi.²¹

g. Representational Problem

The Pahadi Brahmins and Chhetris control most of the powerful positions and influence the government and other governing institutions with their action. They consider Madhesi as 'non-Nepali' or 'less Nepali' and as a result, the latter, gets excluded from a higher posts unless he is in their high level of confidence. A very low or negligible representation of Madhesi can be seen in constitutional bodies and in higher posts/ designation-where people make national policies, and are the key decision makers and policy implementers.²²

Although, the scenario of exclusion is dramatically changing after the promulgation of present Interim Constitution 2007, it's widely adopted the proportional inclusive policy in various sectors and the state has declared the state policy should be inclusive.²³

4. Contemporary Human Rights Situation in the Tarai-Madhes

Human rights situation in the Tarai-Madhes especially after the Comprehensive Peace Accord (CPA)

signed between the government of Nepal and the former rebellion CPN-M in November 2006 and the promulgation of the Interim Constitution 2007 have been taken into account in the ensuing paragraphs. Public security has been seen as the greatest challenge connected with human rights concern in the region in this period.

Deterioration in public security and lack of respect for the rule of law in the country became apparent even after the formal ending of conflict in the country. Combined with widespread impunity, the worsening security situation reached to such a level that it impacted on millions of people's daily lives, compelling the government to adopt special policies in 2009. To address the worsening security situations in the Tarai, the government adopted dual policy for addressing the situation and maintain peace in the region. First, the government initiated talk and negotiation strategy with Madhes based armed groups. Second, the government adopted the Special Security Plan for addressing the deteriorating security as well as human rights situations. The government of Nepal (GoN) introduced a Special Security Plan (SSP) at the end of July 2009. The GoN claimed that the SSP was prepared in the context of a deteriorating public security situation and in order to effectively maintain peace and security, to end impunity, and protect human rights. It set the following objectives:

1. Protection and promotion of human rights,

2. Guarantee of public security through full implementation of laws and strengthened security forces,
3. End impunity by holding law-breakers accountable,
4. Easy access of citizens to essential services,
5. Rebuild public confidence to the Government through awareness programs and security management,
6. Increase public partnership in security management²⁴

In a country where police posts and government offices have been displaced for many years as a result of a decade long conflict in the past, it has not been easy to obtain desired result, especially the degraded situation of law and order, from this program. In the Tarai in particular, dozens of non-state armed groups have taken advantage of this law and order vacuum, and have engaged in killings, abductions, threats, and extortion²⁵ taking severe toll on the morale of police. However, the response of the deteriorating security as well as Human Rights situations in Tarai/Madhes, the government has increased its police presence and expanded the roles of the Armed Police Force (APF). The UN Human Rights watch body observed its report in this connection that there are preliminary indications that violent criminal activities have decreased since the government began implementation of its SSP in 2009.²⁶ Although, there are many incidents of killings by armed groups and criminal gangs that remain uninvestigated, the allegations

20. D.N. Dhungel's, A Critique: 'The Nepalese Administrative System' in Contemporary Nepal, Pashupati Rana's Nepal's Fourth Plan, Yeti Pocket Book Ltd 1971, pp 18- 19; and P.P. 122-123).

21. Directory of the United Nations and Its related Specialized Agencies in Nepal, September 2001, UNDP, Kathmandu)

22. Singh, A. 'Restructuring of Nepali State: A Madhesi Perspective, 2003, available at Vijay Kanta Karna, Senior Journalist, **MADHESH AND MADHESI: A GEOGRAPHICAL AND HISTORIC PERSPECTIVE-Nepal**, March 20, 2007, available <http://madhesi.wordpress.com>

23. Art 4(1), The Interim Constitution of Nepal 2063

24. The Security policy has adopted by Nepal Government through Home Ministry, 2009.

25. Investigation Allegations of Extra-judicial Killings in the terai, OHCHR-Nepal Summary of Concerns, July 2010. , Published by United Nations Office of the High Commissioner for Human Rights, OHCHR-Nepal.

26. Investigation Allegations of Extra-judicial Killings in the Tarai, OHCHR-Nepal Summary of Concerns, July 2010.

are there against the security forces that unlawful use of force during their operations resulted in the unlawful deaths of ordinary civilians. Between the years of 2008-2010, the rights body OHCHR received reports of thirty-nine incidents resulting in fifty-seven deaths, which involved credible allegations of the unlawful use of lethal force.²⁷

Similarly, some of the NGOs have produced their reports on incidents of extra-judicial killing in the Tarai. INSEC has reported that during the first six months of 2009 alone, 20 individuals were killed by security forces.²⁸ Similarly, the

Tarai. Madhes movement too crippled general life. The initial year of Madhes movement targeted Nepali speaking community (Pahadis). The impact of these incidents and trends affected thousands of Pahadi residents forcing them to migrate to the northern part of the country for the security of life and property. But, over time, these armed groups are targeting the Madhesi people including businessmen, civil servants, and landlords.

In 2007, the violation of Human Rights record soared in the Tarai Districts exceeding the records of other parts of Nepal. According to the INSEC report, the number

for only about 10 per cent killing cases, i.e. for 27 cases only, on the other hand, the armed groups of Madhes were responsible for 90 per cent killing cases.³⁰ Killings excluded, the armed groups of Tarai were responsible for 73 per cent incidents of human rights violations and the state was responsible for 27 per cent incidents only.

5. The Initiatives to Address the Problem

State is primarily responsible for the protection and promotion of Human Rights. State should adopt various mechanisms and legal instruments for addressing the violations of human rights. With the aim to protect the life of common people and save their property in the Tarai-Madhes region, the government introduced a Special Security Plan which was also meant to address the seriously deteriorating security situations as well as the violations of human rights. The policy formulated by the government towards this end stated that all kinds of conflicts and problems that emerged and persisted in the Tarai-Madhes and some other parts of the country would be resolved through talks and dialogues. However violent and criminal activities would not be tolerated.³¹ Accordingly, the Ministry for Peace and Reconstruction initiated peace talk with more than one dozen of armed groups based in the Tarai region. The policy adopted by the government committed for the protection and promotion of human rights, guarantee of public security, ending impunity by holding law-breakers accountable, etc. However, violation of human rights by the state and the armed groups did not abate

The policy adopted by the government committed for the protection and promotion of human rights, guarantee of public security, ending impunity by holding law-breakers accountable, etc. However, violation of human rights by the state and the armed groups did not abate as expected. The security situation has improved relatively following the promulgation of the SSP but is not in a satisfactory state.

Democratic Freedom and Human Rights Institute published their report in June, 2010, which documented allegations of 73 killings by security forces between March 2008 and June 2010.²⁹

On the other hand, the non-state armed groups are indiscriminately involved against civilians in murder, abduction, and extortion. Similarly, threat to take life is still a common phenomenon in the

of killing was 44 in Dhanusha, 37 in Saptari, 36 in Siraha, 34 in Kapilvastu, 33 in Morang and 10 to 24 people were recorded to have been killed in the other districts of the region. The total report of killing was 541 in these districts but the security forces were responsible for only 10 per cent of incidents and the rest was committed by non-state armed groups.

Similarly, as per INSEC, in 2008 security forces were accountable

27. *ibid*

28. www.insec.org.np/pics/1247468044.pdf

29. www.dfhri.org

30. Nepal Human Rights Year Books 2009, Published by INSEC, Kathmandu, 2009.

31. Policies and programs of the Govt of Nepal for the Fiscal year 2066-2067, as presented to parliament on 9 July, para 8-21.

as expected. The security situation has improved relatively following the promulgation of the SSP but is not in a satisfactory state. The government has failed to bring the violators to justice and maintain peace thorough dialogues.

Civil society and Human Rights organizations, interestingly, have remained silent on the human rights situations of Madhes. Surprisingly, the Madhes based political parties are also indifferent to the degrading human rights situations in Tarai whereas following the election for the CA all Madhes-based political parties were in the governance. They have not taken any meaningful initiation to reduce the intensity of Human Rights violation and end impunity. Tug of war for the post and power has overshadowed the grim situation of rights violation in the Tarai region.

6. Conclusion

The situation of Human rights in the Tarai has been deteriorating day by day. The Mahesis have been facing so many conventional human rights problems such as discrimination, under-participation in the state mechanism, the issues of language and cultural identity, lack of access and opportunity on various places and so on. But, after the signing of the CPA and promulgation of present Interim Constitution too Madhes switched to uprisings. Madhes rejected the new Constitution for not covering their issues such as inclusiveness and autonomous federal state restructuring. The Madhes movement ensured this provision in the Constitution and now Madhesi people are enjoying the rights of equal participation with reservation in various sectors, constitutionally.

However, so many social and political problems have engulfed Tarai. Thousands of people from the Pahadi communities have been forced to leave the area, killings, random extortions and abductions, threats to take life of the ordinary people including Madhesi communities are common.

On the other hand, the government has not initiated reliable steps for the improvement of human rights situation in the Tarai region. The government primarily focused on the improvement of security situation and

for the CA, however, the parties did not raise the issue and are reluctant to initiate steps to address the human rights violation in the Tarai-Madhes region. The latest SSP was formulated when the mainstream Madhes-based political parties were in the governance in 2009. Some of the columnists, journalists and Madhes-based civil society members and intellectuals have tried their best to draw attention of the government on the contemporary Madhes issues but to no avail. So, all the stakeholders have to be responsible

Surprisingly, the Madhes based political parties are also indifferent to the degrading human rights situations in Tarai whereas following the election for the CA all Madhes-based political parties were in the governance. They have not taken any meaningful initiation to reduce the intensity of Human Rights violation and end impunity. Tug of war for the post and power has overshadowed the grim situation of rights violation in the Tarai region.

has been relatively successful for the purpose. Some of the Human Rights organizations, including the NHRC, OHCHR and others have accused security forces of violating human rights in the Tarai. Government has not taken stern step to discipline the security personnel, who have been alleged for the rights abuses and violations.

The major Madhes-based political parties received major portfolios in every government formed before and after the election

to address the degrading human rights situation of Tarai-Madhes. The perpetrators, doesn't matter who they are, have to be disciplined as per the law. They should not go scot free and enjoy amnesty in the name of political activism. It's already late to address the deteriorating human rights situation in Tarai-Madhes. However, cooperative efforts of civil society, the government, national and international rights institutions and the political parties can upgrade the existing rights situation in the region.

Child Soldiering in Nepal :

International Commitments and Real Situation



Puspa Pokharel*

General Background

Children are the most vulnerable component of population in a country so they should enjoy particular protection from exploitation and other forms of inhumane treatment. It is a known fact that by dint of their innocence and gullibility they have high chances of becoming victims of a wide range of exploitation. Trafficking, sexual slavery, child labor, child soldiering and so forth are common and dreadful forms of exploitation used against children. The phenomenon of child soldiering is a particular example of the exploitation of children. The practice of child soldiering is not new. For a long time, an overwhelming number of children have been either used as combatants or have been made into active agents during conflicts.

Child soldiering is an international phenomenon. Many

full-fledged and adult insurgents come from the ranks of child soldiers. Many of the current adult insurgents in Afghanistan are considered to have come from the ranks of former child soldiers. Facts have shown that there has been a rapid growth of recruitment of children as soldiers in recent times. One UN source suggested that their number ranged from 200,000 to 300,000 between 1998 and 2002; by the latter date, they served in 72 government or rebel armed forces in about 20 countries.¹ Likewise, according to Amnesty International statistics, there are an estimated 300,000 children under the age of 18, some as young as 7 participating in armed conflicts around the world today, across some 30 countries.² Hence, a rough estimation of child soldiers now can be considered to be 300,000. However, it can also be observed that the number of countries

employing child soldiers has increased rapidly since 2000. According to the recent annual report on Children and Armed Conflict issued by the Secretary General of the United Nations, the number of armed groups and forces identified as using children has climbed from 40 in 2006 to 57 in 2007.³

The norms and historical bans against child soldiering have been ignored, especially since the Cold War. Although lots of global protocols, agreements and declarations are in place attempting to protect children from both forced and voluntary recruitment, the reality is still dismal in this regard. The most heart breaking story comes from Uganda, where children were used as the central belligerent forces.⁴ Now, child forces have become the principal force across Africa, Asia and Latin America and are playing an important and strategic role in the Middle East.⁵

* Ms. Pokharel is affiliated to INSEC.

1. *Child soldiers global reports 2004*, (Coalition to Stop the Use of Child Soldiers 2005), 13-17.
2. www.amnesty-usa.org/children/soldiers/about.html; as cited in Darren J O'Byrne, *Human rights-An Introduction* (Pearson Education Ltd 2003), 378.
3. *Despite global push to end use of child soldiers, reality on the ground for tens of thousands of children remains bleak*, UNICEF, available at www.unicef.org/media/media_44003.html
4. The disturbing humanitarian crisis is the fact that the war by Lord's resistance Army (LRA) - the 18 year old rebellion, is fought by children on children-minors make up almost 90 per cent of the LRA's soldier... Since the rebellion began in the 1980s, some 30,000 children have been abducted to work as child soldiers and porters, or to serve as "wives" of rebels and bear their children. These numbers have soared, with 10,000 children abducted in the past 18 months alone. Ten stories the world should hear more about, 2004, <http://www.un.org/events/tenstories/story.asp?storyID=100>
5. *Adult wars, child soldiers* (Bangkok: UNICEF 2002), 8 available at <http://www.unicef.org/emerg/AdultWarsChildSoldiers.pdf>

The Nepali Context

Historically, Nepal has witnessed several sporadic, short-lived and armed-conflict-oriented uprisings. This write-up doesn't look into how children were used, or not used, in those situations. However, the Maoists as well as the state were drawn into controversies for using children during the Maoists waged armed conflict. Both the parties have been denying this. In the case of the government forces there exists no policy for the systematic recruitment of children below the age of 18 in the NA.⁶ However, children between the ages of 12 to 16 might have been used as couriers, messengers or spies.⁷ The Maoists too had been repeatedly denying the use and recruitment of the children during armed conflict. However, the "one family, one member for the party" policy of the Maoists during 2002 in the Maoist controlled area had, voluntarily or in coercion, had reportedly forced children into the People's Liberation Army (PLA). From early 2003, large-scale abductions began to be reported, mostly of school children, apparently for the purposes of political indoctrination. To make it more evident, various reports regarding the abduction and recruitment of children in daily newspapers cannot be ignored. On February 25, 2004, for instance, 65 students of Birendra Secondary High School at Baphikot in Rukum district were abducted in the midst of the exams as the Maoists took over the school grounds for parades, drills and political indoctrination.⁸ The Asian Human Rights Commission estimated that about 30 per cent of the Maoist forces were children between

the ages of 14 and 18.⁹ From the start of the People's War in 1996 to July 2004 alone, 286 children under the age of 17 are reported to have been killed.¹⁰ There are many incidents that provide evidence as to the escalated recruitment of children and their exploitation by the Maoists during the armed conflict.

The ceasefire in 2006 that ultimately led to the Comprehensive Peace Accord (hereinafter CPA),

1990(hereinafter CRC) and the Optional Protocol to CRC, 2000. This implies that the obligations under the treaties hold Nepal responsible for the protection of children. Furthermore, section 9 of Nepal Treaty Act states for the application of the ratified treaties as the law itself and in case of inconsistency the latter one prevails.¹² When it comes to analyzing the domestic laws as to the recruitment in security forces, the Army Act

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formally ended the decade long armed conflict in November 2006. The peace accord incorporated provisions not to use or enlist children in any military force and it also contained provisions to rescue and rehabilitate such children immediately.¹¹ Subsequently, the United Nations Mission in Nepal (UNMIN), with the assistance of other UN agencies, registered and verified the Maoist army combatants in January 2007.

Paradox between the International Commitments and the Real Practice

Nepal is party to all the four Geneva Conventions 1949, the Convention on the Rights of Child

2006 does not explicitly mention the minimum age of recruitment which still is in fact governed by the 1962 Royal Army New Recruitment Rules which required recruits to be at least 18 years old, which is in line with the optional protocol to CRC.

Scenario Prior to the Comprehensive Peace Accord, 2006.

In an ideal world, a child's best interest lies in never having to join an armed groups and in never having to live under conditions which make that the only choice is the other battle for survival.¹³ This highlights the need of protection of children with due respect

6. *Child Soldiers Global report 2008*, (Coalition to stop the use of child Soldiers, 2008), 246.

7. *Ibid.* 190.

8. *Children in Maoist Ranks*, The Kathmandu Post, June 17, 2004.

9. Asian Human Rights Commission, *Children and the People's War in Nepal*, 22 January 2003 as cited in *Child Soldiers Global report 2004*, (Coalition to Stop the Use of Child Soldiers 2005), 191.

10. INSEC has been cited in *Caught in the Middle: Mounting violations against children in Nepal's armed conflict*, (Watch list on children and armed conflict 2005), 17.

11. Comprehensive Peace Accord Concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), November 2006, Clause number 7.6.

12. Nepal Treaty Act 1990 Section 9 (1) In case of the provisions of a treaty to which the Kingdom of Nepal or HMG has become a party following its ratification accession, acceptance or approval by the Parliament conflict with the provisions of current laws, the latter shall be held invalid to the extent of such conflict for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as Nepal laws.

13. *Child Soldiers* by Guy Goodwill-Gill & Ilene Cohn.p.123, as cited in Rohan Sharma, *Protection of women and children during armed conflicts under international humanitarian law* available at <http://www.sharmalawco.in/Downloads/PROTECTION%20OF%20WOMEN%20AND%20CHILDREN%20DURING%20ARMED%20CONFLICTS%20UNDER%20INTERNATIONAL%20HUMANITARIAN%20LAW.pdf>

and special care at any circumstances before and during the armed conflict. However, it seems that recruitment in practice has been vaguely interpreted by both the parties to armed conflict in Nepal. Only the aspects of direct participation of children have been seen *prima facie*. The practice of extracting information by grilling the children who surrendered to the security forces or who were captured and detained in State custody was especially prevalent.¹⁴ Children who escaped from the CPN-Maoists' control were considered to have been forced to provide sensitive information about the Maoists' activities and were sometimes used as guides to show physical locations of the CPN-Maoist camps, further putting their lives at risk.

Recruitment itself creates a great confusion as to whether it forbids the volunteering of children themselves to be the part of the armed forces or the armed group. It is to be understood that children at any cost or by any means cannot be considered for recruitment under the age of 18. Hence, recruitment which, in itself is a broad concept covers any means (formal or de facto) by which the children are the part and parcel of the armed forces or of an armed group, in particular conscription, voluntary enlistment, and forced recruitment. This means that the parties to an armed conflict must refrain from enrolling children under 18 years of age who volunteer to join the armed forces. Thus, the Committee on the Rights of the Child has stressed that in the light of the definition of child and the principle of best interest of child, no child under the age of 18 should be recruited into armed forces, either through conscription or voluntary enlistment.¹⁵

The Nepali laws as to the recruitment of soldier have set the minimum age for voluntary recruitment as 18 years and, furthermore, there is no provision as to conscription. Recruitment of children into the security forces was rare, although the reports on indirect participation were frequent. Prior to the 2006 ceasefire, the CPN (Maoists) instituted special recruitment campaigns such as "one family, one member for the Party", where children were recruited, forcibly or voluntarily. The widespread practice of mass abductions, forced participation in mass meetings and cultural events in rural areas had played a decisive role in funneling children into the various CPN-M organizations to support their "cause" and subsequently to be involved directly or indirectly in the CPN-M military activities.¹⁶ However, it should be noted that under the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the "voluntary" recruitment of children under the age of 18 by non-state actors is not recognized.¹⁷

Scenario after the Comprehensive Peace Accord 2006

The ceasefire in April 2006 ended a decade long armed conflict between the security forces and the CPN (Maoists). The king was forced to handover the executive authority which it had been exercising via the curtailment of fundamental rights of the citizens. The CPA was finalized in November 2006. It incorporated prohibitory provisions on the use and recruitment of children in any military forces. Since the restoration of democratic rights through the April uprising, conflict-related abuses, to a large extent, have been reduced.

Inclusion of provisions in the CPA for the protection of children from any sort of warfare has indeed brought about positive vibes among Nepalis.

The CPA of November 2006 included provisions prohibiting use or enlistment of children in any military force. The children already used were to be rescued and rehabilitated immediately¹⁸. The agreement has also prohibited new recruitment of children in any militias and has also stipulated provisions for the rehabilitation of the children who have already been the part of the Maoist militias. In spite of such provisions, the Maoists-intensified recruitment drive peaked during November 2006. It was reported that children from various villages were recruited. Between October and December 2006, the Nepal Task Force for Children and Armed Conflict¹⁹ documented 1,576 cases. Concerned families reported that their children had been recruited by the CPN-M.²⁰ Furthermore, a number of children from the Maoist militia were informally released after the militias were banned by the CPA. The informal discharge of the children thus had created problems. Their integration into society and rehabilitation was full of challenges. They were left no other options except entering into the labor markets, the Tarai based armed politico-criminal groups; opting for the foreign employment and so forth. Those informally discharged or disqualified by the verification process of Maoist army personnel are reported to have been absorbed by the Young Communist League. The League, beginning from its inception, was involved in confrontational street politics, and has been implicated in the supervision, disciplining and even re-recruitment of the children informally

14. Report of the Secretary-General on children and armed conflict in Nepal. UN Doc. S/2006/1007, 20 December 2006, 4.

15. *Implementation Handbook for the Convention on the Rights of Child*, 3rd Edition, (UNICEF 2007), 573.

16. Report of the Secretary-General on children and armed conflict in Nepal, UN Doc. S/2006/1007, 20 December 2006, 5.

17. Article 4 (1), Optional Protocol to the convention on the rights of the child on the involvement of children in armed conflict. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

18. Comprehensive Peace Accord Concluded between the Government of Nepal and the Communist Party of Nepal (Maoist), under clause no. 7.6.

19. Nepal Task Force for Children and Armed Conflict is set up under the terms of Security Council resolution 1612 (2005) to monitor the recruitment of the children in any armed forces.

20. Report of the Secretary-General on children and armed conflict in Nepal, UN Doc S/2008/259, 18 April 2008, 4.

released from the cantonments.²¹ Some of the children were recruited to the Maoist army while others were recruited to the Maoists affiliated organizations. Such acts are grave-breach of the international instruments which Nepal is party to, and it also breaches the commitments set forth in the CPA.

The United Nations Mission in Nepal (UNMIN) completed the registration and verification of the Maoist army personnel in December 2007. Of the more than 30,000 Maoist cadres originally registered in the cantonment sites created under the CPA, 2,973 were assessed to be under-age, although other children were believed to have left the cantonments before the verification process was completed.²² Discussions were held during the verification process as to the delay in discharging the minors from the cantonments. The scheme to provide an allowance to the Maoist combatants in the cantonment probably had enticed the poor parents. Such tendency of the parents probably encouraged the commanders in the cantonments to recruit and not to discharge, though illegal, the children. After several months of obstruction in the discharge process of disqualified minors, an Action Plan for the discharge and rehabilitation of the disqualified Maoist Army personnel verified as minors was signed by the representatives of the Government of Nepal, the UCPN-Maoist, the Resident and Humanitarian Coordinator and the representative of UNICEF in Nepal, on behalf of the United Nations.²³ Ultimately, discharge of the disqualified minors began on 7 January and ended on 8 February 2010.

Recently, there have been no reports of recruitment of children.

However, deep concern remains over the use of children in political violence. Difficulty remains in verifying the participants as being children. The fact that children were participants in the protest rallies and demonstrations organized by political parties, particularly UCPN-Maoist and its sister organizations can't be ignored. Of the 42 protests and demonstrations where the Task Force documented significant numbers of children including the ones in school uniforms, 14 were organized by the UCPN-M and its sister organizations.²⁴ Though the children are not directly recruited into the military forces, the involvement of children in the rallies and demonstrations puts them at risk. Moreover, this gives evidence of the hold the UCPN-Maoists have on children. This indicates the likelihood that children can be used again in future if the Maoists feel it necessary.

Conclusion

Children by virtue of their innocence deserve special protection against any sort of harm. Armed conflict affects all, doesn't matter whether they are an active agent or not. Children are more vulnerable in times of conflicts. When children are part of an armed conflict, they undergo a myriad of negative effects. The involvement of the Nepali children in the armed conflict certainly has developed violent psyche. The dispositions developed out of such a violent psyche will have far reaching negative effects in the society. Thus, protecting children and creating an environment totally prohibiting their recruitment during armed conflict can ensure a better society. However, regrettably, despite the existence of various protocols, commitments, and declarations ensuring the protection of children from armed conflict, the

trend of using and recruiting children was almost a norm during the Maoists waged armed conflict in Nepal.

Despite the fact that Nepal is a party to the major international instruments protecting children from armed conflict, a lot of stories and incidents depict the bitter truth - children are the main target for exploitation. The national and international commitments and obligations for the protection of children have not been fulfilled in practice. However, the discharge of minors from the Maoist cantonments following the verification of the Maoist personnel is, in itself, a great achievement. Steps aimed at rehabilitating the discharged minors have not been efficacious. Failure to materialize the commitments in reintegrating such minors might again create a big problem and might compel them ultimately to enter into the armed forces.

During the warring period Nepali children were made part of it. Following the CPA they, contrary to the international obligations, were used for political indoctrination and propagation. This is the situation now that the armed conflict has come to an end. The problem of the use of children for political rallies and demonstrations has not been stopped. Children in the Tarai regions are still being indoctrinated by several armed groups active there. It is urgent that the armed and any other political groups have to refrain from involving children for their causes. Moreover, to make the commitments more effective and enforceable, the formulation and effective implementation of national laws criminalizing the use and recruitment of children should be created as a matter of urgency.

21. *Ibid.*, 6.

22. UNMIN Press Statement, 27 December 2007 as been cited in *Child Soldiers Global report 2008*, (Coalition to stop the use of child Soldiers, 2008), 248.

23. The plan incorporates the schemes of reintegration of disqualified minors by various packages namely, education grant; vocational training; business training; or health-care training.

24. Report of the Secretary-General on children and armed conflict in Nepal, UN Doc. S/2010/183, 13 April 2010, 5.

The Relationship between Transitional Justice Mechanisms and the Criminal Justice System*

Can conflict-related human rights and humanitarian law violations and abuses be deferred or suspended on the basis of commitments to establish a Truth and Reconciliation Commission?

Legal opinion

I. INTRODUCTION

1. It has recently been enunciated in Nepal in a number of social, political and legal fora that accountability for conflict related human rights and international humanitarian law violations and abuses cannot be undertaken by the regular judicial system, and rather falls in the purview of transitional justice mechanisms. This position may be the result of imprecise information regarding transitional justice mechanisms that have been established elsewhere or from an erroneous interpretation of commitments and obligations ensuing from the Comprehensive Peace Accord (CPA) and the Interim Constitution that have given guidance to Nepal's peace process. At worst, it could be perceived as a deliberate attempt to further perpetuate impunity for violations committed during the armed conflict.
2. Transitional justice mechanisms have been established in a number of postconflict and post-authoritarian situations to achieve a comprehensive set of objectives, including the establishment of truth and justice in relation to human rights and international humanitarian law violations. In most cases, these institutions were considered necessary as it was difficult for national courts and other rule of law institutions in the country to deal with all aspects of these violations and their broader impact upon the society. The transitional justice mechanisms have also been proven as instrumental

- in analysing patterns of violations and designing appropriate measures of response, including to support victims and affected groups in society.
3. Transitional justice mechanisms such as truth commissions are temporary by definition and receive specific, limited mandates. They have very different functions to courts of law in that, most notably, they deliberately prioritise the victims, whereas a court of law concerns itself primarily with the possible guilt of the accused. OHCHR has consistently affirmed that, "a truth commission should be viewed as complementary to judicial action",¹ not as a basis to supplant or suppress the regular judicial system. Accordingly, the regular judicial system cannot be held in abeyance because a commitment to establish transitional justice mechanisms has been made or even once these mechanisms are actually established and functioning. It cannot erode the obligation upon all states to take clear steps to provide justice for past violations.
 4. This note will analyse the issue in terms of applicable international and national law, including case law.

II. THE NATIONAL LEGAL AND POLICY FRAMEWORK

A. Comprehensive Peace Accord

5. Clause 5.2.5 of the Comprehensive Peace Accord (CPA) signed in 2006 obliges parties to the agreement to set up a Truth and Reconciliation

* This write-up was made public by OHCHR, Nepal in March 2011 and has been published in INFORMAL being mutually interested to further disseminate the issue.

1. See *OHCHR Rule of Law Tools for Post-Conflict Countries: Truth Commissions* (2006), p. 27.

Commission (hereafter, TRC) to establish truth about violations of human rights and to create conditions conducive to societal reconciliation.² The Clause neither designates the TRC as having exclusive powers to deal with international crimes and serious violations of human rights nor does it suggest that the jurisdiction of regular judicial mechanisms should be suppressed in any way. On the contrary, the meaning of Clause 5.2.5 is clarified when the clause is read together with Clause 7.1.3, which affirms the commitment of both parties to ensure that impunity is not protected and that the rights of victims and/or their families is safeguarded.³

B. Interim Constitution

6. Similarly, the Interim Constitution (2007) confirms that the State is responsible for constituting a high-level Truth and Reconciliation Commission to investigate violations, committed during Nepal's conflict. Article 33(S) of the Interim Constitution provides for the constitution of "a high-level Truth and Reconciliation Commission to investigate the truth about those persons involved in serious violations of human rights and crimes against humanity committed during the course of conflict, and to create an atmosphere of reconciliation in the society." By virtue of this provision, the function of the TRC appears to be limited to "investigate the truth" and create "an atmosphere of reconciliation". There is no indication that the investigation and prosecution of these violations should be deferred by the existing criminal justice system to a TRC or that any diversion from established criminal justice procedures is permitted.
7. On the contrary, the Interim Constitution reaffirms that powers relating to justice shall be exercised by courts and other judicial institutions in accordance with "the provisions of the constitution, the laws and the recognised principles of justice".⁴ Similarly, the Interim Constitution empowers the Attorney General "to make the final decision on whether or not to initiate any prosecution on behalf of the Government of Nepal in any court

or judicial authority".⁵ As suggested above, a TRC has a different function to a court of law and to the Attorney General.

C. Draft transitional justice legislation

8. Although not yet law, the draft bills pertaining to the establishment and functioning of the transitional justice mechanisms in Nepal are consistent with the position outlined above. Chapter three of the draft TRC bill and chapter four of the draft bill on the establishment of a Commission of Inquiry on Disappearance (CoI-D) detail the functions, duties and powers of the respective commissions: however, there is no suggestion that these mechanisms override Nepali laws, the established role of the judiciary or international obligations in any way.
9. Furthermore, neither of the draft bills provide the commissions with prosecutorial powers, nor do they provide for a direct transfer to the criminal justice system of cases in which violations of human rights and international humanitarian law are evident. In this regard, the current draft bills limit the competence of the future commissions to addressing the Attorney General for necessary criminal prosecutions.

The complementary roles of a TRC and criminal justice and legal precedents in Nepal

10. The above assessment of the national legal framework clearly demonstrates the complementary roles of the TRC and the criminal justice system in terms of ensuring accountability. While a TRC is designed to reveal truth, including through investigating the causes, nature, and extent of the human rights violations, the regular criminal justice system is maintained to ensure justice, and as such to prosecute and punish individual perpetrators responsible for violations that constitute a crime under national or international law. As there has not been any provision or proposal for creating a special court, tribunal or alternative prosecutorial mechanism, criminal trials under the regular justice system are the only foreseen mechanisms to

2. CPA Article 5.2.5: Both sides agree to constitute a High-level Truth and Reconciliation Commission through mutual agreement in order to investigate truth about those who have seriously violated human rights and those who were involved in crimes against humanity in course of the war and to create an environment for reconciliation in the society.

3. CPA Article 7.1.3: Both parties express their commitment and state that necessary investigation will be undertaken against any individual involved in violating the rights mentioned in the agreement and action will be taken against ones that are found guilty. Both parties also ascertain that they will not protect impunity and along with it, the rights of the people affected by the conflict and torture and the families of the people who have been disappeared will be safeguarded.

4. Interim Constitution, Article 100.

5. Article 135 (2) of the Interim Constitution of Nepal 2007

contribute to re-establishing the rule of law through ensuring individual criminal accountability.

11. Legal precedent exists in several decisions issued by the Supreme Court of Nepal that fulfil obligations to provide accountability for conflict-related violations and abuses, including enforced disappearances and extrajudicial executions. For example, in June 2007, the Supreme Court issued a decision on enforced disappearances in which it stressed the urgency of carrying out state obligations, under the Constitution and international law, to investigate and prosecute such offences.⁶ Reading the Interim Constitution's directives requiring the formation of transitional justice mechanisms in light of the rights of the victims to an effective remedy against breach of fundamental rights, including the right to life, the Court held:

The state may take a stand that the formation of a Commission with respect to matters pertaining to directive principles and policies are to be done at its' own convenience in accordance with its own priorities. The state may also contend that the implementation of directive principles of the state is a matter at its own discretion. However, the legal investigation, prosecution and provision of a remedy, to be carried out with respect to a remedial mechanism as a part of fundamental right, cannot be a matter of secondary priority and further cannot be a matter outside the jurisdiction of the court. In fact, on matters relating to the investigation of truth and provision of a remedy in respect of disappeared person, no reason can be seen that gives rise to conflict between the jurisdiction of the court and any other organ of the state. Rather, it can be accepted that the obligation of the state with respect to this matter is an obligation to be borne jointly

[emphasis added; unofficial translation].

This approach of the Supreme Court has subsequently been replicated in a number of cases (*Devi Sunuwar v. District Police Office, Kavre et. al*, WPN 0641/2063, decided on 18 Sep. 2007. *Purni Maya Lama v. DPO, Kavre et. al*, WPN 1231/2063, decided on 10 March 2008. *Jaya Kishor Lav v. District Police Office Dhanusha et al*, WPN 0681/2063, decided on 2 Feb. 2009 related to violations committed during the conflict).

III. International legal framework

A. International humanitarian law

12. The duty of States to prosecute individuals for 'grave breaches' of international humanitarian law – the laws of war – is well established.⁷ Common Article 3 of the four Geneva Conventions of 1949 prohibits, among other things, summary executions, torture and other ill-treatment, the taking of hostages, and punishment without fair trial. Common Article 3 binds both parties to the conflict and adherence is not based on reciprocity – one party to the conflict cannot excuse its own violations on the basis that the other party to the conflict is also violating it. The High Contracting Parties are required to enact criminal legislation to prosecute individuals ordering or committing grave violations.
13. The duty to investigate and prosecute violations committed in the context of an internal armed conflict has been significantly reinforced over the past two decades, thanks in particular to the investigations into atrocities committed in the Balkans, which culminated in the establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY). The body of jurisprudence of the ICTY constitute in this respect a very strong source of interpretation of states' obligations. The Rome Statute, which brought into being the International Criminal Court (ICC), sets out in its preamble the obligation of every state "to exercise its criminal jurisdiction over those responsible for international crimes". It has also recognized the issue of 'war crimes' in the context of an internal armed conflict. While no legal implications pertain to non-party states, such as Nepal, the establishment of the ICC is evidence of an international resolution that those most responsible for gross violations must not go unpunished. It also reflects the historic growth of international customary law – rules that, though not embodied in treaty law, have become widely accepted as binding as a result of the general practice of States.

B. International human rights law

14. Nepal has ratified both the *International Covenant on Civil and Political Rights* (ICCPR)⁸ and the *Convention Against Torture and other Cruel, Inhuman*

6. *Rajendra Dhakal et al v. Government of Nepal Ministry of Home Affairs et al*, decided on 1 June 2007.

7. Under Articles 49, 50, 129 and 146 of Geneva Convention I, II, III, and IV of 1949 respectively.

8. Under Article 2.3 (a), the ICCPR requires States parties to ensure that victims of violations of the Covenant "[...] have an effective remedy."

or Degrading Treatment or Punishment (CAT),⁹ and is therefore subject to the general obligation of States Parties to provide an effective remedy against violations of the rights and freedoms contained in these core human rights treaties. This includes a duty to investigate and punish those responsible.

15. In both its General Comment number 31 and its decisions on individual cases,¹⁰ the Human Rights Committee has made it clear that the State party has a duty to thoroughly investigate alleged violations of human rights, particularly enforced disappearances and violations of the right to life, and to criminally prosecute, try and punish those deemed responsible for such violations.¹¹
16. Responding to a case in Nepal, *Sharma v. Nepal*, the Human Rights Committee has reaffirmed its position that the States parties are required under the ICCPR to take effective steps to investigate violations of human rights recognized as criminal and to bring to justice those who are responsible for these violations, as well as to provide an effective remedy to the victims.¹²
17. In order to give effect to the right to an effective remedy guaranteed under the human rights treaties including ICCPR, all alleged human rights and international humanitarian law violations committed by individuals on all sides of the conflict must be investigated and, if appropriate, prosecuted. The onus for respecting these obligations rest on all branches of the Government and the judiciary must implement these obligations irrespective of the actions of the executive - and *vice versa*. Bearing in mind that the rights of victims to an effective remedy applies at all times, bypassing this duty to investigate and prosecute for the mere reason that the Government has taken initiatives to set up transitional justice mechanisms constitutes a separate violation of the ICCPR's "effective remedy" provisions which obligates the State to implement

effectively the international human rights treaties to which Nepal is a party.¹³ It is a constitutional imperative for all branches of the Government to ensure the right to remedy by prompting thorough, independent and impartial investigation of alleged violations of human rights.

18. International Human Rights Law obliges States to investigate allegations of serious violations and to prosecute suspected perpetrators. With respect to International Human Rights Law, the rule is set out in articles 2 of ICCPR, which requires a State party to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in it and also to ensure an effective remedy for any person whose rights have been violated.
The UN Human Rights Committee has repeatedly held that the failure to investigate and punish perpetrators of human rights violations constitutes a separate violation of the ICCPR. Similarly, article 7 of the 1984 Convention against Torture (CAT), which Nepal ratified in 1991, obliges States parties either to try or to extradite anyone who perpetrates torture.
19. Nepal did exercise its prerogative to derogate from the ICCPR on two occasions during the conflict but as it is clearly stated under article 4 of ICCPR, these derogations can never apply to so-called underderogable rights such as the right to life and the right to be free from torture. International human rights law remains in effect, despite a situation having reached a threshold of "armed conflict" such that IHL also applies. Both the Maoists and the Government were obliged to respect their prohibitions on certain types of acts in those areas where they were in effective control. All alleged violations with respect to International Humanitarian Law and International Human Rights Law— perpetrated by individuals

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9. Under Articles 13 and 14 of the Convention against Torture (CAT), the right of torture victims to adequate remedy and reparation is guaranteed.
 10. General Comment No. 31 regarding "Nature of the General Legal Obligation Imposed on States Parties to the ICCPR" issued by the Human Rights Committee in 2004 reads: "Where [investigations that States parties are required to undertake] reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under domestic or international law, such as torture and similar cruel, inhuman and degrading treatment [...] summary and arbitrary killing [...] and enforced disappearance".
 11. See *Bautista de Arellana v. Colombia*, Comm. No. 563/1993, CCPR/C/55/D/563/1993 (1995); *Chaparro v. Colombia*, Comm. No. 612/1995, CCPR/C/60/D/612/1995 (1997); *Hugo Rodríguez v. Uruguay*, Comm. No. 322/1988, CCPR/C/51/D/322/1988, 12.4 (1994).
 12. Considering a complaint lodged by Yeshoda Sharma in relation to disappearance of her husband Surya Prasad Sharma in the context of the armed conflict in Nepal, the Human Rights Committee, in November 2008, adopted the views that Nepal is under an obligation to provide the victim with an effective remedy, including a thorough and effective investigation into the disappearance and fate of her husband, his immediate release if he is still alive, adequate information resulting from its investigation, and adequate compensation for her and her family for the violations suffered.
 13. Interim Constitution of Nepal, article 33(m).

on either side of the conflict – must therefore be subject to criminal investigation. Failure to provide this would constitute a separate violation of the ICCPR's effective remedy provisions, as well as of international customary law.

Relevant UN principles and policies

20. A vast body of instruments¹⁴ outlines the legal obligation of States to ensure accountability and provide redress to victims of violations of human rights.

The UN Principles on the Right to Remedy and Reparations states, "In cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have a duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations, and if found guilty, the duty to punish her or him."¹⁵

21. Similarly, Principle 19 of the UN Updated Principles on Combating Impunity indicates that, "States shall undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished."¹⁶

It would be appropriate to stress the terms 'prompt' and 'area of criminal justice' of this principle in the Nepal's context.

22. Furthermore, at no point during the Universal Periodic Review of Nepal at the Human Rights Council in January 2011 was there any suggestion that the envisaged establishment of transitional justice mechanisms offers an alternative to criminal justice procedures. On the contrary, recommendations made by member States called both for "perpetrators of human rights violations [to be] brought to justice" and for the urgent establishment of the Commissions as well as, notably, "that there be no amnesty for grave violations of human rights."

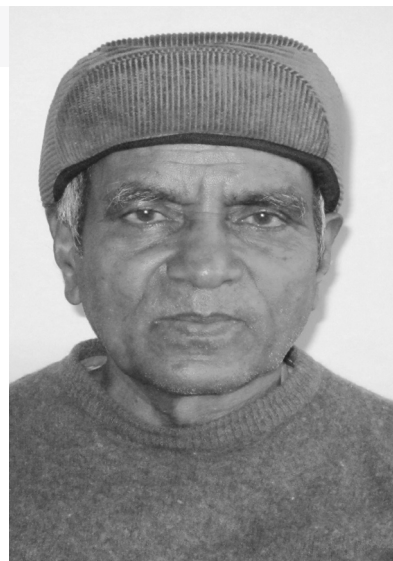
IV. Conclusion

23. The legal position that investigations and prosecutions for human rights and International Humanitarian Law violations committed during conflict would only be dealt with under transitional justice mechanisms is inconsistent both with Nepal's existing legal frameworks as well as with the country's obligations under international law including ICCPR and customary international law.
24. As such Nepal is required to establish accountability for conflict related human rights and International Humanitarian Law violations through criminal justice procedures.

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14. It should be noted that while many of these instruments do not have the legally binding character of ratified international treaties, many of their provisions have acquired the level of customary international law.
 15. Principle 4 of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of Human Rights and Serious Violations of International Humanitarian Law, adopted by the General Assembly in December 2005.
 16. Principle 24 of the UN Updated Principles on Combating Impunity, endorsed by the UN Commission on Human Rights in 2005

*Valued readers are requested and encouraged to contribute
with articles for the forthcoming issues of
INFORMAL*

Madhes is Still Trapped in a whirlpool



*Human rights violations are intense in the country and so are the socio-economic problems. Tarai-Madhes is believed to have suffered from such problems even more. Crimes have not abated here. Different agreements were reached between the Government and the Madhes-based political parties in the past to solve the long existing problems of the region but implementation level of the agreements is not satisfactory. In this context INFORMAL had talked with the **former Commissioner of National Human Rights Commission Dr. Ram Dayal Rakesh** on Human rights situation and contemporary issues related to Tarai-Madhes. An edited version:*

INFORMAL: How would you view the overall Human Rights situation in the Tarai –Madhes region?

- The existing situation of Human Rights in the Tarai-Madhes region is horrific. Human rights are intensely violated and abused. Conflict in the country has come to an end but it applies to the hilly region of the country only. Madhes is still trapped in a whirlpool. I mean, it has been a complete five years since the formal ending of conflict, however, conflict continues in the Tarai region. I don't think it will come to an end so easily. Very recently a central level student leader of the Sadhabana Party has been killed brutally in Sarlahi district but media and the administration have not taken notice of the incident. Media should have covered the news about the incident. Human rights organizations too did not show their concern on the incident neither did the National Human Rights Commission (NHRC), where personnel are agitating and expressing their aggression because of

internal reasons. How can we expect monitoring of rights violations in the Tarai? Lack of proper monitoring of rights violation has further worsened the situation of impunity in the country. The sorry state of human rights in the Tarai is the result of impunity enjoyed by rights violators.

INFORMAL: What do you think are the major problems in the Tarai-Madhes that are connected with Human rights concerns?

- The main problem is that the organizations that work for the cause of Human rights are not equipped with sufficient resources and are with limited mandate. NHRC has not paid attention on the issue whereas it has its regional offices in all the regions. People are killed and unidentified groups are made responsible for the killing. Police express commitment for the arrest but what happens to the criminals next is rarely followed up. This is indicative of the fact that clear image of violations do not surface and become public.

INFORMAL: Often, criminal activities in Tarai-Madhes are viewed to link with open border. Do you think there are other causes behind the criminal activities there?

- Open border is one of the factors for the criminal activities there, it's apparent. Similarly, there persists racial and ethnic kind of hatred and lack of cooperation among political groups. Diverse political parties and groups are active in the Tarai at a time when country suffers political instability. There is a tendency among the political parties to downplay each other in an unfair competition. This might be the other facet of human rights violation in the region. Parties have failed to exist and function in cooperation and collaboration so ordinary people are compelled to bear the consequences of the parties' weaknesses. Parties have such degraded relation ranging from the district level up to the center. The parties should have been committed at least for the cause of human rights, which consists

the concepts of universal values and abstention from killing and violence. However, human rights violations are taking place everywhere in the country not only in the Tarai-Madhes region. Police express their commitment to punish the abusers and violators but to no avail. Several professionals have been shot and killed in the valley itself but no responsible persons have been brought to justice. No one is safe. Anything can happen against anyone and anywhere. If any people are safe they are the people who travel on vehicles with bodyguards. If the capital city itself is in such a situation what can be thought of about the Madhes? Madhes is an orphan, it has been orphaned. I envisage dark future of Madhes. I have been writing in different papers and speaking in different fora about the degrading rights situation of Madhes but have not felt any positive change in the rights situation of the region.

INFORMAL: *Don't you think that various agreements reached between the Government of Nepal and Madhes based parties were concerned more with power equation than the real problems long existing in the Tarai-Madhes?*

- Different agreements reached in the past have not been implemented. Different Madhes based parties and even the armed groups signed different agreements with the Government but implementation of the agreements is a problem. Signature alone is not a solution of any problem so the agreements can be interpreted to link with power politics as well. However, Madhes-based leaders are unhappy due to the non-implementation of the agreements they signed earlier. I think, any agreements signed honestly even with the armed groups will bring them to the political mainstream. One might question, how come the criminal groups be brought to mainstream! But, it is the government to differentiate between criminal and political groups. Nothing blocks the government from initiating dialogues with the armed groups. Non-implementation of the

agreements reached earlier is also responsible for the rights violations in the Madhes region.

INFORMAL: *What's your view on cooperation/non-cooperation of the Madhes based political parties in controlling crimes and guaranteeing Human rights?*

- Their role is paradoxical. There is gap between rhetoric of the leaders and the ground reality of Madhes. Madhes-based parties join governments by raising the issues of Madhes and they forget Madhes while in governance. But, when they have to step down they revive the issue of Madhes again. This has been a hindrance for the improvement of human rights situation of the region. Madhes lacks peace and more dreadful is the fact that people are not living in a friendly terms. Leaders have been reiterating that they are fighting for the rights of Madhesi people and have been trying their best for the purpose. However, such rhetoric and attempts have not yielded desired results. Even an ordinary person knows this. Madhes is crying for the timely solution of the problems it has been facing for long.

INFORMAL: *How have you perceived the incidents of explosions that have occurred in the recent past in the Tarai-Madhes?*

- These incidents are inhumane and against human rights. So, these incidents have to be, does not matter who ever are the people responsible for the incident, condemned. As a human rights defender I condemn the incidents. Such abuse of rights that terrifies ordinary people is a crime. We have to condemn such incidents, does not matter, wherever they take place.

INFORMAL: *Many issues connected with Human Rights of Tarai Madhes can be solved through legislation. However, questions are being raised that problems have to be solved via the new constitution. What provisions in the new constitution, do you think, will solve the problems of Tarai-Madhes?*

- It's doubtful whether or not

constitution will be promulgated. However, I think, an abridged constitution has to be provided to the people within the extended time. For this, suggestions have to be collected from all walks of life but the constitution promulgated in this way should not be the final one. The urgency of constitution is more to the Madhesi downtrodden and backward people for these communities are discriminated exploited and their rights are violated. New constitution has to safeguard their rights so that these groups and communities will be able to feel their ownership in the constitution and accept it easily. Some groups are also there whom it does not make any difference whether or not constitution is promulgated but it's a must for the Madhesi people, women, dalits, indigenous groups and backward communities. The new constitution has to make sure that these groups and communities will feel their ownership of the constitution and will be assured of themselves that their rights are guaranteed in the constitution.

INFORMAL: *Do you have any more to say on the issues of Tarai-Madhes?*

- I think, Madhesi have to be familiar with the ground realities of Madhes. However, the plight of Madhes and economic condition of ordinary people there stands as a big problem. There occurred two uprisings in Madhes but some select Madhesi people are enjoying the fruits of the uprisings. Ordinary people have not felt any relief there. Such benefits taken by the select people should not be perceived as an accomplishment. Achievement should be judged on the basis of facilities and reliefs enjoyed by the ordinary people. Resources of Tarai are being misused and smuggled in an organized way. Local administration and leaders are involved in such activities. I don't see any guardian in Madhes so Madhesi leaders have to pay attention on this. It's the political leadership of Madhes who have to work for Madhes. We cannot do anything except speaking and writing for the better rights situation in the region. - Interview by Raju Paswan

Some News Published on www.inseconline.org

January-March, 2011

These are the representative news reported on different dates, which depict the situation of criminal activities and the incidents of rights abuses/ violations in the Tarai-Madhes region.

Woman Murdered After Rape

Saptari/ January 8

An unidentified gang has murdered a woman after rape on January 7. Body of an unidentified woman around in her early twenties was found at Kajaradhar of Mohanur VDC-1 on January 8. Police said that the woman was killed after rape by the gang. Although identity of the deceased has not been established yet, locals informed that she was Puja, a worker in a restaurant in Swambhunath in Saptari district. The dead body has been taken to Sagarmatha Zonal Hospital for postmortem, police said, adding that investigation of the incident is underway.

NA Defuses Bomb Planted in Bardiya DDC

Bardiya/ February 4

Nepal Army has defused a pressure cooker bomb planted by an unidentified gang in the entrance gate of the Bardiya District Development Committee in Gulariya Municipality-7 on February 4. The bomb was planted by a gang at around 9 P.M on February 3 and the army had tightened security to defuse it. A squad of Nepal Army from Ranjha defused the bomb at 8 A.M on February 4. The motive behind planting the bomb and gang involved in it has not been identified yet, the Bardiya District Police Office said, adding that an investigation of the incident is underway. Pawan, Tharuhat in-charge of Janatantrik Terai Madhes Mukti Party has claimed responsibility of the incident over phone to local media.

Boy Injured at Bomb Blast

Rautahat/January 13

Rajan Shah, 12, of Tendraha VDC-3 has been injured in bomb blast on January 12. He got splinter in his right hand after a pipe bomb was detonated at around 12 P.M near the place where he was sleeping. He is receiving treatment in nearby medical shop. Ranbir Singh, identifying himself as the district coordinator of Janatantrik Tarai Madhes Party said that his party was responsible for the blast. Father of Singh and an employee of Poverty Alleviation Fund, Shivapujan Shah said that he had received threat from an unidentified group two years ago.

Motorcyclist Gunned Down by Unidentified Gang

Siraha/February 26

Mohamad Yaku Miya, 35, of Bhawanipur (Pra. Dha) VDC- 1 has been shot dead by an unidentified gang on February 24. The gang comprising of around 8-10 persons in number had stopped Miya on the way and opened fire at him while he was returning home from Lahan on his motorbike plated Sa 1 Pa 2687. Miya, who sustained bullet wounds to his head and chest, died instantly, police said, adding that the body has been taken to the Lahan Hospital for postmortem. The attackers had sternly beaten up Sagar Prasad Chaudhary, a pillion rider. Injured Chaudhary is undergoing treatment at Smarak Hospital in Lahan. Four suspects have been arrested for investigation, the Lahan Area Police Office said.

Two Held with Weapon

Kapilvastu/February 15

Binod Thapa, 20 of Shivpur VDC-2 and Bharat Gharti Magar, 25 of Dang have been held with a revolver and a pistol by the Armed Police from Krishnanagar VDC-2 on February 15. Thapa and Magar who were heading to Krishnanagar from Chandrauta on motorcycle plated Ra 1 Pa 4871 were held by APF Border Security personnel during a security check, police said, adding that the duo has been detained in Krishnanagar based APF office. The arrestees have been suspected to be cadres of any armed outfit active in Tarai.

Volunteers' Forces Capture Civilian's House

Morang/ February 23

The cadres of Sanghiya Loktantrik Party's sister organization Sanghiya Volunteers Groups have padlocked the house of Buddhiram Bhattarai of Urlabari VDC-2 on February 22. In a statement signed by Tendhang, who claimed as being the deputy commander, justified the abduction saying that Bhattarai had borrowed Rs 6.5m from Rajkumar Dahal of Gauradaha VDC-8 in Jhapa. A letter signed by Tenghang said that the group had to take action as the Bhattarai did not appear to return the money. Urlabari ASI Gaurav Subba acknowledged the occurrence of the case. Bhattarai filed a complaint at the District Headquarters and has been asked to appear in the court on February 23.

Two Minors Injured In Bomb Explosion

Parsa/January 24

Two girls have been injured in a socket bomb explosion around 11 A.M on January 22. The girls identified as Puja Sah, 15, and Nisha Sah, 12, of Ranighat in Birganj Sub-Metropolitan City-14 were injured when an unidentified persons lobbed a socket bomb at the gate of Shankar Saw Mill, located in the same place. Both girls had splinter injuries in their thighs. They were in the Mill to buy some firewood. The girls returned home following treatment at Narayani Sub-zonal Hospital on the same day. Police said they were searching for the assailants but are yet to make any arrest.

VDC Secretaries Halt Work Demanding Security

Bardiya/March 4

Secretaries of all 31 VDCs in the district have been halting their work since March 3 indefinitely demanding security. "We are forced to halt our work as there is no respite to asking donation and issuing threats to us by the underground outfits," Chuda Bahadur Somai, chairperson of the district chapter of the VDC Secretary Rights Protection Center said, adding that the agitating secretaries will not resume their duties until guarantee of their security. "The district chapter of the VDC Secretary Rights Protection Center expresses its serious concern as the VDC secretaries are forced to halt their work due to the escalation of asking donation and issuing threats to us by the underground outfits," states a press release jointly issued by the Centre's chairperson Somai and its secretary Kashiraj Gautam. The Centre has urged all trade unions and civil society to take the matter seriously and extend moral support to the agitation.

Unidentified Gang Attempts to Kill Businessman

Jhapa/March 15

An unidentified gang has tried to shoot Hari Agrawal, 55, of Surunga Bazaar in Surunga VDC-5 on March 13 midnight. The gang of about 10-12 masked men came inside Agrawal's house and shot at him. The group also stabbed Agrawal's son Bijay Agrawal, 27. Both have been taken to BP Koirala Institute of Health Sciences in Dharan. It is said that while the condition of Hari Agrawal is critical, Bijay is in stable condition. Locals complained the recently deteriorating security situation in the area. Inspector Surendra Sitaula of Birtamod Area Police Office said the search for the attackers was going on.

UCPN-M affiliated ANSA Captures Land

Bardiya/ March 17

All Nepal Squatters Association (ANSA) has captured land belonging to some locals located at Moraiya

of Rajapur VDC-2 and Paryagpur of ward no. 7 on March 16. ANSA cadres announced capture of the lands by planting their party flag at the 45 *bigabas* of land belonging to Binaya Dwoj Chand, 40 *bigabas* of land belonging to Krishna Bastola and Damodar Bastola, and 40 *bigabas* of land belonging to Shree Das Sapkot of Rajapur VDC. The UCPN-M affiliated ANSA said that they captured the land as the land owners tried to sell the land to people of other places without their consent. They added that the land was captured by the UCPN-Maoist during the armed conflict and was distributed to landless squatters. According to the Area Police Office Rajapur, the ANSA captured the lands warning the owners not to sell the land to other persons and to sell the land to squatters on installment basis. The police office further said that a police team had uprooted the party flag from the site.

NC Activist Injured as Unidentified Gang Opened Fire

Banke/March 19

Nepali Congress activist Khushi Ram Barma, 28 of Bankatti VDC-4 has been injured when an unidentified gang opened fire at him on March 18. The gang comprising of some six persons arrived at Khushi's shop at 7:45 P.M, told that they wanted to talk to him personally, took him to the nearby road and fired at him saying that he was a NC leader, Khushi's brother Shiva Kumar said.

Barma, who has received bullet injuries to his both thighs and feet, has been undergoing treatment at the Nepalganj Teaching Hospital. He also has wounds left by the butt of the gun to his head. Injured Barma is secretary of NC Bankatti Village Committee. An eight-year-old Suman Kumari Chauhan, of the same locality was also injured after sustaining a bullet wound to her loin in the incident. Chauhan returned home after undergoing treatment at the Nepalgunj Teaching Hospital. Nobody has claimed responsibility for the incident yet. Investigation of the incident is underway, Binod Ghimire, DSP at the Banke District Police Office said.

Two Bombs Found in Krishnanagar VDC

Kapilbastu/March 24

Two socket bombs have been found on the roadside near the house of Purushottam Nagaliya in Krishnanagar VDC-4 and behind the building of Sidhharth Bank in the ward number 2 of the same VDC on March 24 morning. The locals had informed the Krishnanagar Area Police Office after sighting the bombs. The police have cordoned off the area and have informed the Nepal Army for the disposal of the devices. Police said that the devices could have been time-controlled as a watch was found near the bombs. The information on the group placing the bombs could not be known.

Book Review

The Rise of Ethnic Politics in Nepal

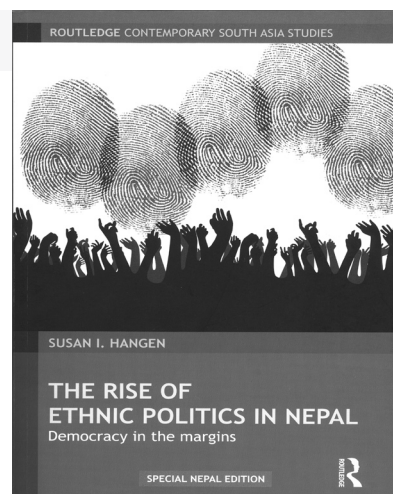
Democracy in the Margins

This book is about ethnic politics and democratization in Nepal. It argues that ethnic politics is becoming increasingly central to Nepali politics and such centrality strengthens democracy rather than destabilizing it.

Concisely, this is a book showing that ethnic parties can be compatible with democracy and democratization can proceed in diverse and unexpected ways. Believed to have been written drawing on years of ethnographic field work in the areas of multiple ethnic groups, especially focusing on the rural eastern part of Nepal, it is a reliable documentation of ethnic and nationalities' movement and struggle against Hindu culture and monarchical rule in the country. Different ethnic organizations, especially Mangol National Organization (MNO) have been taken into account. Shedding light on how people in the margins interpreted and engaged with the democratic political system that was instituted in 1990, the book traces the rise of ethnic politics and democratization in Nepal since 1990. It's a book about the people on the margin. Generally margin of a state are congruent with the space defined as 'rural' and dealings in the book sticks to this very notion of margin. Fundamentally, it is an endeavor to reveal how the supposedly apolitical rural and ethnic people, especially the ethnic constituents of the eastern hill, were organized for their further rights.

Beginning with a brief historical context for understanding ethnic politics in Nepal, the first chapter, in the book, centers on the argument that despite greater political and cultural freedom brought by the political movement of 1990, ethnic inequality persisted. As a result the subordinated groups were compelled to mobilize themselves to demand further changes in the society. Before describing the founder of MNO, his core ideas and gender based participation in the movement in chapter three; the book outlines, in chapter two, a comparative analysis of the ethnic parties and organizations in Nepal, which were active in post-1990 era and also glorifies the construction of pan-ethnic identity of indigenous nationalities' movement. There has been an endeavor to depict the negative interactions of the ethnic people with the high caste Hindus and the internal tussle between individuals in the ethnic groups in course of what the writer implies- a movement for empowering ethnic groups of Nepal.

Complications seen between the ethnic groups and inability of MNO to garner wider support from within the nationalities eventually gave it a form of a political party instead of defining a Mongol Culture. This has been discussed in the sixth chapter. Similarly, a representative village with the pseudonym Maidel has been used to examine the history and multiplicity of meanings of changing religion, from Hinduism to Buddhism. And, finally,



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it analyses the MNO's existence and struggle against the other political parties taking even the election for the Constituent Assembly into account. The book concludes- when democracy is disjunctive, as was the case after 1990, ethnic politics turns violent.

Although the book, as the title suggests, is supposed to deal with endeavors of diverse ethnic groups at a macro level for the democratization, it has failed to encompass the overall dimensions of ethnic movements and their spatial-temporal pervasiveness. It seems that the writer has derived conclusion taking only two districts of the Eastern Region into account whereas she states that it was written after following ethnographic studies. However, this is a good documentation of MNO's emergence, existence and the struggle in relation with Hindu and non-Mongol people and democratic practice in the country. So, it can be a worthwhile book for those who are working for the cause of ethnic people in Nepal in a changed political set up.

Reviewed by Binod Gautam

Calling for Security and Justice in Nepal:

Citizens' Perspectives on The Rule of Law and The Role of The Nepali Police*

1.1 Purpose and Scope of the Survey

This report presents the findings of a mixed method survey of attitudes among the people of Nepal toward security and the rule of law. Eight thousand members of the general public and well over four thousand members of specific professions were asked about their perceptions and experiences regarding access to justice and security. One subject that received close attention was whether the institutional mechanisms of the Nepal Police (NP) limit or enhance the public's sense of security.

The survey was conducted by the United States Institute of Peace (USIP) in collaboration with 20 local civil society partner organizations. Together, they mobilized 101 local surveyors in 21 districts across Nepal. In all, 12,607 respondents answered a detailed questionnaire. Of those, 4,597 respondents drawn from six targeted groups or professions (the NP, civil society, the Government of Nepal, political parties, the business and industrialist community, and the legal profession and Judiciary) also responded to a separate questionnaire. Furthermore, 15 focus group discussions (FGDs) involving 364 participants were held, and interviews were conducted with 118 high-level government officials, political party leaders, and civil society leaders.

Survey development began in 2009 and delivery occurred between August and October of 2009. FGDs and interviews followed from January to June, 2010 using a constant comparison method of data analysis, culminating in the publication of results in early 2011. This relatively lengthy timeframe was purposefully designed in order to maximize the opportunities for local and policy-level stakeholders to participate in the survey and to develop their working relationships. While some local

security issues erupted and others diminished across the interaction period, the survey results accurately reflected public opinion on the attitudes among the people of Nepal toward security and the rule of law.

1.2 Survey Results

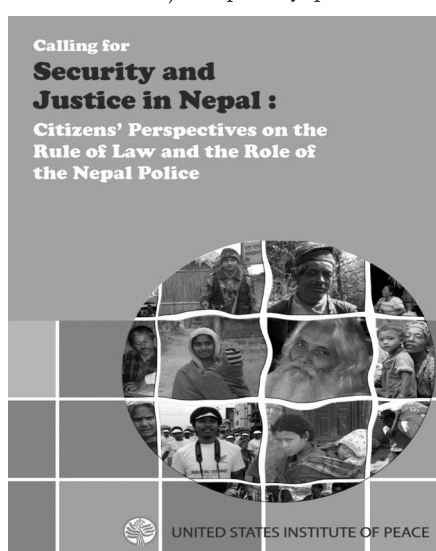
1.2.1 A Public Worried by Multiple Challenges to the Rule of Law, but Willing to Help Tackle Those Challenges

Respondents identified bandhs (general strikes) and chakkajams (roadblocks), corruption, theft and robberies, vigilantism, and political interference or threats as the most common challenges to the rule of law in their communities. These activities take place against a broader backdrop of more systemic illegal activities, such as gender-based violence, domestic violence, child labor, and discrimination of marginalized groups based on sexual orientation, ethnicity, or caste.

The chief factors contributing to insecurity are perceived to be unemployment, alcohol consumption, poverty, political instability, and bandhs and chakkajams.

These problems, respondents believe, can best be countered by skill-development programs, the prohibition of the sale and consumption of alcohol, universal access to secondary education, stronger legal codes, and the outlawing of bandhs.

Among "public respondents" (i.e., those who are not themselves members of the NP—the vast majority of respondents), fewer than one in ten feel no personal responsibility for public security, whereas more than six in ten believe that citizens do have such responsibilities. These include observing the law; informing the



* Summary of the research report published by Strengthening Security of Rule of Law Project in Nepal under the United States Institute of Peace. For the full version of the research report readers are requested to log on to <http://www.usip.org/files/resources/securityandjusticeinnepal.pdf>

NP of wrongdoings; showing respect to others; refusing to participate in corruption; not violating the rights of other individuals and groups; and supporting the NP in efforts to improve security.

1.2.2 The Vital Role of the NP in Creating a Sense of Personal Safety

Nearly half of all public respondents feel safe in their community at least most of the time. Geographically, residents of the hills of the Far-Western Region feel the safest, while residents of the Tarai of the Mid-Western Region are most likely never to feel safe.¹

Among the six targeted professions, political party representatives and government officials feel least secure, in part because of the dangers posed by criminals and armed groups, but chiefly because of threats and violence carried out by members of or groups linked to political parties.

The most important factor in contributing to a sense of safety within one's own community is an absence of criminal activities. The second most commonly cited factor is the presence of the NP in a respondent's village or town. Almost half of public respondents to the survey said that the NP provides security "sometimes," and one-third said that the NP keeps them safe most of the time or always. These opinions did not vary significantly between males and females or between people from different parts of the country; however, individuals identifying themselves as Dalit or Madhesi were more likely than other ethnic groups to say that the NP could not or would not provide security to their community. Slightly more than half of public respondents believe that the NP's performance in 2007–2009 was an improvement on previous years, and only a minute minority felt that its performance had declined. The three factors most commonly cited as contributing to this enhanced performance were an improvement in the NPs' behavior and attitude, an improvement in the security situation generally, and increased patrolling by the NP.

1.2.3 A Mixed Assessment of Access to Security

More than half of public respondents do not believe that there is equal access to protection and other services provided by the NP. Poor people, Dalits, and women were identified by respondents as the three groups most likely to suffer from unequal access. Even so, and despite seeing the NP as impeded by corruption, lack of resources, and political interference, the majority of all respondents believe that the NP should be the lead law enforcement agency handling issues related to maintaining law and order and ensuring civilian security.

1.2.4 Flaws in the NP's Investigative Capacity Encourage "Alternative Justice"

Among survey respondents who identified themselves as having been either a witness to or a victim of

a crime, almost one-third did not report the crime to the NP, anticipating that the NP would not or could not help them. Of those who reported a crime to the NP, two-fifths used a third party, in most cases because they thought it was required to do so. Almost two-thirds of respondents who had reported a crime to the NP said that the NP had investigated the crime. Respondents' level of satisfaction with the investigation process depended heavily on the extent to which the victim or witness perceived the investigation as impartial and the NP personnel as communicative and responsive. Among victims and witnesses who chose not to report a crime to the NP, two-fifths sought an alternative means of addressing the issue, such as approaching a political party or a nongovernmental organization (NGO). Even many of those who *did* report a crime to the NP were inclined to seek alternative avenues of redress if the case did not go to court or if the court did nothing about the case. These alternatives included asking civil society or political leaders to put pressure on the police, padlocking government or NP offices, imposing bandhs and chakkajams either against the NP or against the alleged perpetrator, taking personal acts of revenge, or paying a gang or political party wing to act against the alleged perpetrator. A small majority of those witnesses and victims who said their case had gone to court perceived the judge as being fair and impartial. Those who had a less favorable impression believed the judge in their case had been swayed by bribes and corruption, political considerations, or personal prejudices.

A majority of respondents want legal aid options available in their community and would like to see local government and the NP provide more information on laws and processes to access justice. More than half of public respondents said that the NP, rather than the courts, is the agency most responsible for making decisions regarding innocence or guilt.

1.2.5 Interaction between the NP and the Public Is Generally Positive but Insufficient

When respondents had interacted with the NP in a situation other than reporting a crime, just over one-half rated the experience as good and almost all of the remainder deemed it average. Respondents' experiences were shaped above all by the behavior or attitude of NP personnel. When NP personnel displayed respect and politeness, respondents found the interaction useful and positive. Persons unwilling to approach the NP or who had a negative experience generally reported that they had been ignored or not shown respect, or that the NP Personnel had not communicated with them. Among NP respondents, the vast majority believe that interaction with the public other than when a crime is being reported not only improves the image of the NP by improving their own job performance but also helps them collect information.

1. Nepal is divided into three topographic regions: mountain (the Himalayas), hills and tarai (lowlands along the border with India). Nepal is also divided into five geographic regions: Far West, Mid-West, West, Central and East. See Map 1, Page

1.2.6 Limited Public Knowledge of the NP's Outreach Centres

Two out of three NP respondents and more than four out of five public respondents believe that interaction with the community is the responsibility of all NP personnel, not just the NP's Community Police Service Centre (CPSC). While those respondents who have interacted with the CPSC found the experience to be positive, only just over one-fifth of public respondents had ever heard of the CPSC even though CPSC offices exist in two-fifths of the areas surveyed. Fewer than one in ten public respondents knew about the work of the Women and Children Service Centres (WCSC), the special division of the NP charged with reaching out to and helping to address issues specific to women and children, and fewer than one in one hundred had used the WCSC. According to public respondents, improvements in the performance of the WCSC offices and of the NP in general, could be achieved by providing more resources and trainings, and by increasing engagement with the local community through meetings, social activities, and information sharing.

1.2.7 NP Personnel See the Need for Some Reform of the NP

Among NP respondents, although slightly more than half said they are satisfied with the conduct of their peers, a small minority expressed concerns regarding misconduct. One in seven NP respondents reported witnessing misbehavior such as threats or verbal abuse from their superiors.

NP respondents' attitudes toward their basic training are generally positive, though some respondents see room for improvement. Four in five said that their instructors had behaved well and were supportive of them, and a large majority noted that their training had been conducted based on the fixed curriculum and in an interactive, rather than lecture, style. One in five, however, was not satisfied with the training and believes that the curriculum should be updated and devotes more time to topics such as investigation procedures and laws and legal codes.

Although three-quarters of NP respondents received their training materials, the remainder said that materials were either inadequate or they did not receive all educational, uniform, and training materials. About one in seven respondents had to buy additional food during their training period, and three in seven were given insufficient logistic materials after the training period. Food rations beyond the training period were deemed insufficient in both quantity and quality by more than half of NP respondents, and one in ten said they do not receive even the minimum requirement of rations.

Nepotism, favoritism, and corruption—especially in the transfer and promotions process—have been witnessed by three-fifths of NP personnel surveyed. Nearly one-third believe that they personally have been denied professional

opportunities because they did not pay bribes or lacked family or friend connections.

The procedures for issuing orders within the NP and the chain of command within the NP are seen as effective by almost three-quarters of NP respondents. A smaller proportion—less than two-thirds—regard the mechanism by which the government issues orders to the NP as effective, an opinion shared by only one-half of government respondents. Lack of accountability, political interference, and corruption are the most frequently cited factors contributing to an ineffective chain of command.

1.2.8 The Negative Impact of Politics and Political Pressure

Political parties and affiliated groups such as student and youth wings were seen by respondents as chiefly responsible for the five leading threats to security: bandhs, chakkajams, corruption, vigilantism, and political pressuring and threats. Furthermore, political parties were seen as second only to criminals in bearing responsibility for other illegal activities, such as theft and robberies, murder, trafficking of women and children, vigilantism, and smuggling of weapons.

When public respondents who believe that the NP cannot provide satisfactory security were asked why the NP cannot do so, the most common answer was “political pressure.” Similarly, when public respondents were asked what negatively impacts the work of the NP, three of the top five responses were political interference in the transfer, promotion, and recruitment processes within the NP; political interference in enforcing the law equally; and political pressure.

Victims and witnesses to a crime who had reported it to the NP cited political pressure and political interference among the top three explanations as to why the NP did not do a better job in addressing the crime. More than half of those surveyed who belong to the legal profession and the judiciary stated that political connections play some role in an individual's ability to access legal counsel and to receive a fair trial.

1.2.9 Widespread Support for an Independent NP

Substantial majorities of public respondents believe that the NP should act only on the basis of laws and evidence, not on the basis of political directives. More than four-fifths of each of the six targeted professions believes that the NP should be an independent state institution. Independence is seen as the best way to combat all-too prevalent political interference (two-thirds of NP respondents reported witnessing political interference). NP respondents want strict repercussions for those who interfere in investigations or obstruct police duties. However, more than two-fifths of NP respondents believe that political interference will not end until the NP takes an ethical stand against it.

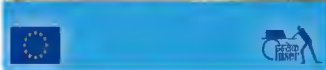
Livelihood at Risk

Findings from Mid-western Nepal

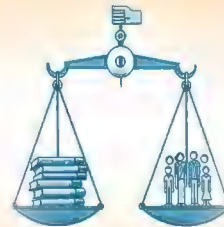


Land Holding Pattern

in Mid-western Nepal



नेपाल सुरक्षासम्बन्धी कानुनी प्रावधान



संस्कृतिकार्य र समुदाय विकास विभाग
अर्थशास्त्रिक क्षेत्र सेवा केन्द्र (इन्सेक)

अन्तराष्ट्रिय फौजदारी अदालतको रोम विधान

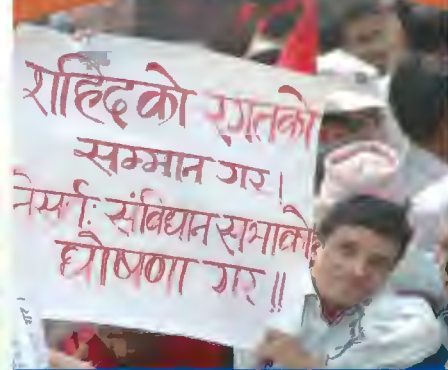


Some Publications of INSEC

मध्यपश्चिममा इन्सेकको डेट दशक



संविधानसभा राज्य पुनःसंरचनाको प्रवेशद्वार



मानवअधिकार : ठूला ६ महासन्धि



मध्यमाञ्चल जनआन्दोलन र मानवअधिकार



Jana Andolan-II A Witness Account



Edited by Kundan Aryal • Upendra Kumar Poudel

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Informal Sector Service Centre (INSEC)

POBox: 2726, Kathmandu, Nepal, Tel: +977-1-4278770

Fax: +977-1-4270551 email: insec@insec.org.np

Website: www.insec.org.np, www.inseconline.org