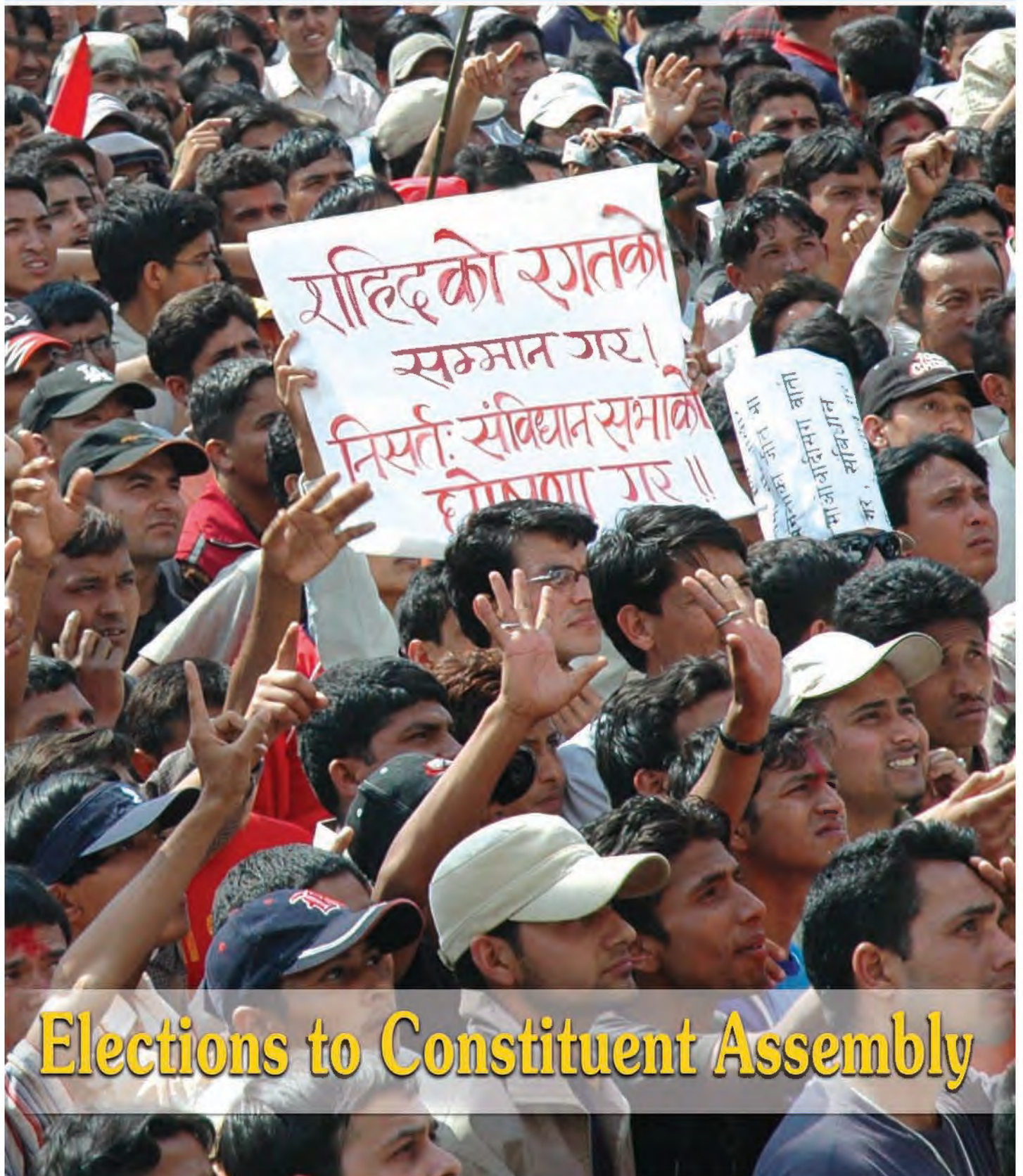


INFORMAL

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Elections to Constituent Assembly

INSEC's Quarterly Publication on Human Rights & Social Justice



INFORMAL

South Asian Human Rights Solidarity

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Formal-Informal

All the major problems should be overcome for free and fair elections to CA that is going to be held later this year.

Jimmy Carter

Former US President, June 14, 2007

Talking to Journalists at Election Commission in Kathmandu



Our main responsibility at this time is to hold CA election within December so as to institutionalize the achievements of *Janandolan-II*. The government is committed to accomplish this responsibility.

Girija Prasad Koirala

Prime Minister, June 24, 2007

Addressing the Meeting of National Development Council in Kathmandu



Our party would walk out of the interim government and launch peaceful agitation if election could not be held even in November and December. We would come out of the government and launch serious movement.

Pushpa Kamal Dahal

Chairman, CPN (Maoist), June 24, 2007

In an interview to CNN-IBN Television Channel of India



Maintaining peace and security is the main challenge for CA elections. The government should take immediate initiative to create a favorable atmosphere and ensure security for contesting candidates, voters and polling officers.

Bhojraj Pokhrel

Chief Election Commissioner, June 25, 2007

In a Press Meet at his Office



Creating the free and fair atmosphere for the CA election will require the commitment and hard work of the Government, political parties, civil society and social movements.

Ian Martin

Special Representative of the UN Secretary-General in Nepal

In an interview to Informal, June 8, 2007



Keep Eyes Open to the Challenges

We need constituent assembly election to be strengthened as the sovereign people. We the Nepali are in the process to be sovereign people for ever. We are in a struggle to constitutionalism in the country, so that no one could be the supreme and above the constitution in future. But the question is how it would be possible in an environment where people are in fear.

It is easy to say let people decide their destiny, whereas very difficult to express the will in an environment where rule of law is missing. Though, date to the constituent assembly elections is declared, people, especially out of the valley, are in extreme fear. If the situation remains same, would they be able to vote with their choice?

People who were displaced from their place during the violent conflict are still unable to return home. Maoist's commitment to allow them to back home has not been implemented properly. Right from twelve point agreement of 22 November 2005, they have been expressing their commitment repeatedly. People were in hope that after the Comprehensive Peace Agreement of 21 November 2006, they will be able to return their home without any obstacle. Sadly, the situation does not seem easier as expected.

We strongly believe that preparation of the election of constituent assembly and the process of transitional justice should go hand in hand to achieve the goal. Our goal to make people sovereign will be achieved only in such a situation where people get justice and freedom from fear.

On one hand there are victims of a decade-long violent conflict. On the other, there are people who had been excluded systematically by the state for the last 238 years. People have been expressing their discontents over the existing political structure in several parts of the country. We have been witnessing conflicts even after resolving one that was induced by the Maoists.

Decade-long conflict victims are asking for justice. The eight political parties, who are running the country after April 2006 upraise, are committed to come up with rule of law tools. The interim constitution has provision for truth commission and the commission on disappearance. However, the words have not been translated in deed. The eight party government, after more than one year, still unable to form National Human Rights Commission. A commission on disappearance recently formed by the government has caught under a huge debate because of its blurred mandate.

In nutshell, there are many things to do to create confidence among the people in order to provide them an environment where they can vote in a free and fair manner. In this regard, the eight political parties have failed in different aspects. They could not prosecute the violators of human rights and humanitarian laws. King and his fellows who used excessive force during the pro-democracy movement, in fact, got blanket amnesty. They are, even after their commitment, unable to create the mechanism to provide justice for the conflict victims. The efforts of rehabilitation and restructuring are not seen in an expected way and pace. On top of that, the eight party alliance belatedly addressed the grievances of Madhes and they are still unable to control the situation over there.

We have to make the elections to constituent assembly a grand success. But we can not ignore the challenges on the way to achieve that national goal.

From History

Prakash- People's Journalist

Subodh Raj Pyakurel

Prakash Khaphley's contribution to promote journalism in the tone of people is immemorial. Whether publishing 'Saptahik Khabar' from Hetauda or assisting for 'Samaj Daily', Prakash attempted to think and understand the people's agenda in their own tone, seeking answers to them.

The journalists of the decade 2030s of Bikram Era (1975-1985 AD) should have the memory that Prakash has contributed a lot to translate the interviews into journalism. He visited Delhi and called on 'Janta Dal' leader Atal Bihari Bajpeyi, the then foreign minister of India. He raised the Nepalese people's question, 'Does India think of itself that it is the elder brother of Nepal?'

Prakash and Sushil, with

untiring effort, identified the discrimination made upon the import-goods of Nepal in the customs and go down in Calcutta port. The report was serially published in the 'Samaj Daily'. Prakash had taken interviews with the then renowned personalities – Gobinda Biyogi, Gopal Das Shrestha, Narayan Gopal and Bhupi Sherchan in around 70s. I was surprised by his way of noting down the interviews and investigating reports of which the publication would be always unsure.

I am happy to know that the award selection committee has recommended Mr. Narayan Prasad Sharma for conferring Prakash Human Rights Award, coming up to the ninth series. Struggling continually with innumerable difficulties and complexities remaining at the outskirts of the capital for journalism is not an easy task. Mr. Sharma is really a fighter. One cannot spend the whole life as a journalist without

instinct to naturalise any kind of crisis. Unlike the national level newspapers, which priorities the event and the personalities, the local newspapers prioritize the effects and the spirit of the people. The importance of the local newspapers, in this sense, never decreases.

The nation is in crisis nowadays. Due to the crisis of the personalities in the government, political parties and the Maoists to put forth their agenda in a crystal clear way, the situation is being further deteriorated. In such a situation, Prakash would perhaps ask the agenda of solution in a very simple, rough but loving tone. On behalf of all the human rights activists, I wish Narayan Sharma would raise the voice of the people as a watchdog journalist. He is the witness of the People's 'War and Suppression', remaining out of Kathmandu Valley. I extend congratulations to him.

Informal, Vol. 16, No. 3, July

Letter to Editor

Dear Editor

I got an opportunity to go through the previous issue of *Informal*. I found the *editorial*, focused on sharing a common ground with the perspective of those who are striving for the proportionally represented New Nepal. It further hoped for a violence free and encouraging environment for the Constituent Assembly.

'Issue of Inclusiveness and Madhes Movement' gives strong



ideas about the *Madhes* appraisal. It visualizes in a reader's mind—the reasons, complexities, and governments suppress to the protests and solutions of the *Madhes* movement. The article reminds a reader that structural causes of any kind of conflict within the society must be addressed properly. 'Towards a New Nepal: Experience with Federalism from Africa' explains the nightmares of Sudan and Nigeria. These nations are completely divided on the basis of people's ethnicity. The

writer compares Nepal with Sudan and Nigeria, as they are all developing countries and also the fact that transportation of hydropower and oil can be similar. He further describes by his remarkable examples that when federal states are created on the basis of ethnicity only, a nation becomes vulnerable to division because the minorities within the federal states can still be oppressed.

'Nepal: Women's Suffrage or Women's Suffer Age', I thought to be a ground reality on the condition of women in Nepal. Any person having his/her faith in democracy must advocate for women's role in the making of new Nepal. However, some points- women would be more concerned about the marginalized groups than men and they were only women who didn't give up hopes for the peaceful future of Nepal; I suppose there are ultra feminist views. 'Human Rights in the context of abolition of Death Penalty in Nepal', I think to be an interesting article, illustrates the prevalence of the capital punishment in Nepal. The government of Nepal in the past had many ways of justifying and condemn-

ing the killings of ordinary people. However, it is well known that security forces, in many cases, should no mercy to the people, resulting in their death.

'Information society Vs Fear Society' is basically concerned to freedom of expression. It delineates the harsh situation of journalism in Nepal in the post February 1 era. 'Where the mind is without fear and the head is held high- knowledge is free there' great poet Rabindranath Tagore's views support the writer as the existence of fear takes away the right to information. 'Impact of Ongoing Conflict on Minorities in Nepal' states the effects and implications of the people's war on minorities in Nepal. It is an informative article giving some specific statistics.

Overall, the articles in the magazine contribute to their primary cause- making of a new Nepal. We, the readers give our best wishes for your pure hearted cause. I feel fortunate for writing for Informal, after all this is also freedom of expression.

Shreya Poudel, 'A' Level Student
Chelsea Int'l Academy
Baneshwor, Kathmandu

Dear Editor

I am glad to have an opportunity to read *Informal*, April/June edition via online. After reading the articles, I was asking myself about the democracy, democratic country, democratic people, violations and human rights. I have got some answers from the data and articles you published in the magazine. I know, INSEC is one of the sources to educate the people about human rights, and I totally agree with the views of *Laxman Datt Pant* in his article *Media in Conflict Resolution and Peace Building*. Journalists and media should do their best to educate the people on human rights issues and can even find out the ways to settle conflict. I really appreciate INSEC for its work in Nepal. I wish all the best for your teamwork. I hope INSEC will continue its work even better.

Krish Ghimire
Itahari-2, Sunsari
Now in Charlotte, NC, USA

Dear Readers

How did you find this issue of

Informal ?

What do you prefer to read in our publication related to

Human Rights Issues ?

Please do write us.

Comments and suggestions are always appreciated.

- Editor



Kundan Aryal

All Plans to Make a Date Historical One

Taking the lesson from the history, now we the human rights defenders should be in frontline to pave way for the success of the elections to constituent assembly.

November 22, 2007. The date will certainly be a historical one. The elections to constituent assembly is not only a process to build a new constitution in the country. It will yield the new constitution with the people's ownership and pave the way for restructuring the state. Moreover, it will take the nation to the completion of the ongoing peace process that was started with twelve point agreement between the Seven Political Parties and CPN (Maoist). It will defeat the ill motives of authoritarianism for ever.

With the dawn of democracy in 1951, voices to build a new constitution through the constituent assembly was surfaced on the political ground. Then, for about a decade the slogan to form the assembly gained currency. After dissolution of democratic system in 1960, major political parties such as Nepal Communist Party and Nepali Congress were involved in fighting to restore democracy. They fought for thirty years to restore the multi-party system.

But when they achieved democracy in 1990, they took satisfaction with a constitution drafted by a commission appointed by the King on the recommendation of the coalition interim government. As the constitution of the kingdom of Nepal 1990 was framed by a commission comprised of the representatives of Nepali Congress, Communist Parties and the King, the quest of constituent assembly was ignored. Subsequently, the new constitution did not get overwhelming support; even a major political

party and one of its framers paid critical support. Then, within one and half decade the constitution of the Kingdom of Nepal 1990 lost its relevancy. It was declared dead by the camps of extreme left and extreme right political forces.

In course of political development, amid CPN (Maoist) led arm struggle, issue of constituent assembly emerged as a peaceful way out of the violent conflict. Initially, Congress and UML decline to listen the Maoist's demand to draft a new constitution by the election of constituent assembly. However, after the emergence of authoritarianism of King Gyanendra Congress and UML gradually started to buy the agenda of constituent assembly.

In the aftermath of the King's total control over the state power in 2005, the agenda of constituent assembly strongly appeared as a way out for the peaceful transformation of the CPN (Maoist). By the time, it was established public opinion that Nepali people should have an opportunity to be the author of the constitution. Now, it is agreed by the political players of all sectors that the election of constituent assembly will decide the fate of the monarchy in the country. It will close the chapter of political instability and establish the people's sovereignty in real sense.

The elections to constituent assembly is going to establish people's supremacy in the state for ever. But it has been the matter of worry for the status quos. It is a general speculation that such elements are hatching conspiracy against the

environment that allows people to take part fearlessly in the election. Due to that suspicion a conspiracy theory is being surfacing over the political ground. Such conspiracy theory states that the elements of regression have been operating under current. It might be true. But it is, certainly, not a serious threat to Nepali people. Such element can be traced back to the 1950s and aftermath that restrained the constituent assembly election in the past. But the lessons from the history can save us in future. We have learned a lot from the history to overcome such conspiracy.

Taking the lesson from the history, now we the human rights defenders should be in frontline to pave way for the success of the elections to constituent assembly. As we foresee the success of the constituent assembly election as the threshold of new Nepal, we should have to create the wave of awareness among the people to make them master of this country.

The success of the elections to constituent assembly lies on the credibility of the same. The election will be credible only in that situation where people could vote in free, fair and fearless environment. To create free and fair environment people should come forward to assert their rights. Regarding, especially, the historical constituent assembly election we should be careful on the right to vote and should take it as the duty to the nation too. So now, we should tailor all the plans to make the "November 22" a grand success. ●

Prerequisites of Constituent Assembly Elections: Human Rights Perspectives



»Surya Prasad Dhungel«

1. Background

One very important thing that we must not forget while talking about the Constituent Assembly election is the specific nature of the institution for which the Nepali citizens are going to cast their votes for the first time in the history of Nepal. Neither is the election taking place for a 'parliament', nor it is for local government bodies. The forthcoming election is not for holding a national referendum to decide on any specific national issues either. The forthcoming election is exclusively for constituting a representative body, called Constituent Assembly, which will be entrusted with the task of framing and promulgating a new Constitution for Nepal. Hence, despite many similarities, the prerequisites for the CA election would be different from other common elections.

2. Constituent Assembly and Constitution Making

The constituent Assembly is normally a representative body, and, mainly, it is tasked to formulate a

new constitution for the country concerned. Whenever, a country is ready for a 'fresh start' as a result of independence from a colonial clutch or due to internal political upheaval, a Constituent Assembly is created for enabling people to exercise their sovereignty through elected representatives. In Nepal, the political forces of the country represented by eight political parties agreed to forge an alliance against the ruling autocratic monarch in November 2005 with the CA as a common agenda for working together to frame a democratic constitution authored by the people themselves in exercise of their sovereign authority. This was in fact a great leap forward towards restoration of peace and democracy.

The Nepalese people's aspiration to pave the path for determining their destiny on their own and to break them from the past autocratic subjugation has been eloquently stated in the Interim Constitution (IC) of 2063 BS. Preceded by it was the common understanding reached agreement amongst the leading political forces of the day through a series of that culminate in the

.....
The forthcoming election is exclusively for constituting a representative body, called Constituent Assembly, which will be entrusted with the task of framing and promulgating a new Constitution for Nepal.
.....

Comprehensive Peace Accord. Despite numerous irreparable conceptual and technical flaws apparent in the Interim Constitution (IC) undermining the principles of constitutionalism and the role of law, there are elements of legitimacy that make the IC acceptable to the people and the international community as well.

The guarantee of people's authorship of the new constitution and exercise of their sovereignty through the Constituent Assembly ensured by the preamble and chapter 7 of the IC is the main source of legitimacy. In spite of the eight party supremacy, rather than constitutional supremacy as stated in article 1 of the Interim Constitution restoration of peace and democracy through inclusive electoral process,

as promised by the IC through articles 33 and 63, is the ultimate hope that IC symbolizes. Above all, the explicit commitment of the IC to recognize, respect and fulfill international human rights standards by enumerating additional rights and alleviating the status of the National Human Rights Commission in the Interim Constitution (preamble, Chapters 3 and 17) further addresses the issue of legitimacy. Politically speaking, however, the mandate and spirit of *Janaandolan-II* may be said to grant the eventual legitimacy through the procedures followed to promulgate the IC.

The Constituent Assembly has two aspects: conceptual and procedural. As stated earlier, the CA conceptually reflects the

authorship of a constitution. Never before in Nepal had people directly exercised their sovereign authority to write and promulgate Constitution. Either it was the Rana Prime Minister, as was done in 1948 or the subsequent monarchs since 1951 who in reality exercised legal sovereignty to promulgate each of the Nepalese written constitutional documents. Procedurally, CA is simply a legitimate device to formulate and promulgate a constitution for the nation which has opted to go for a 'fresh start', after sudden break with the past. The procedural aspect has a strong impetus that ensures 'inclusively' and "people's ownership" through the CA process.

The CA is therefore a representative body that enables people to write and promulgate a constitution through their extensive participation and intensive deliberation on issues of their concern.

The participation of the people in the constitution making is secured through various means. Since the CA is a body where very limited numbers of people's representatives are sent through a free, fair and genuine electoral process, many people and interest groups may not be able to get directly involved in the constitution making exercises. In order to ensure full participation of the people in the constitution making, the state has to create additional devices to complement the role of the CA. This is where the role of the civil society and other actors, both governmental and non-governmental, comes into picture.

In view of the complexity of the constitution making process, which is normally divided into three phases (preparatory, drafting and promulgation, and implemen-

International Covenant on Civil and Political Rights, 1966

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Universal Declaration of Human Rights, 1948

Article 21

- 1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- 2. Everyone has the right to equal access to public service in his country.
- 3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

tation phases), the state must innovate ways to engage the people from all walks of life in the all three phases. Otherwise the issue of people's ownership may dilute the question of legitimacy. This will eventually make a constitution weak and defenseless, as we have seen the fate of our past constitutions.

3. Prerequisites of CA Election

The success and failure of any constitutions mainly depend on the 'ownership' of the constitution making process. Although many constitutions of the world are not drafted and promulgated by any representative Constituent Assemblies, their continuity and sustainability have, nevertheless, their sources in the institutional devices and historical events have played a crucial role in ensuring the engagement of the people in the implementation process as well as a securing people's right to cement the participatory constitutionalism. Expansion of constitutional principles and space through induction of international human rights standards during the implementation of constitutions has enabled many democratic countries, such as UK and Nordic countries, to compensate the absence of CA while drafting their constitutions. But the problems of developing democracies are different. Norms of human rights have received a welcoming profile the electoral systems and process in young democracies for enhancing participatory devices and ensuring fairness of the whole electoral process.

But confusion still prevails in Nepal as to whether the forthcoming election announced to be held on 22 November 2007 is for the Constituent Assembly or for the Parliament. This is where the role

and approaches of the eight-party alliance raise many questions with regard to their commitment to free, fair and fearless electoral process. Political party leaders appear to forget that people's ownership to the constitution making is directly linked to the nature composition and model of the CA and how much participatory the whole CA process has been. Inclusiveness of the CA is determined by the electoral system opted for CA, and it has to be certainly different from parliamentary elections.

4. Conclusion

Knowingly or unknowingly, political leaders have already committed several blunders in eroding democratic and constitutional values while placing the IC subject to 'eight-party decisions' against the principles of constitutional supremacy and the rule of law. They chose a wrong model of the CA, both in terms of its large size as well as its dual role to function like a parliamentary government with power to draft a new constitution. Failure to recognize and separate the dichotomy between a 'parliament' and 'Constituent Assembly' is bound to create many problems. The question therefore is: will the political forces and other stakeholders be able to overcome the constitutional deficiencies through proper identification of problems, and recognition and observation of standard prerequisites acceptable to all during the forthcoming CA election?

(LL.M., PHD. Dr. Dhungel is a Constitutional Lawyer, and formerly a law professor, with experiences of working with international organizations in post-conflict countries. Currently, he is associated with constitutional Advisory Support Unit of UNDP Nepal. Views expressed in the article are, however, his personal.)

.....
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»Dr. Vinodh Jaichand«

Constitutionalism of ESC Rights with Special Reference to the Experience of South Africa

1. Introduction

In apartheid South Africa there were such inequities between the one group and all others that it was believed that only a long, protracted and bloody struggle would ensue before the emergence of fairness and equality for all. Thankfully that did not result as a negotiated transition took place. The Interim Constitution¹ Described itself as "a historic bridge between the past of a deeply divided society"² and a new transformative society. The Constitution of 1996 in the preamble categorically signaled that "there is a need to create a new order". Appropriately the first article of the Bill of Rights in

1996 "affirms the democratic values of human dignity, equality and freedom."

This article attempts to outline the main constitutional provisions that allow the South African Courts to play the role of arbiter in socio-economic cases, to trace the path taken by the South African Courts through the decided cases to carve out a niche in this area of jurisprudence and to examine the role of the South African Human Rights Commission in monitoring both the need for and delivery of economic and social rights. The article also offers some brief concluding comments on future opportunities for Nepal.

2. The Salient Constitutional Provisions

The protection of economic, social and cultural rights in South Africa is constitutionally entrenched and, in keeping with the Vienna Declaration and Programme of Action³, all human rights are indeed indivisible, interdependent and interrelated. Since 1993 South Africa became a constitutional state⁴ and the issue of bifurcation of rights into civil and political and economic, social and cultural ceased to exist because the Bill of Rights protected all rights.

Indeed, the Bill of Rights expressly provides that the state must respect, protect, promote and fulfill the rights⁵ enshrined in the

1. Constitution of the Republic of South Africa, Act Number 200 of 1993

2. Sometimes referred to as the "postamble" which came after the last section (section 251) of the Interim Constitution, note 2.

3. World Conference on Human Rights: Vienna Declaration and Programme of Action, UN doc. A/Conf. 157/23, Part I, paragraph 5.

4. The Interim Constitution of 1994 first made provision for this under Chapter 3, Fundamental Rights, which would "apply to all law in force and all administrative decisions taken and acts performed during the period of operation of this Constitution". Section 2 of the Constitution of the Republic of South Africa, Act 108 of 1996 (hereafter referred to as the 1996 Constitution) states that the ".... Constitution is the supreme law of the Republic: law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

5. Section 7-2_ of the 1996 Constitution..

Constitution and includes the rights to: work⁶, a healthy environment⁷, property⁸, housing⁹, health care, food, water and social security¹⁰, education¹¹, language and culture¹² and religion¹³.

The approach of the Constitutional Court to these rights can be classified into three main categories: The first would be 'basic' rights unqualified by references to resource constraints or notions of progressive realization and would include children's socio-economic rights, the right to basic education and the rights of the detained and prisoners' socio-economic rights. The second category includes 'access rights' or the right of everyone to have access to adequate housing, health care, food, water and social security. The duty

of the state is limited to taking "reasonable legislative and other measures within its available resources, to achieve the progressive realization of each of these rights."¹⁴ The third category imposes a prohibition on the state with regard to the right to shelter in that no eviction may be made without an order of court and the right not to be refused emergency health care.¹⁵ These rights may, however, be limited through a law of general application where the limitation can be construed as reasonable and justifiable in an open and democratic society taking into account all relevant factors.¹⁶ Before I proceed to examine the Constitutional Court's approach through the case law, a glance at two more provisions from the constitution is necessary. The

first is the requirement of standing. Persons who may approach the court include the affected individual, an individual acting on behalf of another, a member in the interest of a class of persons, any one acting in the public interest or association acting on behalf of its own members.¹⁷ The International Covenant on Economic, Social and Cultural Rights has been signed but South Africa is not yet one of the 154 state parties.¹⁸ The constitution however protects the full range of economic, social and cultural rights contained in that International Covenant and it provides direction on interpretation. The constitution also states that the courts must consider international law and may consider foreign law in interpreting the Bill of Rights.¹⁹

6. Sections 22 and 23

7. Section 24

8. Section 25

9. Section 26

10. Section 27

11. Section 29

12. Section 30

13. Section 31

14. As in section 27 (2)

15. Liebenberg, S, The protection of Economic, Social and Cultural rights in Domestic Legal Systems, in Eide, A, Krause et al, Economic, Social and Cultural Rights, 2nd edition, 55-88 at 61-2

16. Section 36 provides:

- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including-
 - (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.

- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

17. Section 38 states: "Anyone listed in this section has the right to approach a competent court, alleging that a right has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are-

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest, and
- (e) an association acting in the interest of its members.

18. According to Heyns, C and Viljoen, F, The Impact of the United Nations Human Rights Treaties on the Domestic Level, Human Rights Quarterly 23.3 (2001)483-535 at 495, this is "due to bureaucratic bungling, caused by the responsibility for the ratification being transferred from one department to another." As of December 2005, this has not been corrected through ratification.

19. Section 39 (1) (b) and (c)

.....
*As the highest court in the
land, it reiterated that it
had the power to adjudi-
cate on socio-economic
rights because the
Constitution gave them
that power. It also said
that, within the debate
around the separation of
powers, it was entitled to
examine this issue even if
it had a financial
implication.*
.....

3. On Justiciability

The jurisprudence of the South African Constitutional Court with regard to social and economic rights has been set out initially in the triad of "reasonableness review"²⁰ cases of *Soobramoney v Minister of Health, KwaZulu-Natal*, 1998 (1) SA 765 (CC), *Government of the Republic of South Africa v Grootboom*, 2001 SA 46 and *Minister of Health v Treatment Action Campaign* 2002 (5) SA 721 (CC). The central issue that appears to preoccupy the Constitutional Court in these types of cases is whether the policy chosen by the organs of state can reasonably be expected to deliver the rights in question.

From a cautious start, with some deference to the executive and legislature, in *Soobramoney* the Constitutional Court became quickly aware of the framework of its inquiry into the reasonableness of state policy. As a result of limited funds being available for dialysis treatment, which the Constitutional Court found did not fall within the ambit of the "right to emergency treatment", it denied Mr *Soobramoney* the right to that treatment. It said: A court will be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibilities it is to deal with such matters.²¹

In the *Grootboom* case, Mrs *Grootboom*, her children and number of similarly affected neighbors, moved from their home which had flooded during the winter rains

onto land earmarked for locust housing. They were evicted from this land when the matter went before the High Court who found in their favor. The state appealed to the Constitutional Court who explained the ambit of its inquiry within the standard of reasonableness of the state policy in the context of the separation of powers doctrine.²²

The precise contours and content of the measures to be adopted are primarily a matter for the legislature and the executive. They must, however, ensure that the measures they adopt are reasonable. A Court considering reasonableness will not enquire whether other more desirable or favorable measures could have been adopted, or whether public money could have been better spent. The question would be whether the measures that have been adopted are reasonable. It is necessary to recognize that a wide range of possible measures could be adopted by the state to meet its obligations. Many of these would meet the requirement of reasonableness. Once it is shown that the measures do so, this requirement is met.

As the highest court in the land, it reiterated²³ that it had the power to adjudicate on socio-economic rights because the Constitution gave them that power. It also said that, within the debate around the separation of powers, it was entitled to examine this issue even if it had a financial implication.²⁴ It repeated that if it ordered

20. Liebenberg, S, Needs, Rights and Transformation: Adjusting Social Rights, 18

21. See note 20, at paragraph 29

22. See note 20, at paragraph 41

23. *Soobramoney v minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC); 1997 (12) BCLR 1969 (CC) and *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC); 2000 (11) BCLR 1169 (CC)

24. Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa 1996 (4) Sa 744 (C).

legal aid to an accused individual, as a civil right, that too would have a financial implication. That would appear to be an adequate answer to those who maintain that the enforcement of civil and political rights, as a negative duty on the state, do not have high cost implications. One commentator sees the political dimension of this debate clearly as privileging negative liberty and the existing economic status quo.²⁵ Justice Yacoob stated that reasonableness can be evaluated at the level of legislative programming and its implementation:

Legislative measures by themselves are not likely to constitute constitutional compliance. Mere legislation is not enough. The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive. The programme must also be reasonably implemented. An otherwise

reasonable programme that is not implemented reasonably will not constitute compliance with the state's obligations.²⁶

Justice Yacoob also explained the meaning of reasonableness by linking it to the three democratic values of human dignity, equality and freedom²⁷ in the South African constitution:

"Reasonableness must also be understood in the context of the Bill of Rights as a whole. The right of access of adequate housing is entrenched because we value human beings and want to ensure that they are afforded their basic needs. A society must seek to ensure that the bare necessities of life are provided to all if it is to be a society based on human dignity, freedom and equality. To be reasonable, measures cannot leave out of account the degree and extent of the denial of the right they endeavor to realize. Those, whose needs are the most urgent and whose ability to enjoy all rights therefore is

most in peril, must not be ignored by the measures aimed at achieving realization of the right. It may not be sufficient to meet the test of reasonableness to show that the measures are capable of achieving a statistical advance in the realization of the rights. Furthermore, the Constitution requires that everyone must be treated with care and concern. If the measures, though statistically successful, fail to respond to the needs of those most desperate, they may not pass the test.²⁸"

The usual thinking on social policy matters is that they are solely legislative and executive functions²⁹ and the courts have a limited or no role to play there.³⁰ In the Treatment Action Campaign case, the Constitutional Court said that:

"... Although there are no bright lines that separate the roles of the legislature, the executive and the courts from one another, there are certain matters that are pre-eminently within the domain of one or other arms of government and not

25. Liebenberg, S, Needs, Rights and Transformation: Adjudicating Social Rights, Centre for Human Rights and Global Justice Working Paper Economic and Social Rights Series Number 8, 2005, 13

26. See note 14, at paragraph 42.

27. Section 7 (1) of the 1996 Constitution

28. See note 14, at paragraph 44

29. See Kevin Hopkins, "Shattering the divide-when judges go too far" <<http://www.derebusorg.za/archives/2002mar/articles/dicidede.htm>>; Mureinik, E, Beyond a Charter of Luxuries: Economic Rights in the Constitution, (1992) 8 South African Journal of Human Rights; Davis, D, The Case Against the Inclusion of Socio-Economic Demands in a Bill of Rights Except as Directive principles (1992) 8 South African Journal of Human Rights; Liebenberg, S, Social and Economic Rights: A Critical Challenge in Liebenberg (ed) The Constitution of South Africa from a Gender perspective, David Philip Publishers, Cape Town 1995; Scott, C and Macklem, P, Constitutional Ropes of Sand or Justiciable Guarantee? Social Rights in a New South African Constitution, (1992) 141 University of Pennsylvania Law Review; Jaichand, V, The promise in the Right to Vote, (1993) 25 Comparative and International Law Journal of Wouthern African.

30. In a speech by the Minister for Justice, Equality and Law Reform, Mr Michael Mc Dowell on 5 April 2003 at St Patrick's College, Drumcondra, the Minister raised this issue also when he stated: "It seems to me that it is a fundamental error to imagine that the area of resolution of value differences in a modern liberal society can be consigned to the courtroom. On the contrary, differences within societies concerning economic and social values and ends should, in the normal course of things, be resolved by the democratic political process. An every increasing tendency to state all value differences as conflicts of rights carries with it the potential to diminish and belittle the democratic and political debate in our society Such an approach also carries with it the danger that the Judiciary will become ever more politicised in carrying out their functions. If the judiciary arrogate to themselves, or have arrogated to them, the resolution of social and economic issues, then the democratic process is usurped, as is the legislature and the executive. One must also consider the fact that they are not examined as to the content of their social and economic opinions when appointed, judges who then trespass on the proper sphere of the legislature or the executive do so without a mandate. It is a trespass on the entitlement of the people, in the last analysis, to determine social and economic issues in accordance with their view of the common good as expressed through the ballot box."

others. All arms of government should be sensitive to and respect this separation. This does not mean, however, that courts cannot or should not make orders that have an impact on policy."

So the issues before the Constitutional Court were not about whether economic and social rights are justifiable or not, but how they can be enforced. In the Treatment Action Campaign case the government's policy of failing to provide Nevirapine, an anti-retroviral drug used in reducing mother to child transmission of HIV/Aids at all state health facilities, was under scrutiny under the rights of children to medical care. In an application before the Pretoria High Court on 14 December 2001 Judge Chris Botha found that the government had a duty to provide Nevirapine to pregnant women who were HIV positive. The government appealed against this decision. The Constitutional Court found in favour of Treatment Action Campaign when it held that the government's programme to prevent mother to child transmission was unreasonable.

The Constitutional Court, in this case, was mindful of its role in adjudicating upon socio-economic rights in the context of the separation of powers doctrine when it said:

"Courts are ill-suited to adju-

dicate upon issues where court orders could have multiple social and economic consequences for the community. The Constitution contemplates rather a restrained and focused role of the court, namely, to require the state to take measures to meet its constitutional obligations and to subject the reasonableness of these measures to evaluation. Such determination of reasonableness may in fact have budgetary implications, but are not in themselves directed at rearranging budgets. In this way the judicial, legislative and executive functions achieve appropriate balance.³¹

In *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development*³² the applicants who were permanent residents in South Africa from Mozambique brought the application on behalf of their children, other affected persons, the class of permanent residents and in the public interest. They challenged sections of the Social Assistance Act 59 of 1992 which disqualify persons who are not South African citizens from receiving welfare grants. Justice Mogoro, for the Majority of the Court, held that the exclusion of permanent residents was not a reasonable way to achieve the right to social security. The state had to find a less drastic method of reducing the risk of permanent residents on becoming a burden on the state than mere exclusion. In the applica-

tion of limitations clause, Justice Mogoro was of the view that the impact of the exclusion from the welfare benefit on the life and dignity of the permanent residents outweighed the financial and immigration concerns of the state.³³

The prohibition on the state with regard to the right to shelter, in that no eviction may be made without an order of court, resonates with the anachronistic forced removals of the apartheid era.

In *Port Elizabeth Municipality v Various Occupiers*³⁴ a number of persons who were unlawfully occupying private land were evicted by the municipality. After they successfully challenged their eviction the municipality appealed to the Constitutional Court. In a unanimous judgment by Justice Sachs the Court held that for it to be persuaded that it was "just and equitable" to evict people from their homes, the state would have to show that serious consideration was given to the possibility of providing alternative accommodation to the occupiers³⁵. Municipalities must show equal accountability to occupiers and land owners. The application for leave to appeal was refused with costs.

In yet another eviction case, *President of the Republic of South Africa v Modderklip Boerdery (Pty) Ltd*³⁶ a private landowners

31. 2002 (5) SA 721 at paragraph 38; 2002 (10) BCLR 1033 (CC). This argument is not antithetical to the views of Minister Mc Dowell (see footnote 23 for citation) who values the separation of powers as "the cornerstone of our society. Our form of Government does not relegate distributive issues of social and economic justice by making them the exclusive care of the Parliament and Government. Parliamentary democracy is by far the best agency to make value judgments on such issues. And parliament is best suited by far to decide on resourcing and vindicating entitlements in the social and economic sphere." At best the Irish separation of powers model is but one, which excludes government accountability through the courts, and the South African another which is inclusive. The judiciary is one but branch of that power (the others being the legislature and the executive) whose duty is to mediate disputes between all parties, including the state and the individual.

32. 2004 (6) BCLR 569 (CC)

33. paragraph 82

34. 2004 (12) BCLR 1268 (CC)

35. paragraph 29

36. 2005 (8) BCLR 786 (CC)

was unable to execute an eviction order granted against 40,000 occupiers on his land. When he approached the sheriff's office he was asked to deposit R1.8 million, more than the value of the land, to engage a private security company. unable to execute the order, he approached the High Court where he was successful. The state appealed against this decision. The Court, under Acting Chief Justice (as he was then) Langa, unanimously held that the state had failed to take reasonable steps to assist the property owner. The Court found that in these circumstances it is unreasonable of the state to stand by and do nothing. It found this to be a violation of the principle of the rule of law as well as the right of access to the courts. The Court held that the State compensate the landowner for the unlawful occupation of his property. In addition, the occupiers were to continue living there until alternative accommodation was found by the state.

In *Jaftha v Schoeman and Others; Van Rooyen v Stoltz and Others*³⁷ the appellants were unemployed, from a poor community and threatened with losing their homes as a result of failure to pay certain debts. They acquired those homes through state subsidies. After losing in the High Court, which stated that the right to adequate housing did not include the right to own one's own home, they appealed to the Constitutional Court. In a unanimous judgment by Justice Mogoro, the Court held that any measure which removes from people their pre-existing

access to adequate housing limits the right to housing in the Constitution. The Court held that an appropriate remedy would be to provide judicial oversight of the execution process so that a court can determine whether an execution order against immovable property of a judgment debtor is justifiable in the circumstances of the case. From the cases cited there is no doubt that the Constitutional Court is beginning to hone its jurisprudence in keeping with the values articulated in the Constitution of 1996 and in that way creating jurisprudence, which transforms the South African society.

4. The Role of the South African Human Rights Commission

Section 181 of the Constitution provides for a number of independent and impartial state institutions, accountable to the National Assembly³⁸, that support democracy and one of them is the Human Rights Commission. Cultural Rights are taken care of under the Commission for the Promotion and protection of the Rights of Cultural, Religious and Linguistic Communities.³⁹

The functions of the South African Human Rights Commission appear to be fairly standard in the promotions aspect: firstly, respect for human rights and secondly, the protection, development and the attainment of human rights. It also monitors the observance of human rights in the country, In addition has the power to investigate, to obtain redress for violations of human rights and to

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37. 2005 (1) BCLR 78 (CC)

38. These include the Public Protector, the Commission for the Promotion and protection of the Rights of Cultural, religious and Linguistic Communities, the Commission for Gender equality, the Auditor General and the Electoral Commission

39. Section 185 of the 1996 Constitution

research and to educate.⁴⁰ In terms of the Human Rights Commission Act⁴¹, the Commission is empowered to educate the public about the Bill of Rights and the role, function and powers of the Human Rights Commission. It is expected to liaise with similar institutions with a view to cooperation and facilitation of cases. It has the power to bring proceedings in a court on behalf of a person or a group or class of persons. All organs of the state are expected to co-operate with the Human Rights Commission in the exercise of its powers and performance of its duties and functions.

The Human Rights Commission has special powers to monitor the state with regard to economic and social rights because the organs of state need to report annually on the measures they have taken towards the realization of economic and social rights,

specifically in relation to housing, health care, food, water, social security, education and the environment.⁴² Heyns summarized this power as follows: "At the heart of reporting as an enforcement mechanism lies the fact that it creates a duty of justification on the one side and a system of monitoring on the other: a system of introspection and inspection."⁴³ With regard to the latter the Human Rights Commission has used its subpoena powers to compel organs of government to deliver their annual reports where they have been dilatory.

Liebenberg articulated the role of the South African Human Rights Commission in the following terms:

"The Commission is thus equipped with a powerful information gathering tool for monitoring and assessing the realization of eco-

nomic and social rights in South Africa. Through this mechanism the Commission can play a valuable complementary role to the judicial enforcement of socio-economic rights. It has a particularly important role to play in monitoring the progressive realization of the rights, identifying structural patterns of violations and drawing these to the attention of government and the public. In this way it can promote greater accountability by organs of state for the realization of economic and social rights.⁴⁴"

An additional role for the South African Human Rights Commission was given oversight of the state organ's compliance with court orders. In the *Grootboom* case the Constitutional Court asked the Human Rights Commission to report to on the state's progress. The report which it

40. General Comment Number 10 (1998) issued by the Report of the Committee on Economic, Social and Cultural Rights, UN Doc. E/1999/22, set out some of the possible activities in paragraph 3 for human rights commissions to include:

- (a) promoting educational and information programmes;
- (b) Scrutinizing existing laws, administrative acts, draft bills and other proposals to ensure that they are consistent with the International Covenant on Economic, Social and Cultural Rights;
- (c) providing technical advice or undertaking surveys;
- (d) Identifying national level benchmarks against which the realization of Covenant obligations can be measured;
- (e) Conducting research and inquiries designed to ascertain the extent to which the rights are being realized;
- (f) Monitoring compliance with specific rights recognized under the International Covenant on Economic, Social and Cultural Rights and providing reports thereon to the public authorities and civil society;
- (g) Examining complaints alleging infringements of economic and social rights.

41. Act Number 54 of 1994

42. Section 184 (3)

- (1) Section 184 provides: "(1) The Human Rights Commission must-
 - (a) promote respect for human rights and a culture of human rights;
 - (b) promote the protection, development and attainment of human rights; and
 - (c) monitor and assess the observance of human rights in the Republic.
- (2) The Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power-
 - (a) to investigate and to report on the observance of human rights;
 - (b) to take steps to secure appropriate redress where human rights have been violated;
 - (c) to carry out research; and
 - (d) to educate.
- (3) Each year, the Human Rights Commission must require relevant organs of state to provide the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.
- (4) The Human Rights Commission has the additional powers and functions prescribed by national legislation."

43. Heyns, C, *Taking Socioeconomic Rights Seriously: The "Domestic Reporting procedure" and the Role of the South African Human Rights Commission in terms of the New Constitution*, (1999) 32 *De Jure* 195, 198.

44. Liebenberg, S, *The Protection of Economic and Social Rights in Domestic Legal Systems* 53, 83 in Eide, A et al, *Economic, Social and Cultural Rights*, 2nd edition, 2001, Dluwer Law Internal Netherlands.

filed has been criticized for its content and emphasis.⁴⁵ On a separate issue, that Commission's failure to continue as *amicus curiae* in the Treatment Action Campaign case came under close scrutiny by civil society organizations who speculated that the decision to do so might have been deferential to President Mbeki's controversial views on HIV/AIDs. The Human Rights Commission has published four reports on socio-economic rights which can be found on its website.⁴⁶ In commenting upon the consistency of the last three reports, Klaaren concludes that the "monitoring of socio-economic rights has settled into a pattern, albeit one with which neither the Commission nor its closest NGO and academic partners appear entirely comfortable."⁴⁷

As Klaaren⁴⁸ takes a closer look at the role of the South African Human Rights Commission in its promotions and monitoring functions and he observes that it has modeled its role on a "violations approach"⁴⁹ based on the international approach. In the absence of any other mechanism to advance social, economic and cultural rights, this approach was understandable but he believes it has not been fruitful. He concludes that in the light of the clear jurisprudence of the Constitutional Court, the enforcement role of the South African Human Rights Commission on socioeconomic right is superfluous in its current form. As a result of the Constitutional Courts pronouncements on a number of socioeco-

nomics rights, Klaaren is of the view that content of state policies must be known by the public. The model he proposes is the "information promotion" model in which a strengthened national system of information sharing will make the state more accountable through the use of the Promotion of Access to Information Act. He quotes the views of the Chairperson of the South African Human Rights Commission to substantiate his conclusion:

"The right of information is not something that lives in the air, or something that thrives within Academia, but in the day-to-day lives of citizens and in the important decisions they take around bread and butter issues. Access to credible, reliable and accurate information is so important in the kind of decisions they make. Not just decisions about the kind of government they want, but decisions about the kind of house they want, the kind of education they want for their children, the kind of accountability they are entitled to demand from local government officials and elected representatives."⁵⁰

So the advice by Klaaren to the South African Human Rights Commissions appears to be that its promotions and public education function be enhanced so that an informed public is empowered to make government more transparent and accountable.

5. Conclusion

The South African model was drafted when it was unsure what direction the Constitutional

Court was going to take on socioeconomic rights which were so vital for the redressing of vast imbalances in resources and opportunities. As a result, the drafters of the constitution gave the Human Rights Commissions a complementary function also. With the development of the jurisprudence, some feel that the Human Rights Commission's time might be better spent on educating people about their rights. That will lead to the creation of a rights culture which will assist South Africa's overall confidence levels on the implementation of human Rights.

Let me conclude with some brief observations. The debate about whether it is possible to protect economic, social and cultural rights is nearly over with major success in India and South Africa. So, in Nepali constitution-making process provide for the widest possible base for the enforcement of social, economic and cultural rights. Not all these rights need to be articulated through decisions of courts: administrative tribunals might be another possibility. More and varied opportunities for protection and enforcement are better than one. Consider ombudsman or other specialist commissions as added mechanisms. When success in progressing social, economic and cultural rights arrives in Nepal, you will be in the enviable position to think about rationalizing the mechanisms.

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45. Pillay, K, Implementing Grootboom, (2002) 3 (1) ESR Review

46. www.sahrc.org.za

47. Klaaren, note 48, at 550

48. Klaaren, J, A Second Look at the South African Human Rights Commission, Access to information and the Promotion of Socioeconomic Rights, Human Rights Quarterly 27.2 (2005) 539-56.

49. Chapma, A, A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights, 18 Human Rights Quarterly 23 (1996).

50. Klaaren, not 36 at 555-6.



»Bijaya Raj Gautam«

Democracy, Human Rights and Peace: Towards an Inclusive Democratic Nepal

.....
New wave of aspiration, encouragement and determination of Nepali people is clearly evident with the establishment of Loktantra (democracy) in April 2006 and official end of decade-long armed conflict in November same year. However, effects of the conflict are deep-rooted not only resulting in civil and political crisis but also stigmatizing socio-economic and cultural process.
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1. Context

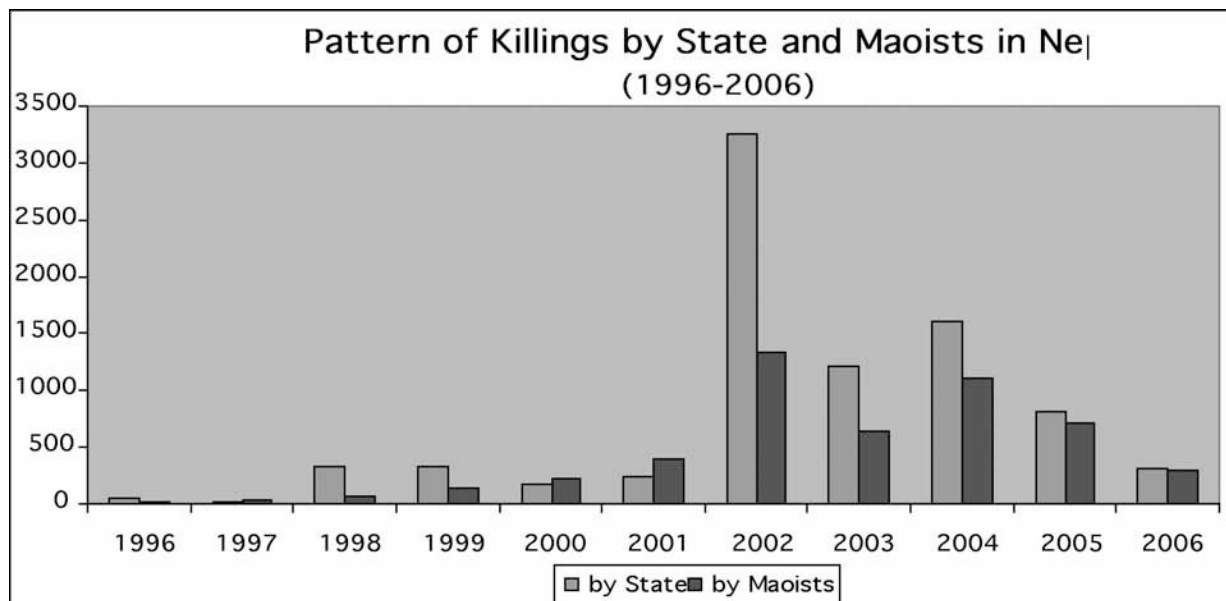
Nepal is passing through a transitional phase, whose complexity involves multiple factors. A restored democracy and newly experienced post-conflict scenario has been setting up the very fabric of Nepali society. The trauma which the conflict has left in the society has been a prime concern of human rights organizations.

New wave of aspiration, encouragement and determination of Nepali people is clearly evident with the establishment of *Loktantra* (democracy) in April 2006 and official end of decade-long armed conflict in November same year. However, effects of the conflict are deep-rooted not only resulting in civil and political crisis but also stigmatizing socio-economic and cultural process. It was the day, 21 November 2006, when the Government of Nepal (GoN) and Communist Party of Nepal-Maoist (CPN-M) signed a Comprehensive Peace Accord (CPA) ending up the armed conflict, the country

entered into a new phase of democracy that promises progress of the nation through sustainable and just peace. Such sustainability and justice again should stand on the foundations of inclusion, state of the rule of law and equality among the people.

2. Background

Armed conflict between the State and Maoists from February 1996 to April 2006 left long lasting implications in the country. The extent of violations of fundamental rights of people was immeasurable and there have been unprecedented loss of lives, property and physical infrastructures. According to INSEC records, during the Maoist insurgency and their armed offensive over the last 10 years, more than 13000 people have been killed. Similarly, 1295 people have been disappeared by the State and 66,833 people were abducted by the Maoists. By November 2006, among those abducted, 13 had been killed, whereabouts of 8,862 people were unknown though most of them



had either joined the Maoists or had been released. Since 1996, around 20,000 people were arrested by security forces; most of them were reportedly tortured in custody or army barracks. Over 2,000 children have been orphaned in connection with the conflict. Reports estimate that more than 200,000 people were internally-displaced from their homes due to the terror inflicted by the Maoist and the state security forces. Larger number of people left the country in search of security and livelihood, mostly crossing the border of India.

Widespread patterns of conflict did not leave a single area unaffected. Nepal became the second country in the world after Peru, where a democracy was challenged by a violent insurgency considering that most armed revolts have been against despotic or military rulers. Displacement of hundreds of thousands of people from their place of origin, destruction of infrastructure, alarmed insecurity, fragile economy and absence of state actions for reconstruction resulted in miseries of

the people at large.

On the other hand, autocratic move of the king in 2002 and in 2005 triggered a gross violation of human rights and abandoned the fundamentals of democratic governance in the country. King's direct rule proved once again that the autocracy always undermines human rights, neglects basic premises of democracy and the rule of law. Experience of Nepal has shown that autocratic regime does not only suppress people's voice, but always tries to establish a single-man monopoly and excludes people from participating in all the state affairs.

3. Three Pillars: Democracy, Human Rights and Peace

Nepali experience of democratic movement has marked indispensability and inter-relatedness of democracy, human rights and peace, and established that they serve as three pillars of an inclusive democratic system. Without democratic governance, enjoyment of human rights remains merely an aspiration of the people. Similarly, without

human rights and peace, meaning of democracy is just limited to 'paper' and that again cannot uphold the aspiration of the people. Peace, as an inherent part of social life, should always reflect justice and sustainability. Relative phenomenon of peace, however, does not signify absence of conflict rather embarks an environment where the space for enjoying human rights and taking part in democratic process are valued.

The central lesson from the peace process in Nepal is that it is not sufficient to possess democratic institutions in order to construct a viable post-conflict peace. There must exist a normative structure and consensus on the road-map among the warring sides that peace will be beneficial for the population at large. Such benefit can only be guaranteed when human rights approaches are followed and ensured in all the stages of these processes.

3.1 International Framework

Nepal's participation in the international human rights arena began with the restoration of

democracy in 1990 and it was so with the ratification of significant international human rights treaties. Ratification of such international instruments took Nepal to an extended field of international laws that created opportunities to be more visible with commitments to democratic governance and human rights conjoined with obligations to fulfill thereof. Now, till date, Nepal is a state party to 20 UN and 7 ILO conventions, including the Big Six treaties¹ and bound to abide by the obligations to implement the provisions of the instruments.

3.2 National Framework

Two recent national instruments of Nepal have set inter-linkage between democracy, human rights and peace with a political will towards an inclusive state. However, these commitments are to be translated into practice that could only measure the level of political will and vision of the political actors.

3.2.1 Interim Constitution, 2007

Interim Constitution of Nepal, 2007 has set democracy, human rights and peace as keys for establishing inclusive democratic state. The Constitution, in its preamble keeps democracy, peace, prosperity and progressive economic-social changes in the centre and has determination for progressive restructuring of the state in order to resolve the existing problems of the country based on class, caste, region and gender.

The Constitution expresses full commitments towards democratic norms and values including

competitive multiparty democratic system, civil liberty, human rights, adult franchise, periodic election, full freedom of press, independent of judiciary and concept the of rule of law. Moreover, the Constitution guarantees fundamental rights and sets responsibilities, directive principles and policies of the state.

3.2.2 Comprehensive Peace Accord (CPA), 2006

Besides the national law, the CPA concluded between the government and Maoists on 21 November 2006 is another basis for peace and democratic process. The CPA has clearly expressed respect to the popular mandate in favour of democracy, peace and progress expressed through repeated historic struggles and people's movements from the pre-1951 era till date. Through the CPA, both the conflicting parties have pledged for forward-looking restructuring of the state by resolving the prevailing problems related to class, ethnicity, regional and gender differences.

Commitments to competitive multiparty democratic system, civil liberties, fundamental rights, human rights, complete press freedom and all other democratic norms and values including the concept of rule of law are reiterated in the CPA. It also reinforces commitment to the Universal Declaration of Human Rights 1948, international humanitarian laws and the fundamental principles and basic principles and norms related to human rights. As expressed in the Interim Constitution later, the CPA keeps

at the centre the democracy, peace, prosperity, forward looking economic and social transformation as well as independence, integrity, sovereignty and dignity of the country. The CPA also paved the way for democratic restructuring of the state and economic-social and cultural transformation through the Constituent Assembly (CA) formation.

These are the basic commitments of political parties, including the Maoists to ensure human rights and strengthen democracy and peace in the country. However, there is still a long way to go for the people to realize them in their daily lives.

3.3 Critical Areas of Concern

All these backgrounds are instrumental in strengthening human rights and contributing for an inclusive democratic system in Nepal. However, there is still a question of securing institutional framework and mechanisms to deal with emerging as well as long-standing socio-economic, cultural and political issues. Though the policy framework is one step forward for moving towards an inclusive state, it is difficult to accommodate the problems and obstacles that are faced by a new and restored democracy without effective institutions. How capable are the state mechanisms and how much willing is the state in addressing these issues are major concerns for human rights organizations. On top of that, the actual capacity of the state is another question.

Impunity is rampant and multi-faceted in Nepal. It has

1. International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and Convention on the Rights of the Child (CRC)

affected people in multiple ways and violated their rights on a daily basis. Impunity associated with the conduct of the security forces and the Maoists violated the civil and political rights of the people while those committed by state officials through their corrupt practices or by conducting the practice of structural violence has largely violated the economic, social and cultural rights thus, compromising Nepal's international obligations to guarantee these rights and punish those guilty of abuse.

Popular will and commitment to democracy and affirmation of the integrity of each culture and the preservation of each language to enrich the shared Nepali identity is a key for survival of democracy in Nepal. Considering the fact that the sense of trustworthiness in other social groups and parties is a particularly crucial aspect of democratic political culture, Nepali political leaders have to take responsibility to restore ethics to politics and build a sense of civic competence among the people. Ensuring human rights, improving people's quality of life and increasing their knowledge about and participation in public affairs are bases for inclusion and social justice.

4. Question of Inclusive Democracy and Current Debates: Cycle of Conflict Surfaced

The Interim Constitution has been promulgated and a Comprehensive Peace Agreement (CPA) has been reached. There is the Interim Parliament and newly formed Interim Government in place. The government and the political parties have been explaining that the legal arrangements and the institutions are intended

to address the previous weaknesses in state governance in either form. Earlier, the reinstated House of Representatives (HoR) had declared Nepal a secular and untouchability-free state on 18 May and 5 June 2006 respectively.

The ground reality, however, is quite different. Many of the laws that are discriminatory and prevent marginalized communities from enjoying full social and cultural rights still exist. As a result, tribal communities, indigenous and ethnic people, dalits and their organizations have taken themselves to streets for serious protests. It is to be noted with prime consideration that different communal forces have been indulged in protest against all the recent developments in the country. Ensuring right to self-determination and justice to the victims are fundamental issues that should be addressed on time so as to respond to the discontent.

Deprivation of human rights of ethnic, janajatis, dalits, madhesis and women remained as one of the causes that served for the eruption of armed conflict that Nepal had to witness for a whole decade. And, their human rights directly correspond with the right to self-determination: right of self-governance, autonomy and enjoyment of their own land and resources that correspond to the principle and values of inclusive democracy.

Social hierarchy and its implications such as the caste system and gender discrimination are not only reflected in the patterns of social interaction, but also in economic and political participation. These long-standing issues are to be addressed in such a way that the marginalized and disadvantaged groups have higher level of

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Impunity is rampant and multi-faceted in Nepal. It has affected people in multiple ways and violated their rights on a daily basis. Impunity associated with the conduct of the security forces and the Maoists violated the civil and political rights of the people while those committed by state officials through their corrupt practices or by conducting the practice of structural violence has largely violated the economic, social and cultural rights thus, compromising Nepal's international obligations to guarantee these rights and punish those guilty of abuse.

involvement in attaining their human rights.

Social discrimination and economic and political underdevelopment of madhesi, janajatis, women, dalits and other groups become very difficult to resolve unless there is an inclusive democratic governance. Moreover, other groups of people who are traumatized and are direct victims of the conflict have to be the top most priority of democratic and peace process. Their agonies should be addressed with appropriate mechanisms fully respecting their rights that inclusive democracy offers. Right to education, awareness, economic and political opportunities can also be the options that the stakeholders should engage with these groups of people to establish inclusive democratic Nepal.

These aspects depend upon the political will of the stakeholders. Social mobilization of marginalized and disadvantaged groups along with inclusive process to achieve desired social changes could mean as democracy in addition to the representation and participation to the decision making levels of state affairs.

5. Constitution Making Process

The country is moving forward for a new constitution through the CA that is sole target of the interim government. There are some major steps that determine future of democracy through a constitutional set-up in Nepal.

5.1 Participation

Participatory process is a key to sustain life of the constitution itself. In 1990, such process

did not involve larger strata of people, rather was somehow limited to the key political actors. The failure of the 1990 Constitution and experiences from the past have clearly signified that such a limited approach cannot guarantee human rights, rather fails in addressing the core agenda of the people and contributes conflicts in the society. This process further demands the right to have citizenship of all people, including marginalized and disadvantaged groups regardless of their gender, class, caste/ethnicity and residence.

5.2 Elections to Constituent Assembly

Free, fair and fearless elections to the CA is one of the most important aspects to determine future path to democracy in Nepal. Though the conflict has been formally ended, attributes of the decade-long violence have remained in the picture. Atrocities of the Maoists are somehow taking place at the local level and many displaced people are yet to be safely returned to their places of origin. House, land and other properties of all such people have not yet been returned by the Maoists in many places. There is still a continuous fear of the activities of Maoists' militia at the local level. Moreover, new groups such as Janatantrik Terai Mukti Morcha (JTMM) and Madhesi Janaadhakar Forum (MJF) have been indulging in violent activities. Janajatis, women, dalits and other marginalized and disadvantaged groups have been raising their issues to be included in the whole process and

some of such groups have warned of waging 'armed struggle' if their voices are not heard on time. This could thus result in hindrances to elections to the CA within the set time of June 2007.

5.3 Proportional Representation

Interim Constitution guarantees that women, dalits, indigenous tribes, madhesi communities, oppressed groups, the poor peasant and laborers have the right to participate in the state mechanism on the basis of proportional inclusive principles.² Further, the Constitution ensures that elections to the CA will be held under a mixed electoral system³ where 204 out of 425 members will be elected under the proportional electoral system on the basis of the votes given to the political parties.

Recently, the government has formed an Electoral Constituency Delineation Commission (ECDC) on 20 March 2007, to determine the electoral constituencies for the CA polls. The Commission is entrusted with the responsibility of fresh delimitation of electoral constituencies as per the amendment made in the Interim Constitution to add the number of constituencies based on increased population in Terai while keeping the current number of constituencies in other regions intact. But, the process of appointing commissioners led to discontents among the political parties.

However, there are doubts on how the marginalized and disadvantaged groups could have space in this process to get involved in, considering the fact that the majority⁴ of the CA mem-

2. Article 21

3. Article 63 (3)

4. 221 members, out of whom 205 among the candidates elected on the basis of First-Past-the-Post system from each of the Election Constituencies existed in accordance with the prevailing law before the commencement of this Constitution and 16 will be nominated by the interim Council of Ministers.

bers will either be elected on the basis of First-Past-the-Post system from each of the election constituencies⁵ or nominated by the Council of Ministers.⁶ How the political parties translate their commitments in compliance with the Interim Constitution⁷ to take into consideration the principle of inclusiveness while selecting the candidates to ensure proportional representation of women, dalits, oppressed tribes/indigenous tribes, madhesi and other groups is another question in this regard.

5.4 Federal System and Devolution

Federal structure of the state allows marginalized and disadvantaged groups to have a role in decision-making, at least in the regions of their concentration. Apart from facilitating political participation, federal system allows for minorities to preserve their cultural identity and material interests. These are the underpinning factors that demanded restructuring of state and having federal structure after the success of *Janaandolan-II* in Nepal in 2006.

Various political parties and the recent movement arising in the Southern Nepal have also very strongly raised this question. Right to self-determination can be acclaimed through federal structure. This demand has come through the historical background where the people have always been deprived of their human rights, including the right to development. Though Nepal has been implementing periodic development plans for 50 years, local people have not benefited from it. Centralized plan, policy and pro-

gramme frameworks have failed to respond the basic needs of the people at the grassroots level. It has thus, demanded devolution of authority and resources to the institutions of local government that could reach to the people in need and offer them with equal access to and control over to such resources.

5.5 New Constitution

Constitution making process in Nepal requires human rights based approach that fulfills people's expectation which has been explicit during and aftermath of the *Janaandolan-II*. Such constitution can provide adequate and effective safeguards of minority rights and the fundamental rights of the people with more practical ways to ensure transformation of state. Current concerns focus on the transformation of state not only in terms of political settlement; rather highly require socio-economic and cultural changes through better policies and institutions.

6. Way Forward: Civil Society Strategy

Reinstating key democratic institutions such as political parties, judiciary, law enforcement agencies as well as civil society organizations are keys to lead towards an inclusive democratic state. Ensuring human rights is the requirement that should be enshrined in all policy frameworks as a core issue that can adequately address democracy and peace dichotomy. How to establish an inclusive democratic state also depends upon in which level the political actors follow their com-

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5 Article 63(3)a

6 Article 63(3)c

7 Article 63(4)

mitments and agreements of the past that have been leading towards peace and forward to the CA. Though the Interim Constitution provides certain avenues to guide this process, the political will and awareness and intervention of people at all levels are determining factors to drive them in a better manner.

There are some key areas in which civil society organizations in Nepal and outside should focus on to respond to the challenges.

Ending impunity

- Compensation to the victims of human rights and humanitarian laws violation
- Ensuring transparency at all level
- Poverty alleviation and employment
- Guaranteeing all human rights for all
- Addressing root causes of the conflict and structural violence
- Ending all forms of discrimination and exploitation
- Conducting free and fair elections to the CA.

Following strategies could lead towards sustainable and just peace with inclusive democratic process:

- Top-most priority to human

rights agenda – civil and political as well as economic, social and cultural rights

- Awareness raising, capacity building and empowerment of the conflict victims as well as the people at the grass-roots level
- Sensitization and lobby/advocacy with other stakeholders at the national as well as international level
- Facilitating political parties to strengthen their performance for peace, democracy and development
- Increasing media intervention through people's access to media
- Coordination among civil society/human rights organizations to push forward the human rights agenda at all decision making processes
- Coordination among inter-governmental, governmental and non-governmental organizations and donor agencies for better rehabilitation and reconstruction efforts
- People's mobilization for development activities
- Facilitating people to strengthen local efforts of establishing peace through

various means they deem necessary at their area, and encouraging other stakeholders to support these initiatives.

In Nepal's case, inclusive democracy always lies on the success and level of inclusiveness in all strata of social life. Where there are around hundred ethnic/caste groups, and almost equal number of languages with diversity in socio-cultural and economic factors, it is always difficult to ensure better social cohesion. But, unless and until the government and other concerned agencies keep human rights agenda at the top priority, such challenges are easier to mitigate. Once we pursue institutionalizing individual as well as group rights of various groups, there is always possibility of finding universality in diversity which entirely leads towards inclusive democracy.

(Mr. Gautam, Director of INSEC, presented this paper at the meeting on "Nepal: Looking beyond Kathmandu – Challenges and Opportunities for Peace-Building from Below", jointly organized by ICCO, KERKINACTIE GIRO456, Plan International and SAAPE facilitated by EEPA and in cooperation with Crisis Management Initiatives and HIVOS in Brussels on 20 April 2007) ●

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Constituent Assembly: Concept for Discussion



»Bijaya Kanta Karna«

Meanings of Constituent: The Oxford Dictionary defines Constituent as 'a body of fundamental principles or established precedents according to which a state or organization is governed'. Noted constitutional expert James Bryce defined constituent as 'a frame of political society, organized through and by law, that is to say one in which law has established permanent institutions with recognized functions and define rights'.

The Constituent is the legitimate means of the management of power and authority in the political system.

In the more specific term, a constituent is a document or set of documents describing the framework of a political system. It defines where power lies within a state, what the institutions of government are, how they are constituted and how they are intended to operate. The Constituent of any country is the supreme law and other laws can not contradict.

1. Evolution of Constitutional State

The evolution and development of constitutional state is a historical process started right from

the Greek city states to the modern political system state system. Modern Constitutional development mainly dominated by the Constitutional development of the USA and UK.

The movement of Constitution is still going on in various countries of the third world with a motive to improve the political organization in the direction of a legitimate constitutional state. Studying the development of Constituent from ancient time to modern times give certain character of the constituent. Every state should governed by the constitutional means based on democratic principles and self rule not by the order of any authority.

2. Making of Constituent

The making of the Constituent depends on the conditions of the country and it differs from one to another. There are no universal rules for making constituent. Some constituents made by colonial ruler, some are created by the negotiated settlement or compromise between various forces of the country. Many constitutions were written by the people through their representatives.

Various forms of constituent exist in the different countries rigid

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The basic function of the constitution is to empower the people and establish sovereignty of the people. The success of the constitution depends on the functions of the political system and relations between people and government.
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and flexible, written and unwritten. United Kingdom does not have written document as constituent. However, UK unwritten constituent is based on custom, conventions, decrees, charters and laws passed by parliament.

The basic function of the constitution is to empower the people and establish sovereignty of the people. The success of the constitution depends on the functions of the political system and relations between people and government. The best way of making Constitution is by the peoples representatives through Constituent Assembly with wider participation of the people of all segments of the country ensures the proper function of the Constitution.

3. Constitutional Development of Nepal

Nepal has not been able to develop Constitutional practices through evolutionary methods over more than half a century. Five Constituents have been promulgated by the king and its process has been obstructed by the monarchy. From Rana oligarchy to present 1990 constituent were not allowed to function properly. The institution of monarchy is always obstacles in the democratic and Constitutional development process of the country.

Five Constitutions:

- a. Rana Constitution (Govt. of Nepal Act) 1948
- b. Interim Constitution 1951
- c. The Constitution of 1958
- d. Panchayat Constituent 1962
- e. The Constitution of 1990

Above mentioned constitutions were made by the king and his men except 1990 Constitution. The present constitution is the product of the compromise among

the political forces including king. This constitution carries various ambiguous articles on crucial provisions particularly of monarchy and army. Even executive power has not been clearly defined. The monarchy and various other feudal institutions have been kept out of the provision of the Constitution and extra- Constitutional institutions exist.

Three basis points can be drawn from the Constitutional history of Nepal:

1. Monarchy as obstacle for the Constitutional and democratic practices.
2. Constitution made by the king or the group of individual is not acceptable to the people and not functional. (Non representatives)
3. Peoples from all segments wanted to make their constitution themselves.

The last conclusion creates the demand of Constituent Assembly (CA). The idea of CA was raised by the Nepali Congress in 1950 by its Baigania Conference. Later NC refrained herself to raise this issue. After the King Mahendra's coup in 1960. Communist Party of Nepal revived the demand of CA. However, after 1990 people's movement some of the communist parties raised this demand of CA. The United National Peoples Movement which includes the present Maoist faction demanded the election of CA in order to transform the Sovereignty to the people. (Nepal Press Digest, May 7 May 14, 1990)

But this demand was rejected by the then dominant political forces like Nepali Congress and United Left Front and agreed to form a commission for drafting a new constitution. The issue of mak-

ing of Constitution through CA has been revived by CPN- Maoists during the **people's war** and later all the democratic forces accepted this demand and present people's movement endorsed the election of CA for new constitution and it has been passed by present House of Representatives.

Making of the constitution is the people rights and depend of the will of the people. Since it is clearly impossible for peoples to meet in one place and exercise the rights of writing Constitution. This creates the representative system by which people elect their representatives for making Constitution is called CA. It is an accepted theory of making constitution and exercise of sovereign rights. In this way people ownership has been established.

4. Constituent Assembly: Means of Inclusion and Establishing Democratic System

Nepal is home to more than 61 ethnic groups and diverse nationalities consisting of 23 million people. Nepal has become to a greater extent an unequal society in which some people or communities and geographical areas have prospered while many other communities and districts have not.

There is a strong conceptual debate around the notion that exclusions, either social, economic, political or geographical have been the main causes of unequal society. Exclusion results in poverty, unequal distribution of resources and development initiatives, and in the inability of certain communities or geographical areas to participate in socio-economic and political development processes.

Political exclusion inhibits basic citizenship rights and when done on a large scale, it prevents communities and even geographi-

cal areas from participating in the political arena and this consequently inhibits democratic process. The key variables are basic citizenship rights, participation in political life, making public policies, decision-making process and representation.

The above tables show that the participation of women, janajatis Dalits and Madhesi is not possible under present political and legislative structure. To create new structure in political system is very pertinent for the participation of all Disadvantaged Groups (DAG)

For 237 years, Nepal has been practicing unitary political and cultural system which tried to destroy plural socio-cultural structure of the country. Some of the policies introduced to consolidated political and cultural power in the hands of dominant hill Brahmin and Chhetris community are given below

- a. Imposition of monolingual policy (Nepali only)
- b. State sponsored migration (colonization)
- c. Denial of citizenship rights.
- d. Destruction and negligence of cultural heritage sites other than Khas
- e. Creating private army. (Royal Nepal Army)
- f. Derecognizing of culture of other communities except Khas.
- g. Hindu religion as a state religion.
- h. Creating a political and administrative system to debar DAG participation
- i. Artificial creation of political and administrative boundaries (five region, 14 zones, 75 districts and 205 parliamentary constituencies)

For the creation of new inclusive political system, it is

Table 1. Representation of Different Castes and Ethnic Groups in National Legislature (In percentage)

Caste/Ethnic Groups	National Legislature				Total Population in 1991
	1959	1981*	1991	1999	1991
Brahmins	27.5	13.3	38.1	39.6	12.9
Chhetri/Thakuri	31.2	36.3	18.2	17.3	17.6
Newar	3.7	8.1	8.3	8.3	5.6
Brahmin/Chhetri/Newar	62.4	57.7	64.6	65.2	36.1
Tarai	22.0	18.5	19.6	17.4	32.0
Hill Social Groups	15.6	23.0	14.7	14.7	22.4
Others	---	0.7	1.2	1.5	8.3

Source: Dr. Ram Prakash Yadav's unpublished article 2006.

essential to introduce more participatory and representative system in the making of CA. There are various methods introduced in various countries for the participation of all segments of society.

4.1 Methods of Representation of CA: These days, many methods are adopted for the establishment of democracy:

4.1.1 Majority Representation

A candidate securing votes more than those of others are elected in this system. Whole territory is divided into number of constituencies for election of any legislative body. The election of present House of Representatives is based on this system. This system is not representative and create imbalance. (see table)

Table 2. Representation of various caste and Ethnic groups in Cabinet from 1951 to 2005.

Caste/Ethnic groups	Cabinet		Percent of total Population in 2001	Proportional Share Index (PSI)
	No. of Ministers	Percent		
Brahmins	352	27.0	12.7	2.13
Chhetri/Thakuri	366	28.1	17.3	1.62
Newar	131	10.1	5.5	1.84
Brahmins/Chhetri/Newar	849	65.2	35.5	1.84
Tarai Madheshi)	198	15.2	33.0	0.46
Hill Social Groups	227	17.4	29.0	0.60
Others	28	2.2	2.5	0.88
Tarai/HSG/Others	453	34.8	64.5	0.54
Total	1302	100.0	100.0	

Source: Dr. Ram Prakash Yadav's unpublished article 2006.

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Political exclusion inhibits basic citizenship rights and when done on a large scale, it prevents communities and even geographical areas from participating in the political arena and this consequently inhibits democratic process. The key variables are basic citizenship rights, participation in political life, making public policies, decision-making process and representation.

4.1.2 Proportional Representation

The most complex problem of modern democratic government is how the minority and DAG living in the country should be represented. It has generally been admitted that to give them representation is most essential for their social, cultural, and political development. This will develop cohesive and participatory system. This is most appropriate system for the Constituent Assembly Elections in Nepal. There are various method used for the proportional representation.

a. List System: In this system, large multi-member constituencies are formed and many representatives are elected from each constituency. Each political party submits a list of that number of candidates as are to be elected from a particular constituency. Each voter votes not to individual as candidates but to the list of the candidates of the parties. To be elected each candidate has to secure at least as many votes as are fixed by the electoral quota of votes.

b. Single Transferable Vote System: In this system, multi-member constituency is formed, from which as many representatives as are desirable may be elected. Each voter casts one vote. Voter can write in the

ballot paper his or her first, second, third, fourth and fifth preference. Transfer of votes according to need is the characteristic of this system. To be elected in the election, each candidate must secure at least as many votes as the quota is fixed for the purpose. There are various methods of determining the quota. Simple is given below:

(i) $\frac{\text{Total Number of}}{\text{Number of Representatives to be elected}}$

This system is useful for multi-member constituency.

For Nepal's CA, a mixed system of both the method of proportional representation can be useful. I propose both *majoritarian* and proportional representation system. Present number of HoR is sufficient for the constitution of CA. Fifty percent of the 205 will be elected on the basis of simple *majoritarian* system and fifty percent can be elected on the basis of proportional representation. I have yet not developed the appropriate method for CA. It will take some time to develop, which is being discussed with geographer, sociologist, anthropologist and political scientist. I hope this deliberation will help to develop clear concept for all constituency for the participation of all DAG. ●

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CA Polls: Does Literacy Matter ?



»Pratibedan Baidya«

Though the government has announced election date to Constituent Assembly to be held on November 22, but none of the political parties are concerned about making people aware about the elections. Constituent assembly is a complicated process and the success of the constitution making depends on its reflections to people's aspiration. In this regard, raising awareness among people about the CA polls is a crucial element for the success of Constituent Assembly.

Though making constitution through the constituent assembly is a most democratic practice, only 40 countries of the world have drafted constitution through CA. Following the success of the April movement, all political parties are involved in making political deals and power sharing rather than making people informed about the elections of the constituent assembly and holding it as per the commitment of all political parties.

INSEC has organized an interaction programme about the CA polls in remote district of Karnali region in Mugu on June 1, 2007. Mugu District President of Nepali Congress, Ram Singh Aidi said, "We did not know about the

democracy when we were fighting for democracy before the success of the popular movement of 1990 and we are also reiterating about the CA polls but we actually do not know what does it mean? As we fought for democracy and restored democracy in 1990 later on we have to be displaced from the village and I don't know what sort of situation we have to face after the CA polls. "Similarly, district chairman of Nepal Worker's and Peasant Party, Tej Bahadur Shahi said, "We will know and make opinion about the CA polls as per the directive of the party high command but we are yet to receive such directive. But, what I think is that the CA polls should be held in a free and fair manner." Both of these statements from the district chief of the two responsible parties show the lack of awareness among people about the CA polls.

The constitution formed through constituent assembly does not yield fruit; if it was held without informing people about the process and allow them choose their representatives in a free and fair manner. Political parties have to make clear their agendas for the elections of the constituent assembly in major issues like restructuring of the state, their position on monarchy and their economic and

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other policies but none of the political parties did it so far. Even top leaders of the major political parties did not have appropriate information in this regard and they are still undecided in major political issues. International experiences show that political parties have to settle various agendas that play crucial role in new Nepal through referendum and frame a new constitution accordingly. But the political parties are yet to settle major issues like election systems (open or closed list in proportional election system). Political parties are yet to reach to the grass root level with their agendas and to inform people about the CA polls. In this situation, giving rhetoric about holding the CA polls did not keep any meaning. People in village level are not aware on what type of elections the CA poll is and they are taking this election as the previous elections, which might lead the country towards another form of conflict and will not be able to restore peace and stability in the country. Assistant Chief District Officer of Jumla district, Uma Kant Adhikari, who had recently visited various parts of the district, said that some people understand CA polls as restoration of peace, so misunder-

standing about the CA polls may push the country into another form of conflict.

Nepal has to learn lesson from the countries where constitution was made through elections of the constituent assembly but failed as people failed to perceive it as their constitution. Political parties should concentrate on holding the CA polls in a free and fair manner rather than hurrying for it. If there is any threat to the CA polls, the interim parliament will have to take appropriate action against such forces and take stern action against reactionary forces so that they will not dare to attempt to disrupt the CA polls. All political parties need to focus on making people aware about the elections of the constituent assembly and should go to the public with their stance in number of issues.

According to Sudarshan Shrestha, a journalist, who served as an observer in the parliamentary elections of Scotland, in Scotland, public information about the election, started a year and a half ago. "In Nepal we are talking about holding elections or a referendum in a matter of months when there are no laws in place to guide the electoral process," he added. ●

Election Crime Act, 2063

Act number 2 of 2063 enacted by the Legislative- Parliament

(The Act Made to Amend and Consolidate Prevailing
Laws Relating to Election Offences and Punishment)

Certification Date:

2063/12/12 (March 26, 2007)

Chapter – 2: Electoral Offences

4. Prohibition on making influence: No person acting on behalf of any political party or candidate or his or her agent or other person shall, in the course of election, influence, in any manner, any candidate or voter or any person with whom any of them has concern or interest in an election by committing any of the following acts:

- (a) Making obstruction, obstacle or intimidation, or causing such act to be made, with intent to prevent any person from making candidacy in an election or canvassing election or exercising the right to vote;
- (b) Demonstrating or using weapons or explosive substances of any kind;
- (c) Causing any kind of damage;
- (d) Showing any kind of fear, threat, terror or menace;
- (e) Threatening to boycott socially;
- (f) Showing gratification or greed or economic benefit in any manner;
- (g) Causing to swear or promise.

Source: Election Commission, Nepal

Election Skepticism



»Bhuwan Adhikari«

Transition will prolong..! CA election will never be held....! Eight Party Alliance does not want CA election earlier...! The king and the allies are back staging..! USA is skeptic about every substantial progress..!

These are few edited verbatim of the average minds and very often the claim forward by the leaders mandated to build the new Nepal. Somewhere the reality can be traced in between the above lines .The foundation for the New Nepal to make the people prosperous and powerful is being laid on the confusion. Making the peace process an example in transformation of the powers to the feeble is now a mystery borne by reciprocal distrust among the Eight Party Alliance. Seven political parties and the new partner in main stream politics the *Maoists* are sharing the unprecedented awkward power equilibrium to govern and guide the Nepal. But somewhere the alliance seems to have overlooked the mandates given to them by the Peoples of Nepal after the April movement. The perforation in the agreement among eight political parties has provided a peeping hole to the election skeptics.

At somewhere down the time line taking into the considera-

tion on regional issues, the activities of pro-Maoists concerns and the state of impunity has transformed the nearing remedy for peace to far set mile stone. The armed conflict and the state of insecurity are rampant in southern districts. Young Communist League (YCL), a Maoist wing and the likes are borne some peace analysts comment saying peace process is still to begin. Peace exists in no form where the impunity is so high and state presence is very low in the troubled region .People are suffering in either way by the state , by the transiting party and by the insurgents .There is no right to life , how you can claim the inclusion ? In such a critical scenario, the free and fair election with ongoing cascade of propagating regional and ethnic conflict is daunting task. The drossier of the 12 points agreement and the mandate of the *April movement* was aimed to set Nepal free of all its discriminations, inconsistency, feudalism and the bloodshed. Which in turns has made and astonishing affect for peace process after the restoration of the house , the agreements , the comprehensive peace accord , Interim constitution and the Maoists participation in the parliament .

The human rights violations

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Seven political parties and the new partner in main stream politics the Maoists are sharing the unprecedented awkward power equilibrium to govern and guide the Nepal. But somewhere the alliance seems to have overlooked the mandates given to them by the Peoples of Nepal after the April movement. The perforation in the agreement among eight political parties has provided a peeping hole to the election skeptics.

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 gle for power in order to
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 victory through
 CA election.*

after the restoration of *lokantatra* is differently deteriorating. The newer version of human rights violation as ethnic combats and newer issues to be addressed immediately has been raised in year we farewell. The country has entangled itself in the vicious circle of uncertainty. The problem of regional security and the issues of ethnic inequality had made the leaders orthodox escapist. The CA election itself is not enough to map the new Nepal. It needs the composite of the differently brought up brains. This can be achieved by the reconciliation and consolidation among eight political parties. More over the parties must be free from struggle for power in order to assure the people of their victory through CA election.

From the day one of the *lokantatra* the state was vision scary. It never unraveled the root cause of the conflict and the disarray of rights. So, everywhere from Comprehensive Peace Accord to Legislative Parliament the issues of inclusion and equal rights were left out. The restructuring of the state on the proportionate majority of an ethnic composition was pushed back and forth. The end of monarchy was delayed in the name of legitimacy. The state of impunity was overlooked for the sake of peace process. Maoists human rights violating activities and state unaccountability was accepted by various pressure groups as the by product of the transition. This made people to suffer, which produced the skepticism for election.

The country needs the ramification in the entire sphere of socio cultural and political dynamics of the society. This is to be addressed by the transitory government in order to settle for sustainable peace.

The *Madhesh* issues and the armed conflict in mid *Terai's* districts must be dealt with soft centre in brain. The pivotal role of inclusion and restructuring of the state must be prioritized above all else. The impunity must not be tolerated for any noble cause. State must acknowledge that people are aware of what is happening and the state must be transparent on what is assured for the people and when the people are going to reap the fruits of peace, stability and development. The per functionary state act promptly in the issues that are rumoring the uncertainty of CA election.

The election laws prior to the election must be compatible with human rights standards. Some of the laws earlier as the nomination of 16 members for CA and the signed mandate of ten thousands civilian to register a party has provided the spaces for the nearest of the ruler where as minority were marginalized respectively. Such laws must be amended before the election. Mean while prerequisites for ruling parties to present candidature for the CA election must be calibrated. The environment of the election must be created by assuring security to all its countrymen. The perpetrator, human rights violators and regressive agents must be brought to the court not to the election arena. Skeptics for CA election are certainly not the destiny of transiting Nepal. But the plot of the politics depicts such. In such a vulnerability of violence and conflict state must resolve the issues as soon as possible. Rather than *blame storming*, the leaders are to act for immediate end to violence. State must promulgate laws to guarantee free and fair election.



CA Elections: Some Discussions on International Practices



»Ramesh Sharma«

1. Background

Constitution is nothing than a negotiated document within diverse communities and regions which is also a critical product of the process. It is the body of representatives of the people. Furthermore, it is the product of long negotiations in which different interests are carefully balanced, or which seek to make fundamental changes in the organization of the state and society.

The prescribed history of the constituent assembly traces back to French revolution. After the country goes in new steps from autocracy to democracy, one party system to multiparty system and oligarchy to people's government system, there is need of a new constitution. Not only because country had passed one situation or phase to another but also for the time being. In our country's context, the situation of 1990 and the situation of 2006 has been drastically changed. So it needs a new, developed, and prescribed constitution. There is a growing interest in the role of a constituent assembly in making constitution around the world. This is the assembly of a representative

of the people for the purpose of making constitution. This is extremely important to enter a new phase and modality of the structure of state. The main objectives for the making a new constitution is to terminate debate for the making constitution, to establish sovereignty of the people, to form representative constitution, to democratize the state, to manage conflict and to decide the future of the monarchy.

2. Learning from the Experiences

In the contemporary world, many disputes have been solved with the constituent assembly elections. There are mainly three ways to inter the whole process of constituent assembly. The first is to discuss on election process, second is to form committees and sub-committees with interacting among peoples and finally after drafting constitution to ratification process. CA elections were proved essential in most of the European countries. Afghanistan made its constitution by the elected constituent assembly but still is under shadow because the constitution has not been made by entire Afghani people rather it was made by the westerners. This

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has proved that election is not the ultimate solution. The power and function of the constituent assembly is differing from the countries, based on time and circumstances of that country. There are some fundamental principles that bound to incorporate like in South Africa, India and Cambodia. There are some international laws, principles of Human Rights and accustoms which are unavoidable. The reason that it is not only process for the making or drafting the constitution rather than maximum awareness to the citizen to get experienced from other countries and full participation. If there is not enough time for the entire process, this leads less exercise and dissatisfaction may come in a short time.

In the history of Namibia, total administration was in the hands of South Africa with guidelines of UN. East Timor was run by UN itself. In that kind of situation they had handled and took the country in favorable destiny. In Iraq, though CA elections were held and formed assembly which made constitution, United States and United Kingdom give direction to the government in this whole process. The constituent assembly in Iraq was failed because the voters were deprived to their rights to vote in the entire province. In Afghanistan the assembly made the constitution but never applied because the people of Afghanistan never felt that constitution made by them. So constitution of the country should be made by the citizen itself. Because of it, constitution never applied within the territory. In Nepal, it doesn't mean that we don't follow the experiences from countries. We can learn from the experiences from of these countries while going for the CA elections.

3. Representation in Constituent Assembly

Inclusiveness with representation from all marginalized groups is essential for the success of making a new constitution. It will be harmful in case of the exclusion of any stakeholder in the constitution making process. Cambodia is the instance where one group still is in war, similarly the Ethiopian opposition did not take part in the constitution drafting process and still it is denying for the legitimacy of the constitutional commission. Kenya and Africa have adopted two kinds of methods for representation of total groups and parties by the direct and indirect election. However there were lots of disputes for representation that leads war within intra state. Like in Somalia, East-Timor, in the lack of total representations leads disputes for a long time. This is our country so we have to decide which way is better for the solution. Disputes have been noticed in many countries in the method of election (mixed, proportional and majority) and division of area for election. There is a way to solve these kinds of problem by calling a round table conference and make consensus agenda by the political parties upon it. Political parties should form a committee for discussion with dissatisfied groups and civil society. This committee should necessarily reserve power to give advice to run governments until the election.

4. Proportional Representation in Government

The natural resources should be the property of the indigenous communities. The state should make an economic plan of development, without monopolies and promote private sector with equitable

re-distribution of gains. In the same way, industrialization should be within the hands of indigenous people. The method of good governance is to be followed. The state should promote direct participation through assemblies, local meetings, referendum, and legislative initiatives. There should be local courts who decide local cases in local level. Supreme Court judge should be elected from people. There should be local level, state level and centre level forms of government which must ensure easy access to government. Relation between constituent assembly member and Member of

Parliament should be correlative.

5. Constituent Assembly and Human Rights

The goal of the constituent assembly is to draft constitution that decides the future of the people which too plays a vital role in the development of the people. The right of self determination was not only relevant before the colonial countries, it is equally important today. On the basis of these rights, people can decide their political, religious, social and economic status. Proportional representation is the process of active participation in the government directly and indirectly by the people. Every

community based on occupation, language, religion, race etc has their rights and by their representative they could share it in the constitution. All the international laws and human rights would be the guidelines for the new constitution. The important part is the place where all representatives of entire population could share their needs. All suppressed communities with cultures, language, region and even altitude have internalized the fact that the state needs to be restructured through the Constituent Assembly. It is the high time for learning lessons from past errors. ●

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Pre-Election Statement: Carter Center Election Observation Mission in Nepal

Key Points:

- A. Improve Security environment:** The poor law and order situation should be addressed in order to ensure a credible electoral process.
- B. Allow Democratic Space:** All political parties regardless of their ideology should be allowed to move and campaign freely in Nepal. Violations of this principle should be condemned publicly by all stakeholders when they occur.
- C. Adopt Critical Electoral Legislation:** As a matter of urgent priority, the interim government must adopt the legal framework that will provide the necessary base for the election commission and other participants to conduct the elections.
- D. Widen Political Inclusion:** The constituent assembly election is unlike an ordinary parliamentary election and in order for the results to be accepted broadly, extra care should be taken to include the perspectives and participation of previously underrepresented groups.
- E. Launch Voter Awareness Campaign:** There is a wide-

spread lack of awareness among the Nepali people about the purpose and meaning of the constituent assembly election. A national voter awareness campaign is necessary to address this gap.

- F. Ensure a Credible Voter Register:** Seized voter lists, civil unrest in the Terai, migrant voter issues, problems related to the citizenship process and the lack of a publicly displayed preliminary voter's list threaten to undermine credibility of the voter register. Wherever feasible, measures must be undertaken to accommodate these concerns or minimize their ultimate impact.
- G. Prioritize Transparency in the Electoral System:** A proposal to allow parties to shift the order of candidate names on party lists after the elections would remove transparency for voters and could give political party elites disproportionate control over their candidate lists. The consequences of this and alternative approaches should be debated thoroughly before passage of the electoral law.

16 April 2007



»Rupesh Nepal«

Child Participation in Political Activities: Is it Justifiable ?

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*If children are the future of
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.....

The internal armed conflict that lasted in Nepal for more than a decade had serious consequences in the lives of children. There was widespread violation of the rights of the children and in very specific ways. Children were killed deliberately or in indiscriminate attacks, illegally detained, tortured, raped, abducted and recruited for military activities. Hundreds of children became permanently handicapped falling prey to the use of explosives by the warring parties. Their right to education was seriously violated due to the frequent enforced closure of the schools. Schools were used as a venue for different gatherings and programmes of political nature. Children were abducted from the school during school hours and forcibly made to participate in such programmes. Moreover, schools were damaged and destroyed during military operations carried out by both the parties to the conflict. Thousands of children were forced to leave their houses and live a displaced life with their family members in search of safe hideouts. Children in the same number had to quit their education in the middle and start working for their liveli-

hood. Their natural development of children was seriously affected and the warring parties did not respect the principle of "Children as Zone of Peace".

Rights of the children continued to be seriously violated during conflict despite continuous efforts from different organizations working for the protection and promotion of child rights. The conflict would have further exacerbated the problem, but thanks to the Comprehensive Peace Accord (CPA) signed between the government and the Communist Party of Nepal (CPN)-Maoist that brought the armed insurgency initiated by the latter to a complete halt.

The government and the CPN-Maoist signed the CPA on 21 November 2006 paving the way for the Maoists to join the peaceful mainstream politics. The signing of the CPA and Maoist's arrival to the mainstream politics was highly appreciated by all sections of the society including the international community. Though, the earlier agreements between the government and the CPN-Maoist (12-point letter of understanding and the ceasefire code of conduct) failed to address the issue of child rights,

clause 7.6.1. of the CPA guaranteed to give special protection to the rights of children. The clause stated not to conscript or use children who are aged 18 or below in the armed force and agrees that children thus affected shall be rescued immediately and appropriate assistance as may be needed shall be provided for their rehabilitation.

The number of child recruitment by the CPN-Maoist declined steeply after the signing of the CPA, but it did not come to a complete halt. However, Maoists had already accomplished their target by recruiting huge number of children just before some days of the signing of the CPA. INSEC's documentation in 29 districts shows that 252 children were recruited in the People's Liberation Army (PLA) since the beginning of November 2006. However, hundreds of cases of recruitment still remain unnoticed. These all are the new recruitment cases of children with hundreds of children already associated in the Maoist party and serving in different departments. Moreover, INSEC's documentation in 29 districts over past two years shows that over 700 children are associated with the Maoist and are serving in different departments.

Notable thing here is, the Maoists who earlier did not accept the involvement of children in their army, have now, following the growing criticism from national and international rights workers, agreed to release anyone found under the age of 18 in their camps. The United Nations facilitating for the management of the Maoist army and weapons will have the responsibility to distinguish such children in the PLA camps established throughout the country. However, a crucial question remains ahead, what will happen to such children once they are taken out from the camps pro-

vided that the government and the CPN-Maoist have not set up any mechanism for providing any assistance and rehabilitation of such children as stated in the clause 7.6.1 of the CPA. The risk remains high: these children may be manipulated and misused in the political activities and in the upcoming CA election. Just to give an example, a girl of Baniyani VDC in Jhapa district was recruited by the Maoists in the month of May 2006 when the Maoists organised a political programme in the village. Later, when the government and the Maoists agreed for the registration and verification of PLA by the United Nations, she was taken to the PLA camp in Ilam district. Surprisingly, she was released from the camp on November 2006 and used in the cultural department and was involved in the Young Communist League (YCL) - the sister organisation of the Maoist- activities. However, following the constant pressure from the human rights activist, the child was again released from the Maoists and is now studying at a school at Chandragadhi. Her activities look different than other children, says the principal of the school. Once, already went through the schooling environment, the child now is trying to re-adjust again in the same environment. One she was lucky to get the support of the rights workers who facilitated for her release and re-integrated her in the family. Hundreds still await such luck. This case clearly depicts the need for the set up of a mechanism for the rehabilitation and re-integration of such children in a bid to avoid their re-involvement in other political activities.

Not only the Maoists but other political parties are also equally responsible for the use of children in the political activities. Let it be the recent movement in terai, the fre-

quent bandhas called upon by different organisations formed in the name of caste, ethnicity, geographic location, the victims have always been the children. Though heads of such political parties and organisations have repeatedly expressed their commitments on respecting children's rights, they have not taken any action in practical to refrain children from political activities. Specially, student wings of such political parties are seen conducting their political programmes inside the school premises to indoctrinate students with their political ideas. Reports coming to INSEC from the districts say that all the student organisations are forming their committees or organisations in the schools. These student unions have been using children of their committees in different political programmes. This is an alarming signal for the potential threat of children's participation in the upcoming CA election.

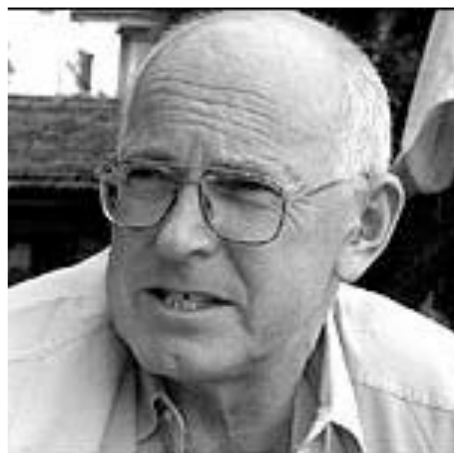
It is well known fact that politics is the best means to express your ideas. Yes, children are free to express their views or, if they prefer, to not do so. But children should not be pressured, constrained or influenced in ways that might prevent them from freely expressing their opinions or leave them feeling manipulated. Children should be guided throughout childhood to develop informed opinions and be given the appropriate space to express themselves in a constructive manner.

If children are the future of a country, rights of the children are the issues where all the seniors need to take the lead. They need to think of the children, their development and well being. It should always be remembered that prosperous children lead to a prosperous nation.



Informal Converse

Ian Martin, Special Representative of the UN Secretary-General in Nepal has emphasized on creating the free and fair atmosphere for the Constituent Assembly Elections in Nepal. In an interview with **Laxman Datt Pant, editor of Informal** on June 8, 2007, Martin said, "CA election is a truly unifying landmark in the peace process which enables a representative body to lead the next steps in the process of building sustained peace. *Excerpts:*



Informal: What is the specific purpose of your office in Nepal?

Martin: The United Nations Mission in Nepal (UNMIN) is a special political mission established by the United Nations Security Council, Resolution 1740, to support the peace process in Nepal: *in particular, to assist in the conduct of the Constituent Assembly election in a free and fair atmosphere.* UNMIN was established in response to requests by the Seven Party Alliance Government and the Communist Party of Nepal (Maoist), in their letters to the Secretary-General of 9 August 2006 in which they asked the UN to assist in creating a free and fair atmosphere for the election of the Constituent Assembly and the entire peace process. The parties went on to sign the Comprehensive Peace Agreement on 21 November 2006, and UNMIN officially began its work on 23 January 2007.

To achieve its objective, and based on the requests of the parties to the CPA, UNMIN's mandate

includes the following tasks:

- Monitor the management of arms and armed personnel of the Nepal Army and the Maoist army.
- Assist the parties through a Joint Monitoring Coordinating Committee in implementing the agreement on the management of arms and armed personnel of both the Nepal Army and the Maoist army.
- Provide technical assistance to the Election Commission in the planning, preparation and conduct of the election of a Constituent Assembly in a free and fair atmosphere.
- Assist in the monitoring of ceasefire arrangements.

In addition, an independent team of election monitors appointed by the Secretary-General and reporting to him will review all technical aspects of the electoral process and the conduct of the election.

Informal: What would you say are the noticeable efforts in the present peace process in Nepal?

Martin: After ten years of conflict, the peace process in Nepal has come a long way in the past year. Since the Janaandolan of April 2006, there have been major achievements: successful negotiations culminating in the Comprehensive Peace Agreement between the Seven-Party Alliance and the Communist Party of Nepal (Maoist), which formally brought the conflict to an end and set the roadmap for Constituent Assembly election and the transition process; implementation of the Agreement on Monitoring the Management of Arms and Armies, with the Maoist army cantoning its personnel, registering them and their weapons and storing weapons under UN monitoring, while the Nepal Army has stored an equivalent number of weapons under UN monitoring and remains in its barracks; safe storage of thousands of improvised explosive devices by the Maoist army, with a commitment to destroy these; a commitment by the Nepal Army to clear all landmine and other sites of unexploded

ed remnants of the war; the formation of the Interim Parliament-Legislature and then the Interim Government; and preparations for the Constituent Assembly election.

All of this represents rapid progress after a protracted conflict. There remain major challenges, and it is natural that with the expectations after the 2006 Janaandalon many people in Nepal are frustrated at what they see as unresolved issues and delays. But the achievements of the past year should be recognized in order to strengthen the political will and unity to address the remaining challenges to ensure that the peace process stays on track.

election in a free and fair atmosphere, but also to manage a longer transition to sustained peace and inclusive democracy. Now that the CPN (Maoist) is part of the Government, it shares responsibility with the other seven parties to work together in Government to move ahead with the peace process.

UNMIN was established on the basis of the requests of the parties for the UN to assist in creating a free and fair atmosphere for the election of the Constituent Assembly and the entire peace process. Part of the role of UNMIN, and of OHCHR-Nepal, is to monitor the implementation of the commitments of the parties to the CPA: in relation to the manage-

required to deliver difficult messages to the parties. But the spirit of cooperation and common purpose between UNMIN and the parties is strong.

Informal: Have you noticed differences in the political developments after your arrival in Nepal?

Martin: I arrived in Nepal in May 2005, as Representative of the United Nations High Commissioner for Human Rights. At that time, the armed conflict continued without sign of abating, and there was tremendous pressure to restrict democratic rights. In the three years before OHCHR was established in Nepal, there was a shocking rate of enforced

There remains much work to do to ensure that the electoral system is broadly acceptable to all the traditionally marginalized groups in Nepal, so that the CA election is a truly unifying landmark in the peace process which enables a representative body to lead the next steps in the process of building sustained peace.

Informal: How would you observe the Government's and Maoist's commitment towards peace? Are they supporting enough in regard to your presence in the country?

Martin: It was clear in the negotiations which culminated the Comprehensive Peace Agreement in November last year that the members of the Seven-Party Alliance and the CPN (Maoist) had genuine political will to end the armed conflict. And the commitments made in the CPA demonstrate that the parties to the agreement are mindful of key issues which need to be managed and resolved in order not just to achieve a Constituent Assembly

ment of arms and armed personnel, the implementation of cease-fire arrangements in communities across the country to ensure a free and fair atmosphere for the preparation and conduct of the CA election, and, by OHCHR, the protection of human rights.

Having requested the UN to support the peace process, the parties which now form the Interim Government work closely with UNMIN as we fulfill our mandate. The Joint Monitoring Coordination Committee has established excellent cooperation among UNMIN, the Nepal Army and the Maoist army. Of course, given our monitoring role there will be times when UNMIN, and indeed OHCHR-Nepal, are

disappearances related to the conflict, as well as many other serious violations of international humanitarian law. The changes and the progress toward peace and inclusive democracy over the past two years are dramatic.

It is to be expected that there will be challenges and problems along this path from a protracted conflict to sustained peace. There remains much work to do to ensure that the electoral system is broadly acceptable to all the traditionally marginalized groups in Nepal, so that the CA election is a truly unifying landmark in the peace process which enables a representative body to lead the next steps in the process of building sustained peace. One key to meet-

ing these challenges is to make sure that the spirit of dialogue and tolerance is fostered and utilised, between political parties, and between political parties and groups within society. Genuine dialogue is the only way to bridge the differences between parties and to move from tension and conflict to cooperation.

Informal: How do you observe the recent extortions by YCL? Can the Maoists be trusted?

Martin: It is essential that the leadership of the CPN (Maoist) ensure that its cadres across the country abide by the party's commitments. The genuinely peaceful political actions of a youth wing of a political party are a normal aspect of the political process, but any form of violence or intimidation to prevent the political activities of others is unacceptable. I have expressed concern to the Maoist leadership that the YCL must be a peaceful political organization and should cooperate with the police in law enforcement, and not maintain parallel structures. At the same time, I would encourage discussions between state law enforcement agencies and the Maoists, as well as civil society, about how law enforcement can be made more effective and all citizens can assist the police in their responsibilities.

The Maoist leadership has on a number of occasions denied that incidents attributed to the YCL were in fact committed by its members. If political parties assert that they are wrongly accused in the media of violations of their commitments, then they have an interest in ensuring that objective monitoring is carried out by an

objective body independent of all political actors. The creation of an independent national monitoring body has been overdue ever since the National Monitoring Committee on the Code of Conduct for Ceasefire (NMCC) was dissolved. Such a body, assisted by UNMIN under the terms of our mandate, would have the capacity to monitor conditions in the districts and the conduct of political parties and report in an independent and credible manner. This would provide a reliable basis for all parties to ensure that their members respect their commitments made in the CPA.

Informal: How do you analyse the protests by the ethnic communities like the *Madhesi*? What do you think about the possible impact of the *Madhesh* Movement on Constituent Assembly elections?

Martin: The *Madhesi* communities of the *Tera*i have legitimate concerns related to long-standing discrimination, and now in relation to the Constituent Assembly election, and it is essential to the success of the peace process that these concerns be heard and addressed. The recent talks between the Interim Government and representatives of the *Madhesi* Peoples Rights Forum are a positive sign.

The Secretary-General, in his report to the Security Council on the establishment of UNMIN, stated that "if Nepal fails to meaningfully include traditionally marginalized groups in the peace process and in the election, and in the deliberations of the Constituent Assembly, the country will lose a crucial opportunity to harness the strength and vision of

its own people and leave some of the key underlying causes of the conflict unaddressed." The credibility of the CA election will depend, in part, on it being inclusive of marginalized communities. It is essential that the legitimate concerns of the *Madhesi* movement in relation to the electoral system, and other matters, are listened to and addressed. Of course this applies as well to other groups, for example Janajatis, Dalits and women.

It is also important that protests by the *Madhesi* movement, or by any other movement, use only peaceful means. It is to be expected that groups will seek to exercise their democratic right of peaceful protest in a time of political transition, as a means to press their demands. The leadership of such movements must ensure that only peaceful means are used, and the State has the responsibility to respect this democratic right of peaceful protest and to use only methods of policing which respect human rights in the event of demonstrations.

Informal: In recent days, Maoist army combatants have left cantonment sites and their commanders have stated that this is in order to secure work and lodging. How do you observe this with regard to the Agreement on Monitoring the Management of Arms and Armies?

Martin: There have indeed been instances when Maoist personnel have left the cantonment sites, reportedly to work or gather food, or to shelter because conditions in the cantonments have suddenly deteriorated. UNMIN has pressed the Government for some

months to improve the conditions in the cantonments, to ensure that Maoist personnel can remain inside the sites with proper conditions and support. I am pleased that since the formation of the Interim Government there seems to have been real progress, and understand that building works for better accommodation are currently underway at Maoist cantonment sites.

Informal: What kind of role can Nepali civil society play for lasting peace?

Martin: Civil society played a key role in the difficult years of armed conflict, in its efforts to protect human rights as well as to support some of the most vulnera-

society - so that all Nepalese people can participate in the process of transition. I hope the local peace committees which the Interim Government intends to establish at the district level will have strong civil society participation, including the participation of women.

In a wider sense, civil society, in its many forms, plays the role of acting as guardian of the democratic principles which are the foundation of the peace process. By promoting dialogue and participation, civil society can work to ensure that even as the peace process quite naturally turns to democratic political competition, people do not lose sight of the goal of developing a free, just and inclusive society for all Nepalese people

ties are committed to the CA election before mid-December, it is essential that the Government put in place a comprehensive plan of action with a realistic timetable to ensure that all the necessary steps are taken to prepare for a credible election.

The Election Commission has made it clear that it cannot begin detailed preparations until the legal framework is in place establishing the electoral system. And this framework will need to be broadly acceptable to those traditionally marginalized groups calling for an inclusive and representative election. UNMIN provides technical assistance to the Election Commission, and stands ready to support the Commission complete the necessary prepara-

Creating the free and fair atmosphere for the CA election will require the commitment and hard work of the Government, political parties, civil society and social movements.

ble groups in society through development programmes. It played a major role in the Janaandalon of 2006, including in working to ensure that the movement remained peaceful. The work ahead for civil society is no less challenging, and remains a key element to the success of the peace process. Protecting human rights and promoting dialogue and political tolerance in district and village communities are roles where local civil society organisations and activists can make a significant contribution. Civic education, especially among traditionally marginalized communities and groups and in the countryside, is another important role for civil

Informal: Will CA elections be held in time? When should the elections be held?

Martin: It is not for the UN to say when the CA election should be held. However, it is worth reiterating the words of the Secretary-General in his report to the Security Council upon the establishment of UNMIN, when he stated that "the timely, free and fair conduct of the Constituent Assembly election is central to the sustainability of the peace process." The Security Council also recognized that maintaining the momentum of the peace process is an important element to its success. Now that the eight par-

tions for the election.

In addition to the technical preparations, it is essential that the Government establish public security in the countryside, and set up an independent national monitoring body to insist upon political tolerance at the local level and so create the conditions for free and fair campaigning and voting. Creating the free and fair atmosphere for the CA election will require the commitment and hard work of the Government, political parties, civil society and social movements. UNMIN stands ready to assist in this process, in accordance with its mandate.





»Laxman Datt Pant«

Media in Post-Conflict Reconstruction

Communication has been described as the mechanism through which human relations develop all the symbols of the mind. The Media are "the institutions and forms in which ideas, information and attitudes are transmitted and received." The media create the space for communication within societies and among communities and between nations. They can create either a societal conversation or conflict. Communication scholar James Carey states, "We first produce the world by symbolic work and then take up residence in the world we have produced."

Truth, justice, revenge and forgiveness are societal reactions to collective violence. They are also emotive murmur words used in discussions of post conflict societal reconstruction. Justice is a complex and innate human need. It is essentially, a formal and tempered process of punishment for wrongs committed. Justice as punishment is retributive and should be in proportion to the crime. In situations where the distinctions between victims and perpetrators are blurred and where both must rebuild society together, retributive justice may not only be insufficient but impossible. The purported Truth and Reconciliation

Commission in Nepal is to be aimed to restore a balance in society and the dignity of people by exposing the truth by documenting the narratives of their collective history. This process should be geared to repair social connections, moving victims beyond anger and powerlessness and ultimately enabling the reintegration of delinquents into the society.

Conflict may be natural and normal but violence is a choice - as is reconciliation. The media can help turn collective storytelling into public acts of healing. Conflict resolution expert Jean-Paul Lederach explains, "People need opportunity and space to express to and with one another the trauma of loss and their grief at that loss, the anger that accompanies the pain and the memory of injustice experienced. Acknowledgement is significant in the reconciliation dynamic. It is one thing to know; it is a very different social phenomenon to acknowledge. The media can assist in the releases feelings of shame and humiliation in victims, so that the story becomes one of dignity and virtue. Removing the humiliation from the victim to the perpetrator creates a sense of justice and retribution.

The media's capacity for public humiliation is an extremely

important one, especially in more traditional societies where concepts of honor and reputation still drive behavior. The media in the impulsive post-conflict atmosphere must not succumb to pressure to exploit or sensationalize stories which would only retraumatize victims as well as society in general. Nor should they reduce testimonies to mere lists of atrocities which remove vital context and accountability. Careful reporting must facilitate the societal conversation, respecting victims and the effects of trauma on themselves as well as society.

Reprisal and forgiveness are marks along the scale of human responses to atrocity. Yet they stand in opposition: to forgive is to let go of reprisal; to avenge is to resist forgiving. Perhaps justice itself partakes of both revenge in the form of punishment and forgiveness. In order to affect lasting change and reconciliation, larger patterns of atrocity and complex lines of responsibility and complicity must be investigated, acknowledged and documented. Finding alternatives to reprisal - such as government-managed prosecutions, institutional reforms or other social processes - is a matter, then, not only of moral and emotional significance, it is urgent for human survival. ●

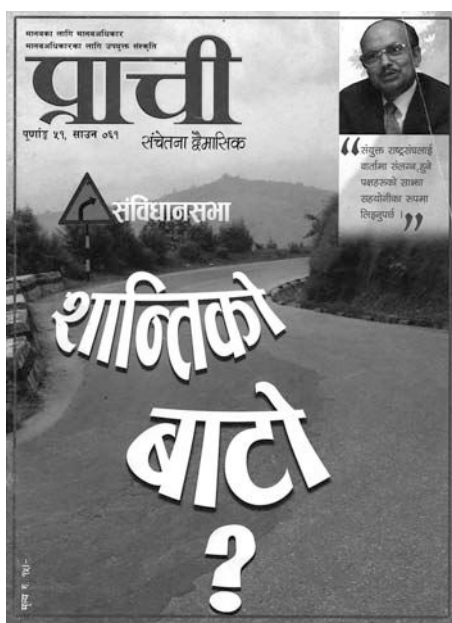
With the much anticipated election of the Constituent Assembly (CA) ahead, Informal Sector Service Centre (INSEC) has been advocating on the need to educate common people about its importance, essentiality and their participation in CA. In fact, INSEC had already started discussions on CA as soon as the House of Representatives (HoR) was reinstated on 24 April, 2006 with the success of the Jana Andolan II. After the HoR passed the resolution on forming a constitution through CA, INSEC took the initiative to create awareness on CA and ensure the inclusion of traditionally marginalized groups such as women, Madhesis, Dalits, Janajatis and others in the CA election by conducting various programmes across the country and through its publications.

A crucial part of INSEC's campaign on creating awareness on CA is through its publications. Besides organizing programmes on CA, INSEC has thoroughly covered these programmes on INSEC ABHIYAN, a monthly magazine in Nepali which covers various programmes organized by INSEC and its partner organizations. The news of these programmes are given high priority and published regularly in www.inseconline.org, a Human Right news portal available in both English and Nepali languages. PRACHI, a bi-monthly publication of INSEC in Nepali had a main issue on CA in its September/October 2006 issue. Likewise, a quarterly publication of INSEC in English, INFORMAL also stressed on the inclusion of traditionally marginalized groups

INSEC Publications: CA

in CA election in its April & June 2007 issue.

The 110th Vol. of INSEC ABHIYAN, June/July 2006 issue covered the interaction programme on "Structure of Women Participation in Constituent Assembly" organized by INSEC on 6 June 2006. The same issue also published the full version of the paper in the same topic presented by Ms. Pushpa Karn, member of INSEC Executive Board on the programme.

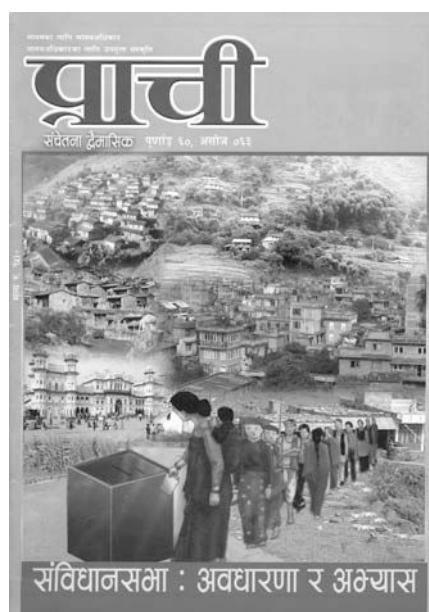


PRACHI on its September/October 2006 issue, Vol. 60 had covered CA as its main issue. Its editorial highlighted the need to concentrate on pre-requisites of CA and the awareness campaigns on CA to make it fruitful. In his article Constituent

Assembly: Principles and Practices of that issue, Luma Singh Bishwakarma elaborated his topic into Constitution, Constituent Assembly, Need for Constituent Assembly, Duration of Constituent Assembly and International Practices, Issues to be considered in forming a Constitution. The article is carefully structured and provides important information on CA. Discussions on Constituent Assembly in Nepal by Jayaram Gautam has given every details of the discussions on CA in the context of Nepal from 2003 BS, when Rana Prime Minister Padma Shamsheer proposed a constitution reform committee (a kind of Constituent Assembly) to 24 April 2006, when King Gyanendra reinstated the HoR, which passed a resolution on forming a constitution through CA on April 28. He has divided this discussion, which he stated is more than 50 years long, into five periods. In an article Constituent Assembly and People's Expectation, the magazine has voiced the opinions of people from different parts of the country on the topic.

In another article Constituent Assembly and Security of Public Interest of the same issue of PRACHI, Ajay Bhadra Khanal has emphasized that the main reasons for social conflicts like autonomy based on caste system, linguistic provisions, restructuring of the state, security

of individual rights, relations between government and parliament, provisions on misuse of rights, etc should end through CA; otherwise a totally different kind of conflict would emerge and destroy the social system. Dipak Aryal in his article How to Improve Literacy on Constituent Assembly has underlined that a combined effort from government, political parties, civil society, private organizations and NGOs side could educate people on different processes of CA and its importance. He also pointed out that media campaigns involving above the line communication media like TV, press and radio, and under the line communication media like leaflets, folders, brochures, catalogues, booklets, postcards could be and must be used in an effective way in this regard. Similarly, Prakash Neupane in his article Constituent Assembly and Issue of Inclusive Representation has underscored the lack of discussions so as to draw ideas to make the CA inclusive. In the article Role of United Nations in Constituent Assembly Election, Bidhya Chapagain has illustrated the significant role played by UN in conducting CA election in South Africa, the remarkable success UN accomplished after the first CA election was held in East Timor in 2001 and the support provided by UN and its specialist in the making of constitution in Iraq. The article has emphasized that Nepal like the other conflict hit countries like Afghanistan, Peru, Bolivia; East Timor could take technical support and suggestions from UN in CA election and drafting of a new constitution. This edition of PRACHI



is a must for everyone in order to gain information on various aspects of CA.

The April & June 2007 issue, Vol. 20 of INFORMAL called for inclusion of traditionally marginalized groups in the CA election. Its editorial read, "The country is heading towards the election of CA to make the new constitution



with the involvement of the people from Mechi to Mahakali. For the first time in Nepali history, the Nepali people are drafting their constitution. Thus, making of a new constitution in Nepal through an elected CA is enviable".

INSEC has carried on with its awareness campaigns on CA across the country. INSEC has launched special awareness campaigns on CA in the eastern region while other programmes are also organized in other parts. The news on these programmes are posted regularly in www.inseconline.org. INSEC's most recent initiative on CA is this issue of INFORMAL. This issue of INFORMAL covers CA as its main issue. It has a main article on Prerequisites of Constituent Assembly: Human Rights Perspective by Dr. Surya Dhungel, and other articles including Constitutionalism of ESC Rights with Special Reference to the Experience of South Africa by Dr. Vinodh Jaichand, Constituent Assembly: Concept for Discussion by Vijaya Kant Karna.

The latest publication of INSEC concerning CA is a book entitled 'Constituent Assembly: A gateway to restructuring of the state'. The book, published in June 2007 comprises of articles regarding CA which were published in two volumes of PRACHI and two articles published in the Nepal Human Rights Yearbook of different years.

Making the most of this transition period is an opportunity to make more people aware of the concept of CA, INSEC has utilized its resources to the full.

- Nir Lama

Books related to Constituent Assembly

Here is a list of books related to Constituent Assembly. The books are written by Nepali writers on different themes including state restructuring, inclusion, constitution making process, constitutional development, democratic practices, national crisis etc. We have tried to present the maximum books available in the market, though the list is not an end.

1. **Shrestha, Ram Prasad, and Ganesh Prasad Subedi.** *2047 Ko Sambidhan Nirman Ra Sambdhan Sabha.* Kathmandu: Bhrikuti Academic Publication. 2063.

The book explains about the movements and dissatisfactions presented by Madan Kumar Bhandari on informational series of incidents on Formation of Constitution Recommendation Commission 2047. The book in addition presents the situation of the nation in which new constitution is going to form through Constituent Assembly.

2. **Gyawali, Chandrakant.** *Sambidhanbad, Sambidhan Sabha Ra Rajya ko Punasanrachana.* Lalitpur: Gyawali Bijaya. 2063.

The book includes programs with presentation about the process on election of Constituent Assembly, various seminars, workshops and to accumulate personal experiences. The author has tried to answer the questions like-How to codify area of constituent assembly? For constituent Assembly what kind of election system should be accepted for the equal representation of all? Which of the election system of the world is to be chosen for the equal representation? In the Nation's reconstruction what should be the function of free judiciary?

3. **Siwakoti, Rajiv, Ratan Bhandari, and Ghanendra K.C.** *Sambidhan Sabha Ra Nepalma Loktantrik Ganatantra ko Disha.* Kathmandu: Madhubhan Prakashan. 2063.

The book has attempted to list out the policies of the Government of Nepal, its' programs, agreements done with Maoists, Constituent Assembly

and views of different scholars on future constitution making process.

4. **Poudel, Navaraj.** *Nepali Samaj ko Agragami Phadko Sambidhan Sabha.* Patan Dokha Lalitpur: Poudel, Sumitra. 2063.

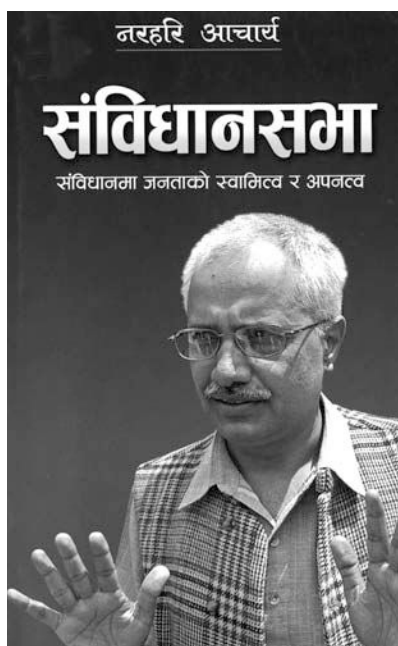
The book has mainly tried to describe the constitutional development and language in constituent assembly, international experiences, concept on Constituent assembly, and various issues on women's participation in the election to Constituent Assembly.

5. **Maskey, Mahesh, and Ninu Chapagain.** *Sambidan Sabha: Sambhawana ra Chhunautihar.* Baudhik Akyabadhdata Samuha Ra Jana Ekata Saptahik. 2059.

The book highlights the importance of Constituent Assembly. Appropriateness came from different corners are given space in this book. Articles and interviews already published in newspapers are included. The book also includes representative articles, interviews, opinions and manifestos.

6. **Bhusal, Bishnu Prasad, and Basantalal Maharjan.** *Sambidhan Sabha: Siddhanta ra Byawahar.* Bishnu Prasad Bhusal, Basanta Lal Maharjan. 2063.

This book has described the election processes prevalent in the world, experiences of various countries in drafting constitution, election of constituent assembly in the context of Nepal. The book also explains things that are to be taken into consideration while drafting new constitution, manifestos related to Jana Andolan 062/63 including 12 points agreements reached between



Maoist and the seven parties.

7. Silwal, Prem. *Loktantrik Andolan, Naya Sambidhan Kina?* 2062.

The book explains conversations and expressions taken from political leaders (including Girja Prasad Koirala, Madhav Kumar Nepal) scholars, writers, human rights activists, student organizations and so on.

8. Dr. Sharma, Gopal. *Nepal ma Sambidhan Sabha*. Katmandu: Pairabi Prakashan. 063

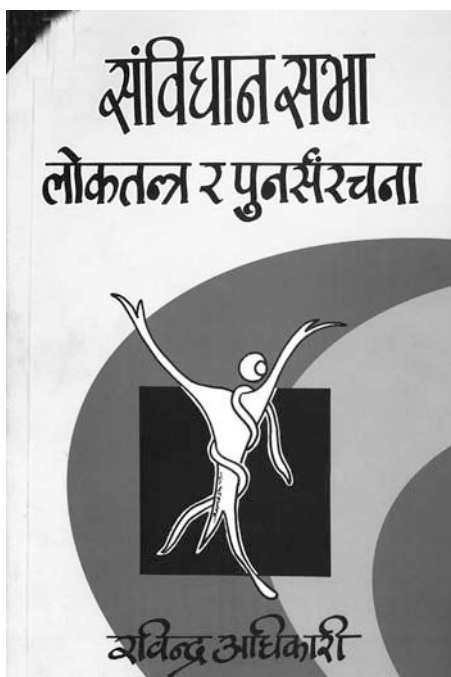
The book is the outcome of the need of ending Nepal's crisis. The author has tried to explain the principles of Constituent Assembly including possible ideal principles of Nepal's Constituent Assembly.

9. Dr. Adhikari Bishwodip. *Sambidhan Ke, Kina ra Kasari?* Kathmandu: Madhuban Prakashan. 2063

The book attempts to answer the questions like what, why and how on constitution. Readers may find the book could be easy to talk to others, to interact and to discuss.

10. Dr. Bhandari Buddhi Prasad. *Sambidhan Sabha ko Auchitya*. Kathmandu: Asia Publication P.Ltd. 2063.

The book highlights on election of constituent assembly after arms management by both the government and Maoist in the mediation of United Nations. The book also explains the importance of establishing permanent peace by resolving conflict. "Suggestion to make this assembly suitable, constitution should be made according to the public interest through free, neutral and transparent election is given," the books explains.



11. Sharma, Anup Raj. *Sambidhan Sambandhi Lekhharu ko Sangalo, Bhag* 12. Kathmandu: Nepal Kanun Samaj. 2049.

The book has been compiled with the articles Jurisdiction and Limitation of Parliament to form laws: Some Explanations related to our Constitution by Madhavraj Poudel, Constitution and Constitutionalism by Kashiraj Dahal and Development of Constitutional Laws in Nepal by Narendra Aryal.

12. Bhandari, KP. (ed.). *Nepali Janataka Prama haru Tatha Saambidhan Sabha ko Prayog*. Kathmandu: Baudhik Darpan Prakashan. 2063.

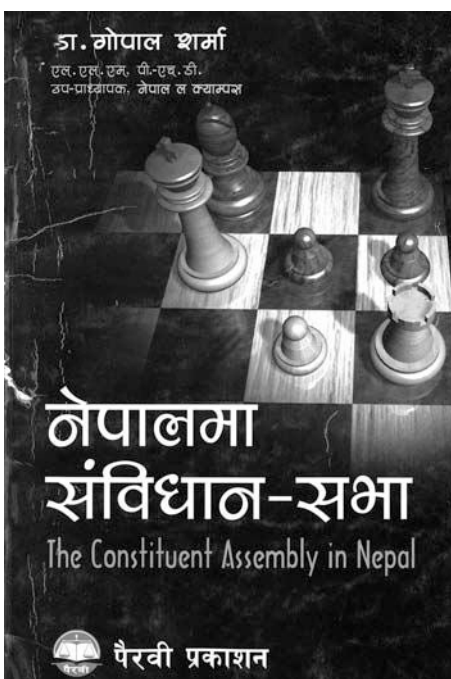
The book describes the histories written by people in group A, special discussion on constituent assembly and its experiences in international level in group B, and series of political incidents in group C.

13. Pokhrel, Krishna, Aman Shrestha, and Prem Kunwar. *Loktantrik Ganatantra: Sambidhan, Sambidhanwad, Samawesi Loktantra Ra Rajyako Puna Sanrachana*. Katmandu: Asia Publication P.LTD. 2063.

This book explains information on Constitution, Constitutionalism, Constituent Assembly its use and process including democracy, inclusive democracy, monarchy, republic, state's restructure etc

14. Dahal Kashi Raj. *Sambidhan Sabha ra Sambaidhanik Bikash (Bisho ko Tulanatmak Adhyan)*. Kathmandu: Nirantar Prakashan P.Ltd. 2063.

The book tries to include aspects mainly processes of forming constitution, beliefs of Constituent Assembly, practices of



states that tried to forward constitutional development processes through Constituent Assembly.

15. Subedi Nawa Raj. *Janaandolan, Sambidhan Sabha Ra Ganatantra*. Akshar Prakashan Network P.Ltd. 2063.

The book describes inclusive democracy and improvement in state's reformation, objectives of Constituent Assembly, knowledge on process and use of Constituent Assembly including the need of republic in people's movement and relevance of process of the democratic rule etc.

16. Gautam, Rajendra. *Sambidhan Sabha: Sworup ra Prakriya*. Biratnagar: Birat Prakashan, 2063.

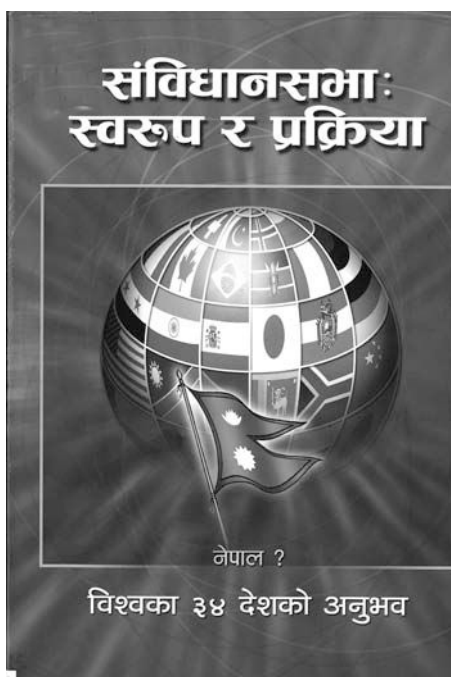
The book presents the ideas on Constituent Assembly including its shape, facts on processes, way of election, and bases in the state restructuring. The book has also proposed 265 members for the assembly.

17. Maharjan, Rajendra. *Rastriya Sankat Ra Sambidhan Sabha*. Katmandu: Mulyankan Prakashan Griha. 2060.

This book is the a collection of articles on Constituent Assembly published in Mulyankan and Nabayuba monthly in different times The book includes articles of Krishna Khanal, Khagendra Sangraula, Govinda Neupane, Narahari Acharya, Mukta Shrestha, Rajendra Maharjan and Shyam Shrestha.

18. Karki, Buddhi. *Nepalma Sambidhan ra Sambidhan ko Bhabhi Disha*. Kathmandu: Kanoon Sarokar Samuha. 2063

The book includes articles *Sambaidhanik Asafalta ka*



Karanharu तथा Sahabaghitamulak Sambidhan Nirman by prof. S Ghai, *Sambidhan ra Prajatantra ko Bhabisya* by Dr. Surendra Bhandari and *Nepal ko Sambidhan Nirman Prakriya Etihasa ra Bibechana* by Buddhi Karki. Similarly this book includes 27 points criticism presented by Madan Bhandari in 2047.

19. Devkota, Keshavraj. *Sambidhan Sabha*. Kathmandu: Saugat Prakashan. 2062.

The book explains the concepts of Constituent Assembly and Republican issues. International experiences with Nepal's situation after Magh 19 are also presented in this book.

20. K.C Dr. Surendra. *Nepal ko Rajya Puna Sanrachana ra Sambidhan Sabha*. Kathmandu: Pairavi Prakashan, 2063.

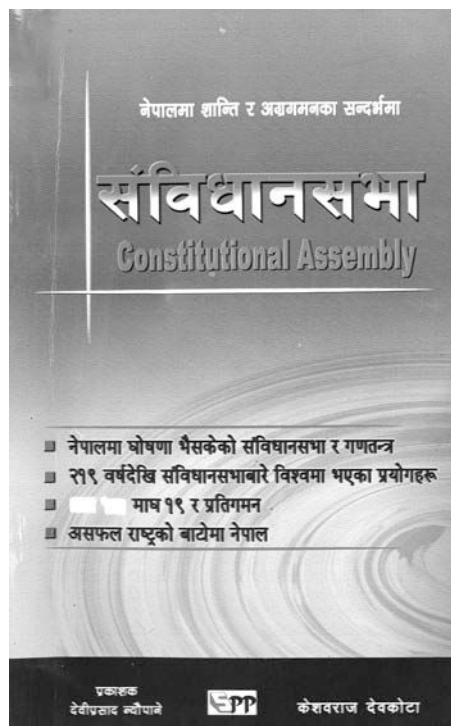
The first part of the book includes background of state's restructure, present situation, relevance and proposal on restructure. The second part includes formation of Constituent Assembly, its history and experiences.

21. Maharjan, Rajendra. *Sambidhan Kasari Bancha? Kathmandu: Mulyankan Griha*. 2061.

The book includes interviews and interactions with eighteen different personalities on Constituent Assembly including articles. Interview of conflict specialist Dr. Nikolas Hesam Phinka can be read in the book.

22. Nepal, Keshav. *Sambidhan Sabha nai Kina?* Lalitpur: Sahashrabdi Prakashan P.Ltd. 2060.

Importance of Constitutional Assembly in Nepal, Its election process, parts of speeches and passed proposals given by political parties about this and book and important editing parts are included.



23. Chintan, Gopal. *Sambidhan Sabhako Pristabhum, Prakriya, Sworup ra Nirwachan Paddati*. Katmandu: Rastriya Sarokar Samaj, 2063.

The book describes the history of Constituent Assembly in Nepal, its background and process to be followed while going for the election.

24. Singha, Prem Bahadur. *Sambidhansabha, Rajyako Puna Sanrachana ra Samabeshi Loktantra Eak Prastab*. Prem Bahadur Singha. 2063.

The book discusses the concept of constituent assembly including state's restructure. The author has also proposed some fourteen federal states according to population and area. The book is divided into three parts.

25. Pokhrel, Shankar. *Sambidhan Sabha, Rajyako Puna Sanrachana*. Nepal Trade Union Mahasangh. 2062.

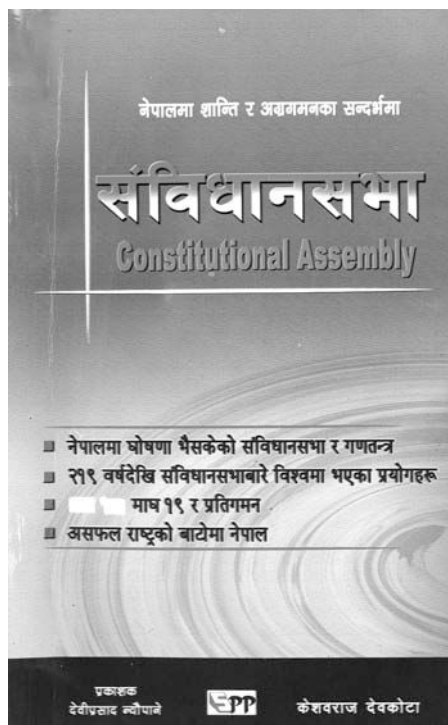
The book is divided into six parts which includes methods of Constituent Assembly, its process, constitutional management, restructuring of the state. The author has described about the fifteen regional divisions in the book.

26. Lawati, Mahendra. *Samabeshi Sambidhasabha Ra Rajya Punasarachana. Adiwasi Janajati Utthan Rastriya Pratisthan Sansthaगत Sudridikaran Pariyojana*. 2063.

The book is divided into two parts which includes structure of Constituent Assembly, its process, state's restructure and discrimination, reservation policy and community discrimination.

27. Acharya, Narahari. *Sambidhan Sabha Sambidhanma Janata ko Swamitwo ra Apanatwo*. Samwatsar Prakashan. 2062.

The author describes the necessity of constituent assembly merely answering the questions why, how and for what? The book also emphasized upon discussions and dialogue to be conducted.



28. Dr. Bhandari, Surendra Raj. *Sambidhan Nirman Prakriyama Nagarikko Sahabagita*. Save the Children USAID, 2063.

In this book constitutionalism, examples of three countries in the formation of constitution and citizen's role in drafting constitution including challenges and possibilities of Constituent Assembly are mentioned.

29. Adhikari, Rabindra. *Sambidhan Sabha Loktantra ra Puna Sanrachana*. Pokhara: New Hello Stationary Book House. 2063.

In this book, Constituent Assembly, its method, shape and its practice in the world as well as explanation on state's restructure including political activities during

people's movement are discussed.

30. *Nepali Madhesi ka Samasya, Sambidhan Sabha ko Auchitya*. Madhesi Jana Adhikar Forum-Nepal. 2061.

The book is the authentic manifesto of Madhesi Jana Adhikar Forum. The book discusses the appropriateness of Constituent Assembly, its background in Nepal, world's history and importance of state restructuring.

31. Acharya Bhimarjun. *Sambidhan Sabha Prakriya ra Anubhavharu*. Kathmandu: Rastriya Shanti Abhiyan. 2063.

The book discusses different experiences on constituent assembly including international experiences. Challenges related to constituent assembly are particularly discussed.

32. Mishra, Birendra Prasad et al. *Sambidhan Sabha ko Sanrachana ra Nirwachan Paddhati*. Kathmandu: Freedom Forum. 2063.

The book discusses different political events including political consensus reached among parties. The book identifies election to constituent assembly as the only way to get rid of 12 years armed conflict.

- Raju Pasawan/Gopi Krishna Bhattarai/Shubha Kayastha

Workshop on Issues of State Restructuring



From Extreme left- Chitralekha Yadav, Dy-speaker, Shovakar Parajuli, Acting Chief-secretary of Nepali Congress Party Office, Rameshwor Phunyal, Secretary of CPN (UML), Kathmandu District Committee and Kundan Aryal, General Secretary, INSEC

INSEC organized a workshop on Issues of State Restructuring at United World Trade Centre, Tripureshwar from 6 to 8 June. Representatives of major political parties including Nepali Congress, Nepali Congress- Democratic, CPN (UML), CPN (Maoist) and Rastriya Prajatantra Party, their sister organizations along with representatives of human rights organizations participated in the three-day programme. The programme was organized to discuss the issues of state restructuring which is in discussion at all political and non-political level. The workshop attempted to generate a debate and find out the needed focus for the state restructuring.

Addressing the opening ceremony of the workshop, INSEC chairperson Subodh Raj Pyakurel said that the political activists were the best social researchers because they

are in constant contact with the people at the grass-root level. He stressed on the need to adhere to process while making decision with due respect to law and regulations.

Shedding light on the objective of the programme, INSEC general secretary Kundan Aryal said the need for the workshop was felt to find out ways to restructuring of the state into new Nepal and expressed hope that at the end of the workshop, the participants will be clear about the issues to focus in coming months.

Prof Krishna Pokharel, legal expert Surya Dhungel, Nepali Congress office secretary Shovakar Parajuli, Deputy Speaker Chitralekha Yadav, Former Commissioner of National Human Rights Commission Sushil Pyakurel presented their separate papers on different issues related to state restructuring.



In-House Study Session

INSEC organized an in-house study session at Hotel Country Vella, Nagarkot from 6 to 9 May. The programme had the objective to listen to and learn from external experts on the matters that are relevant to INSEC work, initiate in-depth discussion among staffers on the emerging issues of the nation and seek ways of intervention in the changing context of the country. A total of 46 INSEC staffs and six INSEC executive board members attended the three-day programme.

The first two days were

Director of INSEC highlighted the objectives of the session which were to set future strategies of INSEC in the long and short term. INSEC chairperson Subodh Raj Pyakurel stressed that we should all be proud of development of INSEC activities which had taken shape of a movement from campaign. INSEC general secretary Kundan Aryal talked about the challenges in the field.

Surya Dhungel of UNDP facilitated as a guest lecture on *Prerequisites for a Constituent Assembly*. Dhungel shared his

Commission Shushil Pyakurel talked about transitional justice where he said Transitional Justice is a painful process because it brings up the painful memory and that all things might not be as wished by the victims and Human Rights defenders. UML leader Jitendra Dev said that the Movement in Madhesh was not a separatist or secessionist but a movement to assert real identity of the Madheshi community. Lal Babu Yadav, the next facilitator talked about restructuring of the state and its challenges and possibilities. His presentation was based on a month-long research he conducted in Terai.

The presence of young



spent on the guest presentations, lively discussions and reflections on the ways INSEC could consider these areas of intervention. On the third day, the sessions focused more specifically on the ways INSEC should incorporate the findings of the discussion on its new strategies, plans and programmes. The fourth day of the session was spent on improving basis skills on written English as working language for selected participants.

Bijayaraj

Gautam,

experiences from Cambodia and Liberia on Constituent Assembly Elections. Next guest Ali Saleem talked about the *Role of UN agencies especially OHCHR and UNMIN in Nepal*. He focused on Post Janandolan and the role of UN in that context. Speaking about the Role of HRD's and INSEC, Subodh Raj Pyakurel, INSEC Chairperson facilitated on the role of Human Rights Defenders and INSEC in CA Election.

Former commissioner of National Human Rights

political leaders including ANNFSU's former president Yogesh Bhattarai, NSU's former general secretary Gagan Thapa and NC leader Narhari Acharya was also significant in the programme. They talked about the present political scenario and possibility of republican set up in the country.

In the last session, 16 persons, who had served in INSEC for more than 10 years were felicitated. ●

Training Sessions to INSEC HRYB District Representatives

Human Rights Documentation and Dissemination Center (DDC), INSEC has organized a week long training for its' 75 district representatives in three different places during April, 2007. The main objective of the training was to

sessions. The training sessions were conducted in participatory approach involving all the participants. Various open discussions, group works, group presentations and individual presentation were held during the training to make the training effective

far-western region had participated in the training programme.

The participants received information about the UN system and UN mechanism. In the second day, participants were taught about the communication, documentation and news reporting and



increase the potentiality of the INSEC human rights yearbook representatives and to increase their documentation capacity to make the reporting process more effective. Training was focused on various aspects of communication, documentation, human rights and technical knowledge about internet and photography during the

Nepalgunj

INSEC mid-western regional office Nepalgunj has organized a week long training to all the INSEC Human rights yearbook district representatives of mid and far western region from 21 to 26 April 2007. Fifteen district representatives of mid-western region and nine district representatives of

writing. The participants were also briefed about the various aspects of insec online and also asked them to follow the guidelines while submitting news and article in insec online, the only human rights news portal of Nepal. The participants were also briefed about the role of rights defenders and their rights.

Participants were also briefed about the security of the human rights defenders, the interim constitution of Nepal and the elections of the constituent assembly. They were briefed about tactics of effective fact finding and report writing and techniques. Practical exercise was also being conducted on the topics. Participants were also given practical knowledge about internet, e-mail and photography. One digital camera, one recorder and one bag were given to every participant during the programme.

Palpa

As part of enhancing the reporting skill of the district representatives, INSEC Western regional office Pokhara successfully organized a weeklong training programme to all the district representatives of the western region and ten district representatives of central region from 26 April to 1 May, 2007 at Hotel Shreenagar in Palpa district.

During the training session Chief of the United Nations Office of the High Commissioners for Human Rights (OHCHR) in Nepal

mitting news and article in insec-online, the only human rights news portal of Nepal. The participants were also briefed about the role of rights defenders and their rights. Participants were also briefed about the role of INSEC from its establishment and future direction. They were also briefed about the interim constitution of Nepal and the elections of the constituent assembly. They were briefed about tactics of effective fact finding and report writing and techniques. Practical exercises were also being conducted on the



Documentation Officers Laxman Datt Pant, Dipak Raj Tiwari, Pratibedan Baidya, Mid-region Coordinator Bhola Mahat, Officer Madan Poudel, IT Officer Pramin Ghimire, Photographer Bimalchandra Sharma and Nir Lama of inseconline facilitated the training programme on different issues.

Lena Sundh entered into the hall and lauded the role of INSEC for the protection and promotion of human rights. She also said that her office will work jointly with the INSEC for monitoring the election of the constituent assembly.

The participants were also briefed about the various aspects of inseconline and also asked them to follow the guidelines while sub-

topics. Participants were also given practical knowledge about internet, e-mail and photography. One digital camera, one recorder and one bag were given to every participant during the programme. Interaction was held about the fact finding and how to prepare effective fact finding reports among others. Participants were also briefed about the inci-

dent form and data entry of the incident form.

Documentation Officers Prashannata Wasti, Bhuwan Adhikari, Acting Regional Coordinator of the western regional office Madhu Panthee, IT Officer Prabin Ghimire and Photographer Bimal Chandra Sharma facilitated the training session.

Biratnagar

As per the central policy of the INSEC to organize skill development training to all Nepal Human Rights Year Book district

Coordinator of Eastern Region Som Raj Thapa, senior officer of INSEC central office Yogish Kharel, Acting Regional Coordinator of Western Regional Office Madhu Panthee, Documentation Officer of Eastern Region Bhuwan Adhikari and representatives of central office Pramin Ghimire and Bimal Chandra Sharma.

The first day of the training session started with an exam to reevaluate the perception of district representatives about various issues of human rights. The sec-

ed to all the trainees by adopting various participatory methods. From the later half of the 5th day to the end of the training the participants enthusiastically participated in the learning of operation of the digital camera and the ICT.

Participants of the training programme suggested that such training programme should be held for 10 days incorporating more subjects related to the human rights and social justice. They also suggested that the training could be more effective if there are some external resource persons from the



representatives, INSEC eastern regional office successfully organized a weeklong training programme from 17 to 22 April 2007 at Hotel Eastern Star in Biratnagar.

All the 16 district representatives of eastern region and nine district representatives of central region were participated in the training facilitated by the Regional

ond half to the first day was focused on the INSEC movement and the refreshment about the human rights and social justice. The second day was intense session on Principality of the human rights. In the third, fourth and fifth day UN System, INSEC style book, human rights documentation and monitoring were impart-

related field. During the training programme it was realized that resource person must get such training before facilitation about the subject matter and a training manual comprising all the elements related to INSEC movement and HR monitoring, documentation and dissemination should be developed. ●

Nepali Media in Democracy: Finding a new Path

"**M**ass Media in Post-1990 Nepal" can be considered as an attempt to fulfill the insufficiency of well documentation of history of Nepali media. The book is the compilation of the essays by Pratyoush Onta that were published mainly in the Kathmandu Post Daily and the Nation Weekly.

Since the essays were originally written for the newspapers, they are on the surface level of the subject matters. However, the 48 essays written in the year 1993, 1997, 2002 and 2006 altogether presents the overall trends and emerging phenomenon of Nepali Media in Post-1990 Nepal.

Dr. Onta presents the width of the topic Mass Media in Post-1990 Nepal right from the state of print to audio visual media. He deals with the state of media freedom and tries to see Nepali media with gender perspective too. He presents the relevant and prominent issues under the headings of "Debating Media Quality", "Foreign Direct Investment in Nepali Media" as well as "Democratizing the Maoists?" in the last chapter.

Onta begins his perspective from the introduction. The introduction is successful in binding all essays divided in six chapters. He states "By late 2006, the media scenario was unrecognizable to those who only knew Nepal from the earlier era. And the most dramatic changes came in print and radio."

"Analyzing Media Growth" Onta opines "One of the sectors in Nepal that has witnessed a spectacular growth since the JanaAndolan of 1990 is media. He lists five factors responsible for the growth of media in post JanaAndolan era. He states" First is change in the legal regime; second is the increasing involvement of private parties and NGOs in both media production and education; third is cumulative growth in the advertisement



Mass Media in Post-1990 Nepal

Author: Pratyoush Onta

Publisher: Martin Chautari,
Kathmandu

Date of Publication: 2006

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market; fourth is the growth in the number of Nepalis who consume media products; and fifth is the imperative of the Nepali language." He presents the year 1990 as the starting point of 'newspaper revolution' in Nepal.

Newspaper revolution is not very old phenomena in many countries. For even our southern neighbor that is considered as world's largest democracy newspaper revolution is not very old story:

"Imagine the morning scene 27 years ago (1976) at a cosmic, all-India bus stand peopled by characters from an R.K. Laxman cartoon. Around each daily newspaper available from the hawkers, 50 people would be jostling to get a glimpse. Now, think of the same bus stand in 2001. The population has grown by 400 million. Where there were 10 people for every square meter of bus stand in

1976, there are now 16. Nevertheless, the crowds around the newspapers have thinned considerably; there's now a newspaper for every 17 people." (Jeffrey 257)

Onta not only presents the picture of newspaper revolution, he also shows a bitter reality of Nepali media as Kathmandu-centric tendency and stress on need to break Kathmandu's monopoly on influential media in Nepal. He deals with several structural characteristics of Nepali media such as spatial concentration of production in Kathmandu, minority representation in the workforce, ownership pattern, and educational attainment of the media personnel. Under the heading "FM Radio as Democratic Expression" he concludes "The growth of the FM radios in Nepal is a clear indication of democratization at work in post-Panchayat Nepali society."

We know, "...it was only towards the end of the nineteenth century that newspapers escaped from the constraints of localism, elitism or sectionalism (political or religious) and became a medium 'for the masse'..." (McQuail 4). Such world wide trend also encompassed our experiences. Dr. Onta analyses such trend under the heading "The Plight of Dogmatic Weeklies." The essay is based on his personal experience, but at he concluding paragraph he generalizes the story: "With no further professional investment (both in terms of management and editing) these weeklies seem to be on their way out-not physically of course but in terms of performing a useful watchdog function."

Martin Chautari has done a thankful job by publishing a readable book on the state of Nepali media in contemporary times.

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Karyal

Representative Incidents

(April-June, 2007)

1. By Maoists

1.1 Killing

Sankhuwasabha, Maoists Cadres have killed Chandra Bhadur Rai of Bahrabise VDC-3 on 29 April. Rai was called out of his house by Maoist cadres including Tularam Rai, Bipan Rai and attacked by Khukuri while he was preparing for sleep after the meal. The Maoist cadres fled the scene when the villagers knew about the attack. The victim died on the spot.

Nir Bahadur Kalakheti of Dhupu VDC-7 has died after being badly beaten by a Maoist cadre. The deceased was beaten by Harka Bahadur Gole alias Bishwa on 8 May. He died at Dake of Dhupu VDC-3 as the villagers were brining him to district hospital in Khadbari.

Bal Krishna Niraula, 50, of Khadbari Municipality-6 has been stabbed to death by a Maoist cadre on 2 June.

1.2 Abduction/ Disappearances

Sankhuwasabha, The whereabouts of over dozen of children abducted from different wards of a VDC for recruitment is unknown till April 4.

The Maoists had abducted 18 children from the ward number 5, 8 and 9 of Tamku VDC on November 18, 2006. All of the abductees are students from class 5 to 10 at Sagarmatha Secondary School.

Gulmi, A group of Maoists led by a cadre Prakash has extorted money from an army jawan on 6 April.

Iman Bahadur Kumal, 20, of Jaisithok VDC-7 and posted at security base camp in Bhimgithi, Baglung under Birdal Battalion, Baglung was abducted by the Maoists from Seugha of Arkhale VDC-5 at around 9 am.

Lamjung, Maoists have handed over Santa Bahadur Pariyar, 31, of



Kupling in Nauthar VDC- 3, whom they abducted on 12 May in connection of a murder, in the injured state to police on 19 May.

Pariyar was abducted by a group of 10 Maoists as he was having dinner at his home assuming he had information about the 16 March murder of his villager Chinimaya Gurung.

According to Pariyar, the Maoists had dragged him with *namlo* (band used for tying cattle) to Agriculture sub-centre in Nauthar Shera where he was beaten up without any mercy.

"They had kept him blindfolded and hands and legs tied. They would kick me up demanding information about the murder repeatedly. After sometime of recess, they would come back, kick and hit me with nettle in my face and over the body". His right thump has become useless due to tying.

It has been revealed that Maoists abducted a 13-year-old girl of Bhulbhule VDC-2 on 18 June. The child, a sixth grader student at Prabhat Shantipurna Secondary School, remains disappeared after abduction.

My daughter has not returned home since Maoists motivated her to go with them during a Maoist organised programme at Badhagaun in the same VDC, said the child's mother. When contacted, a Maoist cadre at the Maoist Office at the district headquarters, showing ignorance said to inquire the incident at the area level. The girl will be released if she was forcibly taken away, he added.

Sunsari, Cadres of Maoist affiliated Young Communist League (YCL) abducted Bal Gopal Shrestha, 28 of Chatara bazaar,

Baraha Tshetra VDC from home on 16 May evening.

According to victim's family, the YCL cadres abducted Shrestha and took him to an undisclosed place saying that they had to talk with him. The victim's family has filed a complaint in the police.

Chitawan, PLA belonging to the third division (Maoist) have abducted three civilians on 16 May on charge of torching their vehicle and chanting slogan against them.

Those abducted are Birendra Adhikari, 20, of Shaktikhor VDC-9, Shantosh Bahadur Bohara, 22, of Pithuwa VDC-9 and Krishna Prasad Paudel of Jutpani VDC-4. According to Sher Bahadur father of Birendra Adhikari, the victims were abducted at eight in the evening.

Jhapa, Accusing to have used drugs, YCL cadres abducted six youths from the bank of Mechi River in mechinagar municipality on 16 May and have held them captive at their labor camp.

Kumar Shrestha, Rajan Chhetri and Mohan Bishwakarma of Mechinagar municipality-10; Yograj Rajbanshi and Suman Khadka of Dhulabari and Kaji Dorje of Pani Tyanki, India were abducted by a group of 12 YCL cadres led by YCL regional coordinator Jivan Subba and local coordinator Bikash Thapa. All the victims were taken to Mechinagar municipality-11 and straight away put in the work of digging road for indefinite period

Cadres of Young Communist League, affiliated to Maoists, have abducted one Lila Mishra, 50, of Surunga VDC- 4 on 1 June night. Mishra's relatives said a group of about 20 YCL cadres had

taken him away at around 10 pm. Locals said Mishra could have been abducted on charge of being involved in illegal logging. Maoists have also captured 1,500 cu ft of sal timber and his motorbike from the godown.

Rukum, Top Bahadur Khadka, 32, of Khalanga VDC-8 and senior assistant technician at District Vetnary Office was abducted by cadres of Young Communist League from the office premises and held captive at Maoist's office for two hours. The victim was then taken to Khalanga VDC-7 where his legs were tied with rope and was beaten at the feet and all over the body. The victim was released from Khalanga VDC-3 on 8 May with threat that he may face any consequences again.

It has been revealed that Thal Bahadur B.K., president of Dalit Service Union, Rukum, is in the captivity of cadres of Young Communist League (YCL), sister organisation of the CPN (Maoist) from 23 June. It has been learnt that B.K, a resident of Shova VDC-2, was abducted by YCL cadres on charge of misusing the money of the organisation. The victim was abducted from the same VDC and is still held captive at the office of YCL at Rukumkot.

Kalilali, Maoists People's Liberation Army (PLA) from Sahajpur based Maoists Cantonment camp have abducted Padam Paduwal, 17 and Gyan Bahadur Rawat, 15 from Pahalmanpur VDC, Deukaliya. Five PLA men including Pratirodh, Kranti, Bikash, Sachet had abducted them on charge of stealing a motorbike.

According to Krishna

Bishta, aunt of Govinda Bista alias Pratirodh, the PLAs from Sahajpur camp abducted the duo as they had found them with the motorcycle of Pratirodh. She told media persons that Pratirodh had lost his motorcycle while coming to her house on 10 May.

Human rights activist had visited the cantonment camp to seek the whereabouts of the abductees after the families of the victims informed them about the abduction. They have confirmed that the duo are still inside the camp.

Siraha, Maoist cadres have abducted Bishwanath Saha, the school principal of Jana Sewa Secondary School, from his house residence, situated in Karjanha VDC-4 on 21 May. Saha's whereabouts are still unknown.

Mugu, Maoists have abducted a 13 year-old-girl of Srinagar VDC-6 on 21 June from the victim's house. Locals say that the Maoists have held the victim captive at their party office at the district headquarters. The child was a sixth grader at the local school.

Rupandehi, It has been revealed that the Maoists abducted Aslam Pathan, 35, of Tunihawa, Bayarghat VDC-9 from Kanchibazaar of Siddhartha municipality-8 on 14 June along with a motorbike. Organising a press conference in Bhairahawa on 16 June, Sahabuddin Pathan, father of the victim, claimed that a group of 5-6 Maoist cadres abducted his son stating "we have some work with you".

YCL cadres have abducted Arjun Aryal, 21, of Tribeni, Susta in

Nawalparasi and currently living in Butwal Municipality- 11, Rupandehi from his room on 4 June. Aryal was abducted on charge of torching the huts of squatters few days ago. His whereabouts are not known yet.

Surkhet, YCL cadres have abducted one Tika Ram Subedi, 58, of Ramghat VDC- 6 on 8 June. He was abducted for settling the dispute which arose after a local was killed in a road accident. Rubi Sunar, 70, of Maintada VDC- 3 died when the motorcycle hit her at Jahare. Subedi is former member of UML district committee. UML informed that he was not released till this report was filed.

Ramechhap, Maoist cadres abducted Chitra Bahadur Karki, District Committee Member of CPN-UML and former chairman of Kubhuka Sthali VDC on 7 June from home. A group of maoist cadres took Karki to Wamti Bazaar in Wamti VDC while the latter was at his home, vice-secretary of CPN-UML, Ramechhap Tulprasad Kandel informed. He said that Karki informed about his abduction and that the Maoists took him

threatening him of physical actions over telephone.

Makawanpur, Maoist activists abducted Belman Pakhrin, 46 of Kakada VDC-4 on 6 June. About 20-25 Maoist cadres abducted Pakhrin from Manahari Pyanche alleging him of giving protections to two persons, who were 'involved' in the murder of their cadre, the locals informed.

1.3 Threat

Ramechhap, Maoists have threatened on 4 April to take action against UML cadre Gajendra Karki, 42, of Devitar in Pulasi VDC- 1 for refusing to feed them. According to UML district committee member Prakash Karki, a group of four Maoists had arrived at Gajendra's home this morning and asked to prepare meal for them. When the family protested saying they could not do that for free to the cadres of one of the ruling parties, the Maoists warned to take action, Prakash said.

Palpa Maoist cadre Bhim Bhattarai has threatened Bimal Bhandari of Rampur VDC- 7 on April 16 in connection of over a



decade-old land dealing.

According to Bhandari, Bhattarai had called him on 6 April to discuss about an issue. He added, he was questioned about a land dealing dating back to 198 and demanded Rs 1,50,000 within mid-May or to face physical action.

The matter was dismissed after a decision by a meeting of all political parties but Bhattarai has resumed his demand, Bhandari complained. When asked, the Maoist activist said Bhattarai had agreed to pay the money as compensation after a discussion.

Sankhuwasabha, Maoists have threatened local journalists of the district for reporting the death of a villager due to Maoist beating. Issuing a statement on 10 May, Maoist district in charge Prabesh asked journalists to correct the news or be responsible for the consequence. The journalists had reported about the death of Nir Bahadur Kalakheti of Dhupu VDC- 7 who died in Dhupu VDC- 3 on 8 May, as he was being transported to the district hospital, after being badly beaten by a Maoist Harka Bahadur Gole.

The statement by Prashesh claims that Gole had already left the party. A local told INSEC on the condition of not revealing the name that the Maoists had also threatened action against the villagers for making the issue public.

Morang, CM Jute Mill, located in Katahari VDC has been shut down from 26 June following the threats from the Maoists. Sister organisations of the Maoists including Madheshi Mukti Morcha, trade union affiliated to YCL threatened the management.

Mill proprietor Ganesh

Rathi said they were forced to close down the mill after the local Maoist leaders forwarded demands difficult for management to meet. The jute mill was employing about 800 at the time of closure. When contacted, Maoist district leadership said they would comment in public after the investigation.

Achham, Maoist cadres threatened a civilian who returned back to his house after spending a displaced life. Lok Bahadur Bhandari of Sera VDC was threatened by Maoist cadres Jaman Bhandari, Dipak Bhandari and Bharat Bhandari of Sera VDC-8 on 16 June while he returned back his home from Tikapur municipality in Kailali district. The Maoist cadres even pelted stone on the victim threatening him to return back.

1.4 Injured

Ramechhap, At least 11 villagers of Betali VDC- 6 have been injured in the Maoists attack on 13 April. The villagers came under attack for staging protest against Maoists on 12 April for Maoist beating of local Prakash Karki on 11 April.

It is said that the Maoists had attacked the people in Betali bazaar indiscriminately. Sudarshan Karki, Arjun Karki, Bhairab Bahadur Karki, Ram Chandra Basnet and Pandav Karki among others were injured of whom Sudarshan and Arjun are said to be in serious condition.

1.5 Beatings/Torture

Nawalparasi, Buddhi Prasad Pandey, 45, of Sunwal VDC-6 and running a hotel at the same VDC-1 was brutally beaten

by Maoist cadres on 4 April after being abducted and taken to Devdaha, Rupandehi district. The victim was seriously injured as the Maoists beat him with sticks. He was released from Sunwal on 5 April morning.

Maoists had abducted and inhumanely treated him accusing his involvement in the thievery at a computer institute at the upper floor of the building where he runs his hotel. Locals claim that the victim has no involvement in the incident of thievery. The victim sustains blue stains on his body.

Baglung, Cadres of Maoist-affiliated Young Communist League have beaten up three civilians on 16 April. Rana Bahadur Thapa, 46 and Rana Bahadur Purja of Sukhaura VDC- 5 and Mahendra Secondary School teacher and resident of ward number 5 of same VDC Bal Bahadur Pun, 38, have sustained injuries in head and back. They were brought to the district headquarters Baglung Bazaar on 18 April and currently are undergoing treatment at district hospital.

Sankhuwasabha, A civilian Bhuwan Rai, 20, of Sittalpati VDC-6 was abducted and beaten up by Maoists on 30 April. The victim was abducted by YCL cadres from his home and beaten at the house of Keshab Rai, YCL area in-charge, at Sittalpati VDC-7.

The victim was tied with ropes and beaten for whole the night before being handed to the Sittalpati Police Post on 1 May.

Sunsari, YCL cadres belonging to Maoists have brutally beaten Rajendra Darji, 25 of Mechinagar Metropolis- 6,

Khuttidangi in Jhapa on 17 May. Rajendra, who is reported to have regular disputes with his wife was beaten by the YCL cadres over the same matter. A group of 6-7 YCL cadres led by Jivan Subba and Jamuna Subba of Mechinagar Metropolis-11 had assaulted him. The victim, a tempo driver by profession is undergoing treatment at Primary Health Centre, Dhulabari.

Darchula, At least five persons including Sher Sing Bista, Karbir Bista were injured by the beating of YCL cadres on 14 May.

According to Chief District Officer Yagyraj Bohara, the police and Maoists were in attempt to settle a dispute over land between Kalawati Bista and Sher Singh Bista for some days. In this course, some YCL cadres thrashed the victims on 14 May while they were trying to settle the dispute. The situation grew tensed after locals came down heavily on the Maoists on the incident.

Rupandehi, Maoist cadres have severely beaten district member of Madhesi Yuba Forum (MYF) Ajad Musalman, 35 of Kamahariya-8 on 5 May evening. According to Chandrika Yadav, district president of MYF, 10-12 Maoist Cadres beat Musalman at Oodbaliya in Aama VDC-2. He informed that the hands and legs of Musalman were broken in the beating and that he was undergoing treatment at Nautanawa.

Maoists have thrashed army person Tularam Giri, 22, of 2 No. Gyarijing Battalion, Bhairahawa on 1 May afternoon on charge of being involved in sexual relationship. The victim claimed that he was brought to the Maoist office and beaten while he was

drinking cold drinks in front of Shanta Hotel in Bhairahawa Bus Park. He had gone there to meet his sister from whom he put on tika in Tihar.

Khotang, Phadiraj Timilsina, secretary of HRERLIC-Nepal, Suntale, organization affiliated with INSEC, was thrashed by Bishnu, Maoist 13 no. area member, on 20 May and locked inside a local mill. The victim was released three hours later the same day on the initiative of INSEC district representative.

Jumla, Maoists have vandalised the belongings and thrashed Jagadish Prasad Upadhyay of Narakot VDC-2 on 24 June at around 11 pm. A group of Maoists led by Sudhar Sarjan beat Upadhyay and vandalised his belongings following personal dispute. The Maoists have also looted a sum of rupees 25 thousand from the house of the victim. The victim is undergoing treatment at the local medical hall.

It has been learnt that the Maoists beat up Murali Prasad Sharma of the same VDC on the same day.

Mugu, Cadres of Young Communist League (YCL), sister organisation of the CPN (Maoist) have beaten a civilian leaving him seriously injured. Shanker Karki, 35, of Sukadhik VDC-3 was seriously beaten by a group of eight YCL cadres on 19 June while he was working on his field. The YCL cadres struk the victim on his head and neck with sharp weapon while he was working on the field. The victim is currently undergoing treatment at Nepaljung Hospital.

Taplejung, Cadres of Young Communist League (YCL), sister wing of the CPN (Maoist), thrashed Mani Labung, 42, and his wife of Ikhabu VDC-5 on 19 June leaving the victims seriously injured.

A group of seven YCL cadres abducted the victims from their house and beat them up following a debate on the appointment of a teacher. The victims were rehabilitated two months back in the initiative of human rights activists and journalists after living a displaced life for sometimes. The victims sustained serious injuries on head and other parts of the body. Villagers carried the victims to the district headquarters for the treatment at the District Hospital. After abducting Mani, YCL tied him at the nearby school and released him at 6 a.m. after beating him continuously for one hour.

Bajura, Cadre of Young Communist League (YCL), sister organisation of the CPN (Maoist), thrashed Ramlal Bista and his wife Nirmala Bista of Dandabada, Jagannath VDC-2 on 16 June night leaving both the victims injured.

It has been revealed that a group of around 25 YCL cadres stormed into the house of Bista and beat up the couple. The District Police Office informed that both the victims are undergoing treatment at the Primary Health Post at Kolti. The YCL cadres are learnt to have thrashed the couple alleging them of carrying out activities against their party at Martadi, the district headquarters, during the time of emergency. However, no one has been arrested in the incident.

Udaypur, Narendra Adhikari, 40, of Babala VDC-8 was thrashed by YCL cadre Durga Bahadur Tamang, 23, of Rampur Thoksila VDC-2 at Rampur VDC-2 on 16 June. Locals said that Tamang thrashed Adhikari in intoxicated condition. The victim was thrashed at the Bargachi bazaar. The victim was treated at Area Health Office, Rampur. The YCL cadre was heard as saying "we are Maoists, who dares to take action against us?" said the eyewitness. Locals have protested the incident.

Palpa, Young Communist League (YCL) cadres have beaten a man of Bhusaldanda in Tansen municipality- 10 after abducting him on 12 June. Prem Prasad Bhattarai, 28, was abducted from his house early morning on 12 June under the pretext of some business.

According to Bhattarai, he was taken to Setipokhara Dharampani of Tansen Municipality-10 where he was hung from leg. They kicked me, beat me with baton in soles of the feet, legs, chest, back and head, Bhattarai said. Blue marks can be seen on his legs inflicted by baton. He says he has developed respiratory problem after the beating. Bhattarai identified Dhiraj and another cadre Suman had threatened to kill him. "When I went to District Police Office to file a complaint, they turned me back saying it was Saturday and told me to come back on Sunday", Bhattarai added.

Sindhupalchok, A group of YCL cadres and Maoists have beaten a UML leader of Thampaldhap VDC on 10 June. Committee member of UML's area number 12, Ganga Ram Shrestha, 55, was beaten by a group led by

Maoist area in charge Arun and YCL's Dirgha Nepali. The reason for the beating could not be known. Condemning the incident, UML issued a statement and demanded action against the offenders.

Cadres of Maoists youth wing, Young Communist League (YCL) have beaten injured Tez Bahadur Lamichhane, 65 of Golche VDC-7, Tarke on 4 June while the latter was on his way to attend a date given by the Maoists.

Lamichhane was abducted by the Maoists on 16 December 2006 and later released after two months on condition of attending dates. The YCL cadres beat him at Kumbheshwor in ward no 9 of the same VDC while Maoists 7 no. area incharge Ravi was talking with Lamichhane, Bharat Silwal, an eyewitness said. He added that the Maoists had filed a case against him on charge of murder.

Gulmi, Former Chairman of Khadgakot VDC-4 and CPN-UML District Committee Member Tikaram Dhakal, 52 was beaten by cadres of Maoists young wing Young Communist League (YCL) on 6 June morning. The cadres had taken Dhakal to the house by saying that the YCL in-charge Sanjaya had asked for him.

Rautahat, Jwala Singh faction of Janatantrik Terai Mukti Morcha (JTMM-J) has captured 25 bighas of land belonging to Laxmi Shankar Shrestha of Dumariya Matiaun VDC-8 on 5 June. According to the locals, about 30 cadres of JTMM-J captured the land by hoisting their flag. The land owner Shrestha is currently staying in Kathmandu.

1.6 Obstruction

Parbat, Maoists have posed obstruction for the restoration of police post at Thulipokhari for the past few days. District Police Office claims that the cadres of other political parties have filed an appeal on 14 April to remove the police post under the pressure from the Maoists. Maoists had expressed discontent over the preparation for establishment of a police team at the Thulipokhari post headed by ASI being deputed before the SLC examinations. DPO head Gopiman Shrestha added the Maoists demanded the removal of the police post saying the post was allowed only for the period of SLC examinations.

Salyan, Area Police post in Rangechaur of Marmaparikada VDC has been displaced after the Maoists told the policemen to leave the place.

According to DSP Robar Bahadur Basnet, a group of Maoists led by district committee member Ramesh Koirala threatened them with dire consequences on 14 April saying the police had been tolerated there only for the SLC exams period. From 15 April, police men shifted to Tharmare police post.

Basnet added, another Maoist team asked police post at Pharula of Dhankadam VDC on 15 April to vacate the post as soon as possible.

Kaski, Maoist cadres have created obstructions for establishment of police station in Dhampus VDC on 20 April asking them to leave the VDC.

"You should better leave the place within two hours or face the consequences", the Maoists said.

Inspector Binod Sharma of ward police office, Bagar informed adding ASI Narpati Dahal had gone to the VDC on 18 April where they had face minor objection but today they simply asked them to leave.

1.7 Seizing Property

Kavre, Maoists cadres have ploughed the land of Purnaman Tamang of Daraunepokhari VDC-3 on 30 April destroying the onions, chilly and corns planted in the field. The land was situated at Khanalthok VDC-9.

Earlier, the Maoists, stating that a case was filed in their office, had made decision ordering Purnaman Tamang to return the land to Subba Lama. Subba had filed a case at Maoist office alleging Tamang of capturing the land from Kanchi Tamangni after the death of her husband Narayan Sin Tamang.

Youth Communist League cadres lead by Mina Tamang, leader of Akhil Nepal Women Association (Revolutionary) seeded maize on the land claiming to have captured it.

Banke, About 700 Maoists affiliated to Tharu Rastriya Mukti Morcha (TRMM) led by their representative to parliament Moti Devi Chaudhary have captured 72 bighas (48 hectares) in Baida of Dhadhawar VDC- 9 on 30 May. The land belonged to Niranjana Swar, Ranjan Swar, Bal Bahadur Swar, Anjali Swar, Devaka Swar, Sanjiv Swar, Sujit Swar and other two farmers. Same group also captured five bighas (3.3 hectares) of mango and lychee orchard.

Parbat, Maoists have recaptured the land of Bakhat Bahadur Kunwar, 70, of Ranipani

VDC- 1 on charge of filing false case against the Maoist cadres. All Nepal Peasants' Association (Revolutionary) issued a press statement notifying about the move.

Affiliated to Nepali Congress, Kunwar was displaced from his village in 2005 owing to Maoists threats and capture of his land. He came back to village on 5 February after Maoists' approval. But, when Peace and Reconstruction Ministry asked for information of destruction and capture of property, Kunwar filed a complaint in district administration office claiming a local Maoist cadre Hira Nepali had looted his paddy and horse.

Bajura, Lately though, it has been revealed that Maoist cadres looted the documents of Dalit Network and National Dalit Society Welfare Union on 12 June.

According to the organisations, Maoists looted the document while they were collecting the data of the information of the Dalit in the district. The document included the register of the collected data. Meanwhile, Maoist district committee member Dipak said that the documents were looted as the organisations functioned in the village without their party's permission.

Sankhuwasabha, Maoists have captured the land of Shanker Shrestha of Chainpur VDC-4 on 14 June. They have started ploughing and cultivating the land. The victim family is living in Kathmandu after the incident. On to the incident, Maoist district in-charge said that the victim was a feudal and the land now be used by their full time party members.

Nawalparasi, Maoists have captured the house of former minister Yadav Prasad Panta, a resident of Sunawal VDC-4 on 26 May. The Maoists have started living in the two storied house located at the same VDC saying that it is their party's rule of capturing the houses of royalists.

According to Yadav's brother Nagendra Panta, seven Maoist cadres including a woman have started living in the house. The Maoists had also captured another house of Yadav at same VDC three years back. They had been collecting eighteen thousand rupees per month as the rent of his house from the tenants.

1.8 Inhuman Treatment

Bardiya, The activists of All Nepal Peasants' Association (Revolutionary) had inhumanly treated Narayan Bikram Rana, 80, of Dhodhari VDC- 9 on 19 May. Rana had returned to his village last month after four years of displacement.

According to Rana, at around 1 pm, about 150 Maoists painted his face black and garlanded him with shoes before taking him around the village accusing him of being 'feudalist and hawking peasants'.

"They even hit me with baton when I could not walk fast enough", Rana told INSEC district representative.

1.9 Destruction

Sankhuwasabha, Maoist cadres have demolished the house of Ram Prasad Dahal in Madi Rambeni VDC-2 on 30 April.

According to locals, there was abundant timber used in Dahal's house and the Maoists pulled down the house to sell the

timbers. Saying that Dahal did not need the four storied house, the Maoists had pulled down the house.

2. By State

2.1 Killings

Sarlahi, One person was killed when the activists of Chure Bhawar Ekata Samaj (CBUS) clashed with police at Dhungre Khola VDC-4 along the east-west highway on 28 April morning.

Mangal Bahadur Gurmachhan aka Bantha, 40 of Dhungre Khola VDC-1 was killed in the police firing. At least 12 others including policemen have been injured in the incident. The clash ensued after the CBES pelted stones at the policemen while they were escorting vehicles which were stranded due to the CBES's indefinite strike.

Jhapa, Purna Bahadur Tamang, 19, a refugee living in Bhutanese Refugees Camp, Beldangi has succumbed to bullet injuries he sustained this afternoon. The protestors were demanding action against the policemen responsible for the shooting on 27 May which claimed the life of 17-year-old refugee Narpati Dhungel.

Tamang died at Amda Hospital while undergoing treatment for abdominal injuries. Seven protesting refugees and nine policemen are also injured in the incident.

2.2 Beatings/Torture

Dhankuta, Policemen in Bhedetar Police Post have severely beaten Kapil Subba and Kumar Subba of Bhedetar VDC-3 on 28 April.

Kumar is still bleeding from nose while Kapil has sustained blue marks all over his back and face due to the beating. The victims have said that they were beaten in custody by the locals also.

The incident was revealed after the victims met INSEC representative and other organizations on 30 April seeking justice for being beaten in custody by the police and the locals. Expressing sorrow over the incident, Head of District Police Office Nara Bahadur KC has said that he would look into the matter. He, however stated that his office would not be able to treat the victims.

Saptari, Dilip Kumar Jha of Rajbiraj Municipality-2 and a teacher at Pabi Secondary School, Rajbiraj was beaten by plain clothed policeman at Rajbiraj municipality-4 on 11 April night on charge of drinking alcohol.

Injured by the beating, Jha was taken to BP Health and Science Academy Dharan after failing to receive treatment at Sagarmatha Zonal Hospital, Rajbiraj. According to the victim's family members, the victim's condition is critical. Meanwhile, police has denied involvement in the incident

Kailali, Bir Bahadur Khatri, 42 of Chuha-8, Baghmar has been beaten in police custody by the police at Area Police Office Lamki on 4 June. The villagers of Chuha VDC handed over Khatri to the police office on 4 June on charge of thivory. According to Khatri, the police beat him up with lathi and shoes until he was unconscious.

3. By MJF

3.1 Killing

Rupandehi, Binod Pant alias Jitendra, the central committee member of pro-Maoists organisation Young Communist League has been killed in an attack by Madheshi Janaadhikar Forum (MJF) on 13 June.

The same group has abducted YCL's district vice-chairperson Mani.

A team of Maoist and YCL leaders comprising of Pant, and Maoist leaders Pamfa Bhusal and Meghraj Gyawali came under MJF's attack in Shivpur of Gonaha VDC as they were returning from observation tour to Khurdlotan Dam situated at Indo-Nepal border this afternoon. The team members dispersed following the attack while Pant and Mani were taken captives. Injuries inflicted by MJF cadres' sharp weapons claimed Pant's life. Mani's whereabouts is still unknown.

3.2 Abduction/ Disappearances

Nawalparasi, Central member of Maoist affiliated peasant union Ramdhani Kewat of Ramgram Municipality-6 was abducted by Madhesi Janadhikar Forum cadres on 1 April and released on the same evening.

Kewat was abducted from Mahespur Chowk while returning back from District Administration Office after handing a memorandum demanding security and compensation against the Gaur incident. It has been learnt that Forum cadres abducted the victim in connection to the incident where Maoists had captured 19 tractors from Rupandehi district some days back.

4. By JTMM- J

4.1 Killing

Siraha, Activists of Jwala Singh led Janatantrik Terai Mukti Morcha (JTMM) have shot dead a civilian at Lahan on 25 April night. Ambika Upreti, 52 of Lahan Metropolis-5 was shot in front her house by the assailants. According to the locals, a group of three persons had shot him and escaped towards the southern parts of the city.

Upreti, who was injured by the bullet died while being taken to Lahan Hospital for treatment. Inspector Manoj Yadav of Area Police Office Lahan said that the body of Upreti was handed over to the family after post mortem.

Rautahat, Nagendra Baitha of Gedahi VDC and Paramananda Sahani of Pipariya VDC have been shot dead by the Jwala Singh faction of Jana Tantrik Terai Mukti Morcha (JTMM) in the morning on 15 May.

Affiliated with Goit led JTMM, both were accused by the JTMM-J of murdering its district chief Ajay Yadav. Locals said that a group of JTMM-J cadres had taken the duo from Dharampur VDC at around 1 am and shot them dead.

Ajay Yadav, the JTMM-J district chief was shot dead on 12 May in Sarmujawa VDC by Goit group.

Bara, A group of Jwala Singh faction of Janatantrik Terai Mukti Morcha (JTMM- J) has killed one local on 25 May. Mohan Bahadur Khadka, 45, was captured from Kanyawa Math of Haraiya Madhuban at around 9.30 pm and shot twice near a bridge of the village. Locals said Khadka owned houses in Resham Kothi Birgunj and Kathmandu.

The body was brought to Kalaiya Hospital few hours after the murder for post-mortem, District Police Office said adding one suspect was arrested.

4.2 Abduction

Saptari, Alleging of smuggling timber, JTMM (Jwala Singh) abducted four persons and captured two loaded trucks from Paudahal Khola, Ghoghanpur VDC on 5 April.

Those abducted are Mohan Adhikari of Bhasi VDC-5, Sunsari district; Hari Karki of Biratnagar sub-metropolis-1; Ganesh Basnet of Biratnagar sub-metropolis-11 and Min Karki of Manpur VDC-1, Sunsari district.

Though the truck driver managed to escape from the captivity of JTMM on 6 April, others still remain in their captivity. Bibas Bidrohi, Saptari in-charge of JTMM has taken responsibility of the incident. He claimed that all the persons including trucks were captured while being smuggled.

Yubraj Neupane, 32, of Mirgauliya VDC-6 and Kaku Thapa, 34, of Indrapur VDC-9 of Morang district have been abducted by the cadres of JTMM (Jwala Singh) from Dharampur VDC-4 on 9 April. Both the victims were abducted by JTMM cadres led by Shaitan Singh along with a motorbike with registration number Ko 2 Pa 7480. According to the victim's family, the assailants have demanded a ransom of rupees 3 lakhs for victim's release.

Dipesh Kumar Yadav of Deuri VDC- 7 has been abducted by a group of about 15 people from the VDC on 21 May night. Mithilesh Kumar, the abductee's brother said Jwala Singh faction of Jana Tantrik Terai Mukti could

have been behind the abduction but he expressed ignorance about the possible motive. Yadav's whereabouts is not known yet.

Rautahat, Cadres of Jantantrik Terai Mukti Morcha-Jwala Singh (JTMM-J) have abducted a Maoist cadre on 9 April afternoon. Manoj Patel, Maoists' area committee member was abducted from Devahi VDC as he was observing distribution of citizenship certificate. He was taken away by a group of 15- 20 JTMM- J cadres, Maoists said.

A staff at District Forest Office, Chandranigahpur Paltu Tamang of Rangpur VDC-3 has been abducted by cadres of JTMM (Jwala Singh) on 12 April afternoon. According to DFO, the victim was abducted by two JTMM cadres while he was at the Range Post and has been taken to unknown place. Ajay Yadav, district president of JTMM, confirmed the abduction.

Meanwhile, the DFO informed that JTMM has demanded a ransom of rupees 4.4 millions for the release of the victim.

The Jwala Singh faction of Janatantrik Terai Mukti Morcha (JTMM-J) has abducted a maoist cadre from Kanakpur VDC on 28 April. JTMM-J activist abducted Lal Bahadur Majhi, member of Maoist PLA at 1 pm from Pashupati Community forest located in Junglesahiya of Kanakpur VDC. Locals informed that the other two maoist cadres who were with Majhi managed to escape while he was abducted.

Dilip Thapa, 32 of Chandra Nigahapur VDC-1 has been abducted by the activists of Janatantrik Terai Mukti Morcha led by Jwala Singh (JTMM-J) on 29

April morning.

Six activists of JTMM-J, who came on two motorcycles abducted Thapa with his motorbike (Na 2 Pa 1600) while he was at his brick kiln in Sakuawa Dhamaura VDC-7. The group has taken him to an undisclosed place. A family source has said that 2,00,000 rupees has been demanded ransom for his release. Meanwhile JTMM-J Area no. 4 secretary Sher Singh has owned up the incident.

Activists of Janatantrik Terai Mukti Morcha (JTMM) led by Jwala Singh have abducted Maoist 5 no. Area Committee Member Naresh Saha from Bhashedawa VDC on 12 May morning. Family members of Saha informed that the activists of JTMM-J came on motorbike and abducted him from home. The whereabouts of Saha is not known.

Cadres of Jwala Singh faction of Janatantrik Terai Mukti Morcha (JTMM) abducted two members of Baluwa village, Kanakpur VDC-5 on 4 May from their houses. The abductees, also the members of local Anjuman community forest, Shekh Sagir and Shankar Saha Baniya were taken away by around 20 men at around 4 am, locals reported. The abductors have also looted Rs 34,000 belonging to Sagir and Rs 21,000 belonging to Baniya, the family members informed along with four guns meant for the security of the forest and the village.

Cadres of Jwala Singh led Janatantrik Terai Mukti Morcha have abducted activists affiliated with UML and Maoists on 29 May. Bharat Bhattarai, 42, of Maira of Rangapur VDC- 3 was abducted from his house at around 1 am. Bhattarai, the UML Rangapur village committee secretary, was

abducted by JTMM's area number 5 secretary Dewan Khaheru, Radha Bhattarai, the victim's wife informed. The family of the victim has requested INSEC to take initiative for his safe release.

A group of cadres of Jana Tantrik Terai Mukti Morcha (Jwala Singh) has abducted Bhagwan Chaudhary of Kanakpur VDC on 26 May. According to locals, the Morcha cadres took away Chaudhary who was driving a tractor in the area in undisclosed location. They have also captured the tractor which plate number could not be ascertained.

The cadres of Jwala Singh faction of Janatantrik Terai Mukti Morcha (JTMM- J) have abducted Ramsogarith Saha of Garuda VDC- 9 in the morning of 26 May for defying the bandh they called. They also torched the tractor with the number plate Na 1 Ta 2418 which the Saha was driving at Sundarpur Tole of Sangrampur VDC- 4.

Cadres of Jwala Singh faction of Janatantrik Terai Mukti Morcha (JTMM-J) have abducted two locals of Kanakpur VDC- 8 in Rautahat on 23 May. Krishna Prasad Pokharel, 28 and Ujjwal Pokharel, 25 were abducted in the evening from the bazaar in the Kanakpur VDC- 8 by a group led by JTMM-J's area number 5 secretary Khaheru Dewan. The abductors have also taken away the victim's motorbike (Ba 16 Pa 9273). The abductees managed to flee the captivity and arrived home after three hours while the motorbike was still with the JTMM- J cadres, the victims' uncle Nawaraj Pokharel informed.

Morang, Bhupal Kumar Chaudhary, 19, of Inaruwa munici-

pality-5, Sunsari district and an 11th grader at Sarada Secondary School was released from Satterjhora VDC-3 on 11 April in the initiative of a Human Rights team. The victim was then handed to District Police Office, Inaruwa on the same day.

The victim was abducted by cadres of JTMM (Jwala Singh) from Saraswati Secondary School in Babiya VDC-1 of Sunsari district on 10 April on charge of maintaining illicit relationship with a girl of Inaruwa municipality-5.

Siraha, Cadres of Janatantrik Terai Mukti Morcha (Jwala Singh) have abducted two persons from Siraha, district headquarters on 22 April.

Shambhu Mahaseth, 23 and Dhuran Thakur, 20, of Siraha Municipality- 2 from near their houses. According to the relatives of the abductees, Mahaseth had recently returned home from abroad while Thakur was in the process of leaving the country to work abroad.

JTMM (Jwala Singh) has abducted a 13-year-old child from Medanipur, Bhawanipur VDC-9 in Siraha district on 1 May night. The reason of abduction remains unknown. Krishna Kumar Mahato was abducted for no reason while he was staying at my home, says his maternal uncle Harish Chandra Mahato. According him, a group of around seven JTMM cadres abducted Krishna Kumar along with his motorcycle numbering Sa 1 Kha 995.

Similarly, JTMM (Jwala Singh) abducted Ansarul Hauq, ranger at District Forest Office, Rautahat on 2 May afternoon. A group of around 12 JTMM cadres led by JTMM's area no. 5 secre-

tary Khaheru Dewan abducted the victim from Baluwa village, Kanakpur VDC-5 and took him to unknown place, said Dirgharaj Koirala, officer of DFO.

JTMM- J abducted Harichan Mahato, 45, of Medanipur in Bhawanipur VDC- 9 on 25 May night. A group of 15/16 men had taken him away after calling him out of his house in the pretext of some work. Mahato is a land tenant on local Hari Krishna Gautam, the land which the group has eyed. Mahato's 12-year-old nephew was also abducted few days ago in connection of the same dispute and was released three days later.

Jwala Singh faction of JTMM abducted Prem Khadka on 4 June. Khadka, a resident of Sindhuli is working at Shiwam Auto Fuel Centre, which is being constructed at Chandrodayapur VDC. The whereabouts of the victim and the reason behind the abduction is not known. Though it is learnt that JTMM-J cadre Abhishesh asked for ransom for the victim's release, the amount is not clear.

Samir Kumar Karki, 24, of Nainpur tole, Dhangadhi VDC-7 has been abducted by cadres of JTMM (Jwala Singh) from his home on 28 June at 9:15 pm.

Sarlahi, Cadres of Jwala Singh faction of Janatantrik Terai Mukti Morcha (JTMM- J) have abducted Uttam Poudel, 50, of Mohanpur VDC- 2 from his house at around 4 pm on 20 June.

4.3 Threat

Siraha, Tuphan Singh, the district in charge of Janatantrik Terai Mukti Morcha- Jwala Singh (JTMM- J) has demanded rupees fifty thousand from a local photo studio. According to a staff at

Hicola Color Lab in Lahan Municipality, a letter dated 4 April was delivered to them only on 10 April. He added they were getting phone calls demanding money since then. "They are telling us to shut down the business if we cannot pay the said amount", he said on the condition of anonymity. JTMM- J was not available for comment.

Kathmandu, The Jwala Singh led Janatantrik Terai Mukti Morcha (JTMM) on 14 April has issued an order to the government employees of hill origin working in offices situated in terai to leave the region. Issuing a press statement, the group asked the employees to leave terai saying that there were still traces of the *pahadi* state structure despite terai being an 'autonomous state'.

Chairman of the group Singh has said that the Terai Liberation Army would take stern actions against those who ignore and fail to comply with the orders.

"Ethnic communities like Tharuwan, Awadhi, Bhojpuri, Maithali should unite and get victory over the whole terai through our combine effort. This is the today's need "read the statement.

"We request the leaders of government to stop abducting and torturing our leaders and cadres."

The statement added that JTMM-J was ready to provide security to 'autonomous terai state', through its army's special strategy.

4.4 Seizing of Property

Dhanusha, Activists of Jwala Singh led Janatantrik Terai Mukti Morcha (JTMM) has captured land of a civilian here on 5 May night. Five bighas of BP Karki of Benga Shivapur VDC was cap-

tured by JTMM-J activists. Acknowledging the incident, central member of the group Rajan Mukti said they captured the land because it lied inside the periphery of 'Madhes Government'.

Saptari, Janatantrik Terai Mukti Morcha (Jwala Singh) has captured the land belonging to Kamal Shrestha and Purushottam Shrestha of Jandol VDC- 5 on 1 June. A group of cadres led by JTMM- J's area number 1 commander Hari Singh Dev had captured an area of 75 bighas (50 hectares). Area number 4 in charge Ranjit told INSEC district representative that the action was taken against the Shresthas because they were 'exploiting terai region'.

5. By JTMM (Goit)

5.1 Killing

Bara, Cadres of Janatantrik Terai Mukti Morcha (Goit) have killed a government officer after abduction on 16 April night. Basudev Poudel, 50, a trainer at Primary Teacher Training Centre at Gangapur in Kaliaya municipality-13 was abducted at around 8 pm. According to a witness teacher, the JTMM- G cadres had arrived at the training centre as the 23 trainees were having dinner and had locked them in a room. Poudel arrived at the scene from his quarters hearing the noises and then was taken away by the group.

Maoist cadre Munna Jaiswal, 25, of Pipra Basatpur has been shot dead at around 11 am on 4 June. He was shot on the roadside in Bagadampur of Dahiyar VDC. Committee member of area number 2, Jaiswal was surrounded by a group as he was heading for Bariyarpur in his motorcycle. He has bullet injuries in head and

abdomen. Janatantrik Terai Mukti Morcha (Goit)'s Bara coordinator Birat called the media persons to own the responsibility of the killing.

Rautahat, Activists of Jay Krishna Goit led Janatantrik Terai Mukti Morcha (JTMM-G) have shot dead Ram Swagarat Sahani, 22 of Ramauli Bairiya VDC-3 on 28 April night. Sahani, a former maoist cadre, was currently affiliated to the Jwala Singh faction of JTMM.

Siraha, The cadres of Janatantrik Terai Mukti Morcha (JTMM) Goit faction have killed Namaraj Bista, an engineer in district technical office Udaypur on 11 May evening.

The group had earlier abducted Bista along with engineer Murali Gopal Ranjitkar, technician Tek Bahadur Lama and driver Ramkumar Yadav from Sakhuwanankar Katti VDC-1 the same day. The driver of the jeep was later released while Bista was shot dead.

Cadres of Goit faction of Janatantrik Terai Mukti Morcha (JTMM- G) have shot dead a teacher of Nahararigol VDC- 1 after abduction.

Surya Narayan Yadav, teacher at Laxmi Narayan Kaushalya Janata Secondary School, Nahara of the same VDC was abducted at around 8.45 pm on 9 June from his house. The villagers reported Yadav was shot dead about three kilometres from his house. They further said the deceased's hands and mouth were tied.

Saptari, Goit faction of the Janatantrik Terai Mukti Morcha

(JTMM- G) has shot dead Dashrath Thakur, the central committee member of All Nepal Peasants' Association- Revolutionary (ANPA-R) on 12 June. Thakur was shot dead at around 5 pm by a group of about seven JTMM- G cadres shot at him in Tyangri of Diman VDC as he was heading for Mauli Bazaar from his house. He was shot twice in the chest.

Cadres of Goit faction of Janatantrik Terai Mukti Morcha have shot dead a Maoist after abduction on 23 June. Govind Chaudhary alias Dipu, the head of Maoist sister organisation was abducted from Barsain Bazaar where he had arrived on personal business.

Also a former Maoist people's district government, Chaudhary was taken to Beriya Musaharniya Tole of Nengada VDC- 5 at around 12 am by a group of about seven JTMM- G cadres and shot dead, Kalyanpur police station informed. The same group had shot dead Dhashrath Thakur, head of Maoists' peasants association 13 days ago.

District-based human rights organisations including INSEC, HUDEF and CHECK have condemned the killing.

5.2 Abduction

Saptari, The cadres of Goit faction of Janatantrik Terai Mukti Morcha (JTMM) have abducted Saptari District Education officer Nivraj Joshi, 45, from Rajbiraj on 7 April. A group led by JTMM- G district coordinator Shyam had abducted Joshi from his office quarters at around 3 am.

Cadres of Janatantrik Terai Mukti Morcha (Goit) have abducted JTMM-J cadre Chandra Narayan Saha, 32, of Kachan VDC-

3 on 15 April from his house. His whereabouts are not known so far. Ram Sundar Saha, a local of Kachan VDC- 2 said the dispute between the two groups had prompted the abduction. Meanwhile, the Rajbiraj bazaar remained shut on 17 April in protest of the abduction of local businessman Manoj Kabara of Rajbiraj Municipality- 1. The strike was called by Saptari Commerce and Industry Association. Kabara was abducted from Swayambhunath Mill situated in Mohanpur VDC on 12 April. His whereabouts are still unknown.

JTMM (Goit) has abducted two civilians on 1 May accusing the victims of spying against them. Sakir Miyan of Malhaniyan VDC-3 and RANbir Chaudhary of Pipra Paschim VDC-2 were abducted by JTMM on acquisition of spying. Taking responsibility of the incident, Agni, JTMM eastern division in-charge, said through phone that they were investigating on both the abductees.

An armed group of Goit faction of Janatantrik Terai Mukti Morcha (JTMM-G) has abducted Pradhyumna Raj Chalise, a teacher at Prasabani Secondary School, Prasbani on 30 May. Chalise, a local of Rajbiraj Municipality- 6 teaches Nepali in the school. Family source said he was abducted as he was travelling from Prasabani, 15 km northeast of Rajbiraj, to home. Witnesses reported seeing Chalise being driven away in a motorbike at around noon.

Siraha, Activists of Jay Krishna Goit led Janatantrik Terai Mukti Morcha (JTMM) have abducted a person from Dhangadi VDC on 26 April.

JTMM activists abducted Ashok Shrestha, 35 of Dhangadi VDC-2, Nainpur from his home at around 10.30 pm. Shrestha, a member of Nepal Transport Free Workers Union and an employee in Sagarmatha Bus Entrepreneur Association was abducted by armed cadres of JTMM, Shyam Shrestha, brother of the victim said. He added that the group of 8/10 JTMM cadres took him out of the house saying they had 'some work' with him.

He said that area no 2 in charge of the group Ajaya owned up the abduction and charged him of spying. Family sources reveal that a ransom of five lakh rupees has been demanded by the group.

Sonelal Saha, 65, of Arnama Prapi VDC-5 has been abducted by Goit faction of Janatantrik Terai Mukti Morcha on 23 May. A group arriving in two motorcycles were asking Saha about his son and took the father away when they could not find the son, locals informed.

The armed group had also detonated a bomb before leaving Saha's house. The motive behind the abduction has not been known yet.

Rautahat, Goit faction of JTMM abducted Abhayaraj Joshi, 33 of Baghaban VDC from Kalaiya on 10 May evening. Bara Co-ordinator of the group Birat owned up the abduction saying that their cadres led by Aakash abducted Aryal from Adalat road in Kalaiya for 'political interrogation'. Speaking to INSEC representative Roshan Raj Aryal over telephone he said that Aryal was safe and that he would be released after interrogation and investigation.

Cadres of Jay Krishna Goit led Janatantrik Terai Mukti Morcha (JTMM-G) have abducted CPN-

UML cadre and former vice-chairman of Ramauli Bairiya VDC Nagendra Patel on 5 June night.

Dhanusha, Cadres of Goit group of Janatantrik Terai Mukti Morcha (JTMM-G) have abducted Nawal Kishor Saha along with five others, whose identity could not be known yet, from Dhanushadham VDC on 25 May.

A statement issued by Prithvi, the coordinator of Akhil Terai Yuva Morcha, youth organisation of the group, the abductees had picked up the mangoes from the orchard owned by former minister Hem Bahadur Malla against despite its declaration of orchard capture. The group has also taken away two motorbikes with the number plates Ja 1 Ta 2351 and Ja 2 Pa 1238.

5.3 Explosion

Saptari, Protesting the formation of interim government, cadres of JTMM (Goit) have detonated bomb at the office of District Forest Office, Rajbiraj on 2 April at 8 p.m.

JTMM cadres detonated a *sutali* bomb at the stairs of the building. The building has been slightly destroyed in the explosion. JTMM (Goit) has taken the responsibility of the incident.

Earlier, they had detonated a bomb at the house of Narayan Luitel of Kanchanpur VDC-6 on 1 April night on charge of failing to provide donation. The window-panes of the building were broken in the explosion. Kunda, area no. 1 in-charge of JTMM has taken the responsibility of the incident.

5.4 Injured

Bara, Shiv Chandra Kusahawa, former secretary of Maoists, was shot injured by

cadres of JTMM (Goit) on 11 April night.

Kusahawa was shot at Sihorwa VDC while he was on the way to his house from Nayabasti, Haraiya along with two other helpers. A group of around seven JTMM cadres shot some six rounds of bullets on me, said the victim.

5.5 Seizure of Property

Siraha, Goit faction of Janatantrik Terai Mukti Morcha (JTMM-G) has captured the ancestral land of late poet Sidhhicharan Shrestha, situated at Arnama VDC-4 on night of 19 May. JTMM-J's area number 2 in charge Swati told media persons over phone that 35 bighas of land, a house and garden were taken over by his cadres. Shrestha family is living in Kathmandu for the past few years. Locals said one of the owners used to come to village frequently but has limited his visit to district headquarters Siraha since the Madhesh movement flared.

Dhanusha, The Janatantrik Terai Mukti Morcha (JTMM) led by Jay Krishna Goit has captured land of five civilians here on 18 May morning.

District Coordinator of JTMM-G, Dipak claimed that five Kathhas of Niranjana Pant of Rahunathpur- 5 and the house in his land; lake of Sudip Tripathi, 38 of Rahunathpur- 1 spread over 4 kathhas; 7 bighas of Madhav Acharya and Tulasa Acharya; and house and land Amika Prasad Koirala of Shantipur VDC were captured. Saying that his cadres had hoisted their flag in the captured land, he warned that serious actions would be taken against those, who try to sell the assets.

Armed cadres of Janatantrik Terai Mukti Morcha (Goit) have

captured land belonging to Anurag Giri, 45, of Sakhawa Mahendranagar- 1 on 13 May. The group captured Giri's 10 bighas of land and two ponds. The group also captured 10 bighas of land and a pond belonging to Arjun Giri of same VDC.

Mahottari, JTMM- G has captured the land owned by former Chief Justice Biswanath Upadhyaya and former Nepal Rastra Bank Governor Satendra Pyara Shrestha on 23 May, located at Bhangaha of Sitapur VDC in Mahottari. Upadhyaya and Shrestha have eight hectares of land each in the village, local informed. Former Sitapur VDC chairman Arun Kumar Singh said that the JTMM- G cadres had hoisted a flag on 23 May declared the land capture.

6. By Madhesi Tigers

6.1 Abduction

Saptari, A group identifying itself as from Madhesi Tigers has abducted an army man on 20 April. Som Bahadur Thapa, posted at Rana Singh Dal Battalion, Lahan was abducted from Kamalpur VDC, family sources informed. No group has so far claimed responsibility for the abduction. This is the first abducted of army since the Terai unrest began.

Madhesi Tigers abducted Ramesh Kumar Gupta, 55, of Portaha VDC- 1 from Portaha VDC- 2 on 23 May. He was accused of spying against the group, Tigers' area number 1 in charge Nabin

informed.

Sunsari, Armed cadres of Madhesi Tigers have abducted Kedar Bishta, 55 of Madhuban VDC- 9 on 24 May 6 pm.

Two Madhesi Tigers cadre stopped his motorbike while he was returning home from Madhuban bazaar and abducted him with the motorbike, locals said.

7. By Unidentified Group

7.1 Killing

Sarlahi, An unidentified gang has shot dead a local and injured another at Beltol of Sundarpur Chuhanwa VDC- 9 at around 8 pm on 6 April.

Thakur Koirala, 33, died on the spot as the group fired indiscriminately after surrounding five villagers staying at the yard of Shiva Chandra Ray. He was shot in the back. House owner Ray has also sustained bullet injuries in the attack. Koirala's dead body has been taken to district hospital, Malangawa while injured Ray was rushed to Narayan Sub-regional Hospital, Birgunj for treatment and from there to Dankan Hospital, Raxaul in India. Locals say the attackers might belong to one of the JTMM factions but none of the groups have taken responsibility for it so far.

Arun Kumar Jayaswal Chaudhary of Malangwa Municipality- 6 has been killed in an explosion on 24 June. An unidentified gang detonated a bomb as he was travelling when

the incident occurred in front of the local temple in Malangawa Municipality-8. He died on the spot.

Local Bhogendra Shah, 13, also sustained splinter injuries. He is undergoing treatment at Malangawa Hospital.

Bara, An identified gang has shot dead former Maoist cadre Manoj Paswan, about 32, of Inarwasira VDC- 8.

The group of about six shot him in ward number 7 of the same VDC at around 5.30 pm. He was hit in back and twice in head. Paswan died while undergoing treatment at Narayani Sub-regional Hospital, Birgunj in the 23 April night.

Mahottari, Overseer at District Development Committee, Mahottari, Purna Singh Pradhan, 38, of Jaleswor municipality-4 was shot dead by an unknown group at the road between Bathnaha VDC and Halkhori VDC on 19 June afternoon.

The victim was shot dead while he was on a site inspection of the newly constructed road at the area.

Dhanusha, Ram Babu Yadav, 15, of Machilagma VDC- 6 has been shot dead by an unidentified gang on 28 June. Yadav was shot in his back as he was sleeping on the bed. He died on the spot.



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